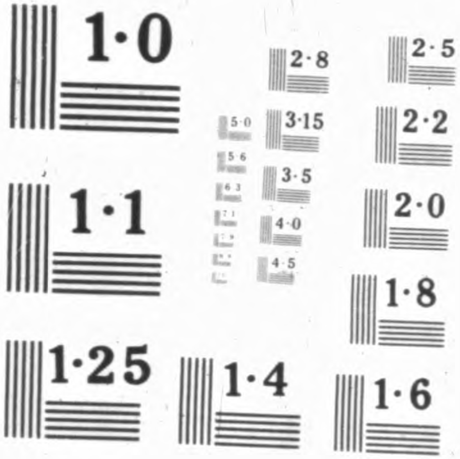
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GREAT BRITAIN
LAW OFFICERS' OPINIONS

Clive Parry
Editor

Erwin C. Surrency
Microfilm Editor

Dobbs Ferry, New York
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1976

GREAT BRITAIN
LAW OFFICERS'
OPINIONS

REEL

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BY THE

LAW OFFICERS OF THE CROWN, &c.

1890.

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CONFIDENTIAL.

REPORTS OF THE LAW OFFICERS OF THE CROWN: 1890.

BORNEO.

No. 1.

The Attorney-General to Foreign Office.—(*Received August* 13.)

[In answer to the following reference, the Attorney-General reports as below:—]

Foreign Office to Law Officers of the Crown.

Foreign Office, August 12, 1890.

Gentlemen,

I HAVE the honour to submit to you herewith, by direction of the Marquis of Salisbury, the papers noted in the margin,* relating to a question which has for a long time been pending between Her Majesty's Government and that of the Netherlands in regard to the boundary-line to be drawn between the Dutch possessions in Borneo and the territory of the British North Borneo Company.

It will not be necessary to trouble you with the early correspondence on this question, but only to give you a brief sketch of the present position of the case.

At a conference recently held at this Office between the Delegates of the two Governments to consider the exact position of the boundary, the principle of a "compromise" was agreed upon, whereby the point of departure of the boundary on the eastern coast of the island was fixed at a place call Broershoek, in parallel 4° 10′.

It will be observed from the Memorandum communicated to Lord Salisbury on the 2nd April last by the Netherland Minister at this Court that his Government propose to agree to accept the principle of the above "compromise," on the understanding that Her Majesty's Government undertake to agree, at the same time, to the delimitation of the boundary-lines which separate the Dutch possessions in Borneo from the States of Brunei and Sarawak, respectively, as far as Tandjong-Datoe on the western coast.

In the year 1888 Agreements were signed between Her Majesty's Government, the Sultan of Brunei, the Rajah of Sarawak, and the British North Borneo Company, respectively, for the establishment of a British Protectorate over those States. (See Parliamentary Paper "Borneo No. 1, 1888.")

The Netherland Government subsequently desired to be informed as to what Her Majesty's Government considered to be the boundaries of the States of Brunei and Sarawak, which had recently been taken under British protection.

The Acting British Consul-General at Brunei was accordingly instructed to inquire of the Sultan of Brunei what he considered to be the boundary-line between his territory and the Dutch possessions. In reply, the Sultan frankly admitted (Mr. Hamilton, No. 6, of the 5th November, 1889), that he knew nothing whatever about the matter; and, on the same question being put by Mr. Hamilton to Rajah Brooke, the Rajah said that

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* "Borneo No. 1 (1888);" Acting Consul-General Hamilton, No. 6, November 5, 1889; Count Bylandt (Memorandum), April 2; British North Borneo Company, July 22; to Count Bylandt, August , 1890.

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the inland boundary of Sarawak was determined by the watershed of the rivers; that is to say, that the country drained by the rivers running to the east coast of Borneo belonged to the Dutch, and, similarly, that on the west coast belonged to Sarawak.

In sending this definition of the boundary home, Mr. Hamilton, however, stated that the exact boundary had never been determined, because no one knew how the surface drainage runs; although he added that at one or two places the exact boundary had been adjusted by an amicable agreement.

The above information was not communicated to the Netherland Government.

The Netherland Government now inquire, in their Memorandum of the 2nd April, whether Her Majesty's Government are prepared to accept the lines of boundary which separate those States from the Dutch possessions in Borneo as defined in the Dutch official Map.

It has been shown that no attempt has ever been made on the part of the Rulers of those States to mark the boundaries between their possessions and those of the Dutch; and fruitless delay would manifestly be occasioned if further inquiries were now to be made on the spot as to the actual boundaries in question.

Under these circumstances, Her Majesty's Government are prepared to accept the definition of the boundary as claimed by the Netherland Government, subject to any modifications which may hereafter be agreed upon.

But, as it would appear to be doubtful whether Her Majesty's Government would be justified in accepting such a definition of the boundaries on behalf of the States concerned without having previously obtained the consent of the Rulers of those States, Lord Salisbury would be glad to be favoured with your opinion and observations on this point.

The draft of the reply which it is proposed to return to Count Bylandt's Memorandum is submitted herewith for your concurrence.

I have, &c.
(Signed) P. W. CURRIE.

BORNEO COMPANY: DELIMITATION OF BOUNDARY.

Dear Sir Philip Currie, *House of Commons, August* 13, 1890.

Delimitation of boundary between Dutch possessions in Borneo and territories of Sultan of Brunei, Rajah of Sarawak, and British North Borneo Company, respectively.

AS a messenger has called for the papers received this morning on this matter, with a request that they may be sent back "done or undone," I have thought it best to look at them at once, to see if I can answer the question off-hand. The Solicitor-General is absent, so you must take this as my opinion only; but if any of the territory proposed to be given to the Dutch under the boundary compromise is in fact part of the possessions of Brunei or Sarawak, Her Majesty's Government would not be justified in accepting such a definition, so as to bind the Rulers of those States without their consent.

I gather from the papers that there is considerable doubt about the boundaries between Brunei and Sarawak respectively and the Dutch territory, but it seems to me that it would not be proper for Her Majesty's Government to attempt to bind the Rulers of these countries, by virtue of the Protectorate, to that which may be a cession of territory, without their consent.

Of course, Her Majesty's Government could agree, so far as they are concerned, but that, I apprehend, is not what is required. Failing consent of the Rulers, some reservation should be inserted in the formal Agreement.

In view of the uncertainty as to the boundary, and the statements contained in Consul-General's letter of the 5th November, it is, I think, scarcely necessary to alter the draft reply to Count Bylandt, but the point should not be overlooked in preparing the formal Agreement, in the event of any difficulty arising with the Rulers. If, however, it is thought desirable to reserve the question on the face of the reply, some words might be added to the effect that the reply is sent on behalf of Her Majesty's Government, and not on that of the Rulers. Personally, I should doubt the prudence of making any such addition.

Kindly excuse the haste with which I have been compelled to write.

In the event of any further reference, kindly direct a copy of this letter to be sent with the papers, as I have no copy.

I am, &c.
(Signed) RICHARD E. WEBSTER.

Annex.

Draft of Letter to Count Bylandt.

M. le Ministre, *Foreign Office, August* , 1890.

ON the 2nd April last I had the honour to receive from you a Memorandum containing certain proposals which the Netherland Government have made with a view to the settlement of the questions in regard to the lines of boundary between the Dutch possessions in Borneo and the territories of the Sultan of Brunei, the Rajah of Sarawak, and the British North Borneo Company, respectively.

The Netherland Government propose in effect:—

Boundary proposed by Netherland Government.

1. That the principle of a "compromise" agreed upon between the Delegates at the recent Conference as to the boundary between the Dutch possessions and the British North Borneo Company being accepted by the Netherland Government, and Broershoek in parallel 4° 10′ being fixed as the starting point of the boundary on the eastern coast, Her Majesty's Government should undertake to agree, at the same time, to the delimitation of the boundary-lines which separate the Dutch possessions in Borneo from the States of Brunei and Sarawak, respectively, as far as Tandjong-Datoe on the western coast. So far, however, as the territory of the British North Borneo Company is concerned, it is proposed that the line of watershed of the Rivers Simengaris and Soedong, as marked on a tracing which accompanied the Memorandum in question, should divide the Netherland possessions from those of the Company, leaving the exact boundary-line to be traced hereafter on the spot by a Mixed Commission;

2. That the Island of Sibittik should remain to the Netherlands;

3. That the navigation of all rivers flowing into the sea between Batoe-Tinagat and the River Siboekoe should be free, except for transport of war material; and

4. That, in the event of Broershoek being fixed as the point of departure of the boundary on the coast, the population of Boelongan should be allowed to collect jungle produce for fifteen years, free from tax or duty.

Counter-proposals and suggestions of British North Borneo Company, which are concurred in by H. M.'s Govt.

These proposals having been submitted to the Court of Directors of the British North Borneo Company for their observations, I have the honour to inform you that the Company have now made the following suggestions and counter-proposals, which are concurred in by Her Majesty's Government:—

1. They are prepared to accept Broershoek, the point on the coast where the parallel of 4° 10′ north latitude meets the sea, and to give up their claim to any territory on the coast south of this point, provided that the Netherland Government agree to surrender their claim to any territory to the north of that parallel, including Batoe-Tinagat, and any places which they may have occupied on the Tavao River, and that the other portions of the proposed arrangement are satisfactorily settled.

They object to accept the line of watershed of the Rivers Simengaris and Soedong as their boundary, for the following reasons:—First, because the mountain ranges are utterly unknown, no one having ever attempted to fix any of them, either geodetically or astronomically; and, secondly, because the tracing annexed to your Memorandum is made from an unofficial Map, and not from an actual survey.

They therefore propose to follow the principle adopted in tracing similar boundaries in unknown and unexplored countries—in New Guinea, for instance,—namely, by accepting a parallel of latitude; and they suggest that the boundary-line should run along the parallel of 4° 10′ north latitude until it reached the mountain range which separates the Netherland possessions from those of Brunei. This, the Company consider, would be equally fair to both parties, inasmuch as it is absolutely a matter of conjecture where the rivers rise which empty themselves into the sea to the north or south of Broershoek at 4° 10′ north latitude.

Should the Netherland Government accept this line of boundary, Her Majesty's Government would be prepared to recognize the dividing lines, already marked on the Dutch official Map,* as those which separate the Dutch possessions from the States of Brunei and Sarawak, respectively, leaving any differences which might possibly hereafter arise with regard to the actual position of any particular locality to be settled by mutual agreement between the British and Netherland Governments.

2. The British North Borneo Company are very anxious that the Island of Sibittik should be recognized as being within the boundary of their possessions, or

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* See Sheet 10 in "Atlas der Nederlandsche Bezittingen in Oost Indië," by J. W. Stemfoort and J. J. ten Siethoff.

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that the boundary-line should run along the parallel of 4° 10′ eastward as well as westward from Broershoek, so as to divide the island equally between themselves and the Netherland Government. But Her Majesty's Government are desirous to arrive at a speedy settlement of this long-vexed question, and they would therefore not press this point on behalf of the Company, provided that the Netherland Government would be prepared to lease the northern part of the island to the Company in perpetuity for a nominal rental, and would undertake to leave the Company in quiet and peaceable possession of it.

3. They are willing to agree that the navigation of all the rivers between Batoe-Tinagat and the Siboekoe River should be free, except for transport of war material, on the understanding that the Netherland Government give a similar undertaking; and

4. They are prepared to agree that the population of Boelongan should be allowed to collect jungle produce for fifteen years, free from any tax or duty.

On hearing from you that the counter-proposals herein made are accepted by the Netherland Government, I shall have the honour to submit, for your approval, a draft Agreement, in order that the result of the negotiations which have passed on the subject between our respective Governments may be formally recorded.

I have, &c.

List of Papers.

"Borneo No. 1 (1888)"		
Acting Consul-General Hamilton	(No. 6)	November 5, 1889
Count Bylandt (Memorandum)	..	April 2, 1890.
British North Borneo Company	..	July 22, "
To Count Bylandt	..	August , "

No. 2.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 1.)

My Lord, *Royal Courts of Justice, October* 30, 1890.

Draft of Brunei Order in Council, 1890.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 4th ultimo, stating that he was directed by your Lordship to submit to us the accompanying draft of an Order in Council, to be known as "The Brunei Order in Council, 1890," which had been prepared by Mr. Wright, under instructions from the Foreign Office, to provide for the exercise of Her Majesty's extra-territorial jurisdiction within the dominions and territories of the Sultan of Brunei.

That Sir Thomas Sanderson was to inclose letters from the Home Office, Colonial Office, India Office, and the Treasury;* and that he was to request that we would take the draft Order into our consideration, and that we would favour your Lordship with our opinion whether it might properly be laid before the Queen in Council for Her Majesty's approval, and with any general observations which we might have to offer.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approves as altered and initialled.

That in our opinion the draft Order, as altered and initialled by us,† may properly be laid before the Queen in Council for Her Majesty's approval.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Home Office, July 12; Colonial Office, June 18; Treasury, June 25; India Office, June 28, 1890.

† Brunei Order in Council. Confidential No. 6003*.

BRAZIL.

No. 3.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 15.)

My Lord, *Royal Courts of Justice, February* 11, 1890.

Proposed new Naturalization Law.

WE were honoured with your Lordship's commands signified in Sir T. Sanderson's letter of the 15th November last, stating that he was directed by your Lordship to transmit to us a despatch (No. 21, Treaty, of the 12th October, 1889) which had been received from Her Majesty's Minister at Rio de Janeiro with reference to the project for a new Law on naturalization, which it was believed that the Brazilian Government intended to present to the Chambers during the next Session, commencing on the 20th November.

Foreigners after two years' residence to be considered Brazilians unless they make declaration to contrary effect within six months of passing of Law.

That Mr. Wyndham inclosed an extract from the Brazilian newspaper "O. Paiz" of the 21st September last, giving the text of the proposed Law, which, as would be seen, provided (amongst other things) that foreigners residing in the Empire for the period of two consecutive years, and who within six months therefrom, and after the promulgation of the Law, did not declare their desire to retain their nationality, should, for all legal purposes, be considered Brazilian subjects as if they had been born in Brazil.

That the terms of the proposed Law were of a somewhat unusual nature, and appeared likely to place British subjects residing in Brazil in a more unfavourable position than they then occupied.

As to a protest by H. M.'s Govt.

That Sir Thomas Sanderson was therefore to request that we would take the projected Bill into our consideration, and that we would favour your Lordship with our opinion as to whether Her Majesty's Government was, from the point of view of international right, either called upon to make, or justified in making, any protest against such a Law, and, if so, to what particular point or points the protest should be especially directed.

Decree of Provisional Govt.

We have also the honour to acknowledge the receipt of a note from Sir Thomas Sanderson, dated the 6th January last, inclosing a despatch (No. 23, Treaty, of the 9th December, 1889) from Her Majesty's Minister at Rio de Janeiro, transmitting a copy and translation of a Decree of the Provisional Government of Brazil respecting naturalization.

We were further honoured with a letter from Sir Thomas Sanderson, dated the 18th January last, stating that he was directed by your Lordship to transmit to us some further papers which had been received from Her Majesty's Minister at Rio de Janeiro with reference to the new Brazilian Naturalization Law.

That it would be observed that since the reference of the 15th November was made to us, the Law in question had passed, apparently without any modifications of an essential character, from the form of a project or Bill into that of a substantive enactment or Decree which was promulgated by the Provisional Government of the Brazilian Republic on the 15th December last.

That that Government had, since the date of the publication of the project of the Naturalization Law, *de facto*, replaced the Government of His Majesty the then Emperor of Brazil under which that project was evolved. That this Provisional Government might be said to have been tacitly acquiesced in by the population at large, but that it had not yet been accepted as a Constitutional Government by the expressed popular vote of the Brazilian nation, nor had it received any formal recognition from the Governments of the Great European Powers, including that of Great Britain.

As to recognition of Provisional Govt., and consequent recognition or otherwise of their Decree by H. M.'s Govt.

That it appeared, therefore, open to doubt whether Her Majesty's Government were bound, under present circumstances at any rate, to recognize any Decree emanating from such a source, or to regard it, in so far as it purported to affect the subjects of Her Majesty, as otherwise than the arbitrary act of an Administration clothed merely with self-assumed and temporary powers, and consequently as a measure possessing no permanent authority nor binding force.

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That, on that question, however, your Lordship would be glad to be favoured with our opinion. But that there were, apart from that point, other considerations of importance which arose in connection with the actual wording of the Decree itself, and that to those Sir T. Sanderson was also to direct our attention.

That the rules laid down in Articles 1 and 2 of that Decree appeared to constitute an innovation upon the principle ordinarily recognized as applicable to changes of nationality, viz., that a foreigner resident abroad was to be considered as retaining his original national status until he himself took steps to change it, and that it was thought that these Articles might call for some observations on the part of Her Majesty's Government. That it would be observed that they put upon a foreigner resident in Brazil the onus of declaring that he wished to retain the nationality with which he entered that country, or in the alternative of becoming by mere efflux of time, unaccompanied by any expression of intention, or other direct action on his part, a Brazilian citizen.

That apart from the objection on general grounds which had already been pointed out to such a provision, it seemed open to grave doubt whether British subjects so becoming naturalized in Brazil by the mere operation of the Decree in question could be considered to have become "voluntarily naturalized in a foreign State" within the meaning and intent of section 6 of "The Naturalization Act, 1870."

That if such British subjects could not, having regard to the circumstances attendant upon their alleged naturalization, properly be regarded as having been voluntarily naturalized in Brazil in contemplation of the English Statute now governing that question, it might be incumbent upon Her Majesty's Government also to protest, on that special ground, against the application to British subjects of a Decree which, if its validity were recognized, might not merely confer Brazilian nationality upon them against their will, but might, as a consequence, also deprive them while in Brazil of the right, which they would otherwise enjoy, of being protected in that country as elsewhere by Her Majesty's Government as subjects of the Queen.

That it had also been suggested that some distinction in that regard might possibly be drawn and urged upon the attention of whatever Government might be ultimately recognized in Brazil, between British subjects who might establish themselves in that country subsequently to the promulgation of that Decree, and who might therefore be taken to have done so with notice, either actual or constructive, of its provisions, and British subjects who had already become resident therein prior to the Decree, and under a Naturalization Law more usual, as well as more favourable to them, in its provisions.

That a protest based either upon the general or special grounds indicated above would embrace the case of all British subjects alike, whether resident in Brazil for their own private purposes or in an official capacity.

Special case of H.M.'s Consuls in Brazil.

But that if, on the other hand (assuming that the Decree was to be regarded as the act of a competent authority), it should be considered that Her Majesty's Government were not legally justified in basing any protest, in so far as British subjects in general were affected thereby, upon the mere wording of its provisions, it was still thought that Her Majesty's Government should require some definite assurance that no attempt would be made to apply it to the case of British subjects in the Consular Service of Her Majesty, whose residence in Brazil, although not covered by diplomatic privilege, was in furtherance of a public duty and not in pursuit of private interests.

That a Memorandum dealing with various precedents bearing on some of the points above indicated had been prepared and was inclosed for our assistance.

That Sir T. Sanderson was to request that we would take the Decree of the 15th December, 1889, and the other papers transmitted therewith, into our consideration, and that we would favour your Lordship with our opinion on the various questions raised in his letter, as well as with any general observations which we might desire to add upon its subject.

We have taken all the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

No ground for protest agst. proposed Law.

That, in our opinion, Her Majesty's Government was not called upon, from the point of view of international right, to protest against the proposed Law of the 21st September, 1889.

The Decree of the 26th November, 1889, is not open to objection.

Cannot object to Decree on ground that Govt. is provisional.

With regard to the Decree of the Provisional Government, 1889, no objection can, in our opinion, be properly founded on the fact that the Government is provisional, it being, as we understand, in effective, unresisted, and peaceful possession of power.

To protest against shortness of period within which declaration must be made.

We think, however, that the proper course is for Her Majesty's Government to take note of the provisional character of the Government as recited in the Decree, and, further, to protest against the terms of the Decree upon the ground of the shortness of the period (six months from the 15th December, 1889) within which the foreigner must make the proposed declaration, and that the Decree proposes to change the status of foreigners already resident who fail to make a declaration within that period, whether they have notice of the terms of the Decree or not.

Liberty of future action and right to protect Bh. subjects.

Her Majesty's Government should reserve to themselves liberty of future action, and also reserve their right to protect any persons whose rights of British nationality are unduly prejudiced by the Decree or its operation.

Position of Consuls.

No special objection can, in our opinion, be founded on the position of Consuls.

Persons, after notice and opportunity, abstaining from making declaration to be held as having become voluntarily naturalized in Brazil.

In our opinion a person who, with notice of the Law and an opportunity of making the declaration therein mentioned, abstains from making such declaration, would be properly held to have voluntarily become naturalized in Brazil within section 6 of the Act of 1870, and to have thereby lost his status as a British subject.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

1	Law Officers. Confidential No. 1301, No. 212	.. ..	September , 1862.
2.	Ditto „ No. 4539, No. 27	.. ..	April 28, 1880.
3.	Ditto „ No. 4637, No. 4	.. .. ..	February 1, 1881.
4.	Mr. Wyndham	(No. 21. Treaty)	October 12, 1889.
5.	Ditto	(No. 23. Treaty)	December 9, „
6.	Ditto	(No. 24. Treaty)	December 17, „
7.	Mr. Wyndham to Sir H. Bergne	(Private)	December 17, „
8.	Memorandum	.. ..	January 13, 1890.

No. 4.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received April 26.)

My Lord, *Royal Courts of Justice, April 25, 1890.*

Brazilian Law on Naturalization.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us the further papers noted in the accompanying list, which related to the new Brazilian Law on Naturalization.

That Sir Thomas Sanderson was to inform us that on the receipt of our Report of the 11th February last your Lordship caused instructions founded upon it to be sent to Mr. Wyndham, Her Majesty's Minister at Rio de Janeiro (to Mr. Wyndham, 26th February, 1890), but that in consequence of a note received from the Italian Ambassador at this Court (from Count Tornielli, 3rd March, 1890) intimating a desire on the part of the Italian Government that the Representatives in Brazil of Great Britain and Italy should act in concert in the matter, Mr. Wyndham was subsequently desired by telegraph to delay acting upon his instructions until he received further directions (to Mr. Wyndham, 7th March, 1890).

That copies of the instructions to Mr. Wyndham were sent on the 10th March to Her Majesty's Representatives to the Great Powers and Belgium (10th March, 1890).

That they were informed that, at the request of the Italian Ambassador, Mr. Wyndham had been desired to delay acting upon his instructions, and that they were instructed to inquire whether the Governments to which they were accredited intended to address any communication to the Brazilian Government on the subject of the Decree.

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Note proposed to be addressed to Govt. of Brazil by European Powers.

That on the 15th March the Italian Ambassador (from Count Tornielli, 15th March, 1890) forwarded a copy of a draft note which the Italian Government proposed should be addressed to the Government of Brazil by the European Powers. That a copy of that draft note was sent to Her Majesty's Representatives on the 22nd March.

That Sir Thomas Sanderson was to inclose despatches from Her Majesty's Ambassadors at Paris, Berlin, St. Petersburgh, Vienna, and Madrid which showed that, with the exception of Russia, who was not directly interested in the matter, the Great Powers were in the main disposed to agree in the views contained in the note prepared by the Italian Government.

That Sir Thomas Sanderson was to add that Portugal, which was probably as much interested in the matter as any of the European Powers, had also been invited by Italy to join the Great Powers in a collective representation, and that, under those circumstances, it had been thought well to instruct Her Majesty's Minister at Lisbon to communicate a copy of the despatch to Mr. Wyndham of the 26th February to the Portuguese Government, and to inquire whether they intended to address any representation to the Brazilian Government on the subject of the Decree (to Mr. Pètre, 15th April, 1890).

That as, however, some time might probably elapse before a definite reply could be received from the Portuguese Government, and that as replies had now been obtained from all the other Powers concerned, your Lordship was anxious, without further delay, to be favoured with our views upon the terms of the Memorandum proposed by the Italian Government.

That it would be observed that the last paragraph of that Memorandum appeared to be couched in somewhat uncompromising terms, and that it was thought possible that the Brazilian Government might feel some difficulty in guiding their action in accordance with a criticism thus expressed.

That, at the same time, Her Majesty's Government were anxious, in so far as they properly could, to concur in language which had already obtained general acceptance on the part of the other Powers interested, and were desirous not to weaken the effect of the proposed identic representation by expressing any reservations upon its terms unless we should consider that course either necessary or prudent from a legal point of view.

That Sir Thomas Sanderson was to add that the Italian Ambassador was pressing for an expression of the views of Her Majesty's Government in order that instructions might at once be sent to the Italian Representative at Rio.

That Sir Thomas Sanderson was therefore to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion on the questions more particularly raised therein, as well as with any general observations which we might have to offer on the Memorandum prepared by the Italian Government.

We were also honoured with a note from Sir Thomas Sanderson, dated the 18th instant, inclosing a further despatch from Her Majesty's Ambassador at Paris (from Lord Lytton, 15th April, 1890) in regard to the new Decree.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

H. M.'s Govt. may properly join in note proposed by Italian Govt.

That, in our opinion, the note proposed by the Italian Government places the protest on somewhat higher grounds, and goes rather beyond that which, if the note had been framed by Her Majesty's Government, we should have suggested; but there is nothing in it inconsistent with the grounds upon which a protest should be based, as stated in our Report of the 11th February, 1890, and, in view of the importance of concerted action, Her Majesty's Government may, in our opinion, properly join therein.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) To Mr. Wyndham	(No. 2 Treaty)	February 26, 1890
(B.) Count Tornielli		March 3, ,,
(C.) To Mr. Wyndham	(No. 3. Treaty)	March 7, ,,
(D.) To Her Majesty's Representatives at Courts of Great Powers and Belgium		March 10, ,,
(E.) Count Tornielli		March 15, ,,
(F.) Lord Lytton	(No. 29. Treaty)	April 3, ,,
(G.) Sir A. Paget	(No. 1. Treaty)	March 21, ,,
(H.) Sir E. Malet	(No. 4. Treaty)	March 15, ,,
(I.) To Sir E. Malet	(No. 9. Treaty)	March 19, ,,
(J.) Sir E. Malet	(No. 6. Treaty)	March 22, ,,
(K.) Ditto	(No. 8. Treaty)	April 1, ,,
(L.) Sir R. Morier	(No. 1. Treaty)	March 19, ,,
(M.) Sir C. Ford	(No. 8. Treaty)	March 20, ,,
(N.) To Sir C. Ford	(No. 10. Treaty)	March 25, ,,
(O.) Sir Clare Ford	(No. 11. Treaty)	March 28, ,,
(P.) Ditto	(No. 12. Treaty)	March 30, ,,
(Q.) Lord Vivian	(No. 4. Treaty)	March 25, ,,
(R.) Mr. Finlay		March 11, ,,
(S.) Mr. Wyndham	(No. 4. Treaty)	March 20, ,,
(T.) To Mr. Petre	(No. 7. Treaty)	April 15, ,,
(U.) Lord Lytton	(No. 30. Treaty)	April 15, ,,

CHILE.

No. 5.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 11.)

My Lord, *Royal Courts of Justice, February 10, 1890.*

Complaint of Nitrate Railways Company against Chilean Government for infraction of Concessions granted by Peruvian Government.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 4th instant, stating that he was directed by your Lordship to lay before us the accompanying Memorandum by Mr. J. W. Budd setting forth the facts on which the Nitrate Railways Company (Limited) founded a complaint against the Chilean Government.

That it would be seen that the Company was an English Company with a large capital; that it had purchased the benefit of three Concessions of railways granted by the Peruvian Government in 1868, 1869, and 1871, with certain limitations; that there were various Decrees of the Chilean Government, which acquired the province within which the railways were situated after the war with Peru, recognizing the rights of the Company, but that the Chilean Government had now declared the third Concession void, and invited tenders for the construction of competing lines.

That a statement by the Nitrate Railways Company as to the Concessions under which the lines were built, and with respect to the question which had arisen with the Government of Chile regarding the third Concession, was inclosed for our information.

That the Company had appealed to the Law Courts of Chile, and that the Supreme Court of Chile had decided that the question was one for the Courts to determine.

That notwithstanding that, the Government refused the intervention of the Courts.

That the Company had obtained legal opinions, of which copies were annexed, in support of their contention, and now asked that Her Majesty's Government should make a strong representation to the Chilean Government to the effect that their action was a breach of faith.

That the matter pressed somewhat as the tenders for the competing railways, against which the Company protested as an infraction of their Concessions, were invited on the 1st March, but that, before taking the action desired by the Company, your Lordship would be glad to be favoured, at our earliest possible convenience, with our opinion as to whether, under the circumstances, Her Majesty's Government would be justified in so doing; and, if so, on what grounds a remonstrance might most advantageously be based.

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We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

To protest against infraction of Concession; legality of which to be determined by Chilean Tribunals.

That, in our opinion, Her Majesty's Government would be justified in protesting against the proposed infraction of the exclusive privilege granted by the Concession of 1871, on the ground that there has been no breach by the Company of any obligation imposed upon it by the transfer of the Concessions approved and recognized by the Peruvian and Chilean Governments; and that if any such infraction were alleged the Company is entitled to have the question of the legality of the forfeiture of the Concession determined in due course of law by the Chilean Tribunals.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Legal opinions communicated by Directors of Nitrate Railway Company to Sir P. Currie, with Foreign Office Memorandum of..	December 17, 1889.
Mr. Budd (with Inclosures)	December 19, ,,
Ditto (Memorandum)	February 4, 1890.

No. 6.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 29.)

My Lord, *Royal Courts of Justice, March* 27, 1890.

Documents respecting wreck of the "Tycoon," lodged at Valparaiso Consulate, wanted by Mr. F. Hill for production at trial.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence which had taken place between the Foreign Office and a solicitor named Mr. Frederick Hill under the following circumstances:—

That Mr. Hill, who represented himself to be acting for Captain Rickaby, the late master, and for Mr. S. C. Love, the owner, of the sailing-ship "Tycoon," which, having put into Valparaiso through stress of weather, was subsequently condemned and sold there, had lodged with the underwriters in England a claim on behalf of his clients.

That the settlement was said to be delayed because the set of papers which the master brought home with him had been either lost or mislaid by the underwriters to whom it had been intrusted for purposes of reference by the solicitor to the owner and master.

That the owner of the vessel had obtained payment on one of the policies on the ship, but that in the present instance the underwriters had made an offer in way of settlement which the owner considered so unsatisfactory as to induce him to bring an action against them upon the insurance policy

That documents similar to those which were not forthcoming were lodged at the British Consulate at Valparaiso, and that they had now been sent to the Foreign Office in order that they might be produced at the trial, if necessary, by one of the staff of the Librarian's Department under a *subpœna duces tecum*.

That Mr. Hill represented that, in order to bring his clients' case properly before the Court, it was necessary for counsel to be furnished with a copy of the documents, as questions in the action would turn on their construction, viz., whether the ship was a total loss or a constructive total loss, and whether the owner should not have had her repaired instead of being condemned by the surveyors.

That copies of various Reports which had from time to time been furnished by previous Law Officers upon applications of a somewhat analogous kind were inclosed, but that it would be observed that in none of those cases were the circumstances identical with those in the present instance.

That Sir Thomas Sanderson was to request that we would take the correspondence into our consideration, and favour your Lordship with our opinion as to whether, under the circumstances, Mr. Hill should be allowed to inspect the papers in question which were now in the Foreign Office, and whether he should be permitted to take or be supplied with copies of such of them as he might consider, after such inspection, material for the purpose of instructing counsel or otherwise in the conduct of the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Mr. Hill may inspect and have copies.

That it is not, in our opinion, desirable that, as a rule, the Foreign Office should furnish documents to private litigants, but, under the special circumstances of the case, we think that Mr. Hill may properly be allowed to inspect and have copies of the papers in question.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Mr. F. Hill	.. ..	November 19, 1889.
To Board of Trade	.. ..	November 25, ,,
Board of Trade	.. ..	November 29, ,,
Mr. Hill	.. ..	November 29, ,,
To Board of Trade	.. ..	December 7, ,,
Board of Trade	.. ..	December 11, ,,
To Board of Trade	.. ..	December 21, ,,
To Consul Newman	.. .. (No. 13)	December 21, ,,
Acting Consul Howard	.. .. (No. 6. Commercial)	December 21, ,,
To Mr. F. Hill	.. ..	February 4, 1890.
Mr. F. Hill	.. ..	February 5, ,,

Law Officers' Reports—

Queen's Advocate, No. 230 ..	September 19, 1861.	Confidential No. 1123, p. 222.
Law Officers, No. 153	September 5, 1864.	Confidential No. 1405, p. 106.
,, No. 93	March 28, 1868.	Confidential No. 1892, p. 65.
,, No. 122	April 2, ,,	Confidential No. 1892, p. 89.
,, No. 181	June 5, 1874.	Confidential No. 4331, p. 132.
,, No. 114	March 2, 1875	Confidential No. 4370, p. 86.
,, No. 123	June 7, ,,	Confidential No. 4370, p. 92.
,, No. 131	July 14, ,,	Confidential No. 4370, p. 97.

No. 7.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received April 29.)

My Lord, *Royal Courts of Justice, April* 28, 1890.

Questions between Chilean Govt. and Nitrate Railways Company.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, which related to the questions pending between the Chilean Government and the Nitrate Railways Company.

That Sir T. V. Lister was to invite our attention to the copy of the Report already received from us on the matter, which was dated the 10th February last.

That since the date of that Report further representations on the subject had been received from Mr. Budd and Colonel North, who represented the interests of the Nitrate Railways Company, and also from Mr. Gibbs, who, representing adverse interests, contended that the Nitrate Railways Company were not entitled to the support of Her Majesty's Government.

That we should see that, on the receipt of our Report above referred to, Mr. Kennedy, Her Majesty's Minister in Chile, was directed to protest against the proposed infraction by the Chilean Government of the exclusive privilege granted by the Concession to Messrs. Montero Brothers in 1871; and that on the 15th February Mr. Kennedy reported the action he had taken in conformity with his instructions.

That the views of the several parties interested were given in the papers marked (E), (G), (H), (K), (L), (O), (R), (W), (X).

That on the 21st March Mr. Kennedy reported that the Chilean Government

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regretted that diplomatic intervention had been sought in support of the claims of the Nitrate Company.

That on the 23rd ultimo he was instructed by telegraph to reserve the rights of the Company, which it was understood from his telegram of the 21st were being set aside by the publication in the official Chilean Gazette of an acceptance of a tender for the construction of a new railway unreservedly.

That on the 1st instant Mr. Kennedy sent home the purport of the Chilean reply to the representation he had addressed to them on the 15th February. That the Memorandum therein referred to had not yet reached the Foreign Office, but that it was founded, as reported by Mr. Kennedy on the 24th February, on the instructions sent to him by your Lordship on the 12th of that month.

That Article 15 of the Concession alluded to would be found at p. 53 of the paper marked (B). That its terms were as follows:—

"The applicants or the Company which they may organize shall have the right to transfer, wholly or in part, their rights to the road from La Noria to the frontier of Bolivia, with permission of the Government expressed in a public document. If the transfer should be made in favour of foreigners, they shall be subject to the laws of the country, without the power of having recourse to any diplomatic intervention."

That it would be seen that the contention of the Chilean Government briefly was that under the terms of that Article, and in view of the fact that the forfeiture of the privileges conferred upon the Company was declared in conformity with the laws of the Republic, there was no *locus standi* for diplomatic intervention on behalf of the transferees.

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to what answer, having regard to all the circumstances, should now be returned to the Chilean note. That your Lordship would, at the same time, be glad to be favoured with any general observations which we might have to offer on the case.

We have also the honour to acknowledge the receipt of Sir Thomas Sanderson's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us a telegram from the Company's representative at Santiago, showing that the Chilean Government had now advertised for tenders for two more lines of railway in the districts covered by the Company's Concessions, which, if completed, would have the most serious effect on the traffic of the Company's lines. That an explanatory Map was also inclosed, on which the position of the proposed railways was roughly indicated in pencil.

That Sir Thomas Sanderson was to request that we would have the goodness to take the papers inclosed in his letter into our consideration, together with those already submitted to us on the subject.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Case is one of considerable difficulty.

That the further papers in this case raise a question of considerable difficulty.

In the last paragraph but one of the Memorandum of Mr. Budd, dated the 4th February, 1890, it was stated that although the Supreme Court of Chile had decided that the question between the Government and the Railway Company was for the decision of the Chilean Tribunals, the Government, on the advice of the Council of State, was paying no regard whatever to the decision, and that the Company's representative was satisfied that the Chilean Government were aware of the illegality of their acts.

Illegality of acts of Chilean Govt.

In the further papers, and particularly in the representations of Messrs. Gibbs and Co., it is alleged that the Council of State have the right of reviewing and, if they think fit, overruling the decision of the Supreme Court.

H. M.'s Govt. justified in enforcing upon Chilean Govt. the claims of Nitrate Railways Co.

If Her Majesty's Government are advised that by the Constitution of Chile this right of review and reversal by the Council of State exists, the ground of protest indicated in our Report of the 10th February, 1890, would, to a great extent, be removed; but as in that case the protection contemplated by clauses 16 of the first Concession, 12 of the second Concession, and 15 of the third Concession, would practically be inoperative, we think that Her Majesty's Government will be justified in taking any measures which to them may seem appropriate for maintaining the protest of the 13th February, 1890, and enforcing upon the Chilean Government the claims of the Nitrate Railways Company. The right of diplomatic intervention belongs to the Government, and not to the individual.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) Legal opinions communicated by Directors of Nitrate Railway Company to Sir P. Currie, with Foreign Office Memorandum of		December 17, 1889
(AA.) To Mr. J. G. Kennedy	(No. 39)	December 18, „
(B.) Mr. Budd (with Inclosure)		December 19, „
(C.) Ditto (Memorandum)		February 4, 1890
(D.) Law Officers		February 10, „
(E.) Mr. Budd		February 10, „
(F.) To Mr. J. G. Kennedy	(No. 9)	February 12, „
(G.) Colonel North		February 11, „
(H.) Mr. Budd		February 14, „
(I.) Mr. J. G. Kennedy	(Telegraphic)	February 24, „
(J.) Ditto	(No. 15)	February 15, „
(K.) Mr. Budd		March 4, „
(L.) Mr. H. Gibbs		March 4, „
(M.) Ditto		March 10, „
(N.) To Mr. H. Gibbs		March 11, „
(O.) Mr. H. Gibbs		March 13, „
(P.) To Mr. H. Gibbs		March 14, „
(Q.) Ditto		March 17, „
(R.) Mr. H. Gibbs		March 19, „
(S.) Mr. J. G. Kennedy	(Telegraphic)	March 21, „
(T.) To Mr. J. G. Kennedy	(No. 20)	March 23, „
(U.) To Mr. Budd		March 29, „
(V.) To Mr. H. Gibbs		March 29, „
(W.) Mr. H. Gibbs		March 31, „
(X.) Mr. Budd		March 31, „
(Y.) Mr. J. G. Kennedy	(Telegraphic)	April 1, „

CHINA.

No. 8.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 8.)

Royal Courts of Justice, February 7, 1890.

My Lord,

Jurisdiction of Bishops of China, Japan, and Corea; as to alteration of limits of.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 7th December last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to a suggestion made by his Grace the Archbishop of Canterbury that the Province of Shing King, in Manchuria, should be included in the district over which the newly consecrated Bishop of Corea, Bishop Corfe, would have ecclesiastical supervision.

That the Act 5 Vict., cap. 6, empowered the Archbishop of Canterbury, or the Archbishop of York, for the time being, to consecrate British subjects, or the subjects or citizens of any foreign kingdom or State, to be Bishops in any foreign country.

That section 2 of the same Act enacted that spiritual jurisdiction might be exercised by such Bishops so consecrated within such limits as might from time to time be assigned for that purpose in such foreign countries; and that section 3 prescribed that Her Majesty's Licence, by Warrant under her Royal Signet and Sign Manual, should be obtained for the Bishop's consecration.

That the circumstances in which licences had at various times been issued, under the powers conferred by that Act, for the consecration of Bishops in China, and that the limits of episcopal jurisdiction which had been from time to time assigned to

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them were set out in a Memorandum drawn up in the Librarian's Department of the Foreign Office, dated the 15th November, 1889.

That drafts of the licences themselves were inclosed, together with the licence authorizing the consecration of the Rev. C. J. Corfe as Bishop of the new diocese of Corea.

That it would be seen from the Memorandum above mentioned that some confusion had arisen as to the limits of the jurisdictions, respectively, of the Bishops of North, Mid, and South China, but that two Circulars to Her Majesty's Consuls in China, dated the 13th May, 1875, defined the limits of the jurisdictions of the Bishops of North and Mid China.

That the alterations, however, which had from time to time been made in the limits of the three dioceses in question had never received Her Majesty's formal sanction.

That it appeared, for instance, from a Commission granted by the Archbishop of Canterbury to Bishop Burdon on the 16th March, 1874, a copy of which was inclosed with Mr. Lee's letter of the 23rd April, 1875, that he was invested with Episcopal authority in Victoria, Hong Kong, and in the Empire of China to the south of the 28th degree of north latitude, and in the *Empire of Japan*, but that in 1883 a Bishop was appointed for Japan, and that, in the Queen's Licence for his consecration, Japan was assigned as the limit within which he might exercise spiritual jurisdiction.

That the correspondence which led to Japan being originally placed under the jurisdiction of the Bishop of Victoria, Hong Kong, was described in the Memorandum dated the 8th September, 1884, and that, in consequence of doubts having arisen as to a possible conflict of jurisdiction between the Bishop of the Church of England in Japan and the Bishop of Victoria, Hong Kong, a Circular was addressed to Her Majesty's Consular officers in Japan, on the 4th January, 1887, after communication with the Archbishop of Canterbury, informing them that the superintendence hitherto exercised by the Bishop of Victoria, Hong Kong, over the ministers and congregations of the Church of England in Japan should thenceforth devolve upon the Bishop of Japan.

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the following points:—

1. Whether, in the event of an alteration being made in the limits of the jurisdiction of the Bishop of Corea, as proposed by the Archbishop of Canterbury, the wording of the Act 5 Vict., cap. 6, and of the Royal Licence issued under that Act, required that Her Majesty's sanction should be given to such alteration;

2. If such sanction should be found to be necessary what form should it take; and

3. If Her Majesty's formal sanction was necessary to the alterations which had already been made from time to time in the limits of the dioceses of North, Mid, and South China, as originally defined, by what method could Her Majesty best express such sanction *nunc pro tunc*.

That your Lordship would be glad, at the same time, to be furnished with any general observations we might have to offer in connection with the matter.

We have taken the papers into our consideration and, in obedience to your Lordship's commands, have the honour to

Report—

Alteration in limits requires H. M.'s sanction.

1. That, in our opinion, any alteration in the limits of the jurisdiction of a Bishop consecrated under the Act 5 Vict., cap. 6, requires Her Majesty's sanction.

Form in which such sanction should be given.

2. That sanction should, in our opinion, be given by Warrant under the Royal Signet and Sign Manual.

3. We are not prepared to say that anything short of an Act of Parliament will suffice to give validity to acts done by the Bishop of Victoria, Hong Kong, in any places which are not British possessions as, in our judgment, if the Commission of 1875 was the only Commission held by Bishop Burdon it was not authorized by the Act, and was void so far as it proposed to give authority outside such possessions.

We are, however, of opinion that it is desirable that a Warrant should issue reciting the Commissions which have been issued to the five Bishops, whose cases are now before us, and assigning to each of them a particular district which must be, except in the case of Japan, described by proper geographical limitations.

It would, we think, be advisable that this Warrant should purport to ratify and confirm all acts heretofore done by either of such Bishops in pursuance of the Commission to him which is recited in the Warrant.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Archbishop of Canterbury	November 6, 1889.
(B.)	Act 5 Vict., cap. vi.	
(C.)	Memorandum by Mr. Streatfeild	November 15, 1889.
(D.)	Licence for Consecration of Bishop of North China	December 11, 1872.
(E.)	Licence for Consecration of Bishop of Victoria	April 22, 1873.
(F.)	Licence for Consecration of Bishop of North China	March 24, 1880.
(G.)	" " " "	July 14, 1880.
(H.)	Licence for Consecration of Bishop Corfe as Bishop of Corea ..	October 2, 1889.
(I.)	Circular to Her Majesty's Consuls in China..	May 13, 1875.
(K.)	Ditto.	
(L.)	Mr. Lee .. .. (Inclosing Commission and authority to Bishop Burdon to exercise spiritual functions within prescribed limits.)	April 23, 1875
(M.)	Licence for Consecration of Bishop of Japan	July 30, 1883.
(N.)	Memorandum	September 8, 1884.
(O.)	Circular to Consular Officers in Japan	January 4, 1889.

No. 9.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 7.)

[After reciting the terms of the reference as below, the Law Officers report as on p. 17:—]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 8, 1890.

Gentlemen,

As to inclusion of Province of Shing King in ecclesiastical jurisdiction of Bishop of Corea.

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the papers noted in the accompanying list,* which relate to the suggestion made by his Grace the Archbishop of Canterbury that the Province of Shing King, in Manchuria, should be included in the district over which the newly-consecrated Bishop of Corea, Bishop Corfe, would have ecclesiastical supervision.

As you are aware, some confusion had arisen in regard to the limits of the episcopal jurisdictions hitherto exercised respectively by the Anglican Bishops of North, Mid, and South China; and in consequence of the proposed extension of the jurisdiction of the newly-appointed Bishop of Corea, it has been necessary carefully to examine the question of the limits within which the aforesaid Bishops might legally exercise such jurisdiction.

The correspondence on this subject was referred to you on the 7th December last, and your views on the several points then submitted for your consideration were contained in a Report dated the 7th February, 1890 (see paper marked Q).

The substance of that Report was then communicated to the Archbishop of Canterbury (paper R), and he was at the same time informed that Lord Salisbury would await his Grace's observations before taking any steps in the matter.

The Archbishop has now furnished Lord Salisbury with his remarks on the question in a letter dated the 14th March (paper S), in which he explains the limits of jurisdiction hitherto exercised severally by the Bishops of—

1. Victoria, Hong Kong;
2. Mid and North China;
3. Japan; and

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* (P.) All Papers marked (A) to (O), with the List of Papers referred to Law Officers, December 7 1889.
(Q.) Law Officers, February 7, 1890.
(R.) To Archbishop of Canterbury, February 18, 1890.
(S.) Archbishop of Canterbury, March 14, 1890.
(T.) Mr. Lee, March 18, 1890.

1890

4. The limits of the ecclesiastical jurisdiction which it is now proposed shall be conferred on the new Bishop of Corea.

Limits of the jurisdiction of the Bishop of Victoria, Hong Kong.

1. *Victoria, Hong Kong.*—With regard to the case of the Bishop of Victoria, Hong Kong, it appears that he was consecrated under a licence issued by the Colonial Office, and under the provisions of 5 Vict., cap. 6 (commonly known as "The Jerusalem Act").

The Commission in the case of Victoria, Hong Kong, is not, except in so far as it relates to "foreign countries" outside the colonial possessions of Her Majesty, obnoxious to the same criticisms and observations as are applicable to the other cases. It appears, moreover, that when this Commission was issued the "foreign countries" to which it applied had not been brought within the operation of 5 Vict., cap. 6, and it is suggested that they remained consequently under the jurisdiction of the Bishop of London, in whom, by law or custom, general ecclesiastical jurisdiction is vested as regards all foreign countries or places where no special provision for other supervision has been made.

With reference to this latter point, it will be observed that, in the concluding paragraph of his letter of the 14th March, 1890, the Archbishop of Canterbury specially expresses his opinion that the Act 5 Vict., cap. 6, does not supersede the right of the Bishop of London to provide for spiritual jurisdiction in any foreign country which has not itself been brought under the operation of that Act.

Limits of the jurisdiction of Bishop of Mid and North China.

2. *Mid and North China.*—In both these cases the licence was obtained and the consecration took place (on the 28th October, 1880) under 5 Vict., cap. 6, and in each case the Bishop was consecrated to be a "Bishop of the Church of England in *North China.*"

North China consists of such portions of the Empire of China as lie to the north of the 28th parallel of north latitude, and neither of the two Bishops mentioned has, since his consecration, exercised ecclesiastical jurisdiction outside of the limits assigned to him by his licence.

But on the day of consecration (26th October, 1880) the Archbishop of Canterbury gave to each Bishop a Letter Recommendatory, allocating to each that portion of North China in which he should exercise spiritual functions. From the copy of one of these Letters Recommendatory which is inclosed herewith it will be seen that the document in question is in no sense a Commission (as had been previously supposed), but it is rather to be regarded as a signification of the Archbishop's approval of a private arrangement which had been previously entered into by the two Bishops as to the limits of their respective spheres of labour within their joint Diocese.

Limits of the jurisdiction of Bishop of Japan.

3. *Japan* was withdrawn from the ecclesiastical jurisdiction which the Bishop of Victoria exercised there under his Commission, on the 31st October, 1884, and the present Bishop of Japan, who was consecrated under 5 Vict., cap. 6, exercises jurisdiction only in Japan, or within the limits mentioned in his licence. No Commission has been issued in this case.

Limits of jurisdiction of Bishop of Corea.

4. *Corea.*—The same remarks apply to this case as to that of Japan.

Under these circumstances it appears to his Grace that the two Bishops in North China are those only to whom it may now be necessary to assign ecclesiastical territorial jurisdiction in a somewhat more formal manner, and he suggests that it would be well to clearly define by Warrants the limits of those respective spheres of labour to which, as already explained, they have under a mutual arrangement, endorsed by the approval of his Grace, practically confined themselves throughout.

The Archbishop of Canterbury has also, through his Legal Secretary, Mr. H. W. Lee, furnished this Department with the following documents:—

(T.) Copy of an Agreement, dated the 26th October, 1880, entered into by the Bishops (elect), the Rev. G. E. Moule and the Rev. Charles Perry Scott, with regard to the scope of their functions within the Diocese of North China.

(U.) Copy of the Form of Letters Recommendatory addressed to the clergy and laity in North China in the case of Bishop Moule, by the Archbishop of Canterbury, dated the 18th October, 1880.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion as to whether, having regard to the further observations and explanations with which the Archbishop has been good enough to favour his Lordship, any existing difficulties may not be sufficiently met by adopting the suggestions made by his Grace in his letter of the 14th March last.

If, however, these should, in your judgment, be from a legal standpoint insufficient, Lord Salisbury would be glad to be favoured with your further opinion as to the mode and extent to which it may be desirable to supplement them.

I have, &c.
(Signed) T. V. LISTER.

In obedience to your Lordship's commands signified in Sir T. V. Lister's letter of the 8th ultimo, we have the honour to

Report—

As to suggestion of Archbishop of Canterbury that the limits of jurisdiction of Bishops of North and South China be defined by a Warrant under 5 Vict., cap. 6.

That we have considered the suggestion of his Grace the Archbishop of Canterbury that the whole matter might be dealt with by a Warrant under 5 Vict., cap. 6, defining the limits of jurisdiction of the Bishops of North and South China; but we see no reason to modify the opinion expressed, or to alter the advice given, in our previous Report.

It is not doubted that a Warrant is required for the purpose of defining the limits of the two districts into which North China has by agreement been divided. The Warrant must also deal with Corea, as it is proposed to extend the jurisdiction of the newly-appointed Bishop.

Japan was included in the Commission to Bishop Burdon in March 1874, but was, nine years later, constituted a separate episcopal Diocese, without any revocation of the previous Commission.

See no reason to modify opinion in previous Report.

We remain of opinion that the Commission of Bishop Burdon was void as to any country or place outside of Her Majesty's dominions.

It will not be necessary to refer to the Letters Recommendatory given to Bishops Scott and Moule.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Royal Courts of Justice, May 6, 1890.

No. 10.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received August* 21.)

Royal Courts of Justice, August 19, 1890.

My Lord,

Jurisdiction of English Bishops in China, Japan, and Corea.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 4th instant, stating that, with reference to our Report of the 6th May last, he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relating to the question of the jurisdiction of English Bishops in China, Japan, and Corea.

That, in accordance with the opinion given in our Report above referred to, a letter was addressed to the Archbishop of Canterbury on the 12th May last, inquiring whether his Grace could take steps to have a draft prepared of the necessary instrument for defining the limits of the episcopal jurisdiction of the English Bishops in those countries.

Draft Warrant defining limits of jurisdiction.

That the Archbishop had now submitted the draft of a Warrant, whereby the limits of jurisdiction at present desired might be duly assigned to the respective Bishops under the provisions of section 2 of the Act of Parliament 5 Vict., cap. 6.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion whether the draft was drawn in suitable terms to meet the purpose for which it was designed, and might be prepared for the Queen's signature, and with any general observations which we might have to offer on the case.

1890

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve draft Warrant as altered and initialled.

That, in our opinion, the draft Warrant, as altered and initialled by us, is in suitable terms, and may be prepared for Her Majesty's signature.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(AA.)	All Papers inclosed in reference to Law Officers of April 8, 1890.	
(BB.)	Law Officers	May 6, 1890.
(CC.)	To Archbishop of Canterbury	May 12, „
(DD.)	Archbishop of Canterbury	July 28, „

Annex.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, &c.

WHEREAS by an Act passed in the fifth year of our reign, intituled, "An Act to amend an Act made in the twenty-sixth year of the reign of His Majesty King George III, intituled, 'An Act to empower the Archbishop of Canterbury, or the Archbishop of York, for the time being, to consecrate to the office of a Bishop persons being subjects or citizens of countries out of His Majesty's dominions'" (hereinafter called "the said Act"), it was amongst other things enacted that it should be lawful, our licence by Warrant under our Royal Signet and Sign-manual being first obtained, to consecrate British subjects, or the subjects or citizens of any foreign Kingdom or State, to be Bishops in any foreign country, as in the said Act mentioned;

And it was by the second section of the said Act further enacted that such Bishop or Bishops so consecrated might exercise, within such limits as might from time to time be assigned for that purpose in foreign countries by us, spiritual jurisdiction over the ministers of British congregations of the United Church of England and Ireland, and over such other Protestant congregations as might be desirous of placing themselves under his or their authority;

And whereas, in pursuance of our licence by a Warrant under our Royal Signet and Sign-manual, dated the 24th day of March, 1880, granted under the said Act, the Reverend George Evans Moule was, on the 28th day of October, 1880, duly consecrated to be a Bishop of the Church of England in North China;

And whereas, in pursuance of the said second section of the said Act, we did by our said Warrant assign North China as the limit within which the said Reverend George Evans Moule might exercise spiritual jurisdiction pursuant to the said Act;

And whereas, in pursuance of our licence by another Warrant under our Royal Signet and Sign-manual, dated the 14th day of July, 1880, granted under the said Act, the Reverend Charles Perry Scott was, on the said 28th day of October, 1880, duly consecrated to be a Bishop of the Church of England in North China;

And whereas, in pursuance of the said second section of the said Act, we did by our last-mentioned Warrant assign North China as the limit within which the said Reverend Charles Perry Scott might exercise spiritual jurisdiction pursuant to the said Act.

And whereas, in pursuance of our licence, by another Warrant under our Royal Signet and Sign-manual, dated the day of 18 , granted under the said Act, the Reverend Edward Bickersteth was, on the 2nd day of February, 1886, duly consecrated to be a Bishop of the Church of England in Japan;

And whereas, in pursuance of the said second section of the said Act, we did by our last-mentioned Warrant assign Japan as the limit within which the said Reverend Edward Bickersteth might exercise spiritual jurisdiction pursuant to the said Act;

And whereas, in pursuance of our licence by another Warrant under our Royal Signet and Sign-manual, dated the 2nd day of October, 1889, granted under the said Act, the Reverend Charles John Corfe was, on the 1st day of November, 1889, duly consecrated to be a Bishop of the Church of England in Corea;

And whereas, in pursuance of the said second section of the said Act, we did by our last-mentioned Warrant assign Corea as the limit within which the said Reverend George Evans Moule might exercise spiritual jurisdiction pursuant to the said Act;

And whereas it is expedient to define more clearly the limits assigned for the exercise of spiritual jurisdiction by the said Reverend George Evans Moule (now the Right Reverend Bishop Moule) and the said Reverend Charles Perry Scott (now the Right Reverend Charles Perry Scott) and their successors respectively;

And whereas the Province of Shing King, in the Empire of China, is not within the limits of spiritual jurisdiction of any of the said Bishops, and we are desirous of including the said province within the limits of spiritual jurisdiction of the said Reverend Charles John Corfe (now the Right Reverend Charles John Corfe) and his successors:

Limits of jurisdiction of Bishops of North China, Japan, and Corea.

Now it is our Royal will and pleasure, and we do by this our Warrant under our Royal Signet and Sign-manual revoke the said Royal Warrants, so far as limits were thereby assigned within which the said Bishops should exercise spiritual jurisdiction, and in pursuance of the said second section of the said Act we do assign the following limits within which the said Bishops of North China, Japan, and Corea shall respectively henceforth exercise spiritual jurisdiction over the ministers of the Church of England and other persons above-mentioned, namely, the district or Diocese within which the said Right Reverend Bishop Moule and his successors shall exercise such spiritual jurisdiction shall be Mid-China, and shall be limited by the southern boundary of the Province of Shantung, the eastern and southern boundary of the Provinces of Shensi and Kansu, the southern limit of such Diocese being the 28th parallel of north latitude; the district or Diocese within which the said Right Reverend Bishop Scott and his successors shall exercise such spiritual jurisdiction as aforesaid shall be North China, and shall consist of the six northern Provinces of Shantung, Pe-che-li, Honan, Shansi, Shensi, and Kansu; the district or Diocese within which the said Right Reverend Bishop Bickersteth and his successors shall exercise such spiritual jurisdiction as aforesaid shall be the Empire of Japan; and the district or Diocese within which the said Right Reverend Bishop Corfe and his successors shall exercise such spiritual jurisdiction as aforesaid shall consist of the Kingdom of Corea, together with the Province of Shing King, in Manchuria, in the Empire of China: Provided always that it shall at all times hereafter be competent for us and our successors to revoke this our Royal Warrant, and in accordance with clause 2 of the said Act to assign such limits as may from time to time seem expedient to us within which the said Bishops, or any of them, and their successors, shall exercise such spiritual jurisdiction as aforesaid.

Given at our Court at , the day of , in the year of our Lord 1890, and in the year of our reign.

By Her Majesty's command.

R. E. W.
E. C.

EGYPT.

No. 11.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received June 14.*)

My Lord, *Royal Courts of Justice, June* 11, 1890.

Question as to how far Commercial Treaties now about to be entered upon between Turkey and foreign countries might be held to have force in Egypt.

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 9th ultimo, stating that he was directed by your Lordship to transmit to us the papers, noted in the margin, relative to the application of Commercial Treaties in Egypt, and that he had to inform us that your Lordship was desirous of obtaining our opinion on certain further points in connection with the question.

That a general statement on the subject was submitted to our consideration in the letter from the Foreign Office of the 8th June, 1889, and that we advised on that reference in our Report of the 10th July last, which was inclosed, together with the papers relating thereto, for convenience of reference.

1890

That Sir Evelyn Baring had now asked for information and directions with respect to certain points in connection with questions which were likely to arise on the termination of Commercial Treaties lately or now subsisting between the Porte and foreign Powers, stating that the last of the Treaties in question would expire in July next. That those inquiries, as set forth in the despatch also inclosed, were to the following effect:—

Sir E. Baring's queries thereon.

1. What treatment was at that date (July 1890) to be accorded, in Egypt, to Powers which had not concluded any special Commercial Convention with Egypt? Had they the right to demand the application of any Treaty they might hereafter conclude with the Porte, or had the Egyptian Government the right to apply any Tariff they chose?

2. Could a Power which had claimed the application, in Egypt, of a Tariff agreed upon between such Power and the Porte, demand, at the same time, the application of Commercial Conventions between Egypt and other countries in respect of stipulations which such Power might deem more favourable to its interests than the Tariff which it had itself agreed upon with the Porte?

3. Could a Power (for instance, Great Britain) which had concluded a formal Convention with Egypt demand, under the most-favoured-nation clause of such Convention, the application of any portions of the Turkish Tariff which it might consider more favourable to its trade than the Egyptian Tariff?

That, lastly, Sir E. Baring asked the further question, "Whether, in case of any Power entering upon the Turkish Tariff, the Tariff included in the Commercial Convention between Egypt and the United Kingdom would come into operation at all in view of the provisions of Article XIV, which runs as follows: 'The effect of the alterations of the present Tariff of duties, provided under Article VI, remains suspended until the alterations in question are also applicable to all other interested Powers'?"

That Sir James Fergusson was to request that we would be so good as to take those inquiries into our consideration, and that we would favour your Lordship with our opinion as to the answer which should be returned to Sir E. Baring with respect to them, and, further, with any observations which we might have to offer on the general question as to how far Commercial Treaties now about to be entered upon between Turkey and foreign countries might be held to have force in Egypt.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Answers to Sir E. Baring's queries.

That, in our opinion, Powers which have not concluded any special Commercial Convention with Egypt, and between whom and the Porte no Treaty exists of an earlier date than 1867, are subject to any Tariff the Egyptian Government may choose to impose.

In our opinion, no Power can claim the application in Egypt of a Tariff agreed upon since 1867 between such Power and the Porte. Such Tariff might be accepted by agreement between any Power and the Egyptian Government, but it would then come into force as a Commercial Convention made by Egypt, and the right to claim the benefit of stipulations contained in other Commercial Conventions made by Egypt would depend upon the terms of the Agreement itself.

A Power which has concluded a Commercial Convention with Egypt cannot claim to apply any portions of the Turkish Tariff under the most-favoured-nation clause. The validity of its Commercial Convention with Egypt rests upon the right of that country, under the Firmans of 1867 or 1873, to act and be considered as a separate country for the purposes of Customs arrangements.

In our opinion, the coming into operation of the Commercial Convention between Egypt and the United Kingdom would not be prevented by an Agreement, made subsequent to such Convention between Egypt and another Power, to apply to that Power the Turkish Tariff, as by such Agreement the Power in question would be removed from the category of interested Powers within the meaning of Article XIV of the Convention.

In our opinion, the effect of Article XIV is that the Egyptian Government cannot be called upon to give effect to the alterations of Tariff, provided by the Convention, until it has dealt with all other interested Powers either by separate Agreements or, where no Agreement is made, by prescribing a Tariff equivalent to that contained in the Convention.

The Convention is not before us, but we assume that it contains a most-favoured-nation clause.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Law Officers ..	.. ..	July 10, 1889.
Sir E. Baring .	.. .. (No. 7. Commercial)	March 25, 1890.

No. 12.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received July* 25.)

My Lord, *Royal Courts of Justice, July* 22, 1890.

Obligations of Egypt towards the Porte and towards foreign nations in commercial matters.

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us (together with other papers bearing on its subject) a draft of a despatch to Her Majesty's Agent and Consul-General at Cairo, founded on our Report of the 11th ultimo, respecting the obligations of Egypt towards the Porte and towards foreign nations in commercial matters.

That we should have perceived that the opinion expressed on those matters by the Legal Advisers to the Egyptian Government differed widely from that of Her Majesty's Government, and that as the former had given in some detail the reasons on which their opinion was founded, it was thought that it would be useful in those circumstances to furnish Sir E. Baring with reasons in support of the opinion of Her Majesty's Government.

Draft despatch to Sir E. Baring embodying views of H. M.'s Govt.

That the accompanying draft despatch had accordingly been prepared with a view of embodying, in a concise but complete form, for Sir E. Baring's guidance and assistance, the views of Her Majesty's Government as to the present position of Egypt with regard to commercial arrangements with foreign Powers.

That your Lordship would, however, desire, in the first instance, to learn whether the views and reasoning therein expressed were such as met with our concurrence, or whether the terms of the draft might, in our opinion (and, if so, in what respects), advantageously be modified.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Concur in views in draft despatch.

That we concur in the views and opinions expressed in the draft despatch, and do not suggest any alteration in its terms.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Draft to Sir E. Baring	.. ..	July , 1890.
Anglo-Egyptian Commercial Convention, "Commercial No. 9 (1890)."		
Firmans, &c. (4747), Pamphlet.		
Law Officers	.. ..	December 15, 1883.
Ditto	.. .. Received	November 18, 1884.
Sir W. White	.. .. (Telegraphic)	May 22, 1889.
Ditto	.. ..(No. 189)	May 22, "
Law Officers	.. ..	July 10, "
Sir E. Baring	.. .. .. (No. 7. Commercial)	March 25, 1890
Sir E. Hertslet	.. ..	April 15, "
To Law Officers	.. ..	May 9, "
Law Officers	.. ..	June 11, "
Mr. Farnall	.. ..	June 19 "

Annex.

Draft of Despatch from the Marquis of Salisbury to Mr. Portal.

(No. . Commercial.)

Sir, *Foreign Office, July* , 1890.

I HAVE considered, in consultation with the Law Officers of the Crown, Sir Evelyn Baring's despatch No. 7, Commercial, of the 25th March last in regard to the position of Egypt in commercial matters resulting from the termination of all hitherto existing Commercial Treaties between the Porte and foreign Powers.

By the Firmans of 1867 and 1873 the Sultan granted to the Khedive of Egypt certain privileges, and the first-named instrument provided that, "whilst all the Treaties of the Sublime Porte must be respected in Egypt, an exception is made only as regards the customs duties, and as regards foreigners in matters relating to the Police, Postal, and Transit Services, for which full powers are given to them to enter into special arrangements with foreign agents. But such arrangements must not take the form of Treaties or Conventions having any political signification or purport; and in the event of their being inconsistent with the principles laid down above, or opposed to my original sovereign rights, it will be necessary to hold them as null and void.

"Wherefore the question of conformity or nonconformity to these principles in matters where a doubt exists as regards Egypt must be referred to the Sublime Porte previously to such arrangements being concluded.

"And when, in the manner explained above, any special arrangements are entered into concerning the customs duties in Egypt, information thereof must be transmitted to my Sublime Porte.

"Also, when any Conference respecting Commercial Treaties takes place between my Government and other Powers in order that the commercial interests of Egypt may be attended to, the opinions of the Egyptian Administration shall be consulted thereon."

The Firman of 1873 further enlarged the freedom of the Khedive in regard to commercial arrangements with foreign Powers, for it did not stipulate that such arrangements must be referred to the Porte previously to their being concluded, nor did it make provision for considering Egyptian commercial interests in negotiations between the Porte and foreign Powers, but it gave authority to the Khedive in the following words:—

"Il est autorisé à renouveler et à contracter, sans porter atteinte aux Traités politiques de ma Sublime Porte, des Conventions avec les Agents des Puissances étrangères, pour les douanes et le commerce, et pour toutes les relations qui concernent les étrangers, et toutes les affaires intérieures et autres du pays, et cela dans le but de développer le commerce et l'industrie et de régler la police des étrangers, ainsi que leur situation et tous leurs rapports avec le Gouvernement et la population."

In renewing these privileges to the present Khedive, the Firman of 1879 stated:—

"Le Khédive sera autorisé à contracter et à renouveler, sans porter atteinte aux Traités politiques de mon Gouvernement Impérial, ni à ses droits souverains sur ce pays, les Conventions avec les Agents des Puissances étrangères pour les douanes et le commerce, et pour toutes les transactions avec les étrangers concernant les affaires intérieures, et cela dans le but de développer le commerce, l'industrie, et l'agriculture, et de régler la police des étrangers et tous leurs rapports avec le Gouvernement et la population. Ces Conventions seront communiquées à ma Sublime Porte avant leur promulgation par le Khédive." But by a note addressed by the Porte to the British and French Ambassadors at the time of the issue of the Firman it was laid down that the provision that "ces Conventions seront communiquées à ma Sublime Porte avant leur promulgation par le Khédive . . . . exclut toute obligation de la part du Khédive d'obtenir la sanction ou l'autorisation du Sultan pour promulguer ou mettre en pratique les dites Conventions; toutefois la Sublime Porte se réservant le droit de refuser de reconnaître ou de sanctionner les dites Conventions, et devant toujours être à temps pour le faire si elles portaient atteinte aux Traités politiques de la Sublime Porte ou à ses droits souverains sur ces pays comme il est dit dans le texte même du Firman."

In the view of Her Majesty's Government, the result of the Firmans from which I have quoted is that Egypt acquired by them commercial liberty so far as the Porte

could grant it. The Sultan could not, by an arrangement with a vassal, abolish the rights of foreign States under Treaties then existing, but by the Firman of 1873 His Majesty divested himself of any right in the future to conclude commercial arrangements for Egypt, and only stipulated that the commercial arrangements to be made by the Khedive with foreign Powers should not affect the Sultan's political rights.

Foreign Powers not having made protest against the Firmans should, in the opinion of Her Majesty's Government, be held to have accepted their effect on their own position whenever their then existing Treaty rights should lapse, and no foreign Power has ground for setting up as against Egypt the stipulations in *commercial* matters of a Treaty with the Porte of a date subsequent to the Firman of 1873. Similarly the absence of protest appears to Her Majesty's Government to be a bar to any claim by a foreign State to enjoy in Egypt most-favoured-nation treatment in commercial matters under the Capitulations or other Treaties with Turkey anterior to 1873.

With regard to the several questions particularly raised in Sir E. Baring's despatch of the 25th March, the following are the views of Her Majesty's Government:—

Powers who have not concluded any Special Commercial Convention with Egypt, and between whom and the Porte no Treaty exists of an earlier date than 1873, are subject to any Tariff the Egyptian Government may choose to impose.

No Power can claim the application in Egypt of a Tariff agreed upon since 1873 between such Power and the Porte. Such Tariff might be accepted by agreement between any Power and the Egyptian Government, but it would then come into force as a Commercial Convention made by Egypt, and the right to claim the benefit of stipulations contained in other Commercial Conventions made by Egypt would depend upon the terms of the Agreement itself.

A Power which has concluded a Commercial Convention with Egypt cannot claim to apply any portions of the Turkish Tariff under the most-favoured-nation clause. The validity of its Commercial Convention with Egypt rests upon the right of that country, under the Firmans of 1867 and 1873, to act and be considered as a separate country for the purposes of Customs arrangements.

The coming into operation of the Commercial Convention between Egypt and the United Kingdom would not be prevented by an Agreement made subsequent to such Convention between Egypt and another Power to apply to that Power the Turkish Tariff, as by such Agreement the Power in question would be removed from the category of interested Powers within the meaning of Article XIV of the Convention. The effect of that Article seems to be that the Egyptian Government cannot be called upon to give effect to the alterations of Tariff provided by the Convention until it has dealt with all other interested Powers either by separate Agreements or, where no Agreement is made, by prescribing a Tariff equivalent to that contained in the Convention.

I am, &c.

FRANCE.

No. 13.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received January 23.)

My Lord, *Royal Courts of Justice, January 22, 1890.*

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the draft of a new Postal Convention now in course of negotiation between Her Majesty's Government and that of France, and to state that your Lordship would be glad to be favoured with our opinion upon a point which arose in connection with Article V of the draft under the following circumstances.

Proposed Anglo-French Postal Convention.

Privileges of mail-packets.

1890

That notice was given to the French Government on the 30th April last to terminate the Postal Convention of the 24th September, 1856, between Great Britain and France. That the French Government had communicated to Lord Lytton the draft of a fresh Convention to replace that of 1856, which was thus about to expire.

That on consideration of that document at the Foreign Office it had appeared advisable to modify the terms of Article V (the stipulations of a somewhat similar nature in the existing Convention having given cause for complaint), and that certain Articles, VIII, XI, and XII, had been inserted at the instance of the Post Office.

That doubt had arisen whether Her Majesty's Government could engage to give effect to the stipulations of Article V as amended, or in the form proposed by the French Government, without legislation for the purpose; and also whether such legislation would not be required in the colonial and foreign possessions of Her Majesty as well as in the United Kingdom.

Case of "Parlement Belge."

That the provisions of Article V were of a somewhat analogous nature to those of Article VI of the Postal Convention with Belgium, which were brought under the consideration of the Admiralty Court, and of the Court of Appeal, in the case of the "Parlement Belge" (L. R. 4 P. D. 129, and L. R. 5 P. D. 197).

Law Officers' Report, April 23, 1880.

That in that connection Sir James Fergusson was to ask our attention to the Report of the 23rd April, 1880, in which our predecessors advised with respect to the case of the "Parlement Belge."

As to necessity for legislation in case of Articles V of French and British Projects.

That Sir James Fergusson was accordingly to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether legislation would be required in the United Kingdom, and likewise in the Colonies and foreign possessions of Her Majesty, to give effect to the provisions of Article V of the French "Avant-Projet," or of the "Projet de Convention" prepared on the part of Her Majesty's Government, or to any other part of the stipulations of the latter document.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Legislation necessary in respect of either proposed form of Convention.

That, in our opinion, in order to give effect to the provisions of either form of the proposed Postal Convention, legislation will be necessary.

Most convenient course, Act and Order in Council.

We concur with our predecessors in their opinion that a short Act conferring the power of regulating these matters by Order in Council would be the most convenient mode of effecting the desired object. Such Order may apply to and include Her Majesty's colonial and foreign possessions.

Concur in opinion of their predecessors as to subsidized ships.

We desire to call attention to their observation as to the great practical difficulty of dealing with the case of merchant or passenger ships receiving subsidies for postal service, and to express our concurrence with them upon that matter.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex 1.

French Avant-Projet.

ARTICLE V.

Lorsque les paquebots employés par l'Administration des Postes de France et par l'Administration des Postes Britanniques seront des bâtiments nationaux propriété de l'État, ou des bâtiments appartenant à des Compagnies subventionnées pour l'exécution du service postal, ces paquebots ne pourront, à aucun titre, être détournés de leur destination ni être sujets à saisie-arrêt, embargo, ou Arrêt de Prince.

Les passagers admis sur ces paquebots, qui ne jugeraient pas à propos de descendre à terre pendant la relâche dans un port de l'un et l'autre État, ne pourront sous aucun prétexte être enlevés du bord ou assujettis à aucune perquisition.

Toutefois, les autorités locales pourront réclamer par l'intermédiaire de l'autorité Consulaire de la nationalité du navire, l'expulsion du bord des individus recherchés en vertu d'un mandat régulier, pour crimes ou délits de droit commun, qui se seraient réfugiés ou embarqués, pendant la relâche, sur les paquebots-poste. Cette expulsion ne pourra être refusée.

En cas de nécessité, des recherches pourront être pratiquées à bord de ces navires par les autorités locales avec l'assistance du Consul de la nation dont le navire porte le pavillon ou de son délégué.

L'exécution de ces mesures ne pourra en aucun cas retarder le départ du navire. Lorsque, par suite, un mandat de justice ou autre ne pourra recevoir son accomplissement, une déclaration écrite sera donnée, à cet effet, par le Consul ou son délégué, au fonctionnaire ou officier ministériel chargé d'exécuter ce mandat.

Annex 2.

Article V of British Projet de Convention.

(Omitting the paragraphs similar to those in the corresponding Article of the French "Avant-Projet.")

Toutefois, les autorités locales pourront réclamer l'expulsion du bord des individus recherchés en vertu d'un mandat régulier, pour crimes ou délits de droit commun, qui se seraient réfugiés ou embarqués, pendant la relâche, sur les paquebots-poste. Cette expulsion ne pourra être refusée.

En cas de nécessité des recherches pourront être pratiquées à bord de ces navires par les autorités locales.

L'exécution de ces mesures ne pourra en aucun cas retarder le départ du navire.

List of Papers.

Convention of September 24, 1856. Treaty No. 412.
Lord Lytton's despatch of April 30, 1889, No. 98, Commercial, forwarding a copy of his note giving notice to terminate the above Convention.
Lord Lytton's despatch No. 243, Commercial, of October 31, 1889, forwarding the French "Avant-Projet" of a new Postal Convention.
A "Projet de Convention" prepared on the part of Her Majesty's Government.
The Articles relating to the privileges of mail-steamers in the Conventions with Belgium of 1876 and with France of 1856. Treaties Nos. 594 and 412.
A note on the case of the "Parlement Belge," taken from a Report by Sir F. Reilly. Confidential No. 4507.
Law Officers' Report No. 47, General, of April 23, 1880. Confidential No. 4539, p. 51.

No. 14.

[IN reply to a note from Sir J. Fergusson asking the Solicitor-General why he thought legislation necessary in respect of all the Articles in the proposed Postal Convention, he wrote on the 31st January and the 5th February as follows]:—

The Solicitor-General to Foreign Office.

Dear Sir James, *Royal Courts of Justice, January* 31, 1890.

Postal Convention with France.

Article V clearly requires legislation to give it effect, and Article III could not be enforced upon inward-bound British vessels without further statutory provisions, such as I do not think would be easily obtained.

The real difficulty with regard to this Convention appears to us to be that which is pointed out in our predecessor's Report, and I should hardly think it worth while to discuss details until that difficulty has been dealt with. I shall be very glad, at the first opportunity, to talk the matter over with you.

Faithfully yours,
(Signed) EDWARD CLARKE.

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The Solicitor-General to Foreign Office.

Dear Sir James, *Royal Courts of Justice, February* 5, 1890.

The Convention can be carried out without legislation, except so far as Articles III and V are concerned.

I think the Convention can be carried out without the legislation, except so far as Articles III and V are concerned. Article III would be ineffective so far as it purports to oblige merchant-vessels homeward-bound to carry letters. Article IV appears to refer to Article III, and probably would be differently worded if Article III were omitted.

The other Articles might possibly be of some use without legislation, but it seems to me that they are either unnecessary or unilateral. Take Article VII, for instance, which purports to provide that letter-carrying boats of the two Administrations may enter or leave ports at any hour of the day or night. If at any British port there were a local Regulation conflicting with this, the Article would have no effect as far as that port was concerned. If there be no such port, the agreement is not needed so far as this country is concerned. Of course, this involves the question of admitting merchant-vessels receiving a subsidy to the contemplated privileges. But if it is desired to make a Convention containing the Articles other than III and V, I do not think there is any legal objection.

Very faithfully yours,
(Signed) EDWARD CLARKE.

No. 15.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received March* 25.)

My Lord, *Royal Courts of Justice, March* 24, 1890.

O. in C. giving effect to arrangement extending Anglo-French Extradition Treaty to Tunis.

WE were honoured with your Lordship's commands signified in Sir T. H. Sanderson's letter of the 5th instant, stating that, by your Lordship's direction, he had to transmit to us the accompanying draft of an Order in Council which had been prepared for the purpose of carrying into effect an arrangement between the Governments of Great Britain and France, signed at Paris on the 31st December, 1889, extending to Tunis the provisions of the Anglo-French Extradition Convention of the 14th August, 1876.

That the principal object which Her Majesty's Government had in view in concluding that arrangement with the Government of the French Republic was to secure, as far possible, the removal of difficulties which at present arose in dealing with fugitives from justice, who, having escaped from some portion of the British dominions, subsequently took refuge in Tunis.

That that question had already come under our consideration, or under that of our predecessors in office, though in a somewhat less general form, both in 1886 (see Law Officers' Report of the 26th January, 1886, Tripoli, No. 59) and in 1887 (see Law Officers' Report of the 24th August, 1887, France, No. 19).

That on the latter occasion we reported that we approved the terms of a draft despatch dealing with the subject, which was subsequently (*i.e.*, on the 27th August, 1887) addressed to Her Majesty's Chargé d'Affaires at Paris.

That that despatch, amongst other things, instructed Mr. Egerton to represent to the French Government that, unless the French Tribunals in Tunis either were then, or could be subsequently, empowered to exercise the jurisdiction with respect to British fugitive offenders taking refuge in the Regency which was, previously to the Order in Council of the 31st December, 1883 (whereby British Consular jurisdiction in Tunis was made to cease to the extent of the jurisdiction vested by law in the new French Tribunals established under the Regency), vested in the British Consular Courts; or, failing that, unless the French Government were prepared to take other measures to secure the apprehension and return of such fugitives to the place from which they had escaped, Her Majesty's Government considered that they would be entitled to claim the right for British Consuls in Tunis to continue to exercise jurisdiction in such cases.

That in September 1889 (see M. Spuller to Lord Lytton of the 21st September, 1889, Inclosure No. 1 in Lord Lytton's No. 62, Treaty) a reply was received from the French Government proposing the signature of a Declaration extending to Tunis the provisions of the Extradition Convention between Great Britain and France of the 14th August, 1876.

That that proposal was accepted by Her Majesty's Government, and an arrangement was accordingly signed at Paris on the 31st December of last year.

That it would be seen that the arrangement in question purported to be made between the Government of Her Britannic Majesty on the one part, and the Government of the French Republic, *acting in the name of His Highness the Bey of Tunis*, on the other part; and it was considered that, inasmuch as the French Government are entitled, by Treaty Agreement with the Bey, to act as his Diplomatic Agents in such matters, the arrangement might, from the point of view of international law, consequently be regarded in effect as having been concluded between Her Majesty and the territorial Sovereign of Tunis rather than between Her Majesty and the Regent or protecting Power now existing, in the shape of the Government of the French Republic, over that Beylicate.

That the arrangement, moreover, did not in any way involve extradition to or from the Protectorates of Great Britain, but applied merely to Her Majesty's dominions, so that it was conceived that the various legal objections which we had already pointed out in our two previous Reports of the 3rd March, 1888 (Law Officers' Reports, Germany, No. 26 of 1888), and the 14th March, 1888 (Law Officers' Reports, Germany, No. 27 of 1888), respectively as arising in connection with arrangements between Great Britain and any foreign State for the mutual surrender of fugitive criminals from the dominions or Protectorates of the one who might be found in the Protectorates or dominions of the other, would scarcely make themselves felt in the present instance.

That copies of those Reports were, however, inclosed therewith for convenience of reference, as were also copies of our Report of the 20th April, 1888 (Law Officers' Reports, Germany, No. 29 of 1888), and of the considered Memorandum with which we favoured your Lordship on the 29th June, 1887 (Law Officers' Reports, Germany, No. 33 of 1887), with reference to the general question of the exercise of jurisdiction by the protecting Power over other foreigners within its Protectorate.

That it was presumed that as the arrangement of the 31st December, 1889, would not touch cases where British fugitive offenders from places which were outside the Queen's dominions, but in which Her Majesty exercises extraterritorial jurisdiction, take refuge in Tunis, Her Majesty's Government should, if possible, continue to reserve to themselves the right for British Consuls in Tunis to exercise jurisdiction in those cases, and should provide for their being dealt with either under "The Fugitive Offenders Act, 1881," and the Ottoman Order in Council, 1882 (as was the case before the establishment of the French Regency in Tunis), or in some other manner, at any rate until a more satisfactory method of disposing of them could be agreed upon between Her Majesty's Government and that of the French Republic.

That the right to claim the extradition of such offenders was not given by existing Treaties between Great Britain and other countries, and no practical inconvenience could be said to have arisen as yet from its absence; but owing to the proximity of the Ottoman dominions to Tunis, those cases might possibly from time to time occur there, as indeed they might in other countries adjacent to Turkey.

That in the particular case, for instance, to which our attention had been indirectly drawn in the earlier part of Sir T. H. Sanderson's letter, the offender was a British subject of Maltese origin, who committed fraud at Tripoli and subsequently fled to Tunis (see Law Officers' Reports, Tripoli, No. 59, of the 26th January, 1886); and it would be impossible to deal with such an offender satisfactorily under the arrangement of the 31st December, 1889.

That Sir T. H. Sanderson was to inclose the correspondence which had passed upon the subject of that arrangement with Her Majesty's Embassy at Paris, and also with the Home and Colonial Offices, and he was to request that we would take the various papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether, having regard to all the circumstances of the case, the terms of the draft Order in Council were such as might properly be submitted to the Queen in Council for Her Majesty's approval.

That your Lordship would at the same time be glad to be furnished with any observations of a general nature which might occur to us in connection with the questions touched upon in that letter.

In obedience to your Lordship's commands we have the honour to

Report—

Approving draft O. in C. Question of

That, in our opinion, the draft Order in Council may properly be submitted to Her Majesty for her approval. It is clear that the arrangement sanctioned by such

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claiming right of British Consuls in Tunis to exercise jurisdiction over British fugitives is one of policy, not of law.

Order will not secure the surrender of British fugitives who are accused of committing crime in the Ottoman dominions. It is a serious question, and is one of policy, not law, whether it will be desirable to claim the right for British Consuls in Tunis to exercise jurisdiction in these cases, which must be of rare occurrence, and in which the French Government would probably be willing to co-operate in bringing the alleged criminal to justice.

Desirable to obtain some assurance of co-operation of French Govt.

It may be desirable to obtain from the French Government some assurance upon this point, by intimating that Her Majesty's Government will otherwise claim the continued exercise of Consular jurisdiction.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Tunis Extradition Declaration. Draft Order in Council.				
(B.)	Anglo-French Extradition Treaty ..		August	14, 1876.	Treaty No. 619.
(C.)	To Mr. Egerton	(No. 47. Treaty)	August	27, 1887.	
(D.)	Tunis Order in Council		December	31, 1883.	Confidential No. 4905*.
(E.)	Lord Lytton ..	(No. 62. Treaty)	September	23, 1889.	
(F.)	Law Officers		March	3, 1888.	Confidential No. 5785, p. 28
(G.)	Ditto		March	14, „	Confidential No. 5785, p. 30.
(H.)	Ditto		April	20, „	Confidential No. 5785, p. 33.
(I.)	Ditto (Memorandum)		June	29, 1887.	Confidential No. 5597, p. 50.
(J.)	"Fugitive Offenders Act, 1881" (44 & 45 Vict., cap. 69).				
(K.)	Ottoman Order in Council, 1882.				Confidential No. 4635*.
(L.)	To Home Office		October	1, 1889.	
(M.)	Home Office		October	10, „	
(N.)	To Lord Lytton ..	(No. 44. Treaty)	October	23, „	
(O.)	Lord Lytton ..	(No. 68. Treaty)	November	6, „	
(P.)	To Lord Lytton ..	(No. 48. Treaty)	November	18, „	
(Q.)	Lord Lytton ..	(No. 94. Treaty)	December	31, „	
(R.)	To Home Office and Colonial Office ..		January	9, 1890.	
(S.)	Colonial Office		January	18, „	
(T.)	Home Office		January	29, „	

No. 16.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received April 3.)

My Lord, *Royal Courts of Justice, April* 2, 1890.

Detention of French fishing-schooners "Virginie" and "Amazone."

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 19th February last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list in further reference to the cases of the French fishing-schooners "Virginie" and "Amazone," which formed the subject of our Report to your Lordship on the 19th July last.

That upon receipt of that Report a communication was addressed to the French Ambassador at this Court in the terms of the draft despatch, as approved by us, adopting the conclusion arrived at by the Judgment of the Newfoundland Court of Appeal.

As to exercise of right of search on foreign vessels.

That the French Government, however, renewed the claim for 44,500 fr. as compensation for the detention of each of the vessels, chiefly on the ground that the Magistrate's sentence of confiscation, which led to their detention, was illegal; and that they again raised the questions whether it was consistent with international usage that the right of search should be exercised on foreign vessels except when taken *in flagrante delicto*, or when exercised by officials on board of ships other than those of a public character.

That information on the following points was thereupon sought to be obtained, namely, (*a*) from Her Majesty's Secretary of State for the Home Department, and from Her Majesty's Ambassador at Paris, whether it was in accordance with precedent that compensation should be given by Her Majesty's Government for the erroneous, but *bonâ fide*, decision of a Magistrate while sitting on the Bench and administering the law in ordinary course; and (*b*) from the Board of Customs, through Her Majesty's Secretary of State for the Colonies, as to the practice of exercising the right of search in this country for the enforcement of Customs or other internal Regulations.

That with regard to the point (*a*) it was understood that in all cases, where compensation had been given by Her Majesty's Government, it had been given as an act of grace and not as a matter of right.

That from the Report of M. Clunet, the Legal Adviser to Her Majesty's Embassy at Paris, it was understood that in France a British subject would not obtain compensation under the above circumstances as matter of right, but that at the same time M. Clunet considered that, as an act of international courtesy, compensation might reasonably be given to owners for the condemnation and subsequent detention of their vessels.

That with regard to the point (*b*) it was gathered that the Solicitor to the Customs was of opinion that forcible search of a foreign vessel, even when in British territorial waters, could scarcely be made by a British official from a purely commercial ship, but that it could be made from any vessel distinctly in Government employ.

He stated, moreover, that, in his belief, no record existed in this country of any foreign vessel having been searched by officials acting on board of ships having no public character.

That it would be observed that M. Jusserand, in his note of the 20th October last, assumed that the right of visitation and search was, in the case of the two vessels in question, exercised "en dehors de tout cas de flagrant délit ou d'indices indubitables de délit," and denounces the proceeding as being on that ground "contraire au principe de la liberté de circulation dans les eaux territoriales" admitted by Great Britain since the signature of the Convention of the Hague in 1882, of which document a copy was inclosed to us for reference.

But that the facts of the case seemed to be very far from bearing out the assumption thus made, inasmuch as the vessels appeared to have been "conveying" some of the said "fishes within the said limits" (see section 2 of the Newfoundland Bait Act, 50 Vict.) at the very time they were boarded and searched, and that, although not "*flagrante delicto*" *quâ* the "catching or taking" of such fish, they were "*flagrante delicto*" *quâ* the "conveying" of them, which was in itself a substantive offence against the Bait Act.

That, moreover, the presence of those fish on board would appear to furnish in itself "indices indubitables de délit."

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration in connection with the arguments advanced in M. Jusserand's above-mentioned note, and that we would favour your Lordship with our opinion as to (1) whether there had been any violation of commonly received maritime usage in respect of the exercise of the right of search by the Newfoundland authorities; and (2) whether it was incumbent upon Her Majesty's Government as matter of right, or desirable as an act of grace, to comply with the reiterated request of the Government of the French Republic, that compensation should be made to the owners of the "Virginie" and "Amazone" in respect of any damage they might have sustained through the illegal detention of their vessels.

That your Lordship would, at the same time, be glad to be favoured with any general observations which we might be good enough to offer upon the terms of M. Jusserand's note and the present aspect of the case.

That the previous correspondence* which was transmitted to us in June last was returned for convenience of reference.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Right of search in time of peace can only be conferred by Municipal Law.

1. That, in our opinion, there is not, independently of the provisions of Municipal Law, any right of search in time of peace even by vessels having a national character.

That right, however, may be conferred by such Municipal Law upon any persons acting in the public service, and may be exercised from vessels whether national or commercial.

It has been decided by a competent Tribunal that the Bait Act of 1887 did authorize such search, and it therefore appears that there was not, under the circumstances, any violation of commonly received maritime usage.

2. We are of opinion that an erroneous decision by a Court of First Instance, afterwards set aside upon appeal according to the course of law, does not found any

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* For list of previous correspondence, see Law Officers' Report No. 16 of July 19, 1889, Confidential No. 5956, p. 33.

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claim to be made as of right against the country whose Tribunal has committed the error.

In particular case, detention of vessels being unlawful, H. M.'s Govt. might, without admitting liability to do so, grant compensation to their owners.

But in this case, we think the detention of the vessels from the 17th July to the 22nd August having been unlawful, Her Majesty's Government might, while making no admission upon the questions of international law raised by M. Jusserand's despatch, comply with the request of the French Republic that compensation should be made to the owners of these vessels for damages shown to have been occasioned by such detention.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of further Papers sent to the Law Officers, February 19, 1890.

1.	M. Waddington		July	15, 1889.
2.	Law Officers' Report		July	19, „
3.	To M. Waddington		July	23, „
4.	Colonial Office		July	31, „
5.	To Colonial Office		October	8, „
6.	M. Jusserand		October	20, „
7.	To Colonial Office		October	24, „
8.	To Home Office		November	19, „
9.	To the Earl of Lytton	(No. 464. Confidential)	November	19, „
10.	The Earl of Lytton	(No. 525. Confidential)	November	27, „
11.	Home Office		December	9, „
12.	Colonial Office		December	11, „
13.	To Colonial Office		December	20, „
14.	Colonial Office		January	31, 1890.
15.	Convention signed at the Hague (No. 727)		May	6, 1882.

[Colonial Office.]

No. 17.

The Law Officers of the Crown to Lord Knutsford.

[*Transmitted to the Foreign Office by the Colonial Office in their letter of July* 17, 1890.]

My Lord, *Royal Courts of Justice, July* 16, 1890.

Newfoundland.

Ratification of Sir B. Walker's action in closing a British lobster factory under the *modus vivendi*.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us a copy of a letter from the Admiralty, covering a request from Sir Baldwin Walker, Commander of Her Majesty's ship "Emerald," for the ratification, as an act of State, by command of superior authority, for closing British lobster factories under the *modus vivendi*. That a copy of the recent *modus vivendi* with France was inclosed.

That we were doubtless aware that the Act 5 Geo. IV, cap. 51, which authorized His Majesty to give instructions to naval officers for the enforcement of Treaties in Newfoundland, was continued to the 31st December, 1834, by the Act 2 & 3 Wm. IV, cap. 79, and that it then expired, and had not since been revived.

That it was understood that Sir Baldwin Walker had given effect to the *modus vivendi* by closing a British lobster factory, and that, in the absence of statutory authority, he desired that his action should be ratified as an act of State done by authority of Her Majesty's Government.

That your Lordship had no official information upon the subject, but that it would appear from the statements in the newspapers that Mr. Baird, the owner of the factory, being called upon to close it, refused to do so, and that thereupon Sir B. Walker, after giving him notice of his intention, closed it by force. That it was understood that that factory was not in existence on the 1st day of July, 1889.

That Mr. Bramston was accordingly to inquire: (1) Whether a document of the nature above mentioned might be sent to Sir Baldwin Walker? (2) In what form it should be couched? and (3) What would be the legal effect as a defence in any legal proceedings that might be taken against that officer, in regard to action already taken or that he might hereafter feel obliged to take? That the case of Buron *v.* Denman (2 Ex. 167) would seem to bear upon the present case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Document ratifying his action may be sent.

1. That we are of opinion that a document ratifying the action of Sir Baldwin Walker in putting in force the provisions of the *modus vivendi* may properly be sent to him.

Form it should assume.

2. The form may be an approval of the action of Sir Baldwin Walker by the Lords Commissioners of the Admiralty.

3. The ratification by Her Majesty's Government would be a defence to any proceedings taken against Sir Baldwin Walker in a case falling within the provisions of the arrangement embodied in the *modus vivendi*.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Admiralty to Vice-Admiral Watson.

Admiralty, July 21, 1890.

Sir,

I AM commanded by my Lords Commissioners of the Admiralty to acknowledge the receipt of a telegram, dated the 4th July, 1890, from Captain Sir Baldwin Walker, commanding Her Majesty's ship "Emerald," requesting that his action in closing British lobster factories in Newfoundland under the *modus vivendi* recently arranged for this season with the Government of France may be ratified "as an act of State, by command of superior authority."

In reply, I am commanded by their Lordships to transmit herewith copy of a letter from the Colonial Office, dated the 17th instant, together with a Report from the Law Officers of the Crown, on this subject; and, in accordance with the opinion therein expressed, my Lords approve of the action taken by Sir Baldwin Walker in putting in force the provisions of the *modus vivendi*, such action being in accordance with the instructions of Her Majesty's Government.

I am, &c.
(Signed) EVAN MACGREGOR.

No. 18.

[Colonial Office.]

The Law Officers of the Crown to Lord Knutsford.

Royal Courts of Justice, August 12, 1890.

My Lord,

Rules and Regulations under section 18 of Newfoundland Fisheries Commission Act of 1889.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us a copy of Rules and Regulations made under section 18 of the Newfoundland Fisheries Commission Act of 1889, together with a copy of the Act.

That the Regulations aimed at protecting and preserving the fishery on the coasts of the Colony; that they were in themselves beneficial, and such as Her Majesty's Government would be disposed to approve, if, in our opinion, they might lawfully do so. For, as we should perceive from the proviso to the last Regulation, such approval was necessary before the fisheries on that part of the coast where the French had Treaty rights could be affected by the Regulations or obtain the benefit of them.

That neither the Treaty of Utrecht nor the subsequent engagements between the countries in terms exempted the French fishermen from the laws of the Colony, nor did they in terms declare that the French exercised their fishery rights subject to those laws.

That the question, so far as your Lordship had discovered, did not appear to have been directly raised in any case submitted to the Law Officers in former times, but that it was now necessary to consider whether the French fishermen, exercising their rights under the Treaties, were subject to Regulations which, though beneficial to the fishery in general, might yet to some extent restrict the operations of individual

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French fishermen by limiting the size of the mesh in their nets (No. 18), and by preventing the use of certain engines (No. 19) before a given date.

That it was further to be observed that by establishing a close time for lobster fishing (Regulation 7), and by fixing the size of the lobsters which might be taken, the Rules, though framed to prevent the extinction of the lobsters, would be a restriction upon the French fishermen should it be held, contrary to the contention of Her Majesty's Government and to our Report of the 6th August, 1888, that they had a right to fish for lobsters.

That there could be no question as to the competence of the Legislature to pass, and of the Executive to enforce, such Regulations upon all fishermen, whether French or colonial, upon all other parts of the coast than that called the "French Shore," and upon colonial fishermen upon that shore, but that the question was whether the French fishermen upon that part of the coast could be bound.

That it would be observed that penalties were attached to the breach of the Regulations, and were (No. 27) to be recovered in a summary way before a Magistrate.

That your Lordship would be obliged if we would advise whether Her Majesty's Government might properly give the approval under Regulation 31.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

H.M.'s Govt. cannot give the approval mentioned in Regulation No. 31.

That, in our opinion, dealing with these Regulations as a whole, Her Majesty's Government cannot properly give the approval mentioned in the Regulation No. 31.

The French have no special Treaty rights in respect of the lobster-canning industry, but Regulations cannot be made with respect to the cod fishery except by arrangement with French Govt.

The Regulations with respect to the lobster-canning industry can, in our opinion, be lawfully made and enforced on any part of the coast, as, for the reasons stated in our Report of the 6th August, 1888, we do not admit that in respect of this industry the French have any special Treaty rights.

The Regulations with respect to the cod fishery would, however, clearly interfere with such rights, and ought not to be attempted to be made except by arrangement, or Convention, with the French Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 19.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received November* 15.)

Royal Courts of Justice, November 13, 1890.

My Lord,

Complaints of British colony in Tunis against certain taxes imposed since the establishment of the French Protectorate.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to complaints of the British colony in Tunis against certain taxes imposed upon the community since the establishment of the French Protectorate over the Regency.

That the Memorial embodying those complaints was referred to Her Majesty's Consul at Tunis for his observations, and that his remarks would be found in the despatch annexed (see Consul Drummond Hay's No. 53 of the 29th July, 1890).

That the grievances enumerated appeared to resolve themselves into eight heads:—

1. *The Octroi Taxes.*

That Consul Hay observed that these taxes were not an innovation of the French régime, having been in force before the establishment of the Protectorate.

2. *The Municipal Abattoir Taxes.*

That your Lordship was in some doubt whether these were taxes against which Her Majesty's Government could protest as of right, but that your Lordship considered that the attention of the Tunisian Government might properly be called to the Regulations of the 30th March, 1881, drawn up by the Consular Body at Tangier and the Moorish authorities for the payment of the agrarian and gate tax (see "Morocco No. 1, 1882"); and that the adoption of similar Regulations might be recommended to the Tunisian Government.

3. *The Communal Taxes.*

That these taxes appeared to be unnecessarily onerous, but that it was questionable whether there was any just cause of complaint on the part of foreigners, and that your Lordship would be glad to be informed whether we concurred in that view.

Case of M. Diacono.

That if, as Consul Hay stated, the Municipality had exceeded their powers in certain instances (such as the case of M. Diacono, cited by the memorialists), there might, perhaps, be a ground for remonstrance in such individual cases.

That the argument used by Consul Hay did not seem to be applicable when he stated:—

"The Municipality appear to have considerably exceeded their powers in this instance, as proofs can be shown that, before the introduction of French jurisdiction, their Regulations had to be confirmed by Judgments from the Consular Courts in the cases of foreigners."

That it was apprehended that the Regulations of the Municipality were not contrary to Treaty rights if authorized by the French Tribunals in Tunis (see to Consul Ricketts No. 22 of the 20th February, and to Acting Consul Carbonaro No. 45 of the 2nd August, 1889), but that your Lordship desired to be favoured with our opinion upon that point.

Case of M. Ellul.

That the case of Ellul, alluded to in the Memorial, had already formed the subject of a reference to ourselves (see Law Officers' Report, France, No. 15 of the 11th July, 1889), and that, in consequence of the opinion then expressed by us, the Acting Consul at Tunis was informed that the acts complained of by M. Ellul did not constitute a violation of the Treaty rights of British subjects. (See Acting Consul Carbonaro, No. 45 of the 2nd August, 1889.)

4. *Irregularities committed by the Officials employed in collecting Taxes.*

That this would appear to be a matter in which Her Majesty's Government could only interfere where specific cases of wrong-doing could be shown.

5. *The Prohibition of the Import of Fruit and Vegetables from Malta under pretext of guarding against the Introduction of the Phylloxera.*

That the law applicable to this matter appeared to be the Decree of the 17th February, 1886. (See "Dictionnaire de la Législation Tunisienne"—Phylloxera—pp. 252, 253.)

That the prohibition seemed to be in violation of Article VII of the Anglo-Tunisian Treaty of the 19th July, 1875, which stated:—

"His Highness the Bey engages that he will not prohibit the importation into the Regency of any article the produce or manufacture of the dominions and possessions of Her Britannic Majesty, from whatever place arriving."

But that Consul Hay explained that the law applied to all countries, including France as well as Malta, though by the Decree of the 2nd January, 1887 (see page 253 of volume mentioned above), an exception was made in favour of such products when coming from Algiers.

That even if the prohibition were, as was alleged, an infraction of Treaty rights, strictly interpreted, it became a question whether, having in view that the prohibition applied to all countries beyond the sea equally, an exemption in favour of British subjects could equitably be demanded.

6. *Increase of the Water Tax.*

That this appeared to be a matter in which the Municipality were within their right, and afforded no ground for a representation as a violation of Treaty rights.

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7. *Tax on Urban Property.*

That instructions as to this had already been sent to the Acting Consul at Tunis. (See to Acting Consul Carbonaro No. 47 of the 31st October, 1889.)

That Mr. Carbonaro was informed that there was no ground for objecting to the tax if imposed on natives of Tunis and British subjects alike, but that if the latter considered themselves wrongly assessed, they should appeal to the French Tribunals.

That those instructions, Consul Hay reported, had been carefully followed, but that he added that the tax was seriously resented, and that a Memorial on the subject would probably be submitted to the Tunisian Government and to the foreign Consuls.

8. *Vague Charges of Partiality and Denial of Justice on the part of the French Judges.*

That, as had been observed above (§ 4), this would appear also to be a matter in which Her Majesty's Government could interfere only where specific acts of miscarriage of justice could be shown to have been committed.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would inform your Lordship whether we agreed generally in the views which had been shortly indicated therein with respect to the various sub-heads of complaint put forward in the Memorial, and would, at the same time, favour you with a more specific opinion on any point arising upon the Memorial with reference to which we might consider it, from a legal point of view, desirable that Her Majesty's Consul should receive more detailed instructions.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Agree generally with the views stated in Sir P. Currie's letter of the 30th October.

That we agree generally with the views stated in Sir Philip Currie's letter of the 30th October.

We are of opinion that the matters alleged by the memorialists in respect of the various local taxes, and the prohibition of the import of fruit and vegetables, afford no ground for protest on the part of Her Majesty's Government. The administrative irregularities complained of are not sufficiently specified, and do not appear to be of a grave character.

The charge against the French Tribunals is far too serious to be made the subject of diplomatic representation without much more detailed evidence in its support than is to be found in the Report of the memorialists.

We have, &c.
(Signed) RICHARD E. WEBSTER
EDWARD CLARKE.

List of Papers.

Memorial of British subjects in Tunis		December 27, 1889.
Consul Drummond Hay	(No. 53)	July 29, 1890.
Regulations as to payment of Agrarian and Gate Tax ("Morocco No. 1, 1882." See No. 2530 Parliamentary).		
To Consul Ricketts	(No. 22)	February 20, 1889.
To Acting Consul Carbonaro	(No. 45)	August 2, „
"Dictionnaire de la Législation Tunisienne."		
Anglo-Tunisian Treaty ("Tunis No. 1, 1876." Treaty No. 586)		July 19, 1875.
To Acting Consul Carbonaro	(No. 47)	October 31, 1889
Law Officers' Report (France, No. 15)		July 11, „

No. 20.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received December* 23.)

My Lord, *Royal Courts of Justice, December* 22, 1890.

Nationality of Mme. de Préaudet, a lady of French origin, widow of a native of Mauritius.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence on the subject of the nationality of Mme. de Préaudet, a lady of French origin, widow of a native of Mauritius.*

That Mme. Préaudet's husband died, apparently, in the year 1874, when she left Mauritius for France, where she had since continuously resided. That she inquired whether, according to the law of Mauritius, she remained a British subject after her husband's death, or recovered her original French nationality.

That Sir Thomas Sanderson was to observe that the matter appeared to be primarily governed by the provisions of the "Code Napoléon," which, having been introduced into the Mauritius in 1808, while the island was under French rule, was continued as (and still remained) the law of the Colony when it subsequently became a part of the British dominions.

That the Code in question provided as follows (Livre 1, Chapitre II, section 1^{re} § 19): "Une femme Française qui épousera un étranger suivra la condition de son mari. Si elle devient veuve elle recouvrira la qualité de Française pourvu qu'elle réside en France," &c.; and that the "Procureur-Général" of the Colony reported that, by the effect of that provision, Mme. Préaudet, as she was now a widow and resided in France, had resumed her nationality as a French citizen.

That it was, however, doubtful whether the sections of the "Code Napoléon" quoted by that officer could, when construed as part of the law of Mauritius under British rule, be held to apply to the case of a French woman marrying a British subject, as such a construction required that, for the purposes of the law of a British Colony, a British subject should, as well as every other person not a French citizen, be described as "un étranger;" while aliens of French nationality should be the only persons regarded as natives.

That it seemed, therefore, most probable that the law was to be read, *mutatis mutandis*, as follows:—

"Une femme *Mauritienne* qui épousera un étranger suivra la condition de son mari.

"Si elle devient veuve elle recouvrira la qualité de *Mauritienne* pourvu qu'elle réside dans l'Ile Maurice," &c.

That in that event the paragraphs quoted by the "Procureur-Général" had no application to the case in question, which would appear rather to be governed, in so far as the law of Mauritius was concerned, by the terms, *mutatis mutandis*, of Article 12 of the "Code Napoléon," viz., "L'étrangère qui aurait épousé un Français suivra la condition de son mari."

That there was no provision of the "Code Napoléon" dealing specifically with the national status of an alien woman who, having married a Frenchman, subsequently became a widow; but that, judging from the analogy of the case dealt with in Article 19 (already quoted above) of that Code, such widow would retain the French nationality of her late husband, unless and until she complied with the formalities prescribed by the law of her country of origin with regard to persons desirous of reverting to their nationality of origin.

Assuming that construction rather than that of the "Procureur-Général" to be correct, the law of the Mauritius would, it was thought, be found to be practically in accord with the provisions of the Imperial Naturalization Act of 1870 upon the point.

But that, on the other hand, if section 10 (1) of the latter Act was applicable to Her Majesty's Colonies as well as to the United Kingdom, as to which point Sir Thomas Sanderson was to call our attention to the inclosed opinion (Law Officers to Colonial Office of the 8th February, 1881) given by our predecessors in office and by Dr. Deane, Q.C., in 1881; and if the construction of the "Code Napoléon" which was contended for by the "Procureur-Général" should prevail, then there would, apparently, be an irreconcilable conflict between Colonial and Imperial law with regard to the present status of this lady.

* The Earl of Lytton, No. 60, Treaty, July 26; to ditto, No. 55, Treaty, July 28; Mr. Egerton, No. 66, Treaty, August 3; to Colonial Office, August 11; Colonial Office, August 22; ditto (and Inclosure), November 14, 1890; Law Officers' Report, February 8, 1881; Naturalization Act, 1870, and French Nationality Law of June 26, 1889.

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That in that latter event it was presumed that the provisions of the Imperial Statute would prevail over the common law of the Colony.

That Sir Thomas Sanderson was to observe that, as far as the national status of Mme. de Préaudet in France, and according to French law, was concerned, she appeared to be in a position to claim the benefit of French citizenship under the last clause of the first paragraph of Article 19 of the recent Nationality Law of the French Republic of the 26th June, 1889, which provided as follows:—

"La femme Française qui épouse un étranger suit la condition de son mari à moins que son mariage ne lui confère pas la nationalité de son mari, auquel cas elle reste Française. Si son mariage est dissous par la mort du mari . . . . elle recouvre la qualité de Française avec l'autorisation du Gouvernement, pourvu qu'elle réside en France, ou qu'elle y rentre, en déclarant qu'elle veut s'y fixer."

That the point, however, upon which Mme. de Préaudet desired information from Her Majesty's Government (see Lord Lytton's No. 60, Treaty, of the 26th July, 1890, and its inclosure) was whether, according to the law then in force in the Mauritius, she remained a British subject after her husband's death, or recovered her French nationality.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

1. Whether Article 19 of the "Code Napoléon," as now in force in the Mauritius, must be held to apply to this case, and, if so, whether the construction of that Article contended for by the Procureur-Général of that Colony should, so far as the law of the Mauritius governed the case, be held to be correct; or whether the alternative construction and Article of the Code which were suggested in Sir Thomas Sanderson's letter as being preferably applicable to the matter should not rather be adopted as governing it?

2. Whether, "The Naturalization Act, 1870" (33 Vict., cap. 14), and more particularly section 10 thereof, was in force in the Mauritius or not?

3. Whether, assuming the answer to question 2 to be in the affirmative, and also that the provisions of the Imperial Naturalization Act governing the national status of Mme. de Préaudet conflicted with the provisions of the law of the Mauritius upon the same point, the former or the latter must be held to prevail?

That Sir Thomas Sanderson was to add that the questions submitted raised points which, apart from the necessities of the case now under consideration, were of practical and general importance to the Foreign Office.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

1. That, in our opinion, the question raised in this case does not depend upon the "Code Napoléon" as now in force in the Mauritius.

2. "The Naturalization Act, 1870," being the law of England, is in force in the Mauritius so far as it determines national status. (*See* Donegani *v.* Donegani (1835), 3 Knapp 63, 85; In *re* Adam, 1 Moore, P.C., 460, 470.)

3. If there were a conflict between the provisions of the law of Mauritius and those of the Act of 1870 upon this subject, the provisions of the Imperial Act would prevail. There is, however, in our judgment, no such conflict.

The "Code Napoléon," as a law in force in the Mauritius, must be read as if the word "Mauritienne" were substituted for the word "Française," and, in construing that law, a French woman must be considered "une étrangère."

Article 19 of the "Code Civil" would, therefore, have no reference to the case of a French woman who has married a British subject.

Mme. de Préaudet would continue to enjoy the British nationality acquired by her marriage until she, by some act of her own, divested herself of it.

Article 12 would apply to her case, and would have the same effect as section 10 (1) of the Imperial Act, viz., that the French widow would continue to enjoy the British nationality acquired by her marriage until she, by some act of her own, divested herself of it. (See Dalloz' "Jurisprudence Générale," vol. xviii, Art. 156, p. 71.)

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

GENERAL.

No. 21.

[Home Office.]

Case.

Status of widow of Mr. Blumenthal, naturalized under Act of 1844.

MR. AND MRS. BLUMENTHAL (both natives of Germany) were married in Hamburg in 1852. They subsequently lived in England, and in 1862 Mr. Blumenthal was naturalized under the Act of 1844 (7 & 8 Vict., cap. 66) on an application by Memorial, stating the age, profession, occupation, and duration of residence of the applicant in the United Kingdom. Under that Act (section 7) the Secretary of State has power (section 8) to issue a certificate granting to the memorialist all the rights and capacities of a natural-born British subject (after having made inquiries into the circumstances of each case) except the capacity of being a Member of the Privy Council or Member of either House of Parliament, and except such rights and capacities (if any) as may be specially excepted in such certificate.

By section 9 every such certificate must be enrolled in the High Court of Chancery, and an oath of allegiance in the form prescribed by section 10 must be taken by the holder of the certificate within sixty days from the date of it.

The conditions embodied in all certificates granted since 1858 provide that they shall cease and determine if the holder resides out of the United Kingdom for more than six months without the leave of the Secretary of State.

In Mr. Blumenthal's case the usual course was adopted, and the usual certificate was issued. Mr. and Mrs. Blumenthal continued to reside in England until the death of the former, which occurred in 1872, and at his death his certificate was unforfeited.

The question arises as to the status of Mrs. Blumenthal, who after the death of her husband went to reside abroad.

By the Act of 1844, section 16, it is provided that any woman, married, or who shall be married, to a natural-born subject or person naturalized, shall be deemed and taken to be herself naturalized and have all the rights and privileges of a natural-born subject.

It will be observed that under this section no act has to be done by the woman so married to obtain these rights and privileges, no Memorial has to be presented by her, no inquiries are made, no oath is taken, no enrolment in Chancery. The Act itself confers the right.

At the death of her husband Mrs. Blumenthal was unquestionably the wife of a person naturalized, and though no doubt she might have acquired by such naturalization greater rights than her husband, *i.e.*, freedom from forfeiture of it by residence abroad, yet he never did so reside, and it would, it is submitted, be impossible to contend that her status depended entirely on the existence of the certificate, which it is apprehended would terminate equally by the death of the holder of it as by its forfeiture by him in his lifetime by an act of his to which his wife might have been no party.

In 1870 the Act 33 Vict., cap. 14, was passed. Mr. Blumenthal did not, however, avail himself of its provisions and obtain a fresh certificate of naturalization as that Act (section 7, last paragraph) enabled, although it did not compel him to do so. Certificates under the Act of 1870 do not contain the provision as to forfeiture which was embodied as above mentioned in certificates granted under the Act of 1844. The 10th section of it, moreover, enacts as follows: "A married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject."

Mrs. Blumenthal, it is submitted, was, at the date of the passing of the Act, the wife of a subject of the United Kingdom, continuing so up to the time of her husband's death, and she has done no act to divest herself of her nationality since his death, as residence abroad by itself does not have that effect.

Form of passports for widows of persons naturalized under Act of 1844

It will be observed from the correspondence hereafter set out that it has hitherto been the custom of the Foreign Office in the issuing of passports to treat the widows of persons who were naturalized under the Act of 1844 as subject to conditions contained in the certificate granted to their husbands.

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Copies of some correspondence on the subject that has taken place between the Foreign Office and the Secretary of State are given below*

The Secretary of State agrees with Lord Salisbury in not seeing any advantage from maintaining the difference in practice pointed out in the Foreign Office letter of the 12th December, but he would be glad to be advised by the Law Officers on the following points:—

1. Whether by the Act of 1844 (*a*), the wife of a person naturalized under that Act was originally subject to the condition of forfeiture contained in the certificate granted to her husband; and (*b*) whether after the death of her husband the widow still remained subject to such condition?

2. Whether if so originally subject but no forfeiture having occurred, and the husband and wife having been British subjects at the date of the passing of the Act of 1870, the wife became by virtue of that Act entitled to be deemed the wife of a British subject, and having done no act to divest herself of her nationality, is entitled to be so deemed during her widowhood, to all intents and purposes, and irrespective of the conditions attached to the husband's naturalization?

3. Whether there is any legal objection to proposed alteration in the form of passports to be granted by the Foreign Office?

The Attorney- and Solicitor-General are requested to favour the Secretary of State with their opinion, as asked in Mr. Pemberton's letter.

Opinion.

1. Widow of person naturalized under Act of 1844, and dying without forfeiting his status, is not subject to forfeiture by residence abroad.

1. We are of opinion that the wife of a person naturalized under the Act of 1844 was not subject to any condition of forfeiture in respect of her residence abroad, but, as she followed the status of her husband, his forfeiture by breach of the condition would have deprived her of the status of a naturalized British subject.

The husband dying without having forfeited his status his widow was not, in our opinion, subject to any condition.

2. Act of 1870 does not apply.

2. The Act of 1870 does not, in our opinion, affect the question.

3. No objection to altered form of passport.

3. We see no legal objection to the proposed alteration in the form of the passport.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Royal Courts of Justice, February 5, 1890.

[India Office.]

No. 22.

Opinion by the Advocate-General of Bengal.—(Communicated by India Office, January 9, 1891.)

[THE Advocate-General of Bengal (Sir Charles Paul) having been asked by the Government of India in October 1890 for his opinion as to whether, by the law of India, a woman of foreign nationality of origin, on her marriage with a natural-born British subject, or with a person naturalized under the provisions of the Indian Naturalization Act as a British subject, follows the nationality of her husband, reported as follows:—]

Opinion.

"The English Naturalization Act, 1870," applies to India.

I have carefully considered "The English Naturalization Act, 1870," which is included in Mr. Whitley Stokes' Statutes relating to India, and am of opinion that that Statute is a general one, and that section 10, subsection 1, applies to India, regard being had especially to the definition of the term "a natural-born British subject" in section 4.

It follows that, in my opinion, the law is the same in India as it is in England with regard to a woman of foreign nationality of origin marrying a natural-born British subject, or a person who is a naturalized British subject.

Indian Naturalization Act of 1852 must be read subject to the English Statute.

The Indian Naturalization Act of 1852 does not contain any provisions similar to the provisions contained in section 10 of the English Naturalization Act, and must, in my opinion, be read subject to the English Statute, which, as I have observed, applies to India.

(Signed) G. C. PAUL.

October 4, 1890.

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* Foreign Office to Home Office, November 21; Home Office to Foreign Office, December 2; Foreign Office to Home Office, December 12, 1889.

No. 23.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 19.)

My Lord, *Royal Courts of Justice, November* 19, 1890.

Draft Order in Council respecting marriage of British subjects outside the United Kingdom, in accordance with section 9 of "Marriage Act, 1890."

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council which had been prepared by Mr. R. S. Wright, in consultation with the Foreign Office, making certain Regulations with regard to the marriage of British subjects outside the United Kingdom, in accordance with section 9 of "The Marriage Act, 1890."

That, for convenience of reference, Sir T. Villiers Lister inclosed a copy of that Act (53 & 54 Vict., cap. 47), together with copies of other Acts referred to therein; and that he was to request that we would favour your Lordship with our opinion whether the draft Order in Council might properly be laid before the Queen in Council, for Her Majesty's gracious approval.

That Sir T. Villiers Lister was at the same time to request that we would inform your Lordship whether we concurred in the inclosed instructions which you proposed to address to Her Majesty's Diplomatic and Consular officers with reference to the marriages of British subjects abroad under "The Marriage Act, 1890," which would come into force on the 1st January, 1891.

That a copy of the instructions which were issued to Her Majesty's Representatives abroad on the 18th October last was also inclosed.

That Sir T. Villiers Lister was to add that the Colonial Office and Admiralty would undertake the making of any necessary provision for cases under sections 3 to 5, inclusive, of the Act falling within the province of those Departments.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve draft Order in Council and instructions to H.M.'s Diplomatic and Consular Representatives as amended; but a more complete Order in Council should be prepared.

That, in our opinion, it is desirable that the Act of 1890 should be brought into operation with the least possible delay, and we think that the draft Order in Council and instructions as submitted to us will suffice for this purpose with the amendments which we have inserted, but it appears to us that a more complete and detailed Order in Council should be prepared and issued with as little delay as is consistent with a careful consideration of the important and difficult questions to which our attention has been called by the papers submitted to us.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) Draft Order in Council and Memorandum. Confidential No. 5997.
(B.) Marriage Act, 1890.
(C.) Act 4 Geo. IV., cap. 67.
(D.) Ditto, cap. 91.
(E.) Act 12 & 13 Vict., cap. 68.
(F.) Act 31 & 32 Vict., cap. 61.
(G.) Circular to Her Majesty's Representatives abroad, October 18, 1890. No. 2112.
(H.) Draft Circular to Her Majesty's Representatives abroad.
(I.) Draft Circular to Her Majesty's Consuls abroad.

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Annex.

At the Court at

Present:

WHEREAS by "The Marriage Act, 1890," the Consular Marriage Acts are amended, and, as amended, are made applicable to marriages at British Embassies and Legations, or before Governors, High Commissioners, Residents, or Consular or other officers authorized in that behalf without or within Her Majesty's dominions, and by the same Act it is provided that Her Majesty the Queen may, by Order in Council, make Regulations for certain purposes specified in the said Act:

Now, therefore, Her Majesty, by virtue and in exercise of the powers by the said Act or otherwise in her vested, is pleased by and with the advice of her Privy Council to order, and it is hereby ordered, as follows:—

Diplomatic marriages—house of Ambassador, &c.

1. For the purposes of section 2 of "The Marriage Act, 1890," every office, room, or place within the precincts or curtilage of the house which is for the time being occupied by an Ambassador or Minister, or in which an Ambassador or Minister for the time being resides, and any church or chapel annexed to such house, or for the time being used with the consent of the Government to which the Ambassador or Minister is accredited, as the chapel thereof shall be deemed to be part of the house of such Ambassador or Minister, *and the Consular Marriage Acts shall apply* mutatis mutandis *to marriages solemnized in pursuance of the said section as if the Ambassador or Minister were a Consul duly authorized within the meaning of the said Acts.*

Diplomatic marriages—residence of parties.

2. For the purposes of section 2 of the said Act, expressions in the Consular Marriage Acts referring to dwelling or residence, or usual place of abode within the district of a Consul, shall be deemed to refer to dwelling or residence, or usual place of abode within the city or place at which the Ambassador or Minister officially resides, or within 10 miles of his official residence.

Consular marriages—office of Consulate.

3. For the purposes of the Consular Marriage Acts as amended by the said Act, every office, room, or place within the precincts or curtilage of the office or Consulate of a Consul, as defined in the said Acts, shall be deemed to be part of the Consulate or office of the Consulate of such Consul.

Marriages by Commissioners, &c.

4. In case Her Majesty is pleased, under the provisions of section 3 of the said Act, to authorize any Governor, High Commissioner, Resident or other officer (not being a Consul within the meaning of the Consular Marriage Acts) to solemnize and register marriages, or any person to act as her officer and Commissioner for that purpose in any country or place outside Her Majesty's dominions, the district for which he is so authorized to act shall be deemed to be his district for the purposes of expressions in the Consular Marriage Acts referring to the district of a Consul, and the office or place specified in the writing by which he is authorized shall be deemed to be his Consulate, or office of his Consulate, and any document required by those Acts to be authenticated by the Consular seal shall be sufficiently authenticated if sealed with his official seal, or~~, in case he has no official seal,~~ if signed by him with the addition of his official name or description.

5. This Order may be referred to as "The Foreign Marriages Order in Council, 1890."

And the

And

are to give the necessary directions herein as to them may respectively appertain.

R. E. W.
E. C.

GREECE.

No. 24.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 10.)

My Lord,
Royal Courts of Justice, February 8, 1890.

Claim of Mr. M. Spartali on Greek Government.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 9th ultimo, stating that, with reference to our Report of the 15th July last, he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Minister at Athens relative to the claim of Mr. Michael Spartali upon the Greek Government.

Little prospect of settlement of.

That it would be seen that there was very little prospect of a settlement of the case, that the legal proceedings threatened to be interminable, and that they constituted, in Sir E. Monson's opinion, a gross scandal, and a disgrace to Greek legal procedure.

That under those circumstances Sir Thomas Sanderson was to request that we would again take the whole case into our consideration, and favour your Lordship with our opinion as to whether, having regard to the considerations set forth in Sir E. Monson's despatch, it was now advisable for Her Majesty's Government to address a formal diplomatic remonstrance to the Hellenic Government, and, if so, upon what particular grounds such remonstrance might, in our opinion, be most advantageously based.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

No ground for diplomatic remonstrance

That, in our opinion, there is no ground for a diplomatic remonstrance to the Hellenic Government, against whose present action no complaint is made, except that it declines to interfere with a matter which is now before the Greek Tribunals.

We would, however, suggest that the Hellenic Government should be asked to inform Messrs. Caravia that, unless due diligence is shown in the prosecution of their suit, the amount voted by the Chamber will be paid to Sir E. Monson.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Mr. Cooper..		January 22,	1886
Mr. Spartali		January 28,	1888
Sir E. Monson	(No. 261)	December 6,	"
Ditto	(No. 274)	December 31,	"
Ditto	(No. 2)	January 4,	1889.
Ditto	(No. 3)	January 9,	"
Ditto	(No. 7)	January 16,	"
Ditto	(No. 1. Telegraphic)	January 23,	"
Mr. Spartali		January 23,	"
To Mr. Spartali		January 30,	"
Sir E. Monson	(No. 19)	January 31,	"
To Mr. Spartali		February 2,	"
Sir E. Monson	(No. 21)	February 2,	"
Mr. Spartali		February 2,	"
Ditto		February 6,	"
Sir E. Monson	(No. 26)	February 6,	"
Ditto	(No. 32)	February 14,	"
Mr. Spartali		February 16,	"
To Mr. Spartali		February 26,	"
To Sir E. Monson	(No. 17)	February 26,	"
Mr. Spartali		April 3,	"
To Sir E. Monson	(No. 32)	April 8,	"
Sir E. Monson	(No. 71)	April 5,	"
To Mr. Spartali		April 9,	"
Sir E. Monson	(No. 89)	April 20,	"
Ditto	(No. 120)	May 21,	"
Ditto	(No. 137)	June 5,	"
Ditto	(No. 149)	June 16,	"
N.B.—Sir E. Monson	(No. 157)	June 28,	"

(Was sent subsequently to Law Officers, July 5, 1889.)

Sir E. Monson	(No. 387)	December 26,	1889.

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HAÏTI.

No. 25.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 5.)

My Lord,

Royal Courts of Justice, February 4, 1890.

Measures of new Haïtian Government.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 28th ultimo, stating that he was directed by your Lordship to lay the following facts before us in connection with certain measures recently taken by the present Government of the Island of Haïti.

That in the month of December 1888 General Légitime was elected President of the Haïtian Republic, and was recognized in that capacity by Her Majesty's Government on the 31st January, 1889. That a revolution soon broke out against his authority, and that in August last he resigned office and left the island.

New Constitution of October 9, 1889.

That General Hyppolite, the leader of the Opposition party, was then elected President of the Republic by a Constituent Assembly, which met at the town of Gonaives on the 9th October, on which day the same Assembly voted a new Constitution for the island.

That Article 185 of that Constitution ran as follows:—

Losses of foreigners through civil wars, &c.

"Tout étranger qui se trouve sur le territoire de la République jouit de la protection accordée aux Haïtiens, quant aux personnes et aux biens, sauf les exceptions établies par la loi.

"En cas de pertes éprouvées par suite de troubles civils et politiques, nul Haïtien ou étranger ne peut prétendre à aucune indemnité. Cependant, il sera facultatif aux parties lésées dans ses troubles de poursuivre par-devant les Tribunaux, conformément à la loi, les individus reconnus les auteurs des torts causés, afin d'en obtenir justice et réparation légale."

That Mr. Zohrab, Her Majesty's Consul-General in Haïti, had since reported in his despatch No. 77 of the 6th December, 1889, that, in pursuance of that Article, General Hyppolite's Government published the Notices of which copies were annexed to that despatch.

Renunciation of Contracts made by former Government.

That reports had also reached the French Government that the new Foreign Minister had since announced that his Government would reject all Contracts made by their predecessors unless they were declared obligatory by the Haïtian Tribunals.

As to Anglo-French protest.

That communications had passed between Her Majesty's Government and that of France as to the course to be adopted with regard to those measures. That Sir Thomas Sanderson was to inclose that correspondence, from which it would be seen that the French Government were of opinion that they called for a protest.

Draft for approval.

That Sir Thomas Sanderson was also to inclose the draft of a despatch which your Lordship proposed to address to Her Majesty's Ambassador in Paris on the subject, and that he was to request that we would take the papers into our consideration, and favour your Lordship with our opinion as to whether the terms of the draft were such as were right and proper under the circumstances.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve draft.

That, in our opinion, the terms of the draft despatch are right and proper.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Consul-General Zohrab	(No. 77)	December 6, 1889.
To the Earl of Lytton	(No. 4)	January 4, 1890.
The Earl of Lytton	(No. 23)	
To the Earl of Lytton	(No. 32)	
Ditto	(No. 33)	

Draft to the Earl of Lytton.

Annex.

The Marquis of Salisbury to the Earl of Lytton.

(No. .)

My Lord,

Foreign Office, February , 1890.

HER Majesty's Government have had under their careful consideration the communication from the French Government recorded in my despatch No. 32 of the 27th ultimo relative to the attitude of the present Haïtian Government towards foreigners.

With regard to the Haïtian Decree affecting the privileges of foreigners settling in the island for purposes of trade, I have to observe that there is no Treaty between this country and Haïti to which Her Majesty's Government can appeal as guaranteeing the position of British subjects in that island. It is therefore doubtful whether Her Majesty's Government can object to the Decree, in so far at least as it affects British subjects who may settle in Haïti for purposes of trade, &c., after its promulgation, on the ground that it is in direct violation of any established principle of general international law.

But the case is different as regards those British subjects who have already established themselves in Haïti on the faith of a different state of things, and who have acquired property and developed their business there under a more favourable system of government, and one more in accordance with the general usage of civilized States. They were entitled to assume that the Haïtian Government would continue to recognize their obligations in respect to the property of foreigners to the same extent, and would allow them to carry on business on the same terms as heretofore, and Her Majesty's Government consider that the present Haïtian Government are in this respect bound by the action of their predecessors, and are not entitled suddenly and violently to change, to the detriment of foreigners, the reasonable conditions under which they originally established themselves in the island, and have since continued to carry on their business there.

Her Majesty's Government will be prepared to join with the French Government in formally protesting on these grounds against the Decree in question, in so far as it in any way affects foreigners who have established themselves in Haïti previous to its issue.

They will also be prepared expressly to reserve to themselves, as a Government, entire freedom of action as to the presentation of any claims in regard to injuries suffered by British subjects which they may consider justified in equity and according to international usage, whether the sufferers have or have not subscribed a renunciation of the right to bring forward such claims themselves.

Her Majesty's Government have not yet received from the Haïtian Government any intimation of its intention to disavow Contracts made by its predecessors unless such Contracts should be declared obligatory by the Haïtian Tribunals. In the event, however, of their receiving any such intimation, they will be prepared to state that they reserve to themselves the acknowledged right of urging upon the Haïtian Government any cases in which they may consider that British subjects have suffered injustice.

I have to request your Excellency to address a note to the French Government in the above sense.

I am, &c.
(Signed) SALISBURY.

ITALY.

No. 26.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received October* 11.)

My Lord,

Royal Courts of Justice, October 9, 1890.

Refusal of Italian Govt. to permit a British subject to act as an Emigration Agent in Italy.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 10th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted on the accompanying list, relating to the refusal of the Italian Government to permit a British subject to act as an Emigration Agent in Italy.

That the principal points in the case were summarized in the inclosed Memorandum.

That Sir T. V. Lister was to request us to consider the papers, and to favour your Lordship with our opinion on the following questions, which would be found stated in the above-mentioned Memorandum, with an indication of the particular papers on which they arose:—

Commercial Treaty between Great Britain and Italy of 1883.

1. Whether, on the assumption that the business of an Emigration Agent was "commerce" within the meaning of the Commercial Treaty between Great Britain and Italy, the Italian Law which limited to Italian subjects the choice of the agent who might perform particular portions of a ship-owner's business was or was not in harmony with the said Treaty?

2. Whether the business of an Emigration Agent, as defined by Italian law, was or was not "commerce" within the meaning of the Treaty; and, if so, whether the provision of that law prohibiting emigration agency to foreigners, and therefore to British subjects, was not contrary to the provision of the Treaty which insured to British subjects the same rights in Italy in matters of commerce as were or might be enjoyed by Italian subjects?

3. Whether the Italian Government was right in contending that a Law regulating the choice of Emigration Agents was not a limitation of free commerce, but a regulating of the conditions under which persons might emigrate, and that such a Law was thus, by its very nature, necessarily exempt from any of the obligations imposed by a Commercial Treaty?

4. Finally, Sir T. V. Lister was to request us to favour your Lordship with our opinion, or observations, on any other questions raised by the papers which might appear to us to be of importance in dealing with the case to which they referred.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

1. That in our opinion, if the business of an Emigration Agent were "commerce" within the Treaty of 1883, the Italian law would not be in harmony with the said Treaty.

Italian Law on emigration is not a contravention of the Treaty.

2 and 3. But we are of opinion that the business of an Emigration Agent, as defined by Italian law, cannot fairly be held to be "commerce" within the meaning of the Treaty, and that the Italian Law on emigration is not a contravention of the Treaty.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Anglo-Italian Commercial Treaty	(Treaty No. 788)	June	15, 1883.
Messrs. Henderson Brothers		February	28, 1889.
To Messrs. Henderson Brothers		March	4, „
Mr. J. Baird, M.P.		March	4, „
Messrs. Henderson Brothers		March	5, „
To Mr. J. Baird, M.P.		March	6, „
The Marquis of Dufferin	(No. 25. Commercial)	March	6, „
To Board of Trade		March	16, „
Messrs. Henderson Brothers		March	18, „
To Messrs. Henderson Brothers		March	20, „
Board of Trade		March	27, „
To the Marquis of Dufferin	(No. 21. Commercial)	March	30, „
Messrs. Henderson Brothers		April	12, „
To Messrs. Henderson Brothers		April	17, „
To the Marquis of Dufferin	(No. 28. Commercial)	April	17, „
The Marquis of Dufferin	(No. 59. Commercial)	May	5, „
To Messrs. Henderson Brothers		May	14, „
To Board of Trade		May	14, „
Messrs. Henderson Brothers		May	31, „
Sir E. Hertslet		June	11, „
To Board of Trade		June	14, „
Board of Trade		June	24, „
To Mr. Dering	(No. 56. Commercial)	July	6, „
Mr. Dering	(No. 93. Commercial)	July	10, „
To Mr. Dering	(No. 59. Commercial)	July	17, „
Mr. Dering	(No. 131. Commercial)	September	9, „
Messrs. Henderson Brothers		May	10, 1890.
To Messrs. Henderson Brothers		May	17, „
Messrs. Henderson Brothers		May	20, „
Memorandum (Mr. Farnall)		May	28, „

No. 27.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received November* 22.)

My Lord,

Royal Courts of Justice, November 21, 1890.

Draft of Agreement between Great Britain and Italy with reference to the coasting trade and merchant shipping.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 8th September last, stating that he was directed by your Lordship to transmit to us the accompanying draft of an Agreement between this country and Italy with reference to the coasting trade, and certain matters concerning merchant shipping.

That your Lordship had some doubt whether, in the absence of agreement between the parties, there was at present any legal power to compel them to accept the decision of a Consular officer in the case provided for by Article III of the draft Agreement.

That your Lordship expressed that view to the Board of Trade, and was informed, in reply, that the Board were advised that the doubt felt by your Lordship appeared to be well founded.

That the Board observed, at the same time, that failure on the part of the owners, shippers, and underwriters to contract themselves out of the provisions of the Article could hardly be construed into a binding acquiescence in its provisions on their part.

That Sir Thomas Sanderson was to inclose correspondence relative to the Agreement between the Foreign Office, Her Majesty's Embassy at Rome, the Board of Trade, the Home Office, and the Colonial Office; and he was to request that we would take the draft Agreement into our consideration, and that we would favour your Lordship with our opinion whether, if signed, it could be put into effect without fresh legislation, and with any general observations which we might have to offer.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Legislation would be required to give effect to it.

That, in our opinion, legislation would be required in order to give effect to the draft Agreement.

Article II is, in our judgment, inconsistent with sections 432, 433, 439, and 441 of "The Merchant Shipping Act, 1854," as it purports to give authority to Italian Consuls which would conflict with the statutable authority and duties of the Receiver of Wrecks.

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If Article III is intended to make the appraisement of a British Consul binding in British Courts, it would not have that effect, and, apart from such a result, we do not see what will be the purpose of the appraisement.

Article IV professes to add another requirement for the registration of a British ship to those the law already prescribes, and would therefore be inoperative without legislation.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

A. Mr. Dering	(No. 69. Commercial)	May 23, 1889.
B. To Mr. Dering	(No. 43)	May 31, „
C. Mr. Dering	(No. 95)	July 12, „
D. To Mr. Dering	(No. 8. Treaty)	July 22, „
E. The Marquis of Dufferin	(No. 2)	January 24, 1890.
F. To Board of Trade		February 20, „
G. Board of Trade		April 24, „
H. To Home Office		May 12, „
I. Home Office		July 16, „
J. To Board of Trade		July 18, „
K. Board of Trade		August 11, „
L. To Board of Trade		August 15, „
M. Board of Trade		August 26, „
N. To Board of Trade		September 1, „
O. To Colonial Office		September 1, „
P. Colonial Office		September 3, „
Q. Draft Agreement.		

Annex.

Articles II, III, and IV of British Counter-Draft.

ARTICLE II.

The following provisions with respect to wrecks are agreed upon by the Contracting Parties as supplementary to those contained in Article IX of the Treaty of Commerce and Navigation of the 15th June, 1883:—

When any vessel belonging to the subjects of one of the two Contracting Parties shall be wrecked or stranded on the coast of the other State, the local authorities shall, with the least possible delay, bring the fact to the notice of the Consul-General, Consul, Vice-Consul, or Consular Agent nearest to the scene of the disaster.

The operations respecting the rescue of English ships wrecked or stranded on the coasts of Italy shall be directed by the Consuls-General, Vice-Consuls, or Consular Agents of Great Britain, and conversely the Italian Consuls-General, Consuls, Vice-Consuls, and Consular Agents shall direct the operations relative to the rescue of ships of their nation wrecked or stranded on the coasts of the United Kingdom of Great Britain and Ireland.

When the proprietors of the ship or cargo, or their legally authorized Representatives, are present, the Consuls-General, Consuls, Vice-Consuls, and Consular Agents shall hand over to them the direction of the operations for rescue, requiring a deposit of the ship's papers and a reimbursement of the expenses already incurred, and a sufficient guarantee for expenses of works undertaken before the transfer, and not yet carried out.

The intervention of the local authorities shall only take place in the two countries in order to carry out the civil and criminal law of the country, to assist the Consular authorities to maintain order, to guarantee the interests of the persons participating in the rescue, if they are other than the shipwrecked crew, and to insure the execution of the regulations to be observed for the entry and exit of the merchandize saved.

But, in the absence of and until the arrival of the Consuls-General, Consuls, Vice-Consuls, and Consular Agents, the local authorities may take all the necessary measures for the protection of the individuals, and the preservation of the objects rescued from the wreck.

Such intervention shall not give ground for the reimbursement of any expenses, except such as shall have been necessary, for the operations of rescue and for the custody of the articles saved, as also those to which, under similar circumstances, national vessels would be subjected. These expenses shall be discharged according to circumstances by the Agents of the Consular Service, the proprietor, or his mandatories.

When on account of absence, illness, or any other cause, the Consular functionaries should be prevented from attending to or managing the operations for rescue, the local authorities, to whom such operations and management shall be intrusted, shall be bound to hand over to the said functionaries the ship's papers and the net product of the ship and cargo.

ARTICLE III.

When there are no stipulations to the contrary between the owners, shippers, and underwriters, the injuries which the ships of the two countries shall have suffered at sea, if they put into the ports of either, voluntarily or by stress of circumstances, shall be appraised by the Consul-General, Consul, Vice-Consul, and Consular Agent of the nation to which the said ships belong, unless subjects of the country where the above-mentioned Agents reside, or those of a third Power, are interested in such injuries. In that case, in the absence of an amicable compromise between all the parties interested, the injuries shall be appraised by the local authorities.

ARTICLE IV.

It is agreed that, except in the case of judicial sales, the ships of one of the two countries cannot be nationalized in the other without a declaration of release from the flag granted by the maritime or Consular authorities of the State to which the vessels belong.

No. 28.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received December 4.)

My Lord, *Royal Courts of Justice, December 4, 1890.*

Proposed Anglo-Italian Coasting Trade Agreement.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 26th ultimo, stating that, with reference to our Report of the 21st November last, relative to the proposed Anglo-Italian Coasting Trade Agreement, he was directed by your Lordship to inquire whether, in our opinion, the draft submitted to us in his letter of the 8th September last could be carried into effect in the United Kingdom without fresh legislation, provided that Articles 2, 3, and 4 were omitted entirely.

That the draft Agreement was returned for convenience of reference.

We have taken the question into our consideration, and, in obedience to your Lordship's commands, we have the honour to

Report—

That in our opinion the draft Agreement could be carried into effect in the United Kingdom without fresh legislation if Articles 2, 3, and 4 were omitted.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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LIBERIA.

No. 29.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received October 1.)

My Lord,
Royal Courts of Justice, September 27, 1890.

Grant by the Liberian Govt. to an English Company of the monopoly of the rubber trade.

WE were honoured with your Lordship's commands signified in Sir Villiers Lister's letter of the 8th instant, stating that, by your Lordship's direction, he had to transmit to us the papers noted in the accompanying list with regard to a question which had arisen in connection with the recent grant by the Liberian Government to an English Company of the monopoly of the rubber trade with that country.

That from those papers it would be perceived that the Company in question, the Liberian Concession Company, had recently acquired a Concession from the Liberian Government, which, according to their prospectus, gives the holders, among other things, (1) the sole right of collecting the india-rubber grown on all the Government lands and forests; and (2) the sole right of exporting all india-rubber grown within the territories of the Republic.

Treaty with Liberia of November 21 1848.

That by Article II, however, of the Treaty which was concluded between this country and Liberia on the 21st November, 1848, it was provided that British subjects were to be allowed to buy from and to sell to whom they liked, without being restrained or prejudiced by any monopoly, contract, or exclusive privilege of sale or purchase whatever; and though it might possibly be the case, as would be seen was the opinion of Sir H. Davey, that the first part of the Concession, applying as it did only to Government lands and forests, was not, strictly speaking, a monopoly, and therefore did not constitute an infringement of the Article of the Treaty above referred to, still it was a point that would seem open to question—though Sir Horace expresses himself as being without doubt in that respect as well—whether at any rate the second part, which conferred the sole right of exporting all india-rubber from within the territories of Liberia, and which therefore applied to the whole of that country, was not a distinct infringement of the Article in question, and did not as such call for a remonstrance on the part of Her Majesty's Government.

That it was true indeed that, as would be seen had been pointed out by Sir H. Davey, Article II of the Anglo-Liberian Treaty did not in express terms refer to or prohibit the granting of an exclusive privilege of exporting a particular commodity, but that, nevertheless, a monopoly of exportation such as was intended to be conferred on the Company could hardly fail to seriously prejudice the sale and purchase of that article by all such British subjects as should be outside the terms of the Concession, and it was that very disadvantage which would be incurred by them, which the Article of the Treaty would appear to have been designed to guard against when it said that British subjects should be allowed to buy from and to sell to whom they like, without being restrained or prejudiced by any monopoly, contract, or exclusive privilege of sale or purchase whatever.

That Sir Villiers Lister was to request that we would take those papers into our consideration, and that we would favour your Lordship with any observations we might have to offer on the points alluded to above, or on such others in the case as might seem to us worthy of remark.

In obedience to your Lordship's commands we have the honour to

Report—

Second part of Concession granted to Ellis Tarr and others (giving them the sole right of exporting india-rubber from Liberia) is contrary to Liberian Treaty of 1848.

That, in our opinion, the first part of the Concession granted to Ellis Tarr and others, granting them the sole right of collecting the india-rubber grown upon the Government lands and forests, is not an infringement of the Treaty of November 1848; but that the second part of the Concession, which gives the sole right of exporting all india-rubber grown within the territories of the Republic of Liberia, is a monopoly by which other British subjects will be prejudiced, and is therefore a distinct infringement of Article II of the Treaty.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Sir J. Hay	(No. 6)	
Ditto	(No. 7)	
Memorandum (Mr. Streatfeild)		July 8, 1890.
To Concessions Company		July 17, „
Concessions Company		July 17, „
To Sir J. Hay		July 17, „
Ditto	(Telegraphic)	July 30, „
To Concessions Company		August 1, „
Concessions Company		August 13, „
Memorandum (Mr. Streatfeild)		August 18, „
Mr. Ponsonby		September 5, „
Liberian Concessions		September 4, „

PACIFIC ISLANDS.

No. 30.

[Colonial Office.]

The Law Officers of the Crown to Lord Knutsford.—(Communicated by Colonial Office, June 21.)

My Lord,
Royal Courts of Justice, May 9, 1890.

Proposed amendment in Treaty between H. M. and Tonga of 1879.

WE were honoured with your Lordship's commands signified in Mr. J. Bramston's letter of the 25th March last, stating that he was directed by your Lordship to transmit to us copy of a despatch from the High Commissioner for the Western Pacific, with its inclosures, in which, for the reason stated, he suggested an amendment in the Treaty of Friendship, &c., between Her Majesty and the King of Tonga, 1879, together with a copy of a correspondence between the Colonial Office and the Foreign Office on the subject.

That Mr. Bramston was to request that we would take those papers into our consideration, and favour your Lordship with our opinion on the following points:—

1. Whether a proceeding to obtain divorce would be a "civil suit" within the meaning of Article III (*d*) of the Treaty, or whether, in order to give the High Commissioner's Court jurisdiction to dissolve marriages, it would be necessary, not only to create the jurisdiction by an Order in Council, but to get such jurisdiction recognized by an amendment of the Treaty;

2. Whether we concurred in the opinion that British subjects ought not to have the option of being tried by Tongan Courts; and

3. Whether we thought it necessary that a further alteration should be made, giving the High Commissioner's Court exclusive divorce jurisdiction where the husband was a British subject. If so, such jurisdiction should, it was assumed, be also conferred by the new Western Pacific Order in Council, which was being prepared to take the place of the existing Orders.

That, as then advised, your Lordship was disposed to adopt the view taken by Sir J. Thurston in regard to the alteration of paragraph (*b*) of Article III of the Treaty.

That your Lordship was also inclined to concur with Lord Salisbury that the proposed alteration of paragraph (*c*) would be sufficient for the purpose, and that, looking to all the circumstances of the case, Sir J. Thurston should be instructed not to prosecute Gray for bigamy.

That your Lordship would be pleased to be favoured with any observations which might occur to us on any further points which might suggest themselves to us in the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

1. That, in our opinion, a proceeding to obtain divorce would be a civil suit within the meaning of Article III (*d*) of the Treaty; and to enable the High Com-

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The Treaty as at present drawn covers all offences against Tongan law.

missioner's Court to dissolve marriages, it is only necessary to confer such jurisdiction upon it by Order in Council, no amendment of the Treaty being required.

We observe, however, that if Sir J. Thurston's proposed alteration of Article III (*b*) were adopted, British subjects in Tonga might altogether escape liability to punishment for some offences. Adultery, for instance, is not a criminal offence cognizable by British law, and it is not clear that it could be considered a violation of a Tongan law relating to local police. The Treaty as at present drawn undoubtedly covers all offences against Tongan law.

British subjects should retain the option of being tried by Tongan Courts.

2. The question whether British subjects should retain the option of being tried by Tongan Courts is one of policy, but we do not see any conclusive reason for depriving them of that option, which does not to us appear unreasonable.

The High Commissioner's Court should have exclusive jurisdiction only in cases where respondent is a British subject.

3. We think it desirable that the High Commissioner's Court should have exclusive jurisdiction only in cases where the respondent, whether husband or wife, is a British subject, and that will be the case under the Treaty where divorce jurisdiction is conferred by Order in Council on that Court.

Gray should not be prosecuted for bigamy.

We concur that, under all the circumstances of the case, Sir J. Thurston should be instructed not to prosecute Gray for bigamy.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 31.

The Law Officers of the Crown to Treasury.

CASE.—UNINHABITED ISLANDS, LICENCES.

Lease of Sombrero Island granted in 1865 to F. K. Dumas.

IN 1865 a lease of Sombrero Island was granted to F. K. Dumas for twenty-one years. The lease was executed on behalf of Her Majesty by the Colonial Land and Emigration Commissioners (see section 6 of 18 & 19 Vict., cap. 119, now repealed by 35 & 36 Vict., cap. 73, sec. 5).

Lease granted to Phosphate Company in 1881.

In 1881 a surrender of the above lease was accepted, and a new lease granted to the Phosphate Company of Sombrero.

As the Colonial Land and Emigration Commissioners had ceased to exist in 1881, and Sombrero Island was not within the jurisdiction of any Colonial Governor, a Royal Warrant empowering the Secretary of State for the Colonies to execute this and similar leases was approved by the then Law Officers (Sir H. James and Sir F. Herschell).

A copy of this Warrant is left herewith (A).

Licences to take guano from extra-colonial islands in Indian, Pacific, and Atlantic Oceans.

When this Warrant was submitted to and approved by the Law Officers the Lords of the Treasury were not aware that Letters Patent were in existence under which the Governors of New South Wales and Jamaica, and the High Commissioner of the Western Pacific, were empowered to grant and were in the habit of granting leases of, and licences to take guano from, extra-colonial islands in the Indian, Pacific, and Atlantic Oceans.

The question of the grant of licences to occupy and remove substances from uninhabited islands has recently been occupying the attention of the Foreign Office and the Colonial Office, by whom it has been agreed that two fresh Letters Patent should be issued to the High Commissioner of the Western Pacific, one dealing with islands already in the possession of the Crown, the other with islands not yet forming part of the Empire.

These Letters Patent have been approved by the Law Officers. Copies of them and of recent Reports by the Law Officers on the subject are left herewith.

Amendment proposed by Colonial Office of Royal Warrant of 1881 (A).

The Colonial Office have now suggested to the Treasury that the Warrant to the Secretary of State requires amendment, and have proposed that it should be amended as shown in red ink in the accompanying copy.

The Lords of the Treasury desire the opinion of the Law Officers on the following points:—

1. Whether, if Letters Patent are requisite for the powers to be given to the High Commissioner, the weaker instrumentality of a Royal Warrant will suffice for the powers to be given to the Secretary of State.

2. Whether, if two different instruments, emanating from two different Departments, are required for the two different classes of islands in the case of the High Commissioner, a single instrument will suffice for both classes of islands in the case of the Secretary of State.

3. Whether, if both the foregoing questions be answered in the affirmative, the wording of the draft Warrant is suitable for the purpose it is intended to fulfil.

Opinion.

Royal Warrant will suffice for all powers proposed to be given to Secretary of State.

In our opinion a Royal Warrant will suffice for the powers proposed to be given to the Secretary of State in respect of both classes of islands and places, and, assuming that it is intended to give the Secretary of State concurrent power with the High Commissioner of the Western Pacific of granting, selling, or disposing of islands, &c., subject to the Letters Patent already approved, the wording of the draft Warrant now submitted to and initialled by us is sufficient for the purpose it is intended to fulfil; but if it is intended that there should not be concurrent power in the Secretary of State and the High Commissioner over the places subject to the jurisdiction of the High Commissioner under such Letters Patent, such places should be excluded from the operation of the Warrant.

Difficulties in case of a concurrent jurisdiction of Secretary of State and of High Commissioner for Western Pacific.

It might, in our opinion, create difficulties if a concurrent jurisdiction existed.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Royal Courts of Justice, July 10, 1890.

Annex.

VICTORIA R. AND I.

By Her Majesty's command.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to our right trusty and well-beloved Councillor Henry Thurstan, Baron Knutsford, our Principal Secretary of State for the Colonies, greeting.

WHEREAS our subjects may resort to and settle in islands and places not within our dominions nor within the jurisdiction of any civilized Power, and it may be expedient that such islands or places should become part of our dominions, and that our subjects should be empowered to take and hold possession of such islands or places on our behalf:

And whereas there are or may hereafter be vested in us, by virtue of our Royal prerogative, and subject to alienation at our pleasure, divers islands and tracts of waste land abroad which are not within the jurisdiction of the Governor of any of our Colonies or possessions abroad:

And whereas we have judged it expedient that provision should be made for the demising, granting, selling, exchanging, and disposing, in our name and on our behalf, as occasion may arise, of such islands and waste lands:

Now, therefore, by these presents and by virtue of the powers in us vested, we do hereby authorize and empower you, the said Henry Thurstan, Baron Knutsford, or other the person for the time being holding the office of Principal Secretary of State for our Colonies, to empower any of our subjects to take and hold possession on our behalf of any islands or places as aforesaid, other than islands or places capable of being dealt with by our High Commissioner for the time being for the Western Pacific under our Letters Patent bearing date the 19th and 20th days of May, 1890; and with the consent of the Commissioners for the time being of our Treasury to demise, grant, sell, exchange, and dispose of such our islands and waste lands as aforesaid, and subject to such consent as aforesaid, which consent shall be signified by the execution by the said Commissioners of the deed or deeds, instrument or instruments, whereby such demise, grant, sale, exchange, or disposal is effected, to make allowances to and arrangements with all or any of the tenants or occupiers for the time being of such islands and waste lands, and with others, and to accept surrenders of leases and tenancies, and also to demand, sue for, collect, and receive, and give effectual discharges for all the rents and profits now due, or which shall become due, in respect of

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the said premises, and in case of non-payment thereof, or any part thereof, to enter into and upon all or any of such islands and waste lands in respect of which any rents or profits shall be unpaid, and for the same rents and profits, and the costs and expenses incurred by, or incidental to, the non-payment thereof, to distrain, and the distress and distresses then and there found to dispose of in due course of law. And to take and use all lawful proceedings and means for recovering and receiving the said rents and profits, and for evicting and ejecting defaulting tenants and occupiers from all or any of such islands and waste lands, and determining the tenancy or occupation thereof, and for obtaining, recovering, and retaining possession of all or any of such islands and waste lands held or occupied by such defaulters, and also, subject to such rules and regulations aforesaid, to commence and prosecute and defend all actions, claims, demands, and proceedings touching such islands and waste lands, or the estate, interest, and rights of us or of our tenants or assigns therein and thereto.

And we direct that the Principal Secretary of State for our Colonies for the time being shall, upon the receipt of any moneys under or by virtue of these presents, account for the same to us, our heirs and successors, and may, for the purposes aforesaid or any of them, in our name and on our behalf, sign, make, execute, and do all contracts, agreements, deeds, transfers, assignments, instruments, and things whatsoever:

Provided always, and we do hereby declare our pleasure to be, that nothing herein contained shall alter or affect, or be construed to alter or affect, any appropriation now made or hereafter to be made by law or by the authority of the Commissioners for the time being of our Treasury, of any moneys which may be produced by the demises, grants, sales, exchanges, and dispositions of such islands and waste lands:

Provided also that nothing herein contained extends, or shall be construed to extend, to interfere in any manner with the due execution of any Law made or hereafter to be made by us with the advice and consent of Parliament in respect of the demises, grants, sales, exchanges, and dispositions of such islands and waste lands in respect of the appropriation of the proceeds of any such demises, grants, sales, exchanges, and dispositions.

Given at our Court at Balmoral, this 15th day of September, 1890, in the fifty-fourth year of our reign.

By Her Majesty's command,
(Signed) W. H. WALROND.
HERBERT E. MAXWELL.

(Initialled by Law Officers) R. E. W.
E. C.

No. 32.

The Law Officers of the Crown to Lord Knutsford.

[Transmitted in Colonial Office, February 23, 1891.]

My Lord, *Royal Courts of Justice, July* 11, 1890.

Punishment inflicted upon natives of the Pacific for outrages against British subjects.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us a copy of a despatch from the High Commissioner for the Western Pacific, with its inclosures, respecting the punishment inflicted upon natives of the Pacific for outrages against British subjects.

That we should observe that Sir J. Thurston suggested the enactment of a local law in Fiji authorizing the detention in Fiji of natives, brought within the jurisdiction of the Colony, who had been proved guilty of violence against British subjects.

That the Law Officers in 1879, in their letter of the 20th March, of which a copy was inclosed, reported that they did not think that Her Majesty could assume a jurisdiction over foreigners not within any part of Her Majesty's dominions. That your Lordship, while accepting that opinion, would, however, suggest, with reference to the concluding words of that Report, that it might be still open to consideration whether offending natives made captives by one of Her Majesty's ships, and conveyed to Fiji, might not be regarded as prisoners of war, and their detention on British soil legalized by an Ordinance of the Colony.

No. 33*.

(*Communicated by the Colonial Office, August* 12, 1893.)

[Colonial Office.]

The Law Officers of the Crown to Lord Knutsford.

My Lord, *Royal Courts of Justice, October* 9, 1890.

Pacific Islands Marriages.

WE were honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 15th ultimo, stating that he was directed by your Lordship to refer us to section 6 of "The Pacific Islanders Protection Act, 1875," in connection with the accompanying correspondence respecting marriages in the Pacific Islands, and to request that we would be good enough to advise your Lordship whether, in our opinion, an Order in Council under the section above referred to, and purporting to be for the government of Her Majesty's subjects, would be sufficient to give legal validity to marriages solemnized by missionaries in the islands of the Pacific, between persons of whom one was a subject of Her Majesty. That if so the draft of the proposed Order would be submitted to us in due course for approval.

"Pacific Islanders Protection Act, 1875."

We have taken the matter into our consideration and, in obedience to your Lordship's commands, have the honour to

Report—

As to legality of when celebrated by missionaries.

That in our opinion an Order in Council would be sufficient to give legal validity in this country where one of the parties was a British subject, and everywhere, when both were British subjects, to marriages celebrated by missionaries, assuming such marriages not to be otherwise contrary to the laws of this country.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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That Mr. Bramston was to request that your Lordship might be favoured with our opinion as to whether the High Commissioner's suggestion could be followed.

We have taken the matter into our consideration, and have the honour to

Report—

Detention in Fiji of natives of countries not being British possessions would be improper, except under very special circumstances.

That we are clearly of opinion that it would be improper by any enactment to attempt to justify, as a matter of criminal procedure, the detention in Fiji of natives of countries not being British possessions, who had been proved guilty of violence against British subjects.

We entirely agree with the Report of the Law Officers of the 20th March, 1879.

As regards the suggestion that offending natives captured by Her Majesty's ships should be detained as prisoners of war, we are of opinion that such a course should only be adopted under very special circumstances, and where such detention is considered imperatively necessary in order to prevent further unlawful and hostile acts.

As a rule such detention should be on board the capturing vessel, but if on shore a local Ordinance should be passed authorizing the detention.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

The Law Officers of the Crown to Sir M. Hicks Beach.

[Transmitted in Colonial Office, March 31, 1879.]

Temple, March 20, 1879.

Sir,

Western Pacific Order in Council of August 13, 1877.

WE were honoured with your commands signified in Mr. Herbert's letter of the 4th January last, stating that he was directed by you to transmit to us a copy of a despatch from Chief Justice Gorrie, written in the absence of Sir A. Gordon in this country, in which it was suggested that the jurisdiction exercised by the High Commissioner for the Western Pacific under the Order in Council of the 13th August, 1877 (a copy of which was annexed), should be extended in the manner specified to natives living within the High Commissioner's command, and to request that we would favour you with our opinion whether it was competent to Her Majesty to confer upon a British Court jurisdiction to try savages for offences against British subjects.

And, if so, what instrument would be proper for the purpose.

Mr. Herbert was further to ask us to favour you with our advice generally upon the proposal.

In obedience to your commands, we have the honour to report—

Do not think it possible for Her Majesty to assume a jurisdiction over foreigners not within any part of Her Majesty's dominions.

That we are unable to concur in the views expressed by Chief Justice Gorrie. We do not think it is possible, by any expedient whatever, to avoid the serious infringement of international jurisprudence which would be involved in Her Majesty assuming a jurisdiction over foreigners not within any part of Her Majesty's dominions. The right to make laws must arise either from a personal jurisdiction, as where Her Majesty is entitled to the allegiance of her own subjects all over the world, or is derived from the sovereignty over the territory with respect to which it is sought to legislate. The maxim, "*Extra territorium jus dicenti impune non paretur,*" is strictly relevant to the suggestion of the Chief Justice, and, if we understand rightly, that suggestion is that, by an Act of Parliament or an Order in Council, Her Majesty should obtain or create a jurisdiction to try foreigners who are neither her subjects nor within her territories. Such an Act or Order could effect nothing, and we think would be a very mischievous example of a State attempting to legislate for those beyond its jurisdiction. If savage tribes inflict violence or injury, the only alternative is to treat those acts as acts of war, and vindicate justice accordingly.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.

1890

No. 33.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received December 2.*)

Final Act of the Conference on Samoan affairs of June 14, 1889. Regulations to be issued thereunder by High Commissioner for Western Pacific.

My Lord, *Royal Courts of Justice, December* 1, 1890.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 11th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to certain Regulations to be issued by the High Commissioner for the Western Pacific, for the purpose of enforcing the stipulations of the Final Act of the Conference on Samoan affairs.

That that Act was drawn up and signed at Berlin by the Representatives of Great Britain, Germany, and the United States of America on the 14th June, 1889, and having been in due course ratified by the three Powers, received the assent of the King of Samoa.

That instructions were, therefore, sent to Sir J. Thurston, the High Commissioner for the Western Pacific, and to Colonel de Coëtlogon, Her Majesty's Consul for the Navigators' Islands, directing them to issue, as far as possible, such Regulations in accordance with the Final Act as would place British subjects upon the same legal footing as the subjects of the two other Treaty Powers, viz., Germany and the United States of America.

Regulations passed by the Treaty Powers with regard to collection of customs and taxes in Samoa.

That Sir J. Thurston had now replied, inclosing a copy of the Regulations passed by Her Majesty's Consul for the Navigators' Islands, in conjunction with his German and American colleagues, with regard to the collection of customs and taxes in Samoa.

That he, at the same time, stated that, on considering the instructions sent to him, and the already existing Regulations in force in Samoa, he had come to the conclusion that he could not at present pass any fresh Regulations without placing British subjects on a footing differing from that occupied by the subjects of other nations.

That Sir Philip Currie was to inquire whether we agreed with the view of Sir John Thurston, that Article 7 of the Western Pacific Order in Council of 1879, under which Regulations were issued by the High Commissioner, did not authorize the imposition of taxes, and that he would, therefore, be debarred from issuing a Regulation which would enforce in its entirety the Regulation with regard to taxes agreed upon by the three Consuls.

That it would be seen that the High Commissioner was of opinion that he could have so far assisted the Consuls as to have issued Regulations enforcing the making of the necessary declarations with regard to imports and exports, value of houses, and clerks employed, &c., on which the amount of taxes was computed. But that the Regulations issued by the three Consuls provided no penalty for a breach of their observance, and that, apparently, if Sir J. Thurston were to impose any such penalties by Regulation, British subjects would be placed in a different position from the subjects of other countries.

That Sir John Thurston requested instructions as to the manner in which the payment of taxes was to be enforced in the future, and pointed out that, though the greater part of them would be payable in Apia, and, therefore, the Municipal Council would be able to make the necessary Regulations within the limits of that Municipality, the Council had no jurisdiction outside of Apia. That he was, therefore, in some doubt as to how outside taxes could and should be enforced.

That your Lordship was inclined to agree with the High Commissioner, that amounts due could probably be sued for before the Chief Justice of Samoa as civil debts due to the Samoan Government, but that any penalties which might be attached to failure to comply with the tax laws must be tried, so far as the subjects of the Treaty Powers were concerned, by their own Courts, the Chief Justice not possessing criminal jurisdiction over the subjects of those Powers.

That your Lordship would be glad, however, of our opinion on these points, for it would appear that when the Samoan Government should have passed laws for the regulation of taxes, it would be the duty of the High Commissioner to make Regulations imposing penalties for entering the country at any other port than Apia, and for any failure to make the required declarations of values and other Returns.

That your Lordship would also wish to be advised whether it was within the High Commissioner's power to impose a penalty on any person carrying on a particular trade without having paid the licence prescribed by the Samoan Government. That Sir J. Thurston was of opinion that, under the existing Orders in Council, that would not be within his power, but that he stated that it would be advisable that such penalties should be imposed, and that he was unable to see, should he be correct in his view, who would be able to enforce them against British subjects outside of Apia.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Powers of High Commissioner as to imposition of penalties, and manner in which such penalties should be imposed.

That, in our opinion, it is competent to the High Commissioner for the Western Pacific, under Article 7 of the Western Pacific Order, 1879, to impose penalties upon British subjects, and that Sir John Thurston would therefore be acting within his legal power in issuing a Regulation which would enforce in its entirety the Regulations as to taxes agreed upon by the three Consuls.

We are not prepared to say that the imposition of penalties upon British subjects for breach of fiscal Regulations could properly be held to place them in a different position from that of German subjects and American citizens, and it must be assumed that these two Signatory Powers will take adequate steps for enforcing upon their respective nationals the Regulations which have been agreed to.

It might, however, be desirable that the penalties should, if possible, be similar in all three cases, and be simultaneously prescribed.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Western Pacific Order in Council	.. ..	August 13, 1877.	Confidential No. 3966.
" " "	.. ..	August 14, 1879.	Confidential No. 3958
Final Act of Samoan Conference	.. ..	June 14, 1889.	Treaty No. 850.
To Consul de Coëtlogon ..	(Telegraphic)	April 8, 1890.	
Lord Knutsford to Sir J. Thurston	.. (No. 11)	March 27, "	
(Inclosure 2 in Colonial Office of April 5, 1890.)			
Colonial Office	.. ..	October 29, "	
Sir J. Thurston to Colonial Office	.. ..	August 19, "	

PERSIA.

No. 34.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received October 30.*)

Claims and disputes in consequence of cancelling of Persian Lottery Loan Concession.

My Lord, *Royal Courts of Justice, October* 28, 1890.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the circumstances under which the Persian Lottery Loan Concession was cancelled by His Majesty the Shah of Persia, and to the claims and disputes which had in consequence arisen.

That our Report of the 5th December last dealt with various questions arising out of the endeavours of certain parties to float the Concession in this country.

That on the 10th December last, however, the Persian Minister for Foreign Affairs notified to Her Majesty's Minister at Tehran that the Concession was cancelled.

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That a notification to the same effect was conveyed by the Persian Government to Malcom Khan by telegram on the 5th of the same month.

That Malcom Khan had, a short time previously, been recalled from his post as Persian Minister in this country.

That his letter of recall was dated December 1889, no particular day being specified, but that his audience of Her Majesty to deliver his letter of recall did not take place till the 10th March, 1890, up to which date at least it was presumed that he would enjoy the privileges of extraterritoriality. That in reply, moreover, to a specific inquiry which had been addressed to the Persian Government with reference to that point, Her Majesty's Minister at Tehran had been informed (see Sir H. D. Wolff's telegram No. 252) "that the telegram of the 5th December cancelling the Lottery Concession was officially addressed to Malcom Khan as Persian Minister in London."

That a letter had now been received from Messrs. Slaughter and May, stating that the question of the revocation of the Concession was one of vital importance to their clients, the Anglo-Asiatic Syndicate, on whose behalf they might hereafter have to claim the support and protection of Her Majesty's Government, and inquiring when and to whom the notice of withdrawal was first given.

That they, at the same time, inclosed a Circular addressed by the Directors of the Anglo-Asiatic Syndicate to their shareholders, to which our particular attention was directed, as it contained a statement of the dealings which had taken place in regard to the Lottery Concession in question.

That the precise date of the notification of the withdrawal of the Concession had been ascertained by telegraph from Her Majesty's Legation at Tehran, and that Sir Thomas Sanderson was to inclose a draft of the reply which it was proposed to return to Messrs. Slaughter and May's communication.

That it appeared probable that the questions at issue would eventually, in some form or other, become the subject of legal proceedings, and that, under those circumstances, Sir Thomas Sanderson was to request that we would take the accompanying reply to Messrs. Slaughter and May into our consideration, and that we would favour your Lordship with our opinion (1) as to whether any statements made in relation to this matter by the Secretary of State, or under his direction, in answer to specific inquiries addressed to him by Messrs. Slaughter and May, would, if made *bonâ fide* and without malice, be considered to have been made on a privileged occasion; and (2) whether, apart from any question of privilege, the terms of the inclosed draft were in themselves sufficiently guarded to protect Her Majesty's Government and the Foreign Office from all legal liability towards the parties and persons severally concerned in this dispute.

That any general observations which we might have to offer on other aspects of the case were also invited.

We were also honoured with Sir Thomas Sanderson's letter of the 20th instant, inclosing a further letter from Messrs. Slaughter and May.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

No privilege. Do not think it incumbent on H. M.'s Govt. to give any further assistance to persons interested.

That, in our opinion, no privilege will attach to any communications made by Her Majesty's Government to Messrs. Slaughter and May, or other persons interested in this matter; and, having regard to the character of the Concession in question, we do not think it incumbent on Her Majesty's Government to give any further assistance to the persons interested.

Approve terms of draft despatch to Messrs. Slaughter and May.

We note, however, the promise made in the Foreign Office letter of the 30th September, 1890, and approve the terms of the draft now before us.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

1.	Sir H. Drummond Wolff	(No. 162. Secret. Telegraphic)	November 25, 1889
2.	To ditto	(No. 84. Telegraphic)	November 26, „
3.	Sir H. Drummond Wolff	(No. 165. Telegraphic)	November 27, „
4.	Ditto	(No. 167. Telegraphic)	November 30, „
4A.	Prospectus of Anglo-Asiatic Syndicate.		
5.	Prospectus of Persian Investment Company.		
6.	Sir H. Drummond Wolff	(No. 170. Telegraphic)	December 3, „
7.	Law Officers		December 5, „
8.	Sir H. Drummond Wolff	(No. 224)	December 5, „
9.	Ditto	(No. 176. Telegraphic)	December 8, „
10.	Ditto	(No. 239)	December 20, „
11.	Ditto	(No. 251)	December 25, „
12.	Mr. Glyn		March 25, 1890.
13.	Sir H. Drummond Wolff	(No. 188. Confidential)	May 26, „
14.	Ditto	(No. 199. Secret)	June 3, „
15.	To ditto	(No. 64. Telegraphic)	June 17, „
16.	Ditto	(No. 65. Telegraphic)	June 18, „
17.	Messrs. Arber and Lewis		August 6, „
18.	To ditto		August 7, „
19.	Sir H. Drummond Wolff	(No. 211. Telegraphic)	August 30, „
20.	Messrs. Slaughter and May		September , „
21.	Sir H. Drummond Wolff	(No. 243. Telegraphic)	September 29, „
22.	To Messrs. Slaughter and May		September 30, „
23.	Sir H. Drummond Wolff	(No. 245. Telegraphic)	October 2, „
24.	Anglo-Asiatic Syndicate		October 7, „
25.	Sir H. Drummond Wolff	(No. 252. Telegraphic)	October 12, „
26.	Messrs. Slaughter and May		October 17, „

Annex.

Draft of Letter to Messrs. Slaughter and May.

Gentlemen, *Foreign Office, October* , 1890.

WITH reference to my letter of the 30th ultimo respecting the Persian Lottery Loans Concession, I am directed by the Marquis of Salisbury to inform you that, according to the information obtained by Her Majesty's Minister at Tehran from the Persian Government, and reported by him by telegram, the fact of the Concession being cancelled was notified by a telegram from the Persian Minister for Foreign Affairs to the Persian Legation in London, dated the 5th December, 1889.

I am to add that the fact was also notified to Her Majesty's Legation at Tehran in a communication from the Persian Minister for Foreign Affairs, dated the 10th December of the same year.

I have, &c.
R. E. W.
E. C.

PERU.

No. 35.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 5.)

My Lord, *Royal Courts of Justice, November 4, 1890.*

Claim of Pacific Steam Navigation Company to be indemnified by the Peruvian Govt. in respect of losses in the "Padron" case.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 7th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* relative to the claim of the Pacific Steam Navigation Company (Limited) to be indemnified by the Peruvian Government in respect of losses sustained by the Company in consequence of the action of the Peruvian authorities in what was known as the "Padron" case.

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* Sir C. Mansfield, No. 4, Commercial, March 26; to ditto, No. 38, November 12, 1889; Confidential Print, November 5, 1888, to September 22, 1890.

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That the case in question had already been before us, and formed the subject of our Report of the 25th January, 1889.

L. O. Report, 25th January, 1889. Peru, No. 44.

That in consequence of the opinion therein expressed, Her Majesty's Minister in Peru, under instructions from the Foreign Office, addressed to the Peruvian Government the note, of which a copy was inclosed, in the paper marked (A).

That as no answer was received, he made a further representation on the 22nd December in the terms of the paper marked (B), and received, in reply, the note of which a copy was given in Inclosure 1 of No. 2 of the accompanying print, marked (C).

That the note which contained copies (Inclosures 8, 9, 10, 11, 12, and 13) of the sentences of the different Courts, and (Inclosure 14) the Report of the Fiscal of the Supreme Court to his Government, might be taken as the Peruvian case.

That it was submitted to the Company, and that their reply, dated the 22nd September last (No. 6 in the printed paper C), contained their counter case.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether, having regard to the various facts and arguments adduced on either side in those documents respectively, Her Majesty's Government should reiterate the demand they had already made on behalf of the Company upon the Peruvian Government for the repayment of the 2,000*l.* said to have been improperly exacted, and with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Reasons why H.M.'s Govt. is fully justified in strongly supporting the claim of the Pacific Steam Navigation Company for repayment of the 2,000*l.* said to have been improperly exacted.

That, in our opinion, there is nothing in the note now submitted to us, nor in the Report of the Fiscal of the Supreme Court, which justifies the action of the Peruvian Government in respect of which Her Majesty's Government has already made remonstrance.

It is contended that the Company is not now entitled to diplomatic assistance because it acquiesced in the conduct of legal proceedings before the several Courts. This, however, was not a matter of option on the part of the Company, and, in our opinion, the action of the Peruvian Government, the long delay in the proceedings, and the extravagant sentence pronounced nearly eleven years after the alleged offence, fully justify Her Majesty's Government in strongly supporting the claim of the Pacific Steam Navigation Company.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

PORTUGAL.

No. 36.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 18.)

My Lord, *Royal Courts of Justice, March , 1890.*

Claim on account of interference with British steam-ship "Elbe" at Setubal.

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 25th ultimo, stating that he had the honour to transmit to us, by your Lordship's direction, a despatch,* together with its inclosures, lately received, from Her Majesty's Minister at Lisbon with reference to a claim for compensation which had been put forward by the agents of the British steamer "Elbe," in respect of alleged illegal interference with, and obstruction to, that vessel while she was endeavouring to take in her cargo at the port of Setubal.

That the material circumstances of the case, as therein set forth, appeared to be briefly as follows:—

On the evening of the 6th February the British ship "Elbe" arrived off St. Ubes, in Portugal, for the purpose of taking on board salt and other cargo. Everything was made ready to ship the salt from the lighters which had come alongside, and the master finding that no labourers came off from shore, made preparation for taking the cargo on board by means of the ship's crew.

At noon part of the crew went into the lighters with the gear for shipping the salt, but large crowds of the inhabitants of the town, armed with clubs, came alongside the boats, and by intimidating the crew, prevented them from proceeding with the operation of loading. The master, desiring to enter a formal protest, was informed that it would not be prudent for him to go on shore, and a protest was brought on board by the pilot, which protest the master signed and returned. The inhabitants of the town then removed the ship's gear from the lighters and towed them from the ship's side. The police boat having been alongside the whole time and no attempt having been made to prevent the men from removing the lighters, the master, seeing that no protection was afforded to the ship, decided to leave the port, and did so at 5 P.M. on the same day on which the events above mentioned had occurred.

The owner's agents at Oporto consider that indemnity is due from the Portuguese Government for actual loss of freight and for the costs of protests, telegrams, and other expenses which were occasioned in consequence of the "Elbe" not having been able to ship the cargo.

That Sir James Fergusson was to request that we would take the despatch and inclosures transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the case was one which Her Majesty's Government should represent to that of Portugal, and if so, upon what grounds such representatations could most effectively be based.

In obedience to your Lordship's commands we have the honour to

Report—

H. M.'s Govt. should not support claim.

That in our opinion the case is not one in which Her Majesty's Government should make or support any claim against the Government of Portugal. We do not see that any officials of the Government were guilty of neglect of duty, and it appears that but for the hasty action of the captain in leaving the port, measures might have been taken to protect the shipment of the cargo.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 37.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received April 3.)

My Lord, *Royal Courts of Justice, April 3, 1890.*

Claim of Anglo-Portuguese Oyster Fisheries Co. against Portuguese Govt.

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the affairs of the Anglo-Portuguese Oyster Fisheries Company.

That we should perceive from your Lordship's despatch No. 43, Commercial, of the 12th July last, that the case then appeared to have reached such a phase that its merits could only be satisfactorily determined by some one thoroughly conversant with Portuguese law and procedure.

That the whole of the papers were therefore submitted to Dr. Franco do Castro, a jurist of eminence, whose opinion thereon was inclosed in Mr. Petre's despatch No. 110, Commercial, of the 8th November last. That the opinion in question contained a very full account of the case, and of the many points of Portuguese law and procedure which it had raised; that it might not therefore be necessary for us to consider all the papers, but only those in the accompanying print, together with the despatch to Mr. Petre (No. 57, Commercial) of the 2nd December, and the despatch from Mr. Petre (No. 122, Commercial) of the 11th December, and the letter to Mr. Hart of the 4th December last, and his answer of the 7th of that month, regarding

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* Mr. Petre, No. 12, Commercial, February 14, 1890.

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two points on which additional information was thought to be desirable. That our previous Reports on the case were also inclosed for convenience of reference.

That on consideration of the jurist's opinion, your Lordship addressed to Mr. Petre the above-mentioned despatch (No. 57, Commercial) of the 2nd December.

That the reply of the Portuguese Government to the representation made in accordance with that instruction was inclosed in Mr. Petre's despatch (No. 11, Commercial) of the 8th February, and that as it was unfavourable to the claims of the Company that reply was referred to Dr. Franco do Castro, whose observations thereon were inclosed in Mr. Petre's despatch No. 20, Commercial, of the 5th March.

That the Secretary to the Company had now forwarded a claim against the Portuguese Government for illegally taking and withholding the properties bought by the Company from the late H. J. Place, thereby stopping and destroying the Company's business, besides causing heavy legal and other expenses.

That the Company estimated their monetary loss at the large figure of 441,102*l.*, and were desirous that Her Majesty's Government should now present a formal claim for that amount to the Portuguese Government on their behalf. (See Mr. Hart of the 14th March, 1890.)

Alleged delay in legal proceedings, and denial of justice by Portuguese Govt.

That it would, however, be perceived that legal proceedings in the case were still to some extent pending, but that in view of the extraordinary manner in which those proceedings were apparently being protracted by the agents of the Portuguese Executive, Sir James Fergusson was to request us to take the above mentioned papers into our consideration, and to favour your Lordship with our opinion as to whether the delay had assumed a character which could be regarded as a denial of justice by the Government of one nation to the subjects of another, and likewise with any general observations which we might have to offer on the present aspect of the case.

That the other papers in the case were inclosed for convenience of reference.

We have taken the matter into our consideration, and in obedience to your Lordship's commands have the honour to

Report—

No improper and vexatious delay on part of Portuguese Govt.

That we do not find in the papers before us any allegation that there has been improper and vexatious delay on the part of the legal Representatives of the Portuguese Government in the prosecution of the steps which it appears to be admitted that they are entitled to take, under the Portuguese law, for the purpose of preventing the establishment, as against that Government, of the right of the Company to the possession of the oyster-beds in question.

No denial of justice calling for intervention of H.M.'s Govt.

In these circumstances we are unable to say that there has been a denial of justice calling for peremptory intervention by Her Majesty's Government, and, having regard to the assurances contained in the letter of Senhor H. Ribeiro, we do not suggest that any steps should be taken further than requesting that the Portuguese Government will take care that no unnecessary delays should be allowed to prolong a condition of uncertainty which has already inflicted losses so grave upon the English Company.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Correspondence respecting Anglo-Portuguese Oyster Fisheries.			Confidential No. 6006.
Law Officers' Report		September 11, 1884.	Confidential No. 5121, p. 91.
" "		September 5, 1888.	Confidential No. 5785, p. 56.
" "		November 2, 1888.	Confidential No. 5785, p. 58.
To Mr. Petre	(No. 57)	December 2, 1889.	
Mr. Petre	(No. 122)	December 11, 1889.	
To Mr. Hart		December 4, 1889.	
Mr. Hart		December 7, 1889.	
, ...		March 14, 1890.	

RUSSIA.

No. 38.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 5.)

Royal Courts of Justice, May 2, 1890.

My Lord,

Confiscation of British schooner "Araunah" for seal-hunting in Behring's Sea.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the case of a British schooner named the "Araunah" belonging to the port of Victoria, British Columbia, which was seized in July 1888, by the Russian merchant-steamer "Alexander II," and was subsequently confiscated by M. Grebnitzky, the Superintendent of the Commander Islands, for being unlawfully engaged in seal-hunting in the vicinity of Copper Island, a possession of the Russian Empire in the Behring's Sea.

That the circumstances under which the seizure was said to have taken place would be found set out in letters addressed to the Canadian Government by Messrs. Hall and Goepel, the owners of the "Araunah," dated the 21st September and the 26th October, 1888, and by the master of that ship in a letter to Mr. Dering, Her Majesty's Chargé d'Affaires at St. Petersburgh, dated the 27th August, 1888.

That on the 30th November, 1888, Sir Robert Morier furnished your Lordship with a further Report upon the case, and, at the same time, asked for instructions with regard to certain doubtful points before making formal representation on the subject to the Russian Government.

That on the 30th November, 1888, his Excellency wrote to Messrs. Hall and Goepel, asking for information on certain points which he considered required further explanation.

Note from M. de Giers raising various questions of international law.

That in reply to inquiries made by the Russian Government for information as to the proceedings of the Russian authorities with regard to the "Araunah" (from Sir R. Morier's No. 443 of the 30th December, 1888), a note was received from M. de Giers which appeared to Sir R. Morier to raise various questions of international law (see Sir R. Morier's No. 264).

That his Excellency was thereupon informed that before Her Majesty's Government could form any decided opinion as to their future action in the case they would require to be furnished with fuller information on certain points which were indicated to him (to Sir R. Morier, No. 281, 3rd October, 1889).

That M. de Giers' answer upon those points formed an inclosure in Sir R. Morier's despatch No. 79 of the 19th October, 1889.

That the whole of the correspondence had been referred to Her Majesty's Secretary of State for the Colonies, who, in a letter dated the 17th April, 1890, pointed out that if the "Araunah" at the time of her seizure was engaged in committing an offence against the local laws within the local jurisdiction, there would seem to be nothing to show that the confiscation was not carried out with all the formalities required by the Tribunal by which she was condemned, viz., that of the Intendant of the Commander Islands acting under the supervision of the Government of the Russian Province of Amour.

Law Officers' Reports of 19th July, 1889, and 2nd April, 1890, cases of "Virginie" and "Amazone."

That, in connection with the subject, Sir Thomas Sanderson was to invite our attention to our Reports, dated the 19th July last and 2nd ultimo, on the cases of the French fishing-schooners "Virginie" and "Amazone," which were boarded within the territorial waters of Newfoundland by the Customs Commissioners of that Colony, and by them conveyed to the port of Placentia, where their respective masters were charged before the Resident Magistrate with a violation of the Colonial Bait Acts.

That Sir Thomas Sanderson was also particularly to call our attention to the three Reports of the Solicitor to Her Majesty's Customs, which were submitted to us in connection with the cases of those vessels, and which dealt with the practice of this country in regard to the exercise of the right of search in territorial waters.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would, at our earliest convenience, favour your Lordship with our opinion—

1. Whether, in view of the Reports of the Solicitor to the Board of Customs of the 12th and 14th November, 1888, and of his further Memorandum, inclosed with

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the Colonial Office letter of the 31st January, 1890, on the seizures of the French vessels "Virginie" and "Amazone" for contravention of the Newfoundland Bait Act, it could, having regard to the English doctrine and practice on such matters, be safely contended by Her Majesty's Government that a private vessel, with a duly authorized officer on board, and flying the proper flag, and under special instructions, could not rightly make such a seizure as that now under consideration.

2. Whether the Russian Government were justified by international law in subjecting the subjects of a foreign friendly State to informal Tribunals such as those indicated by the procedure in the case of the "Araunah."

3. Whether the fact of the canoes which belonged to the vessel committing an offence, assuming them to have been within Russian jurisdiction, warranted the seizure of the "Araunah" if she was not, at the time of the committal of the alleged offence, or at the time of the capture, within such jurisdiction.

That your Lordship would also be glad to be furnished with any general observations we might have to offer on the case.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

1. That, in our opinion, a private vessel, with a duly authorized officer on board and flying a proper flag, and under special instructions, may lawfully make a seizure such as that now under consideration.

2. We see nothing inconsistent with international law in the establishment by the Russian Government of such Tribunals as those indicated by the procedure in the case of the "Araunah."

3. Even if the "Araunah" at the time of the seizure was herself outside the 3-mile territorial limit, the fact that she was by means of her boats carrying on fishing within Russian waters, without the prescribed licence, warranted her seizure and confiscation according to the provisions of the municipal law regulating the use of those waters.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Correspondence respecting the Capture of the British schooner "Araunah" off Copper Island, by the Russian merchant-steamer "Alexander II."—(Confidential No. 5777.)		
(B.)	Further Correspondence in continuation of Confidential No. 5777.		
(C.)	Sir R. Morier	(No. 79)	March 19, 1890.
(D.)	To Colonial Office	..	March 28, "
(E.)	Colonial Office	..	April 17, "
(F.)	Law Officers (with papers then reported on).. ..	..	July 19, "
(G.)	Confidential Print (Newfoundland Fisheries, Section No. 15, 1889).		
(H.)	Colonial Office	..	January 31, "
(I.)	Law Officers (with papers then reported on)	..	April 2, "

No. 39.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received August 16.)

My Lord,

Royal Courts of Justice, August 15, 1890.

Proposed establishment of differential railway rates in Russia in favour of foreign goods imported in vessels sailing under Russian flag.

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to a proposed establishment of differential railway rates in Russia in favour of foreign goods imported into that country by vessels sailing under the Russian flag.

That Sir James Fergusson was to direct our especial attention to Article V of the Treaty between Great Britain and Russia of January 1859, which provided that "all merchandize and articles of commerce, the produce or manufacture either of the

Treaty between Great Britain and Russia of January 1859.

United Kingdom of Great Britain and Ireland, its dominions and possessions, or of any other country, which are or may be legally importable into the ports of the dominions and possessions of His Majesty the Emperor of All the Russias, in Russian vessels, may likewise be imported into those ports in British vessels, without being liable to any other or higher duties, *of whatever denomination*, than if such merchandize and articles were imported in Russian vessels."

That Sir James Fergusson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the point as to whether the Article of the Treaty above quoted might be properly held to be applicable to railway rates, although the latter were not specifically mentioned in the Treaty.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Proposed establishment of differential railway rates is contrary to Treaty of 1859.

That, in our opinion, the proposed establishment of differential railway rates in favour of foreign goods imported into Russia in vessels sailing under the Russian flag is clearly at variance with the spirit and intention of the Treaty of 1859, and is inconsistent with the terms of section 4 of clause XI of that Treaty.

Russian Government should be remonstrated with.

It is not clear, upon the papers before us, whether the railways affected by the new scale are owned by the Government or are private undertakings, subject only to Government control. But, in either case, we are of opinion that remonstrance upon the subject may properly be addressed to the Russian Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 40.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received October 30.)

My Lord,

Royal Courts of Justice, October 29, 1890.

Seizure of the "Araunah" off Copper Island by Russian authorities.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to the seizure of the "Araunah" off Copper Island by the Russian authorities in 1888.

That, in consequence of our Report of the 2nd May last, the despatch of the 9th of that month (No. 16 in the Parliamentary Paper "Russia No. 1, 1890") was addressed to Her Majesty's Chargé d'Affaires at St. Petersburgh, informing him that, "as at present advised, Her Majesty's Government do not propose to address any further representation to the Russian Government in regard to this case."

That your Lordship had now received a letter, dated the 6th October, from the Secretary of State for the Colonies, forwarding a despatch from the Canadian Government, in which they suggested that the case should be again brought before the Russian Government, and brought forward various arguments in support of that view.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the statements and arguments in the Minute of the Canadian Privy Council, embodying the Report of the Canadian Minister of Marine, led us in any respects, and, if so, to what extent, to modify the views already expressed by us in our Report of the 2nd May last.

That your Lordship would be glad to be favoured, at the same time, with any general observations which we might desire to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Do not modify Report of 2nd May last.

That, in our opinion, there is nothing in the Minute of the Canadian Privy Council to cause us to modify our Report of the 2nd May last.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Mr. Gosling, No. 57, Commercial, July 9; Memorandum by Mr. Streatfeild, July 21, 1890.

* "Russia No. 1 (1890)," No. 3331 Parliamentary; Colonial Office, October 6, 1890 (two Inclosures); Law Officers' Report, May 2, 1890.

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SPAIN.

No. 41.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 14.)

My Lord, *Royal Courts of Justice, June* 12, 1890.

Imprisonment and death of P. Stanver in Philippine Is.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the circumstances attending the imprisonment and death, in the Philippine Islands, of a British subject named Peter Stanver.

Circumstances attending his arrest, imprisonment, and death.

That from the inclosed despatches (Consul Gollan, Nos. 1 and 2 of the 2nd and 9th January, 1888) from Her Majesty's Consul at Manila it would be seen that, in December 1886, this man, a native of Jamaica, was sent down to Balabac by a British resident at that port to assist a shipwrecked crew in the salvage of some property. That while so occupied with the sailors, the wreck on board of which they were working broke up, and that they had to get to shore on a raft to save their lives. That Stanver reached Balabac utterly worn out by the hardships he had undergone, and that, on his party being ordered by the Governor of that Settlement to work on the roads, he refused, and shouted to his comrades not to do so. That thereupon he was arrested, without being informed of the nature of his alleged offence, and kept in irons until conveyed to Manila. That there, notwithstanding the representations of Consul Gollan, he was imprisoned for six months without trial or investigation, until, being taken ill, he was removed to the prison ward of the hospital, where, on the 16th June, 1887, he died, without, as it appeared, having received proper medical attendance.

Consul's inquiry into action of Spanish authorities.

That Her Majesty's Consul thereupon pressed for an exhaustive inquiry, and for an explanation of the action of the Spanish authorities. That six months elapsed before he was informed that Stanver had been guilty of disrespect to the Governor's authority, and that, in consequence of the death of the accused, the proceedings against him had been quashed.

Representation to Spanish Govt.

That, owing to the unsatisfactory character of that reply, Her Majesty's Ambassador at Madrid was instructed to call the earnest attention of the Spanish Government to the facts described above, and to urgently press them to institute an immediate and rigorous investigation of the case.

Their reply thereto.

That the reply of the Spanish Government was to the effect that Stanver had been exempted from labour on account of his weak state, but that he was arrested for inciting his companions to resist the order to work, and for using threatening gestures to the Governor, in the course of which he is said to have handled a revolver which he had concealed under his shirt. That they moreover asserted that he died in hospital of typhoid fever, and denied the allegation that he did not receive proper medical assistance.

That Consul Gollan, to whom the above explanation, with its accompanying documents, was communicated, obtained the opinion of a Spanish lawyer resident in the Colony, who stated that the action of the Governor was arbitrary and illegal; that the subsequent proceedings of the authorities at Manila were dilatory and inconclusive; and that there was an utter absence of proof of crime to warrant the treatment which Stanver received, and through which he undoubtedly died.

Further representation to Spanish Govt.

That Sir C. Ford was therefore again instructed to call the special attention of the Spanish Government to the absence of any serious offence on the part of Stanver, who was not even accused of any breach of Spanish law, and to press for the dismissal of the Governor of Balabac for his inhuman and illegal treatment of the deceased.

Spanish reply thereto.

That that representation received no reply until April last, when the Spanish Government expressed their dissent from the views of Her Majesty's Government, and declined to take any steps in the matter, on the ground that the Governor had acted in strict accordance with Spanish law, and with the universal mode of administering justice in the Philippine Islands, whether the person accused happened to be of Spanish or any other nationality.

Draft of remonstrance to Spanish Govt. for approval.

That the accompanying draft of a further instruction to Sir C. Ford had been prepared, but that, inasmuch as the legal aspect of the case was not altogether free from difficulty, your Lordship would first be glad to be favoured with our opinion as to whether the terms of the proposed representation to the Spanish Government were suitable, or whether any, and, if so, what, alternative action on the part of Her Majesty's Government presented itself to us as preferable under the circumstances.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approving draft of remonstrance as amended.

That, in our opinion, the facts appearing from the papers before us are of a grave character, and call for emphatic remonstrance on the part of Her Majesty's Government, but we doubt whether they are sufficient to justify expressions of such a character as those proposed in the draft submitted to us.

If it is considered politic to make so strong a representation, we think the passage excised by us in red ink* on p. 2 should be omitted.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex 1.

Draft of Despatch to Mr. Barrington (as altered by the Law Officers).

Sir, *Foreign Office, June* , 1890.

I HAVE received Sir C. Ford's despatch No. 53 of the 12th April last, inclosing a note from the Spanish Government, in which they decline to take any action with regard to the case of the deceased British subject Peter Stanver, and justify the action of their officials in the Philippine Islands.

I have to request you to state to the Spanish Government, in reply, that Her Majesty's Government deeply regret that they should have refused to give any more satisfactory explanation of the inhuman treatment by their local authorities of a British subject, ~~and demand to be furnished with particulars of the law and judicial proceedings under which, and of the offence for which, the deceased man was imprisoned for six months. If this demand be refused,~~ Her Majesty's Government can only conclude that British subjects in Manila are liable to be sent to goal without trial at the caprice of the Governor, and that the Spanish Government is ready to tolerate and justify the most flagrant acts of illegality on the part of their Colonial authorities against the subjects of a friendly Power.

I am, &c.

Annex 2.

Despatch to Mr. Barrington (as amended by the Marquis of Salisbury).

(No. 59.)
Sir, *Foreign Office, June* 18, 1890.

I HAVE received Sir C. Ford's despatch No. 53 of the 12th April last, inclosing a note from the Spanish Government in which they decline to take any action with regard to the case of the deceased British subject Peter Stanver, and justify the action of their officials in the Philippine Islands.

I have to request you to state to the Spanish Government, in reply, that Her Majesty's Government deeply regret that they should have refused to give any more satisfactory explanation of the treatment which a British subject has undergone at the hands of their local authorities. It will give rise to the belief that in Manila the subjects of a friendly Power are liable to arbitrary imprisonment of a severe character at the will of the Governor; and that even when such treatment has a fatal issue, no redress can be hoped for from the Government of Spain.

I am, &c.
(Signed) SALISBURY.

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* Printed in erased type.

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List of Papers.

Consul Gollan	(No. 1. Political)	January	2, 1888.
Ditto	(No. 2. Political)	January	9, „
To Sir Clare Ford	(No. 57)	April	13,
Sir Clare Ford	(No. 61)	April	24, ,
Ditto	(No. 138)	October	22, „
To Consul Gollan	(No. 10)	October	27, ,
Consul Gollan	(No. 1. Political)	February	15, 1889.
To Sir Clare Ford	(No. 35)	April	13, „
Sir Clare Ford	(No. 46)	April	20, „
Ditto	(No. 53)	April	12, 1890.

TURKEY.

No. 42.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received February* 6.)

My Lord, *Royal Courts of Justice, February* 5, 1890.

O. in C. for trial of British subjects for serious crimes in Ottoman dominions. Draft for approval.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council (to be cited as "The Ottoman Order in Council, 1890") which had been prepared by Mr. R. S. Wright, under instructions from the Foreign Office, for the purpose of making further provision for the trial of serious criminal offences committed by British subjects within the Ottoman dominions.

That the circumstances which had pointedly drawn your Lordship's attention to the necessity of supplementing the arrangements hitherto in force for the trial of such offences when committed in remote parts of the Ottoman dominions were briefly as follow:—

That on the 5th October last Her Majesty's Consul-General and Judge at Constantinople informed your Lordship that Colonel Tweedie, Her Majesty's Consul-General at Bagdad, had reported thence a charge against a British Indian subject named Abdullah Khan of murdering his wife at Kadhivan, about 4 miles from Bagdad.

That the minutes, depositions, and exhibits taken in the case by Colonel Tweedie were inclosed in Sir H. Fawcett's despatch, but that it appeared, for the purposes of the present reference, immaterial to trouble us with them.

That Her Majesty's Consul-General at Bagdad was not, under the provisions of the existing Ottoman Orders in Council of 1873 and 1882, competent to try cases which would be capital in England, and that the prisoner must therefore (as the law stood at present) either be sent as a British Indian subject, under the provisions of section 265 of the Ottoman Order in Council, 1873, and of section 4 of "The Foreign Jurisdiction Act, 1843," to take his trial at Bombay, or the Judge or Assistant Judge of the Supreme Court at Constantinople must proceed to Bagdad to try him on the spot (see section 34 of the Ottoman Order in Council, 1873).

That the case, so far, seemed to correspond in its main features with a case known as the Kerbellah case which arose in 1885, and which formed the subject of two Reports, dated respectively the 24th February and 26th March, 1885, from the then Law Officers of the Crown.

That in that case the latter alternative was adopted, and Mr. Assistant Judge Tarring was sent to Bagdad to try the accused person.

That in the present instance, however, it was considered most undesirable to follow a similar course, as Mr. Tarring's prolonged absence from Constantinople (the journey and trial would probably occupy some four months) at the present time would, in view of the fact that no duly qualified Consular officer was at present available to act as Assistant Judge at Constantinople during Mr. Tarring's absence, be attended with great inconvenience to public interests; while the former alternative of sending the prisoner and witnesses to Bombay was open to grave objection on grounds of expense and inconvenience, and was, moreover, considered unsuitable by the India Office, who had been consulted on the matter.

That with a view of meeting the immediate difficulty it was suggested by Sir H. Fawcett that powers should be conferred upon Her Majesty's Consul-General at Bagdad to enable him to try cases of that kind, but that Colonel Tweedie did not possess the legal qualifications prescribed by the Ottoman Orders in Council of 1873 and 1882 for a Judge in regard to the trial of cases which in England were capital, and that it appeared to your Lordship undesirable to modify by further legislation the extent of the qualifications which were then thought necessary for the trial of those particular crimes.

That, under the circumstances, it seemed preferable that an Order in Council should be prepared in general terms enabling the Secretary of State to nominate and appoint from time to time, whenever he should deem that course advisable in the public interest, any person possessing the legal qualifications requisite for an Assistant Judge of the Supreme Court at Constantinople (see section 5 of the Ottoman Order in Council, 1882), in order to proceed to any part of the Ottoman dominions for the purpose of trying any case or cases of exceptional gravity or importance, and demanding for their trial special legal experience and knowledge.

That Sir T. V. Lister was to request that we would take the draft Order in Council into our consideration in connection with the other papers transmitted therewith, and that we would favour your Lordship with our opinion as to whether its terms were such as might properly be submitted to the Queen in Council for Her Majesty's approval.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve draft.

That, in our opinion, the terms of the draft Order in Council are such as may properly be submitted to the Queen in Council for Her Majesty's approval.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

1. Draft Ottoman Order in Council, 1890. Confidential No. 2354.
2. Book containing Ottoman Orders in Council, 1873–83.
3. Law Officers' Reports—
   February 24, 1885. Turkey, No. 160. Confidential No. 5246, p. 164.
   March 26, 1885. Turkey, No. 161. Confidential No. 5246, p. 164.
4. Sir H. Fawcett, No. 66, November 7; ditto, No. 73, December 3, 1889.
5. To Sir H. Fawcett, December 11, 1889.
6. India Office, November 20; ditto, November 29, 1889.
7. Acting Judge Tarring, No. 62, October 15, 1889.

No. 43.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received July* 19.)

My Lord, *Royal Courts of Justice, July* 18, 1890.

Claims for indemnity of Mr. E. Cassimati and Mrs. Moazzo for destruction of property during riots in Crete.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list* relative to claims for indemnity put forward by Mr. E. Cassimati, Clerk to Her Majesty's Consulate in Crete, and Mrs. Moazzo, widow of the late British Vice-Consul at Canea, on account of the destruction of their property during riots in that island.

That details with regard to both cases would be found in Mr. Consul Biliotti's despatch No. 72 of the 3rd ultimo.

That, in his despatch No. 278 of the 19th June, Her Majesty's Chargé d'Affaires at Constantinople asked whether, in the opinion of Her Majesty's Government, claims of that nature could properly be taken up by Her Majesty's Embassy; and that Sir

* Mr. Biliotti, No. 72, June 3; Mr. Fane, No. 278, June 19; to ditto, draft, July , 1890; Memorandum, February 8, 1877; Memorandum, October 20, 1883; Memorandum, June 30, 1890.

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Philip Currie was to inclose the draft of the instructions which had been prepared for his guidance in the matter.

That various Memoranda, which had been prepared in the Foreign Office at different times, bearing on the question were also annexed.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the proposed instructions to Mr. Fane were right and proper in the circumstances, and also with any general observations which we might have to offer on the matter.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve proposed instructions to Mr. Fane.

That, in our opinion, the proposed instructions to Mr. Fane are right and proper under the circumstances.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Draft of Despatch from the Marquis of Salisbury to Mr. Fane.

(No.)

Foreign Office, July , 1890.

Sir,

I HAVE received your despatch No. 278 of the 19th ultimo, on the subject of a report you had received from Her Majesty's Consul in Crete, forwarding a claim for indemnity from Mr. Cassimati, Clerk to Her Majesty's Consulate at Canea, in consequence of the destruction of his property while it was being guarded by Turkish soldiers, as well as a claim to indemnity from Mrs. Moazzo, widow of the late Vice-Consul at Canea, whose property was burnt by Christians owing to her holding it jointly with a Mussulman. You ask to be furnished with instructions before replying to Mr. Biliotti.

The general principles on which Her Majesty's Government have consistently acted in such cases are that—

1. In times of insurrection or riot foreigners are entitled to as ample protection for their persons and property as are natives, but that they are not as a rule entitled to any special or greater protection.

2. That if the authorities neglect to protect foreigners equally with natives, or to take reasonable or proper precautions to quell a riot or insurrection which might otherwise have been prevented, and foreigners suffer injury in consequence, either of these circumstances would afford a *primâ facie* ground for remonstrance on the part of the foreign Government, and for a claim for compensation on the foreigner's behalf.

Her Majesty's Government would, however, in practice require the clearest proof of negligence on the part of the Government of a friendly State, or of culpability on the part of its authorities, before intervening on behalf of British subjects so long as they were accorded as favourable treatment as was extended to natives or to foreigners of other nationalities.

Provided that the above principles were not violated or infringed by the Turkish authorities in dealing with any cases in which British subjects were concerned arising out of the riots in Crete, Her Majesty's Government would not be disposed to press the claims of such British subjects in any special manner upon the consideration of the Porte.

I am, &c.
R. E. W.
E. C.

No. 44.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received September 18.)

My Lord, *Royal Courts of Justice, September 10, 1890.*

Levying of fees under the Ottoman Order in Council.

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 15th ultimo, stating that, by your Lordship's direction, he had to transmit to us the papers noted in the accompanying list, which related to the levying of fees under the Ottoman Order in Council, and that he was to request our opinion as to whether those fees were levied as Consular fees, under the Consular Act of 1825 (6 Geo. IV, cap. 87), or solely by virtue of the Foreign Jurisdiction Act of 1843 (6 & 7 Vict., cap. 94).

We have taken the matter into our consideration, and in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the fees under the Ottoman Order in Council are levied under the authority of "The Foreign Jurisdiction Act, 1843," but that, in view of the questions that have been raised, we think it advisable that the recital of the Act of the 6 Geo. IV, cap. 87, should be retained in the Order in Council, and that in every case some maximum limit of fee should be inserted.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Consular Act, 6 Geo. IV, cap. 87.		
Foreign Jurisdiction Act, 6 & 7 Vict., cap. 94.		
Ottoman Order in Council	October 26, 1875.	Confidential No. 2873.
Memorandum by Sir E. Hertslet	August 12, 1890.	
Mr. Wright	May 23, „	
Consul-General Fawcett .. .. (No. 8. Treaty)	June 24, „	
Mr. Wright	July 11, „	

No. 45.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received September 18.)

My Lord, *Royal Courts of Justice, September 12, 1890.*

Mr. C. Charnaud's claim against Turkish Govt. for compensation for seizure in 1877 of steam flour-mill.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 18th ultimo, stating that he had to transmit to us, by your Lordship's direction, the accompanying despatch from Her Majesty's Ambassador at Constantinople, which related to a claim brought forward by Mr. Charles Charnaud, a British subject, against the Turkish Government for compensation on account of the seizure by the Turkish authorities in 1877, during the war with Russia, of a steam flour-mill at Varna, the joint property of Mr. Charnaud and M. Franchini, a Russian subject, after their refusal of the terms offered for its purchase.

Sir W. Wh No. 346.

That at the time of the seizure Mr. Charnaud sought and obtained the intervention of Her Majesty's Embassy at Constantinople, and a summary of what then occurred would be found in the inclosed despatch from Sir W. White (*vide* also Inclosures 1, 2, 3, and 4 in the said despatch).

That subsequently, but not until long after, Mr. Charnaud was put again into possession of his property, but no indemnity had been received by him for the losses he sustained by its sequestration.

That the Turco-Russian Commission for the settlement of all claims arising out of the late war recognized the justice of the joint claim preferred by M. Franchini and Mr. Charnaud, and awarded them the sum of 60,000 fr., to be paid integrally and immediately.

That it would, however, appear that M. Franchini had as yet only received 434*l.* of the 30,000 fr. awarded to him, while Mr. Charnaud had, as already stated, received nothing.

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That the question remained in abeyance until lately, when, on the 21st October last, Mr. Charnaud addressed a letter to Her Majesty's Embassy (*vide* Inclosure 5 in Sir W. White's No. 346) asking their intervention with a view to obtain from the Turkish Government payment of the sum of 30,000 fr., with interest from 1877 up to date, as a simple claim for rental for the work wrought out of his mill, and as his share of the 60,000 fr. fixed by the Russo-Turkish Commission after the conclusion of the war, of which the half was allotted to his partner, M. Franchini.

Sir W. White's note to the Porte claiming payment of sum of 30,000 fr. awarded by Russo-Turkish Commission to Mr. Charnaud.

That, on the 28th February last, Sir W. White addressed a note to the Porte calling attention to the previous correspondence, and claiming payment of the sum of 30,000 fr. as Mr. Charnaud's portion of the sum of 60,000 fr. awarded by the Russo-Turkish Commission.

The Porte's reply thereto.

Treaty between Russia and Turkey of February 8, 1879.

That the Porte's reply formed Inclosure 7 in Sir W. White's despatch, and it would be seen that they decline to admit Mr. Charnaud's claim, and contend that an indemnity was awarded to M. Franchini only in execution of a decision given by the Russo-Turkish Commission, and as a consequence of the Treaty of Peace between Russia and Turkey signed on the 8th February, 1879, and other acts establishing the basis of the indemnity to be paid to Russian subjects who had suffered losses during the war.

That the Porte further argued that Mr. Charnaud's claim was not based on any legal ground, since the Imperial authorities, under the pressure of the exigencies of war, had merely seized and made temporary use of a mill which had been abandoned by its owners, and which was eventually handed over to the Russian authorities, who were in military possession of the place, a course which they maintained to be amply justified by the rights of war.

That the Treaty of Peace between Russia and Turkey of the 8th February, 1879, to which reference has been made, was annexed.

That Sir P. Currie was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether the position taken up in this matter by the Porte could be contested, if so, upon what grounds, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to

Report—

Mr. Charnaud's claim should not be pressed.

That, in our opinion, Mr. Charnaud's claim should not be pressed. The contention of the Turkish Government appears to us to be sound, unless compensation was paid to Turkish subjects under similar circumstances, of which there is no suggestion. We note also that it is not shown that Mr. Charnaud sustained any damage at all, and that no sufficient explanation is given of the claim being allowed to sleep for eleven years.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 46.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received September 18.)

My Lord, *Royal Courts of Justice, September 17, 1890.*

Draft of letter to Mr. Stewart McNicoll respecting detention of Mr. Anderson, of steam-ship "Franklin," on board Turkish brig "Adelphotis" in consequence of collision at sea.

WE were honoured with your Lordship's commands signified in Sir Villiers Lister's letter of the 15th ultimo, stating that he had to transmit to us, by your Lordship's direction, the draft of a letter which it was proposed to address to Mr. Stewart McNicoll, for communication to Mr. Anderson, late second officer of the steam-ship "Franklin," who had invoked the assistance of Her Majesty's Government under the following circumstances.

That on the 24th October last year a collision occurred on the high seas between the British steam-ship "Franklin" and the Turkish brig "Adelphotis," of Kios or Cassos, John Anderson, the second officer of the former, being at the time of the collision off duty and asleep in his berth. Anderson, having proceeded on board the "Adelphotis" for the purpose of rendering any assistance that might be required, was illegally and forcibly detained on that vessel against his will not only on the high seas, but also after her entry into the port of Kastro, and suffered great privations in consequence. Mr. Anderson has asked for redress through Mr. S. McNicoll.

That it had been suggested by Mr. Stavrides, Dragoman to Her Majesty's Embassy at Constantinople, that in the event of the "Adelphotis" putting into a British port, the local (British) authorities of the port should compel the master, through his Consul, to find bail that he would proceed to Constantinople to undergo his trial.

That the opinion of the Secretary of State for Foreign Affairs and the Board of Trade upon that suggestion was given in the proposed draft to Mr. McNicoll.

That Sir Villiers Lister was to request that we would take the draft transmitted herewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in his letter, and with any general observations which we might have to offer on the case.

We were also favoured with Sir Villiers Lister's further communication of the 11th instant.

In obedience to your Lordship's commands we have the honour to

Report—

Approve draft letter as altered.

That, in our opinion, the draft letter to Mr. McNicoll, as altered by us, expresses the legal considerations applicable to the case; we are not aware of any means of compelling the master of the "Adelphotis" to give bail, as suggested by Mr. Stavrides.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Draft of Letter to Mr. McNicoll.

Foreign Office, August , 1890.

Sir,

With reference to the letter from this Office of the 10th ultimo respecting the case of John Anderson, of the steam-ship "Franklin," I am now directed by the Marquis of Salisbury to inform you that the Board of Trade are unable to suggest any means of redress other than by resort to the Turkish Tribunals unless the master of the Turkish vessel should come to England, in which case an action might be brought against him in the Superior Court, but he could not be arrested or held to bail. There is, however, little probability of the master coming and remaining here, so that proceedings in this country are of no practical value.

As the Merchant Shipping Acts apply only to British subjects and to the master, officers, and crews of British ships upon the high seas, their provisions afford no assistance to Mr. Anderson in the present case.

I am, &c.

R. E. W.
E. C.

No. 47.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 15.)

My Lord, *Royal Courts of Justice, November 14, 1890.*

Trial and sentence of Abdullah Khan, otherwise Dossabhoy Nowroji, for murder of Zohra Begum.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to the trial and sentence of Abdullah Khan, otherwise Dossabhoy Nowroji, for the murder of Zohra Begum.

Ottoman O. in C., 1890.

That the proceedings were conducted at Bagdad before Mr. W. B. Cracknall, Barrister-at-Law, Her Majesty's Vice-Consul at Zanzibar, who had been appointed by the Secretary of State, in pursuance of the power conferred by Article II of the Ottoman Order in Council, 1890, to be and act as a Judge for the purpose of the aforesaid trial.

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Ottoman O. in C., 1873.

That the Judge found it impossible to fulfil the condition of a trial by jury according to the Ottoman Order in Council, 1873, and that, therefore, in pursuance of Article 266 of that Order and of Article 2 of the Order of the 21st March, 1890, he tried the case with two Assessors. That in the event the accused was adjudged guilty of the murder for which he was indicted.

That a complete record of the proceedings would be found inclosed in Mr. Cracknall's Report to Sir Henry Fawcett, Her Majesty's Consul-General and Judge of the Supreme Consular Court at Constantinople, who had forwarded it to the Foreign Office in his despatch No. 50 of the 1st July last.

That among the papers would also be found, under cover of a letter from Messrs. Ardesir, Hormusje, and Dinshaw, a Petition from Nowroji Dossabhoy Hatiram, the father of the condemned man, praying that the Secretary of State would "be pleased to distrust the story of the prosecution and set aside the conviction of murder against the accused and order him to be set at liberty."

That your Lordship proposed that the maximum penalty which the Secretary of State could, having regard to the provisions of the Ottoman Order in Council of 1873, direct to be imposed, *i.e.*, twenty years' imprisonment, should be awarded to the prisoner. But that, before acting in the matter, your Lordship would be glad to learn whether we agreed in that view, or whether we considered that the circumstances of the case would be more suitably met by the infliction of any lighter, and, if so what, term of imprisonment.

We have taken the matter into our consideration and, in obedience to your Lordship's commands, have the honour to

Report—

No ground for reducing the term of imprisonment below the maximum permitted by the O. in C.

That in our opinion there is, in this case, no ground for reducing the term of imprisonment below the maximum permitted by the Order in Council.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Ottoman Orders in Council, 1873, 1882, and 1890. Confidential Nos. 2873, 4635*, and 5290*.		
Law Officers' Report		February 5, 1890.
Consul-General Fawcett	(No. 50)	July 1, „
Acting Judge Tarring	(No. 86)	October 20, „
Consul-General Tweedie	(Telegraphic)	May 14, „
Mr. Cracknall		May 16, „
To Mr. Cracknall (two)		March 28, „
Messrs. Ardesir, Hormusji, and Dinshaw .. .. (And letters of July 4 and 11, 1890).	(Telegraphic)	June 27, „
To Messrs. Ardesir, Hormusji, and Dinshaw .. (And letter of August 11, 1890).	(Telegraphic)	June 28, „
Mr. D. Naoroji		July 21, „
To Mr. D. Naoroji		August 5, „

Annex.

Draft of Despatch to Sir H. Fawcett.

(No. .)
Sir, *Foreign Office, November* , 1890.

WITH reference to Mr. Tarring's despatch No. 86 of the 20th ultimo, forwarding the original depositions taken before Mr. Cracknall, at Bagdad, *in re* Regina *v.* Abdullah Khan, I am directed by the Marquis of Salisbury to inform you that, after consultation with the Law Officers of the Crown, his Lordship is of opinion that there is in this case no ground for reducing the term of imprisonment below the maximum permitted by the provisions of the Ottoman Order in Council of 1873.

In pursuance, therefore, of section 269 of that Order, Lord Salisbury directs that the punishment to be inflicted on the prisoner shall be twenty years' imprisonment with hard labour.

His Lordship would be glad to receive a Report from you as to the expediency of sending the prisoner to Bombay in order that the sentence may be there carried into effect, under section 309 of the Order.

I am, &c.

No. 48.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received December 16.)

[After reciting the following letter, they report as on p. 74:—]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November 12, 1890.*

Claims for indemnity on account of destruction of property of British subjects during riots in Crete.

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the papers noted in the accompanying list,* which relate to the claims for indemnity put forward by certain British subjects on account of the destruction of their property during the riots in Crete.

On the receipt of your Report of the 18th July last, instructions in the terms of the draft approved by you were sent to Her Majesty's Chargé d'Affaires at Constantinople as to the general principles on which Her Majesty's Government have consistently acted with regard to claims arising out of riots or insurrections in foreign countries, and these instructions were communicated by Mr. Fane to Her Majesty's Consul in Crete.

Mr. Biliotti has now addressed a further despatch to Her Majesty's Ambassador at Constantinople with reference to the claims of five British subjects whose cases he contends are not covered by the above-mentioned instructions, and who have, he submits, an incontestable claim to compensation from the Ottoman Government.

These cases are as follows:—

1. Case of Vice-Consul Cassimati.

1. Mr. Vice-Consul Cassimati, whose house and furniture were burnt, and oil factory as well as family chapel and tomb destroyed, while guarded by Turkish troops, after the desertion of the village of Galata, in which the property was situated, by all the inhabitants.

Mr. Cassimati's house was burnt on the night of the 1st-2nd August, and the village had been uninterruptedly occupied by troops from the 29th August. Mr. Biliotti observes that if they (the troops) were not the actual perpetrators of the outrage, they at all events did nothing to prevent it or to apprehend the culprits.

The papers connected with this case were sent home by Mr. Biliotti in his despatch No. 72 of the 3rd June (Inclosure A), and full details of what took place, tending to establish the responsibility of the Imperial authorities in the matter, are given in his despatch to Sir W. White above referred to, No. 141 of the 1st October (Inclosure B).

2. Case of Mrs. Moazzo.

2. Mrs. Moazzo, widow of the late British Vice-Consul at Canea, whose farmhouse and oil factory, situated about 12 miles from Canea, were burnt by Christians, owing, as is alleged, to the property being held by her in joint account with a certain Mussulman.

In Mr. Biliotti's opinion, this case comes within the category of those in which the claimants did not receive the same protection as was afforded to natives and to other foreigners. He further argues that the principle laid down that foreigners are entitled to as ample protection for their persons and property as natives are involves the obligation on the part of the Government to protect its own subjects; but that when no protection whatever is granted to natives, as was the case during the recent troubles, it does not follow that foreigners should suffer because the Government of the country failed to fulfil its duties towards its own subjects.

At the time the disturbances took place the ranks of the eight battalions usually stationed in the island had been so thinned that, instead of their proper complement of 8,000 men, they numbered only 4,500, and the gendarmerie was known to be useless.

The Vali suggested in proper time the reinforcement of the garrison as a reasonable precaution, but his proposal was not acted upon by the Imperial Government; and it is submitted that this fact, coupled with the wholesale desertion of the gendarmerie, allowed the rioters to carry out their schemes without any attempt on the part of the authorities to prevent them.

3. Case of Vice-Consul Calocherino.

3. Mr. Vice-Consul Calocherino, whose vineyards and harvest of grapes were plundered, the chief offenders being soldiers of the Imperial army.

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* (A) Consul Biliotti, No. 72, June 3; (B) ditto, No. 141, October 1; (C) to Mr. Fane, No. 218, July 22, 1890.

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Mr. Calocherino is the owner of three farms, situated at from one to one and a-half hours' journey from the town of Candia.

According to documents obtained by him from the Christian authorities of the commune, the damage done to his harvest of grapes by about 1,000 soldiers encamped near his farm, and by soldiers in and around the town when the grapes were being conveyed thither, amounted to 68,000 piastres, and that done by natives to 27,000 piastres.

During the insurrection which took place in 1866, the Imperial troops having wrecked two farm-houses and their contents belonging to Mr. Calocherino, the latter obtained an indemnity of 63,119 piastres; and Mr. Biliotti considers this precedent of much value, both as regards Mr. Calocherino's present claim and that of Mr. Cassimati.

4. Case of Dr. Ittar.

4. Dr. Ittar, who rents extensive vineyards in the neighbourhood of Candia for the purpose of manufacturing wine, &c.

The whole of this property was plundered, owing to the neglect of the authorities to protect it, while protection is stated to have been afforded to other parties. Dr. Ittar affirms that if the local authorities, in compliance with his request, had sent a few soldiers to guard his property, it would have been saved, as it was saved by that means in the year 1878. He further states that one battalion of troops who witnessed the plunder of his property did nothing to prevent it, while soldiers were sent to guard the property of Mussulmans who required no such protection, and that he did not receive the protection granted to Ottoman subjects and to other foreigners.

5. Case of Mr. C. Pappadaki.

5. Mr. C. Pappadaki, of Athens, whose property, consisting of two houses and furniture, in the Province of Candia, was burnt by Mussulmans.

The remarks made above with reference to the claim of Mrs. Moazzo apply equally with regard to Mr. Pappadaki's case.

Documents in support of Cases 1 and 2 are forwarded in Mr. Biliotti's No. 72 (Inclosure A), and in Cases 3, 4, and 5 in his No. 141 (Inclosure B).

I am to state that it is not necessary now to consider any question of the amount of compensation claimed in each case, and that, in Lord Salisbury's opinion, it would be desirable in the first instance to come to a decision on the question of principle.

I am to invite your special attention to the last three paragraphs of Mr. Biliotti's despatch No. 141 (Inclosure B), which appear of great importance as showing that the Turkish Government were repeatedly warned in good time of the impending dangers, and yet failed to take adequate steps to guard against them.

I am to request that you will take the papers submitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion as to whether Her Majesty's Government would be justified in pressing upon the Porte, diplomatically, all or any of the five cases above referred to; and that, in the event of your considering any of these claims deserving of support, you will be good enough also to indicate the grounds upon which they may, in your opinion, be most advantageously pressed upon the attention of the Porte.

I have, &c.
(Signed) P. W. CURRIE.

In obedience to your Lordship's commands signified to us in Sir Philip Currie's letter of the 12th November last, we have the honour to

Report—

Reasonable ground for supporting Vice-Consul Calocherino's claim, but not the others.

That we have considered the five cases in respect of which claims are made, and are supported by Mr. Biliotti, and we are of opinion that it is only in the case of Vice-Consul Calocherino that reasonable ground is shown for claiming any compensation from the Turkish Government.

In the cases of Cassimati, Moazzo, and Pappadaki it is not, in our opinion, shown that the claimants did not receive the same protection as was afforded to natives and other foreigners. Indeed, Mr. Biliotti, who makes this statement, goes on, in the same despatch, to say that no protection whatever was granted to natives. He argues that the principle that foreigners are entitled to as ample protection for their persons and property as natives involves an obligation on the part of the Government to protect its own subjects.

This is not, in our opinion, a just contention. It must be assumed that a Government will endeavour, to the best of its power, to protect its subjects, and a failure to do this involves a consideration of questions of policy and of the wise or

unwise distribution of available forces which, in the absence of circumstances showing clearly that foreigners needed special protection, cannot be the subject of diplomatic intervention on behalf of foreigners who have suffered in common with the native inhabitants.

We must add that the statements before us do not show any unwillingness on the part of the Turkish authorities to utilize, for the purpose of protection, such forces as they had at their disposal, and Mr. Biliotti's chief complaint is that there were not sufficient troops in the island.

The case of Dr. Ittar differs only from the three we have just mentioned in that he was Vice-Consul for the French Government, and in that capacity, and upon that ground, considered that he was entitled to special protection.

This is not a matter which can affect his claims as a British subject.

In the case of Vice-Consul Calocherino, it is stated that the larger portion of the damage he sustained was caused by a body of Ottoman soldiers quartered close to his vineyards.

In our opinion this affords ground for pressing that part of his claim.

We have some doubt upon the matter, as we find a letter from Mr. Calocherino, dated the 31st July, 1889, in which he says that he abandons his crops and estates to the Ottoman Government, reserving his right to claim an indemnity. If he in fact ceased, at that date, to take any means for protecting his own property, he cannot reasonably claim to be compensated for loss to which his own default has contributed. Subject to this observation, we think this claim may be supported.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Royal Courts of Justice, December 15, 1890.

No. 49.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received December 23.)

Royal Courts of Justice, December 23, 1890.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the claim of Ezra Harari to British protection within the Ottoman dominions.

Nationality of Harari family.

That in our Report of the 27th November, 1888, we advised that Her Majesty's Government would not be justified in recognizing and pressing upon the Porte the claim of the various members of the Harari family to British nationality, but that it would not, in our opinion, be desirable to withdraw from Ezra the protection accorded to him in 1856 and continued since that date.

That instructions were sent to Her Majesty's Ambassador at Constantinople in that sense on the 4th December, 1888, No. 370.

Porte refuse to recognize Ezra Harari as British subject.

That in his despatch No. 400 of the 28th September, 1889, Sir W. White forwarded a copy of a *note verbale* he had received from the Ottoman Government declining to recognize Ezra Harari as a British subject on the ground of insufficient evidence, together with a copy of his reply. That the terms of his Excellency's reply were approved by your Lordship in your despatch No. 326 of the 9th October, 1889.

That a despatch had now been received from Sir William White (No. 504 of the 21st November, 1890), transmitting a copy of the reply of the Porte to his last note, together with a despatch from Her Majesty's Consul at Damascus, to whom that reply had been referred by his Excellency.

That in view of the continued refusal of the Porte to recognize Ezra Harari's claim, and the unsatisfactory nature of Mr. Dickson's despatch, Her Majesty's Ambassador did not deem it advisable to continue the correspondence with the Sublime Porte without further instructions, as he saw no prospect of success unless he were furnished with better evidence to lay before the Porte, which in this, as in all cases of doubtful nationality, was most tenacious of what it considered its rights.

That Sir W. White put forward a suggestion, though he himself did not appear to favour its adoption, that the Porte might be asked as a favour to allow British protection to be continued to Ezra Harari during his lifetime, but that it did not seem to your Lordship advisable to make that request, in view of the Porte not improbably refusing to grant it.

Draft instructions, for opinion.

That Sir Philip Currie was to submit a draft of the instructions which your Lordship proposed to send to Sir W. White on the subject, and that he was to request

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that we would take it into our consideration, and that we would favour your Lordship with our opinion as to whether its terms were right and proper under the circumstances.

In obedience to your Lordship's commands we have the honour to

Report—

Approve as amended.

That in our opinion the draft instructions, as amended by us, are right and proper.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

A. To Sir W. White	(No 370)	December 4, 1888.	
B. Sir W. White	(No. 400)	September 28, 1889.	
C. To ditto	(No. 326)	October 9, ,,	
D. Sir W. White	(No. 504)	November 21, 1890.	
E. To ditto	(Draft)	December ,,	

F. Law Officers, November 27, 1888 (with Papers submitted, November 13, 1888). Confidential No. 5785.

Annex.

Draft of Despatch to Sir W. White.

(No. .)

Sir, *Foreign Office, December* , 1890.*

I have had before me your Excellency's despatch No. 504 of the 21st ultimo, and its inclosures, respecting the continued refusal of the Sublime Porte to recognize the right of Ezra Harari to British protection.

You observe that it might be desirable to know on what grounds the Law Officers of the Crown, in their Report of the 27th November, 1888, advised that Her Majesty's Government would not be justified in recognizing and pressing upon the Porte the claim of the other members of the Harari family to British nationality, and at the same time stated that they did not consider it desirable to withdraw protection from Ezra Harari.

Reasons for decision in Harari case.

The reason which induced the Law Officers to discriminate between the case of Ezra and those of the rest of the family was that ~~inasmuch as, rightly or wrongly, Ezra Harari had, as a matter of fact, enjoyed British protection since 1856, that protection ought not to be lightly or readily withdrawn from him.~~

~~Her Majesty's Government have now, however, done all that they can in order to induce the Porte to recognize this claim; and I do not think that it would be wise to insist further on a more or less disputable demand which has been, and will evidently continue to be, strenuously resisted by the Porte, and not without some justice.~~

No evidence of British nationality.

But the protection given to Ezra in 1856 not to be lightly withdrawn.

while they came to the conclusion that no satisfactory evidence had ever been produced of the British nationality of the Harari family, they considered that inasmuch as in 1856 *British protection had been (probably erroneously) afforded to Ezra Harari, that protection ought not to be lightly or readily withdrawn from him.*

It now appears that the Porte is resolved to resist the claim to British protection, even when limited to the case of Ezra Harari alone, and Her Majesty's Government are not disposed to press upon the Porte a demand for which the only assignable justification is that it was submitted to by the Porte in 1856, *when it was put forward by Her Majesty's Representative abroad in reliance upon evidence which has now been discovered not to be trustworthy.*

I do not consider that it would be advisable to ask the Porte as a favour to allow us to continue to protect Ezra Harari during his lifetime if there is any likelihood of such a request being refused.

Under these circumstances I leave the matter to be dealt with by your Excellency as you may think fit.

I am, &c.

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* The despatch as sent to Sir W. White is dated January 2, 1891.

UNITED STATES.

No. 50.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 20.)

My Lord, *Royal Courts of Justice, March* 20, 1890.

O. in C. giving effect to Extradition Treaty with U. S. A.

WE were honoured with your Lordship's commands signified in Sir T. H. Sanderson's letter of the 12th instant, stating that he had the honour, by direction of your Lordship, to transmit to us a draft of an Order in Council applying the Extradition Acts, 1870 and 1873, in the case of an Extradition Convention between Her Majesty and the United States of America (supplementary to Article X of the Treaty of the 9th August, 1842), signed at Washington, 12th July, 1889, the ratifications of which were exchanged at London on the 11th instant.

That Sir T. H. Sanderson was to request that we would favour your Lordship with our opinion as to whether the Order in Council as now drafted was right and proper to be submitted to the Queen in Council for Her Majesty's approval.

That your Lordship would be glad to be favoured with our opinion at our earliest convenience, as it was very important that the Order in Council should be submitted for approval at the next meeting of the Council, which would take place at a very early date.

In obedience to your Lordship's commands we have the honour to

Report—

Approving draft of.

That the Order in Council as now drafted is right and proper to be submitted to the Queen in Council for Her Majesty's approval.

We think it right to call attention to the fact that the principal offence of *obtaining* under false pretences is omitted from sub-head 3 of Article I, although contained in many other Treaties, and although the offence of receiving is included.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

WHEREAS by the Extradition Acts, 1870 and 1873, it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient; and that if, by any Law made after the passing of the Act of 1870 by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying the said Acts in the case of any foreign State, or by any subsequent Order, suspend the operation within any such British possession of the said Acts, or of any part thereof, so far as it relates to such foreign State, and so long as such Law continues in force there and no longer:

And whereas by an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," provision is made for carrying into effect within the Dominion the surrender of fugitive criminals:

And whereas by an Order of Her Majesty the Queen in Council, dated the 17th day of November, 1888, it was directed that the operation of the Extradition Acts, 1870 and 1873, should be suspended within the Dominion of Canada so long as the provision of the said Act of the Parliament of Canada of 1886 should continue in force and no longer:

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And whereas a Convention was concluded on the 12th day of July, 1889, between Her Majesty and the United States of America, for themutual extradition of fugitive criminals, which Convention is in the terms following:—

Whereas by the Xth Article of the Treaty concluded between Her Britannic Majesty and the United States of America on the 9th day of August, 1842, provision is made for the extradition of persons charged with certain crimes:

And whereas it is now desired by the High Contracting Parties that the provisions of the said Article should embrace certain crimes not therein specified, and should extend to fugitives convicted of the crimes specified in the said Article and in this Convention:

The said High Contracting Parties have appointed as their Plenipotentiaries to conclude a Convention for this purpose, that is to say:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland; Sir Julian Pauncefote, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Honourable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States;

And the President of the United States of America, James G. Blaine, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

The provisions of the said Xth Article are hereby made applicable to the following additional crimes:—

1. Manslaughter when voluntary.
2. Counterfeiting or altering money; uttering or bringing into circulation counterfeit or altered money.
3. Embezzlement; larceny; receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained.
4. Fraud by a bailee, banker, agent, factor, trustee, or director or member or officer of any Company, made criminal by the laws of both countries.
5. Perjury, or subornation of perjury.
6. Rape; abduction; child-stealing; kidnapping.
7. Burglary; housebreaking or shopbreaking.
8. Piracy by the law of nations.
9. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.
10. Crimes and offences against the laws of both countries for the suppression of slavery and slave-trading.

Extradition is also to take place for participation in any of the crimes mentioned in this Convention or in the aforesaid Xth Article, provided such participation be punishable by the laws of both countries.

ARTICLE II.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded be one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

No person surrendered by either of the High Contracting Parties to the other shall be triable or tried, or be punished for any political crime or offence, or for any act connected therewith, committed previously to his extradition.

If any question shall arise as to whether a case comes within the provisions of this Article, the decision of the authorities of the Government in whose jurisdiction the fugitive shall be at the time shall be final.

ARTICLE III.

No person surrendered by or to either of the High Contracting Parties shall be triable or be tried for any crime or offence committed prior to his extradition, other than the offence for which he was surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered.

ARTICLE IV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offence charged, or being material as evidence in making proof of the crime or offence, shall, so far as practicable, and if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to the articles aforesaid shall be duly respected.

ARTICLE V.

If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Convention, should also be claimed by one or several other Powers on account of crimes or offences committed within their respective jurisdictions, his extradition shall be granted to that State whose demand is first received.

The provisions of this Article, and also of Articles II to IV, inclusive, of the present Convention, shall apply to surrender for offences specified in the aforesaid Xth Article, as well as to surrender for offences specified in this Convention.

ARTICLE VI.

The extradition of fugitives under the provisions of this Convention and of the said Xth Article shall be carried out in Her Majesty's dominions and in the United States, respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering State.

ARTICLE VII.

The provisions of the said Xth Article and of this Convention shall apply to persons convicted of the crimes therein respectively named and specified, whose sentence therefor shall not have been executed.

In case of a fugitive criminal alleged to have been convicted of the crime for which his surrender is asked, a copy of the record of the conviction, and of the sentence of the Court before which such conviction took place, duly authenticated, shall be produced, together with the evidence proving that the prisoner is the person to whom such sentence refers.

ARTICLE VIII.

The present Convention shall not apply to any of the crimes herein specified which shall have been committed, or to any conviction which shall have been pronounced, prior to the date at which the Convention shall come into force.

ARTICLE IX.

This Convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

It shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties, and shall continue in force until one or the other of the High Contracting Parties shall signify its wish to terminate it, and no longer.

In witness whereof, the Undersigned have signed the same, and have affixed thereto their seals.

Done in duplicate, at the city of Washington, this 12th day of July, 1889.

(L.S.) JULIAN PAUNCEFOTE.
(L.S.) JAMES G. BLAINE.

And whereas the ratifications of the said Convention were exchanged at London on the 11th day of March, 1890.

Now, therefore, Her Majesty, by and with the advice of her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is

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hereby ordered, that from and after the day of , 1890, the said Acts shall apply in the case of the United States of America, and of the said Convention with the United States of America.

Provided always, and it is hereby further ordered, that the operation of the said Extradition Acts, 1870 and 1873, shall be suspended within the Dominion of Canada so far as relates to the United States of America, and to the said Convention, and so long as the provisions of the Canadian Act aforesaid of 1886 continue in force, and no longer.

No. 51.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 28.)

[After reciting the following instruction, they report as on p. 81.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, May 26, 1890.

Remonstrance made at Washington against seizure of Canadian vessels by the U. S. Revenue cutter "Rush" in Behring's Sea.

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the papers noted in the accompanying list,* which relate to the remonstrance which was made on the 12th October last through Her Majesty's Chargé d'Affaires at Washington against the seizure of Canadian vessels by the United States' Revenue cutter "Rush" in Behring's Sea.

The terms in which that remonstrance was drawn up were submitted for your consideration, and reported on in your letter of the 1st October last (see D, p. 120 A). Upon its receipt Mr. Edwardes was furnished with the instructions contained in Lord Salisbury's despatches Nos. 205 and 206 of the 2nd October, 1889 (see D, pp. 121, 122).

On the 12th October Mr. Edwardes reported that he had acted on his instructions (from Mr. Edwardes No. 187, D, p. 133), and on the 23rd January last Sir J. Pauncefote, Her Majesty's Minister at Washington, sent home the reply of the United States' Government (Sir J. Pauncefote, No. 9, E, pp. 30–33).

Views of H. M.'s Govt. regarding the seizures.

Lord Salisbury now proposes to address to Sir J. Pauncefote the despatch marked (F), embodying the views of Her Majesty's Government on the principal arguments brought forward on behalf of the United States in justification of the seizures referred to.

It will be observed that these arguments, although particularly addressed and nominally confined to the case of the seizures which were made by the "Rush" in 1889, are in principle equally applicable to those earlier seizures which were effected by the United States' cruizer "Corwin" in 1886.

Law Officers' Reports of the 20th August, 1887; 14th March, 1888; 28th November, 1888.

The proceedings of this latter vessel formed the subject of a detailed reference to you in 1887, and I am to invite your attention to the terms of the Report with which you were good enough to favour Lord Salisbury upon the 20th August of that year (Law Officers' Reports, United States, No. 67, of the 20th August, 1887), and also to your further Reports in connection with the same matter of the 14th March (Law Officers, No. 60, United States, of 1888), and of the 28th November (Law Officers, No. 64, United States, of 1888) of the following year.

Instructions issued by U. S. Govt. to their Revenue cruizers in Behring's Sea.

I am to add that, from telegrams received on the 23rd instant from Sir J. Pauncefote, it appears that, notwithstanding the fact that negotiations for the settlement of the question on an equitable basis are now in progress at Washington, the United States' Government have actually reissued instructions to their Revenue cruizers in Behring's Sea similar to those of last season, with this one exception: that, instead of capturing, they are to dismantle all vessels found sealing in those waters, and to seize their log-books and skins as evidence in case of judicial proceedings being subsequently taken against them.

* (A.) Correspondence respecting the seizure of Canadian schooners in Behring's Sea (Confidential No. 5438); (B.) Ditto (Confidential No. 5559); (C.) Ditto (Confidential No. 5781); (D.) Ditto (Confidential No. 5879); (E.) Ditto (Confidential 1890, Nos. 1–157); (F.) Draft to Sir J. Pauncefote, May 22; (G.) Ditto, May 24; (H.) Ditto, May 29; (I.) Draft Protest; (K.) Law Officers' Report, March 14, 1888 (Confidential No. 5785, p. 81).

Protest of H. M.'s Govt.

On the receipt of this intelligence Sir J. Pauncefote was instructed to inform the United States' Secretary of State that a formal protest would be forwarded to him at once against any such interference with British vessels, and I am to inclose the drafts of two further despatches which Lord Salisbury proposes to address to Sir J. Pauncefote, and the second of which incloses the draft of the protest in question.

I am to request that you will at once take into your consideration these draft despatches, and the other papers bearing thereon which are forwarded herewith, and that you will favour Lord Salisbury, at your earliest convenience, with your opinion as to whether their terms are right and proper under the circumstances.

I am, &c.
(Signed) P. CURRIE.

Report.

Approve the draft despatches to Sir J. Pauncefote as altered and initialled.

We have considered the draft despatches, and approve the same as altered and initialled by us.

R. E. W.
E. C.

May 27, 1890.

ANNEXES.

(No. 1.)

Draft of Despatch from the Marquis of Salisbury to Sir J. Pauncefote.

(No. .)
Sir,
Foreign Office, May , 1890.

I RECEIVED in due course your despatch No. 9 of the 23rd January, inclosing copy of Mr. Blaine's note of the 22nd of that month, in answer to the protest made on behalf of Her Majesty's Government on the 12th October last against the seizure of Canadian vessels by the United States' Revenue cutter "Rush" in Behring's Sea.

The importance of the subject necessitated a reference to the Government of Canada, whose reply has only recently reached Her Majesty's Government. The negotiations which have taken place between Mr. Blaine and yourself afford strong reason to hope that the difficulties attending this question are in a fair way towards an adjustment which will be satisfactory to both Governments. I think it right, however, to place on record, as briefly as possible, the views of Her Majesty's Government on the principal arguments brought forward on behalf of the United States.

Mr. Blaine's note defends the acts complained of by Her Majesty's Government on the following grounds:—

1. That "the Canadian vessels arrested and detained in the Behring's Sea were engaged in a pursuit that is in itself *contra bonos mores*—a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States."

2. That the fisheries had been in the undisturbed possession, and under the exclusive control, of Russia from their discovery until the cession of Alaska to the United States in 1867, and that from this date onwards until 1886 they had also remained in the undisturbed possession of the United States' Government.

3. That it is a fact now held beyond denial or doubt that the taking of seals in the open sea rapidly leads to the extinction of the species, and that therefore nations not possessing the territory upon which seals can increase their numbers by natural growth should refrain from the slaughter of them in the open sea.

Mr. Blaine further argues that the law of the sea and the liberty which it confers do not justify acts which are immoral in themselves, and which inevitably tend to results against the interests and against the welfare of mankind; and he proceeds to justify the forcible resistance of the United States' Government by the necessity of defending not only their own traditional and long-established rights, but also the rights of good morals and of good government the world over.

He declares that while the United States will not withhold from any nation the privileges which they demanded for themselves when Alaska was part of the Russian Empire, they are not disposed to exercise in the possessions acquired from Russia any

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less power or authority than they were willing to concede to the Imperial Government of Russia when its sovereignty extended over them. He claims from friendly nations a recognition of the same rights and privileges on the lands and in the waters of Alaska which the same friendly nations always conceded to the Empire of Russia.

With regard to the first of these arguments, namely, that the seizure of the Canadian vessels in the Behring's Sea was justified by the fact that they were "engaged in a pursuit that is in itself *contra bonos mores*—a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States," it is obvious that two questions are involved: first, whether the pursuit and killing of fur-seals in certain parts of the open sea is, from the point of view of international morality, an offence *contra bonos mores;* and secondly, whether, if such be the case, this fact justifies the seizure on the high seas and subsequent confiscation in time of peace of the private vessels of a friendly nation.

It is an axiom of international maritime law that such action is only admissible in the case of piracy or in pursuance of special international agreement. This principle has been universally admitted by jurists, and was very distinctly laid down by President Tyler in his Special Message to Congress, dated the 27th February, 1843, when, after acknowledging the right to detain and search a vessel on suspicion of piracy, he goes on to say: "With this single exception, no nation has, in time of peace, any authority to detain the ships of another upon the high seas, on any pretext whatever, outside the territorial jurisdiction."

Now, the pursuit of seals in the open sea, under whatever circumstances, has never hitherto been considered as piracy by any civilized State. Nor, even if the United States had gone so far as to make the killing of fur-seals piracy by their Municipal Law, would this have justified them in punishing offences against such Law committed by any persons other than their own citizens outside the territorial jurisdiction of the United States.

~~There are numerous acts which are considered grave offences by the internal laws of particular States to which the law of nations does not attach at all the same signification. Even~~ In the case of the Slave Trade, a practice which the civilized world has agreed to look upon with abhorrence, the right of arresting the vessels of another country is exercised only by special international agreement, and no one Government has been allowed that general control of morals in this respect which Mr. Blaine claims on behalf of the United States in regard of seal-hunting.

But Her Majesty's Government must question whether this pursuit can of itself be regarded as *contra bonos mores,* unless and until, for special reasons, it has been agreed *by international arrangement* to forbid it. Fur-seals are indisputably animals *feræ naturæ,* and these have universally been regarded by jurists as *res nullius* until they are caught; no person, therefore, can have property in them until he has actually reduced them into possession by capture.

It requires something more than a mere declaration that the Government or citizens of the United States, or even other countries interested in the seal trade, are losers by a certain course of proceeding, to render that course an immoral one.

Her Majesty's Government would deeply regret that the pursuit of fur-seals on the high seas by British vessels should involve even the slightest injury to the people of the United States. If the case be proved, they will be ready to consider what measures can be properly taken for the remedy of such injury, but they would be unable on that ground to depart from a principle on which free commerce on the high seas depends.

The second argument advanced by Mr. Blaine is that the "fur-seal fisheries of Behring's Sea had been exclusively controlled by the Government of Russia, without interference and without question, from their original discovery until the cession of Alaska to the United States in 1867," and that "from 1867 to 1886 the possession, in which Russia had been undisturbed, was enjoyed by the United States' Government also without interruption or intrusion from any source."

I will deal with these two periods separately.

First, as to the alleged exclusive monopoly of Russia. After Russia, at the instance of the Russian American Fur Company, claimed in 1821 the pursuits of commerce, whaling, and fishing from Behring's Straits to the 51st degree of north latitude, and not only prohibited all foreign vessels from landing on the coasts and islands of the above waters, but also prevented them from approaching within 100 miles thereof, Mr. Quincy Adams wrote as follows to the United States' Minister in Russia:—

"The United States can admit no part of these claims; their right of navigation and fishing is perfect, and has been in constant exercise from the earliest times throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions."

~~Subsequently to this protest, a Treaty was signed between Russia and the United States in 1824, whereby it was agreed that "in any part of the great ocean commonly called the Pacific Ocean or South Sea, the respective citizens or subjects of the High Contracting Powers should be neither disturbed nor restrained either in navigation or in fishing."~~

That the right of fishing thus asserted included the right of killing fur-bearing animals is shown by the case of the United States' brig "Loriot." That vessel proceeded to the waters over which Russia claimed exclusive jurisdiction for the purpose of hunting the sea-otter, the killing of which is now prohibited by the United States' Statutes applicable to the fur-seal, and was forced to abandon her voyage and leave the waters in question by an armed vessel of the Russian navy. Mr. Forsyth, writing on the case to the American Minister at St. Petersburgh on the 4th May, 1837, said:—

"It is a violation of the rights of the citizens of the United States, immemorially exercised and secured to them as well by the law of nations as by the stipulations of the Ist Article of the Convention of 1824, to fish in those seas, and to resort to the coast for the prosecution of their lawful commerce upon points not already occupied."

From the speech of Mr. Sumner when introducing the question of the purchase of Alaska to Congress, it is equally clear that the United States' Government did not regard themselves as purchasing a monopoly. Having dealt with fur-bearing animals, he went on to treat of fisheries, and, after alluding to the presence of different species of whales in the vicinity of the Aleutians, said: "No sea is now *mare clausum;* all of these may be pursued by a ship under any flag, except directly on the coast or within its territorial limit."

I now come to the statement that from 1867 to 1886 the possession was enjoyed by the United States with no interruption and no intrusion from any source. Her Majesty's Government cannot but think that Mr. Blaine has been misinformed as to the history of the operations in Behring's Sea during that period.

The instances recorded in Inclosure 1 in this despatch are sufficient to prove, from official United States' sources, that from 1867 to 1886 British vessels were engaged at intervals in the fur-seal fisheries, with the cognizance of the United States' Government. I will here, by way of example, quote but one.

In 1872 Collector Phelps reported the fitting-out of expeditions in Australia and Victoria for the purpose of taking seals in Behring's Sea, while passing to and from their rookeries on St. Paul and St. George Islands, and recommended that a steam-cutter should be sent to the region of Ounimak Pass and the Islands of St. Paul and St. George.

Mr. Secretary Boutwell informed him, in reply, that he did not consider it expedient to send a cutter to interfere with the operations of foreigners, and stated, "In addition, I do not see that the United States would have the jurisdiction or power to drive off parties going up there for that purpose, unless they made such attempt within a marine league of the shore."

Before leaving this part of Mr. Blaine's argument, I would allude to his remark that "vessels from other nations passing from time to time through Behring's Sea to the Arctic Ocean in pursuit of whales have always abstained from taking part in the capture of seals," which he holds to be proof of the recognition of rights held and exercised first by Russia and then by the United States.

Even if the facts are as stated, it is not remarkable that vessels pushing on for the short season in which whales can be captured in the Arctic Ocean, and being fitted specially for the whale fisheries, neglected to carry boats and hunters for fur-seals, or to engage in an entirely different pursuit.

The whalers, moreover, pass through Behring's Sea to the fishing-grounds in the Arctic Ocean in April and May, as soon as the ice breaks up, while the great bulk of the seals do not reach the Pribyloff Islands till June, leaving again by the time the closing up of the ice compels the whalers to return.

~~It is unnecessary for me to deal with the third argument advanced by Mr. Blaine, namely,~~ *The statement* that it is "a fact now held beyond denial or doubt that the taking of seals in the open sea rapidly leads to their extinction," *would admit of reply, and abundant evidence could be adduced on the other side. But as it is proposed that this part of the question should be examined by a Committee to be appointed by the two Governments, it is not necessary that I should deal with it here.*

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~~The evidence of experts is at variance on the point, but there is reason to hope that it may be finally settled ere long by the Committee proposed in the draft Convention now being negotiated between the two Governments. It will be sufficient, therefore, for the purposes of this despatch. to point to the evidence contained in Mr. Tupper's letter of the 8th ultimo, which forms part of the correspondence relating to fur-seal fisheries in Behring's Sea, printed in the Government Printing Office at Washington, 1890, and sent home in your despatch No. 53 of the 15th instant, to show that, according to responsible officers of the United States' Government and of the Alaska Commercial Company, the number of seals in the rookeries of St. Paul and St. George has increased of late years.~~

Her Majesty's Government do not deny that if all sealing were stopped in Behring's Sea except on the islands in possession of the lessees of the United States, the seal may increase and multiply at an even more extraordinary rate than at present, and the seal fishery on the islands may become a monopoly of increasing value; but they cannot admit that this is a sufficient ground to justify the United States in forcibly depriving other nations of any share in this industry in waters which, by the recognized law of nations, are now free to all the world.

It is from no disrespect that I refrain from replying specifically to the subsidiary questions and arguments put forward by Mr. Blaine. Till the views of the two Governments as to the obligations attaching, on grounds either of morality or necessity, to the United States' Government in this matter, have been brought into closer harmony, such a course would appear needlessly to extend a controversy which Her Majesty's Government are anxious to keep within reasonable limits.

The negotiations now being carried on at Washington prove the readiness of Her Majesty's Government to consider whether any special international agreement is necessary for the protection of the fur-sealing industry. In its absence they are unable to admit that the case put forward on behalf of the United States affords any sufficient justification for the forcible action already taken by them against peaceable subjects of Her Majesty engaged in lawful operations on the high seas.

"The President," says Mr. Blaine, "is persuaded that all friendly nations will concede to the United States the same rights and privileges on the lands and in the waters of Alaska which the same friendly nations always conceded to the Empire of Russia."

Her Majesty's Government have no difficulty in making such a concession. In strict accord with the views which, previous to the present controversy, were consistently and successfully maintained by the United States, they have, whenever occasion arose, opposed all claims to exclusive privileges in the non-territorial waters of Behring's Sea. The rights they have demanded have been those of free navigation and fishing in waters which, previous to their own acquisition of Alaska, the United States declared to be free and open to all foreign vessels.

That is the extent of their present contention, and they trust that, on consideration of the arguments now presented to them, the United States will recognize its justice and moderation.

I have to request that you will read this despatch to Mr. Blaine, and leave a copy of it with him should he desire it.

I am, &c.

We approve the above as altered.

R. E. W.
E. C.

(No. 2.)

Draft of Despatch from the Marquis of Salisbury to Sir J. Pauncefote.

(No. .)
Sir, *Foreign Office, May* , 1890.

YOU will receive by this mail my despatch No. of the 22nd instant, replying to the arguments urged by Mr. Blaine in his note of the 22nd January last in defence of the seizure of Canadian vessels by United States' Revenue cruizers in Behring's Sea.

Those arguments were not such as Her Majesty's Government could admit to be valid according to the established principles of international law, or sufficient to justify the acts complained of.

The reply has been for some time in draft, but Her Majesty's Government were unwilling to introduce any unnecessary element of controversy into the negotiations in which you are engaged for the friendly settlement of the whole question. I had therefore thought that a certain delay in the presentation of the despatch would not be disadvantageous, ~~and it had been my desire to leave it entirely to your discretion whether and when it should be communicated to Mr. Blaine~~.

The intelligence contained in your telegrams Nos. 37 and 38 of the 22nd instant as to the dispatch of United States' cruizers to Behring's Sea, and the instructions with which they are provided, render it necessary that the communication should no longer be delayed. I have accordingly to request that you will at once place a copy of it in Mr. Blaine's hands.

I shall forward to you, as soon as its terms have been approved by the Queen and the Cabinet, a formal protest, to be delivered to Mr. Blaine, against any such interference with British vessels outside the territorial waters of the United States, as appears to be contemplated in the instructions just issued. I need not say that it would be a cause of sincere satisfaction to Her Majesty's Government if a consideration of the arguments advanced in my despatch, and of those with which you will be able to supplement them, should induce the Government of the United States so to limit the action of their cruizers as to remove the occasion for such a protest.

I am, &c.

R. E. W.
E. C.

(No. 3.)

Draft of Despatch from the Marquis of Salisbury to Sir J. Pauncefote.

(No. .)
Sir, *Foreign Office, May* , 1890.

I RECEIVED on the 23rd instant, and at once submitted to the Queen and the Cabinet, your telegrams Nos. 37 and 38 of the previous day, reporting the instructions issued to the United States' Revenue cruizers in Behring's Sea for the approaching fishing season.

According to accounts given in the press, the accuracy of which is not denied by Mr. Blaine, these instructions are similar to those under which Canadian vessels were seized last summer outside the territorial waters of the United States, with this exception, that, instead of capturing vessels found sealing in Behring's Sea, the cruizers are to dismantle such vessels, and to seize their log-books and skins as evidence in case of judicial proceedings.

This modification, it is unnecessary to say, in no way removes the objections of Her Majesty's Government to such interference with British vessels on the high seas as contrary to international law and the practice of civilized nations.

They deeply regret this decision of the United States' Government as likely, if persisted in, to produce the most serious complications, and to frustrate the efforts now being made to arrive at an agreement for the proper protection of the seal fisheries and the settlement of the questions connected therewith.

Her Majesty's Government have no alternative, under the circumstances, but to protest formally and solemnly against any interference on the part of United States' cruizers with British vessels navigating outside the ~~recognized~~ territorial jurisdiction of the United States, and to leave to the United States' Government the responsibility of the consequences if that protest is disregarded.

I accordingly inclose herewith the draft of a note which you will address to Mr. Blaine if you should unfortunately find that there is no intention of so modifying or restricting the action of the United States' cruizers as to render this step unnecessary.

I am, &c.

R. E. W.
E. C.

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(No. 4.)

Draft of Note to be addressed to Mr. Blaine.

THE Undersigned, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, has the honour, by instructions of his Government, to inclose to Mr. Blaine, Secretary of State, &c., the following communication.

Her Britannic Majesty's Government have learnt with great concern, from notices which have appeared in the press, and the general accuracy of which has been confirmed by Mr. Blaine's statements to the Undersigned, that the Government of the United States have issued instructions to their Revenue cruizers about to be dispatched to Behring's Sea, under which the vessels of British subjects will again be exposed, in the prosecution of their legitimate industry on the high seas, to unlawful interference at the hands of American officers.

~~Her Britannic Majesty's Government have drawn the attention of the Government of the United States to the illegality of these proceedings in a despatch to Sir L. West, then Her Majesty's Minister at Washington, dated the 10th September, 1887, which was communicated by him to Mr. Bayard, then Secretary of State; and again in a despatch of the 2nd October last, which was communicated to Mr. Blaine on the 12th of that month.~~

~~The reply of the United States' Government to the latter of these two communications was given in a note from Mr. Blaine to the Undersigned, dated the 22nd January. It has received the careful attention of Her Britannic Majesty's Government, and the Undersigned has had the honour to forward to Mr. Blaine the copy of a despatch giving the reasons for which Her Britannic Majesty's Government are unable to admit the validity of the arguments urged in justification of these seizures.~~

Her Britannic Majesty's Government are anxious to co-operate to the fullest of their power with the Government of the United States in such measures as may be found to be expedient for the protection of the seal fisheries. They are at the present moment engaged in examining, in concert with the Government of the United States, the best method of arriving at an agreement upon this point, and are awaiting the reply of the United States to their suggestions. But they cannot admit the right of the United States, of their own sole motion, to restrict for this purpose the freedom of navigation of Behring's Sea, which the United States have themselves in former years convincingly and successfully vindicated, nor to enforce their municipal legislation ~~on~~ *against* British vessels on the high seas beyond the limits of *their* territorial jurisdiction ~~generally recognized by international law~~.

Her Britannic Majesty's Government are therefore unable to pass over without notice the public announcement of an intention on the part of the Government of the United States to renew the acts of interference with British vessels navigating outside the territorial waters of the United States, of which they have previously had to complain.

The Undersigned is, in consequence, instructed formally to protest against such interference, and to declare that Her Britannic Majesty's Government must hold the Government of the United States responsible for the consequences that may ensue from acts that are contrary to the established principles of international law ~~and usage~~.

The Undersigned, &c.

R. E. W.
E. C.

No. 52.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received August* 1.)

Jurisdiction claimed by the United States in Behring's Sea. Further note from Mr. Blaine.

My Lord, *Royal Courts of Justice, August* 1, 1890.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 30th ultimo, stating that, with reference to our Report of the 27th May last, expressing our concurrence in the terms of despatches to Her Majesty's Minister at Washington on the question of the jurisdiction claimed by the United States in Behring's Sea, he had the honour to transmit to us, by direction of your Lordship, a copy of a despatch from Sir Julian Pauncefote, inclosing a further note from Mr. Blaine in defence of the contention advanced by the United States.

That in that note Mr. Blaine endeavoured to show that the claim of Russia to exclusive jurisdiction for a distance of 100 miles from the coast was never disputed, either by the United States or Great Britain, so far as Behring's Sea was concerned.

Draft of despatch to Sir J. Pauncefote in reply.

That Sir Thomas Sanderson was to inclose a draft of a despatch to Sir J. Pauncefote in reply to that communication, with a copy of the proposed inclosure to it.

That it reviewed the correspondence respecting the Russian Ukase of 1821, with the view of disproving the construction which Mr. Blaine had sought to place upon that correspondence, and upon the Conventions of 1824 and 1825; and that it produced extracts from the despatches preserved in the archives of the Foreign Office to show that Great Britain distinctly declined to acknowledge the claim of jurisdiction set up by Russia, and that it was, in fact, withdrawn.

That, for purposes of reference, Sir Thomas Sanderson was to inclose copies of (A) your Lordship's despatches of the 10th September, 1887, and the 2nd October last; of (B) Mr. Blaine's note of the 22nd January; and of (C) your Lordship's rejoinder of the 22nd May; together with copies (D) of the papers published by the United States' Government, containing, at pp. 204 *et seq.*, extracts from the correspondence between Russia and the United States in 1822 and following years. That more complete copies of a portion of that correspondence would be found in "State Papers," vol. ix, pp. 471 *et seq.* That copies of the articles in the "Quarterly Review" and "North American Review," referred to in Mr. Adams' despatch of the 22nd July, 1823, were also inclosed.

That a translation of the Ukase of 1799 would be found in Bancroft's "History of Alaska," pp. 379, 380, which was inclosed with the papers.

That the Ukase of 1821 was given at length in "State Papers," as indicated above.

That a Memorandum on Mr. Blaine's note, drawn up at the Colonial Office, was also inclosed. That such portions of it as it seemed desirable to make use of had been embodied in the draft.

That Sir Thomas Sanderson was to request that we would take the papers into our consideration, and would inform your Lordship whether, in our opinion, the draft, and its inclosure, contained a sufficiently complete answer to Mr. Blaine's arguments, and whether we would recommend any alterations or additions.

That your Lordship would also be glad to be favoured with any general observations which might occur to us on the points involved.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Draft despatch to Sir J. Pauncefote approved, with omission of passage on p. 17.

That, with the omission of the passage on p. 17 of the draft despatch, we approve of the same.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Paragraph showing Passage omitted by advice of Law Officers.

The answer, therefore, to the questions with which Mr. Blaine concludes his despatch is that Her Majesty's Government have always claimed the freedom of navigation and fishing in the waters of Behring's Sea outside the usual territorial limit of 1 marine league from the coast; that it is impossible to admit that a public right to fish, catch seals, or pursue any other lawful occupation on the high seas can be held to be abandoned by a nation from the mere fact that for a certain number of years it has not suited the subjects of that nation to exercise it; ~~and that, if Canadian vessels did not resort to that sea for the purpose of seal-hunting previous to 1886, it has been simply because they were unaware of its immense capabilities as a seal-hunting ground, and also because the price of seal-skins was not high enough in previous years to induce them to resort to waters the navigation of which has always been regarded as peculiarly difficult and dangerous.~~*

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* For draft, see Confidential No.

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List of Papers.

Law Officers	.. ..	May	27, 1890.
Sir J. Pauncefote	.. ..(No. 101)	July	1, „
Draft despatch to Sir J. Pauncefote.			
Inclosure to above.			
(A.) To Sir L. West	.. ..(No. 219)	September	10, 1887.
(A.) To Mr. Edwardes	.. ..(No. 205)	October	2, 1889.
(A.) Ditto	.. ..(No. 206)	October	2, „
(B.) Sir J. Pauncefote	.. .. (No. 9)	January	23, 1890.
(C.) To ditto	.. .. (No. 106 A)	May	22, „
(D.) Message of President of United States. (In Mr. Edwardes' No. 102 of March 25, 1889).			
"Quarterly Review," vol. xxvi, 1822, pp. 341 *et seq.*			
"North American Review," vol. vi, 1822, pp. 370 *et seq.*			
(E.) Colonial Office (Memorandum)	.. ..	July	21, „
Bancroft's "History of Alaska."			

No. 53.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received August* 19.)

My Lord, *Royal Courts of Justice, August* 18, 1890.

Proposed arbitration of claims arising out of seizure of vessels in Behring's Sea.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relating to a proposal which it was intended to make to the Government of the United States for the reference to arbitration of all the claims arising out of the seizure of, or interference with, British vessels in Behring's Sea by United States' revenue-cruizers in the years 1886, 1887, and 1889.

Law Officers, August 20, 1887; July 17 and November 28, 1888; October 1, 1889; and May 27, 1890.

That the circumstances of those seizures had already formed the subject of references to us from the Foreign Office, and had been reported on by us in regard to various points on the 20th August, 1887; the 17th July and the 28th November, 1888; the 1st October, 1889; and the 27th May last.

Draft Arbitration Agreement, drawn up by Sir J. Pauncefote.

That, after discussion with Mr. Tupper, Canadian Minister of Fisheries, who was specially delegated by the Government of the Dominion to confer with him at Washington, Sir Julian Pauncefote, Her Majesty's Minister in the United States, drew up a draft Arbitration Agreement, which was contained in his despatch No. 70 of the 12th May last, and had been submitted by Mr. Tupper to the Canadian Government for their approval.

That your Lordship was of opinion that, in the first paragraph of the proposed draft, it would be well to insert the words "alleging themselves to be" before the word "aggrieved," to omit the word "other" before "injuries," and after "injuries" to insert the words "in connection therewith," and to omit the word "therefrom."

That the paragraph would then run as follows:—

"The question for arbitration is whether compensation should be paid by the United States' Government to the persons alleging themselves to be aggrieved by the seizure of, or interference with, vessels in Behring's Sea by United States' revenue-cruizers in the years 1886, 1887, and 1889, and for any injuries in connection therewith resulting to such persons."

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the terms of the draft Agreement, and specially whether we considered that they were sufficiently wide to cover the claims in respect of the imprisonment of the officers seized, the claim in respect of the death of Ogilvie, the master of the "Carolina," which would be found at p. 34 of the paper marked (C), and the circumstances of which were detailed at pp. 2 and 20 of the paper marked (A); the repayment of the fines, &c.; and whether the draft, as it then stood, was such as could properly be submitted to the United States' Government.

That your Lordship would further be glad to be favoured with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the first paragraph of a proposed draft should run as follows:—

Opinion on terms of draft Agreement as to their covering claims in respect of imprisonment of officers seized, in respect of death of Ogilvie, Master of the "Carolina," and the repayment of the fines.

"The question for arbitration is whether compensation should be paid by the United States' Government to persons aggrieved by the seizure of, or interference with, British vessels in Behring's Sea by United States' cruizers in the years 1886, 1887, and 1889, for any losses or injuries in connection therewith resulting to such persons."

We think the words "alleging themselves to be" should not be inserted before the word "aggrieved," as the question which it is proposed, in the first instance, to decide is whether, assuming a person to have suffered loss by reason of the seizure, Great Britain can properly, on his behalf, sustain a claim for compensation.

We note that, while the draft Agreement appears, in all its clauses except the third, to contemplate the decision of this question of principle as the only duty of the Arbitrators and Umpire to be appointed, the closing words of clause 3 provide for the determination of questions of amount by the same Tribunal.

The written statements prepared by the respective Governments with a view to the decision of the main question would not in any way enable the Tribunal to assess the amount of the compensation, and it would be most undesirable to encumber those statements with the questions of, or arguments upon, the amount.

We venture to suggest that the ascertainment of the amount of damage sustained in each case must involve the examination of accounts and vouchers, and possibly, in some cases, the examination of witnesses, and is not a duty required to be discharged by so important a Tribunal as that to which the main question of principle is to be referred. Nor could that duty be properly fulfilled, subject to the limitations contained in clause 5 of the draft Agreement, which, as it now stands, appears to apply to all the proceedings before the Tribunal.

It would, in our opinion, be better that the question of amount should be referred to other Arbitrators under a supplemental Agreement, which should provide for the sittings of the Arbitrators, and for the taking of evidence by affidavit or otherwise. It would for this purpose be necessary to substitute other words for those which conclude clause 3 of the draft.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) Confidential Correspondence,	1886, No. 5438.		
(B.) „ „	1887, No. 5559.		
(C.) „ „	1888, No. 5781.		
(D.) „ „	1889, No. 5879.		
(E.) „ „	1890, to p. 189.		
(F.) Sir J. Pauncefote	.. ..	..(No. 102)	July 4, 1890.
(G.) Ditto	.. ..	(No. 67. Telegraphic)	July 14, „
(H.) Colonial Office	.. ..	.. .. ..	July 19, „
(I.) Ditto	.. ..	.. .. ..	July 24, „
(J.) To Colonial Office	.. ..	.. .. ..	July 25, ,
(K.) Colonial Office	.. ..	.. .. ..	July 28, „
(L.) Treaty of Washington, 1871.	(No. 1370 Parliamentary.)		

No. 54.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received December* 6.)

My Lord, *Royal Courts of Justice, December* 5, 1890.

Seizures by U. S. authorities of British vessels when engaged in seal-fishing in Behring's Sea.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to the question of the seizures by the authorities of the United States of America of certain British vessels when engaged in seal-fishing in Behring's Sea.

That that question had been referred on previous occasions to the Law Officers of the Crown, whose reports on the points submitted to them were dated the 20th

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* Confidential Print No. 5438 (1886), No. 5559 (1887), No. 5781 (1888), No. 5879 (1889), No. 6033 (1890), and Sir J. Pauncefote, No. 143, November 7, 1890.

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August, 1887, 17th July and 28th November, 1888, 1st October, 1889, 27th May, 1st and 18th August, 1890.

Case of the "W. P. Sayward."

That among the British vessels so dealt with in 1887 was the "W. P. Sayward," of Victoria, captured by the United States' revenue-cruizer "Rush," and sent to Sitka for trial before the District Court of the United States for the District of Alaska (from Admiralty, 5th September, 1887; from Colonial Office, 15th September, 1887; from Sir L. West, 3rd February, 1888).

That claims for compensation were advanced by the owners of the vessel, together with a statement of the circumstances under which the capture was made, particulars of which would be found in Inclosures 5, 6, and 7 of a letter from the Colonial Office dated the 23rd January, 1888. That a revised statement of those claims was sent home by Sir Julian Pauncefote, Her Majesty's Minister at Washingten, in his despatch No. 110 of the 6th August, 1890.

Release of the "W. P. Sayward" under bond.

That on the 25th July, 1888, a letter was received from the Colonial Office reporting that the "W. P. Sayward" had been released under bond. That that bond was granted on condition that an appeal should be prosecuted from the Alaska District Court to the Supreme Court of the United States.

That, in reply to an inquiry addressed to him, Sir J. Pauncefote reported on the 26th April, 1889, that the record of appeal was filed on the 30th October, 1888, but that the case would not be reached for about three years.

That Mr. Edwardes, Her Majesty's Chargé d'Affaires at Washington, having been instructed to ascertain the views of Mr. Calderon Carlisle, the Legal Adviser of the British Legation, as to what steps might be taken to obtain an early hearing of the case, reported the result of his inquiries on that point in his despatches Nos. 172, 173, 178, and 180 of the 2nd and 23rd September, 1889.

That a transcript of record in the case of the "W. P. Sayward" *v.* United States would be found in Mr. Edwardes' despatch No. 177 of the 19th September, 1889.

Mr. Carlisle, October 29, 1890.

That Mr. Calderon Carlisle, having now been consulted as to the possibility of obtaining, within a shorter period, a decision of the Supreme Court on the question of law raised by the appeal, had reported that, in his opinion, the Supreme Court had no power to entertain an appeal from the District Court of Alaska, and that that opinion appeared to be shared by many other competent persons, including Mr. Senator Ingalls, who actually introduced a Bill into the Senate for the purpose of amending that supposed defect in the administration of justice.

That Mr. Calderon Carlisle, however, recommended, as the best course for the owners of the vessel in question to pursue, that they should move the Supreme Court at once to advance their appeal. That if the motion should be successful, the hearing of the appeal would come on immediately, and the Court would either dismiss the appeal for want of power to entertain it, or would decide the question of law involved.

That in the former case application should, in Mr. Carlisle's opinion, be made at once for a writ of prohibition, which would raise the question of law forthwith, and in a safer and more convenient form than on the appeal.

That if, however, the Supreme Court should refuse the motion to advance the appeal, Mr. Carlisle recommended that the appeal should be withdrawn in order to allow of an application for a writ of prohibition being made forthwith (see Sir. J. Pauncefote's No. 143 of the 7th November, 1890.)

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the course recommended by Mr. Calderon Carlisle was one which, having regard to all the circumstances of the case, might advantageously be followed; and that he was to add that your Lordship would, at the same time, be glad to be favoured with any general observations which we might have to offer on the present aspect of the case.

In obedience to your Lordship's commands we have the honour to

Report—

That, upon the best consideration we can give to the Memorandum of Mr. Carlisle of the 29th October, 1890, we are of opinion that his advice therein contained as to the procedure to be followed should be accepted and acted upon, subject to this qualification, that the appeal should not be abandoned unless the application for a prohibition is entertained and considered upon the merits, as, upon the information before us, it is by no means clear that there is ground for prohibition; and it may be

that the question is one which arises on the merits, and which the Court had jurisdiction to entertain.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 55.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received December* 19.)

(Secret.)

Royal Courts of Justice, December 19, 1890.

My Lord,

Case of the "W. P. Sayward," seized by the United States authorities in 1887 when engaged in seal-fishing in Behring's Sea.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the case of the British vessel "W. P. Sayward," seized by the United States' authorities in 1887 when engaged in seal-fishing in Behring's Sea.

That a Report was furnished by us on the 5th instant on the Memorandum dated the 29th October last by Mr. Calderon Carlisle, the Legal Adviser of Her Majesty's Legation at Washington, as to the course which should, in his opinion, be pursued for bringing the question of law involved in the Behring's Sea controversy before the Supreme Court of the United States.

That the views of the Canadian Government in regard to Mr. C. Carlisle's opinion would be found in a letter from the Colonial Office dated the 8th instant.

That on the 10th instant a telegram was addressed to Her Majesty's Minister at Washington embodying the views of Her Majesty's Government in the terms recommended by us after our conference on the previous day with Mr. Davidson, Legal Assistant to the Foreign Office, and Mr. Bramston, Legal Assistant Under-Secretary of the Colonial Office, as to the procedure to be adopted at this stage of the proceedings.

That a further despatch had now been received from Sir J. Pauncefote, in which he stated that Mr. C. Carlisle strongly deprecated the proposed application to the Supreme Court of the United States to advance the appeal of the owners of the "W. P. Sayward" against the decision of the District Court of Alaska, and giving in some detail reasons which neither your Lordship nor ourselves had hitherto had the opportunity of considering.

That Mr. C. Carlisle urged that the United States' Attorney-General, acting under instructions from his Government, would probably resort to every expedient to prevent the question of jurisdiction coming before the Supreme Court for decision, and that he anticipated that for that purpose the Attorney-General might oppose the motion on the ground that the question at issue was about to be referred to arbitration, or was otherwise in course of arrangement, as stated in the President's recent Message, and that therefore no necessity existed to advance the appeal from a public point of view.

That, in that event he apprehended the probability of an unseemly discussion in Court as to the diplomatic situation of the case.

That Mr. Carlisle, moreover, pointed out that the United States' Attorney-General might utterly defeat the object of the motion by consenting to a reversal of the Decree of the District Court "on the ground that the evidence of the killing of seals in Behring's Sea was admitted by his Government to be insufficient," a point which might also be taken by the Supreme Court itself in order to escape from the embarrassment of having to give a decision opposed to the contentions of the United States' Government on a matter of national importance.

That, in his view, no such risks would attend the course which he had strongly recommended, namely, the immediate abandonment of the appeal, and an application for a writ of prohibition, as the surest mode of securing a decision on the point in dispute between the two Governments.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would, at our earliest possible convenience, favour your Lordship with our opinion whether the considerations put forward in Sir J. Pauncefote's last despatch modified, and, if so, to what extent, the opinions previously given by us on the question on which the instructions to Sir J.

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Pauncefote of the 10th instant were founded; and with any general observations which we might have to offer on the present aspect of the case.

We have again taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Objections urged by Mr. Carlisle to application for leave to expedite the appeal have great force.

That we are of opinion that the objections urged by Mr. Carlisle (as stated in Sir Julian Pauncefote's despatch of the 5th December) to the application for leave to expedite the appeal have great force.

Application for writ of prohibition should be made.

We have no means of forming an independent judgment as to how far they are well founded, but, in face of them, we are of opinion that the application to expedite the hearing of the appeal should not be made; but in lieu thereof an application for a writ of prohibition should be made.

We adhere to the view that unless it is clear that the question of law will be determined upon its merits on the application for the writ of prohibition the appeal should not be abandoned.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

A. Confidential Print No. 5438 (1886).			
B. „ „ No. 5559 (1887).			
C. „ „ No. 5781 (1888).			
D. „ „ No. 5879 (1889).			
E. „ „ No. 6033 (1890).			
F. To Sir J. Pauncefote	.. ..	(No. 59. Telegraphic)	December 10, 1890.
G. Sir J. Pauncefote	.. ..	(No. 159. Secret)	December 5, „

No. 56.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received December* 19.)

(Secret.)
Royal Courts of Justice, December 19, 1890.

Behring's Sea controversy. Case of the "W. P. Sayward."

My Lord,

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of this date stating that, with reference to Sir Philip Currie's letter of the 17th instant, he was directed by your Lordship to transmit to us a telegram from Her Majesty's Minister at Washington reporting the substance of observations made by Mr. Calderon Carlisle on the opinion given in our Report of the 5th instant as to the course of procedure to be pursued for bringing the question of law involved in the Behring's Sea controversy in connection with the case of the "W. P. Sayward" before the Supreme Court of the United States.

We have considered the telegram from Sir J. Pauncefote, No. 99, of the 18th December, 1890, and have the honour to

Report—

That we are of opinion that Mr. Carlisle's advice as to procedure should be accepted and acted upon.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE

Annex.

Sir J. Pauncefote to the Marquis of Salisbury.—(*Received December* 19, 8 A.M.)

(No. 99.)
(Telegraphic.)
Washington, December 18, 1890.

BEHRING'S SEA: Your Lordship's despatch No. 255.

Behring's Sea. "W. P. Sayward" case.

Law Officers' Report seen by Carlisle. He respectfully submits: First, as regards qualification laid down under law and practice here, application for prohibition cannot be made while appeal pending. Secondly, as regards grounds of prohibition, want of jurisdiction apparent on record in proceedings of District Court, which are nullified by reason of place of alleged offence, place of seizure, British character of vessel, and true construction of Acts of Congress. Thirdly, in view of above, it is not perceived how any question arising on merits which Court had jurisdiction to entertain could defeat prohibition. British cases understood to decide that facts necessary to jurisdiction of inferior Courts may be examined on application for prohibition.

Gaslight Company and Everton Elstone and Rose Thompson and Ingham.

United States' Supreme Court has examined such facts on application for prohibition. Devoe Manufacturing Company 1808. Canadian Deputy Minister of Justice has arrived to confer with Carlisle. Latter asks to be favoured with further observations of Law Officers on above points. Supreme Court adjourns on Monday until 5th January.

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Printed for the use of the Foreign Office. *May* 1892.

CONFIDENTIAL.

(6207.)

REPORTS

BY THE

LAW OFFICERS OF THE CROWN, &c.

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CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.: 1891.

AFRICA.

No. 1.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 6.)

My Lord, *Royal Courts of Justice, March* 5, 1891.

Order in Council for carrying into effect a Treaty concluded on the 20th and 25th June, 1890, between Her Majesty and the Orange Free State, for the mutual extradition of fugitive criminals.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 12th ultimo, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council for carrying into effect a Treaty, concluded on the 20th and 25th days of June, 1890, between Her Majesty and the President of the Orange Free State, for the mutual extradition of fugitive criminals, the ratifications of which were exchanged on the 16th December last.

That Sir Thomas Sanderson was to request that we would take the draft Order in Council into our consideration, and that we would favour your Lordship with our opinion whether it might properly be laid before the Queen in Council for Her Majesty's approval.

That Sir Thomas Sanderson was, at the same time, to request that we would give special consideration to the question whether it was necessary to make express reference in the Order in Council to the provision contained in Article XVIII of the Treaty to the effect that its stipulations should not be applicable to Her Majesty's South African Colonies and possessions.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve draft Order in Council, as amended.

That the draft Order in Council, as amended by us, may, in our opinion, properly be laid before the Queen in Council for Her Majesty's approval.

We have inserted words* at the end of the draft Order to prevent any question as to the application of the Acts in the South African Colonies.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(B.) Colonial Office	.. ..	January 29, 1891.
(C.) Home Office	.. ..	February 7, "

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* In *italics.*

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Annex.

Draft Order in Council.

Extradition Acts, 1870 and 1873.

WHEREAS by the Extradition Acts, 1870 and 1873, it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient; and that if, by any law made after the passing of the Act of 1870 by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying the said Acts in the case of any foreign State, or by any subsequent Order, suspend the operation within any such British possession of the said Acts, or of any part thereof, so far as it relates to such foreign State, and so long as such Law continues in force there and no longer:

Canadian Extradition Act of 1886.

And whereas by an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," provision is made for carrying into effect within the Dominion the surrender of fugitive criminals:

Order in Council of November 17, 1888, suspending operation of Imperial Extradition Acts in Canada so long as the Canada Extradition Act of 1886 remains in force.

And whereas by an Order of Her Majesty the Queen in Council, dated the 17th day of November, 1888, it was directed that the operation of the Extradition Acts, 1870 and 1873, should be suspended within the Dominion of Canada so long as the provision of the said Act of the Parliament of Canada of 1886 should continue in force and no longer:

And whereas a Treaty was concluded on the 20th and 25th days of June, 1890, between Her Majesty and the President of the Orange Free State, for the mutual extradition of fugitive criminals, which Treaty is in the terms following:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and his Honour the President of the Orange Free State, in the name of the Government of that Republic, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes or offences hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up;

His Excellency Sir Henry Brougham Loch, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Honourable Order of the Bath, Governor and Commander-in-chief of the Colony of the Cape of Good Hope, Her Majesty's High Commissioner for South Africa, &c., acting on behalf and in the name of Her said Majesty;

And his Honour Francis William Reitz, President of the Orange Free State, acting on behalf and in the name of the Government of the Orange Free State,

Have agreed upon and concluded the following Articles:—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE II.

Extradition shall be reciprocally granted for the following crimes or offences:—

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge, of a girl under 16 years of age, if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties.

6. Indecent assault.
7. Kidnapping and false imprisonment, child-stealing.
8. Abduction.
9. Bigamy.
10. Maliciously wounding or inflicting grievous bodily harm.
11. Assault occasioning actual bodily harm.
12. Threats, by letter or otherwise, with intent to extort money or other things of value.
13. Perjury or subornation of perjury.
14. Arson.
15. Burglary or housebreaking, robbery with violence, larceny, or embezzlement.
16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any Company, made criminal by any law for the time being in force.
17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
18. (*a.*) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

    (*b.*) Forgery, or counterfeiting or altering, or uttering what is forged, counterfeited, or altered.

    (*c.*) Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm.
19. Crimes against Bankruptcy Law.
20. Any malicious act done with intent to endanger the safety of any person travelling or being upon a railway.
21. Malicious injury to property, if such offence be indictable.
22. Crimes committed at sea:—

    (*a.*) Piracy by the law of nations.

    (*b.*) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

    (*c.*) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

    (*d.*) Assault on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm.
23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III.

Either Government may, in its absolute discretion, refuse in any case to deliver up its own subjects to the other Government.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of the Orange Free State, has already been tried and discharged or punished, or is still under trial in the territory of the Orange Free State or in the United Kingdom respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of Her Majesty's Government, or on the part of the Government of the Orange Free State, should be under examination for any other crime in the territory of the Orange Free State or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption

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from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered. This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through Her Majesty's High Commissioner for South Africa on behalf of the United Kingdom and Her Majesty's Colonies or foreign possessions, not excluded from this Treaty by Article XVIII, and through the Consul-General of the Orange Free State at London on behalf of the Government of the said State.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X.

A fugitive criminal may be apprehended, under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. The criminal shall, in accordance with this Article, be discharged, as well in the Orange Free State as in the United Kingdom, if within the term of forty-five days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XI.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII.

In the examinations which they will have to make in accordance with the foregoing stipulations, the authorities of the State applied to for said extradition shall admit as valid evidence the depositions or statements of witnesses taken in the other State, under oath or under solemn affirmation to tell the truth, according as it legislation may provide, or the copies of these depositions or statements, and likewise the warrants issued and sentences pronounced in the State which demands the extradition, the certificates of the fact of the condemnation, or the judicial documents which prove it, provided the same are authenticated as follows:—

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.

2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

3. A certificate of, or a judicial document stating the fact of a conviction, must purport to be certified by a Judge, Magistrate, or officer of the other State.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by law in the State where the examination is taken may be substituted for the foregoing.

ARTICLE XIII.

If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIV.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI.

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII.

The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty.

ARTICLE XVIII.

The stipulations of the present Treaty shall not be applicable to the South African Colonies and possessions of Her Britannic Majesty.

ARTICLE XIX.

With the exceptions mentioned in the preceding Article, the stipulations of the present Treaty shall be applicable to all the Colonies and foreign possessions of Her

Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or chief authority of such Colony or possession by the chief Consular officer of the Orange Free State in such Colony or possession.

Such requisition may be disposed of, subject always as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Orange Free State criminals who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any such Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XX.

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months.

The Treaty shall be ratified, and the ratifications shall be exchanged at Bloemfontein as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done in duplicate, at Cape Town, this 20th day of June, 1890.
(L.S.) (Signed) HENRY B. LOCH, *High Commissioner.*

Done in duplicate, at Bloemfontein, this 25th day of June, 1890.
(L.S.) (Signed) F. W. REITZ, *State President.*

And whereas the ratifications of the said Treaty were exchanged at Bloemfontein on the 16th day of December, 1890.

Now, therefore, Her Majesty, by and with the advice of her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the day of * , 1891, the said Acts shall apply in the case of the Orange Free State *pursuant to the arrangement made by the* said Treaty with the President of the Orange Free State.

Provided always, and it is hereby further ordered that the operation of the said Extradition Acts, 1870 and 1873, shall be suspended within the Dominion of Canada so far as relates to the Orange Free State and to the said Treaty, and so long as the provisions of the Canadian Act aforesaid of 1886 continue in force, and no longer; *and provided also that the operation of the said Extradition Acts* 1870 *and* 1873 *shall not extend to the South African Colonies and possessions of Her Majesty so far as relates to the Orange Free State and to the said Treaty.*

R. E. W.
E. C.

No. 2.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 16.)

My Lord, *Royal Courts of Justice, March* 14, 1891.

Delagoa Bay Railway case. Terms of the "Compromis Lié" proposed to be submitted to the Court of Arbitration.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the terms of the

"Compromis Lié," which it was proposed to submit to the Court of Arbitration at Berne in the matter of the Delagoa Bay Railway case.

To Sir G. Petre, No. 10, Africa, 6th February, 1891.

That it would be seen (telegram to Sir George Petre No. 10, Africa, of the 6th February, 1891) that Her Majesty's Government had objected to the draft "Compromis Lié," drawn up by the Portuguese Government, on the ground that it laid down Rules of Procedure for the guidance of the Arbitrators, whereas Her Majesty's Government contended that the framing of such Rules was a matter entirely within the competence of, and should be left exclusively to, the Arbitrators themselves, and that the object of the "Compromis Lié" was simply to record the agreement of the parties to abide by the award of the Arbitrators, and to state the terms of reference.

That the Portuguese Government, in reply, had expressed their readiness to instruct their Representative at Berne to concert the terms of an amended draft with his British and United States' colleagues, if the Government of the United States expressed views similar to those held by Her Majesty's Government (Sir G. Petre, No. 24, Africa, of 10th February, 1891).

Sir G. Petre, No. 24, Africa, 10th February, 1891.

That in a despatch No. 8 of the 12th ultimo, Mr. Scott, Her Majesty's Minister at Berne, entered at some length into the whole question, and suggested, moreover, a modification of Article VIII of the Portuguese draft, with a view to place the full competence of the Arbitrators to take cognizance of all the circumstances and issues in the case beyond the possibility of doubt.

That Sir Philip Currie was to request that we would take that despatch, together with the other papers transmitted with his letter, into our consideration, and favour your Lordship with our opinion:—

1. As to whether we concurred generally in the line of argument adopted by Mr. Scott, and considered that it might properly be approved.

2. Whether the words suggested by Mr. Scott, "auront pleine compétence pour connaître" (or words to a similar effect), should be substituted for the following words, "statueront sur leur propre compétence pour connaître," &c., which appeared in Article VIII of the Portuguese draft of the "Compromis Lié."

That your Lordship would, further, be glad to receive any general observations which we might have to offer in connection with the case.

We were also honoured with a further note from Sir Philip Currie, dated the 20th ultimo, inclosing a despatch from Her Majesty's Minister at Berne, containing additional observations in regard to the terms of the "Compromis Lié."

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Opinion as to laying down rules of procedure for the guidance of the Arbitrators.

That we concur generally in the line of argument adopted by Mr. Scott, and consider that it may be properly approved.

We are further of opinion, for the reasons stated in Mr. Scott's despatch, that it is very desirable that the words "aura pleine compétence pour connaître" should be substituted for the words "statuera sur sa propre compétence pour connaître" in Article VIII.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

1.	Sir G. Petre	(No. 13)	January	22, 1891.
2.	Mr. Scott	(Private)	February	14, ,,
3.	Ditto	(No. 8)	February	12, ,,
4.	Ditto	(No. 9)	February	16, ,,

No. 3.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 16.)

My Lord, *Royal Courts of Justice, March* 16, 1891.

Delagoa Bay Railway Company.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 5th instant, stating that, with reference to his letter of the

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* Ten days after publication in "London Gazette."

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Proposed Arbitration in case of.

19th ultimo relative to the proposed arbitration on the claim of the Delagoa Bay Railway Company against the Portuguese Government, he was directed by your Lordship to transmit to us an extract from a letter from Mr. Scott, Her Majesty's Minister at Berne, in which he suggested that he should be furnished with definite instructions as to the limits within which he should confine diplomatic intervention on behalf of the claimants.

Mr. Scott, No. 5, Africa, 13th August, 1890.

That the notes in which the Portuguese and British Ministers at Berne requested the Swiss Government to undertake the selection of three eminent Swiss jurists to constitute a Tribunal of Arbitration would be found in Mr. Scott's despatch No. 5, Africa, of the 13th August, 1890.

The "Compromis Lié."

That the preamble of the "Compromis Lié," which was before us, contained the terms of reference as agreed upon between the Governments.

That a reference to the correspondence at pp. 86, 88, 106, and 122 of the Confidential print, already transmitted to us, would show that the Portuguese Government had constantly maintained that the arbitration was between the Governments of Portugal on the one hand, and of Great Britain and the United States on the other, and not between the Portuguese Government on the one hand, and the Delagoa Bay Railway Company and the United States' claimants on the other. That Her Majesty's Government had, however, never assented to that definition, and that it had never been their intention to do more than, in the first place, to secure for the Company a hearing before an independent and impartial tribunal, furnished with full powers to adjudicate upon the matters in controversy between that Company and the Portuguese Government, and, secondly, to see that the case of the Company was fairly placed before the Board of Arbitration. That they did not, however, propose to incur any responsibility for the details of the case submitted by the Company, or for the conduct of that case when once it had been submitted to the Arbitrators.

That it was presumed that, when the hearing of the case had been concluded, the Arbitrators would make known their decision and award to the Swiss Federal Government, at whose immediate instance they had consented to undertake the investigation, and that the Federal Government would then communicate that award to the Governments respectively interested.

That the question now arose whether Her Majesty's Minister at Berne should not be instructed in that sense.

That Sir Philip Currie was accordingly to inquire whether, taking into consideration Mr. Scott's remarks and all the circumstances of the case, we considered that he might properly be directed to suspend diplomatic intervention when once the case of the Delagoa Bay Railway Company was placed before the Arbitrators.

That there would, however, appear to be no objection to his continuing to the parties interested such unofficial advice and assistance as they might stand in need of.

To Law Officers, 9th March, 1891

We were also honoured with a further letter from Sir Philip Currie, dated the 9th instant, stating that he was directed by your Lordship to transmit to us a paraphrase of a telegram from Her Majesty's Minister at Berne, from which it would appear that the Portuguese Government were disposed to insist that the respective Governments which invited arbitration should be responsible for the cases and arguments submitted by the parties primarily interested.

That Sir Philip Currie was to request that we would take that telegram into our consideration, in conjunction with the other papers and questions recently submitted to us in connection with the Delagoa Bay Railway arbitration case, and favour your Lordship with our opinion as to the course which it would be right and proper for Her Majesty's Government to pursue in the matter.

We have also the honour to acknowledge the receipt of Sir Philip Currie's note of the 10th instant, inclosing a further despatch from Her Majesty's Minister at Berne with reference to the proposed arbitration.

We have taken these papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

H. M.'s Govt. cannot now dispute the contention of the Portuguese Govt. that the arbitration is between the respective Governments.

That, in our opinion, Her Majesty's Government cannot now dispute the contention of the Portuguese Government, that the arbitration is between the respective Governments, and that the Delagoa Bay Company is not in any way to be entitled to be considered as one of the parties to such arbitration. The payment of 28,000*l.* was made by the Portuguese Government, and accepted by Her Majesty's Government, upon those terms (see No. 159, p. 86, Confidential print, 1890).

Her Majesty's Government will, therefore, be responsible for the conduct of the case founded on the claims of the British Company, and the suggested suspension of intervention, when the claims have been submitted to the Tribunal, might involve the suspension of the whole arbitration. These considerations appear to us to make it the more important that the Rules of Procedure should be left to the decision of the Tribunal. In our opinion, it will be necessary that the claims of the Delagoa Bay Company should be carefully considered by Her Majesty's Government before they are submitted to the Arbitrators.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

[But see further Memorandum by Lord Chancellor of April 20, 1891: *infra*, No. 6.]

No. 4.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 26.)

My Lord, *Royal Courts of Justice, March 25, 1891.*

Delagoa Bay Railway case.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 20th instant, stating that, with reference to our Report of the 14th instant on the instructions to be sent to Her Majesty's Minister at Berne relative to the terms of the "Compromis Lié," which it was proposed to submit to the Court of Arbitration in the matter of the Delagoa Bay Railway case, he was directed by your Lordship to transmit to us a further despatch from Mr. Scott, commenting on the instructions which the United States' Minister had received from his Government, and inclosing copy of a draft "Compromis Lié" drawn up tentatively at Washington for his assistance.

That Sir Philip Currie was to request that we would take the despatch into our consideration, and favour your Lordship with our observations thereon, and our opinion as to whether, having regard to its terms, any alteration should be made in the instructions about to be sent to Mr. Scott in conformity with the recommendations contained in our previous Report on the terms of the draft "Compromis Lié" suggested by the Portuguese Government.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

See Law Officers' Report of 14th March, 1891.

That we are of opinion that there is no necessity for any alteration in the instructions proposed to be sent to Mr. Scott.

As regards the American draft "Compromis Lié," we agree substantially with the criticisms thereon by Mr. Scott.

The terms of the proposed clause 3, "The Arbitrators shall have the power to decide all questions as to their competence," are open to the same objections as those taken to the words, "statuera sur sa propre compétence," referred to in the second paragraph of our Report of the 14th instant.

The words "if any" should certainly not be inserted in clause 4, and the proposed delay of one year in the payment of the amount awarded seems excessive; if any period is inserted, it should be less than twelve months.

If desired, there might be a preliminary meeting to enable the Arbitrators to settle any minor points of procedure, but beyond that we are not in favour of any unofficial meetings.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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[Colonial Office.]

No. 5.

The Law Officers of the Crown to Lord Knutsford.—(Transmitted in Colonial Office Letter of April 23, 1891.)

As to extension of the British Protectorate in South Africa.

My Lord, *Royal Courts of Justice, April* 17, 1891.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 12th ultimo, stating that he was directed by your Lordship to inform us that the rapid development of events in South Africa to the south of the Zambesi, the introduction of large numbers of European miners and others into territories which were not part of Her Majesty's dominions nor under her protection, the actual occurrence of disorders within the existing Protectorate, and the danger of difficulties and disorder arising in Mashonaland and elsewhere within the British sphere of influence, had made it imperative that some extension of Her Majesty's authority in the territories above mentioned should be secured.

Memorandum by Mr. Bramston: see Annex 1 hereto.

That the first step in that direction would be the extension of the Protectorate, and that in order to examine into the nature and extent of the jurisdiction and authority which Her Majesty possessed within a Protectorate, both as regards the subjects of civilized Powers and as regards the native Rulers and inhabitants of the protected territory, your Lordship had caused to be prepared a Memorandum upon the subject which had been laid before Lord Salisbury and approved by him, and was now submitted for our consideration, together with the first draft of an Order in Council for giving effect to the views expressed in the Memorandum.

That the draft might probably receive further additions before it assumed its final shape for our consideration, but that it was believed that, as now drawn, it would sufficiently explain the principles on which Her Majesty's Government proposed to act, if, in our opinion, they would, after declaring a Protectorate, possess the legal powers for so acting.

Draft Order in Council for giving effect to the views expressed in the Memorandum.

That the broad outline of the draft Order was that, subject to such limitations as might be imposed by instructions, the powers and jurisdiction of Her Majesty would be delegated to the High Commissioner, with power to legislate by Proclamation for giving effect to those powers and jurisdiction, in respect, amongst other things, of the administration of justice, the raising of revenue, and generally the government of all persons who, for the time being, were entitled to Her Majesty's protection, and subject to her jurisdiction, while at the same time preserving, as far as the efficient exercise of those powers and jurisdiction permitted, all laws and customs regulating the civil relations of the natives among themselves.

That Mr. Bramston was to add that the Order, if passed, would be supplemented by instructions directing the High Commissioner as to the manner in which, and the extent to which, he was to exercise the authority committed to him.

That Mr. Bramston was further to inform us that while Her Majesty's Government had reason to believe that, under existing arrangements with regard to South Africa, other civilized Powers would acquiesce in, if they did not hold themselves entitled to demand, the exercise of control and jurisdiction by this country in those territories for which it had declared itself to be responsible, it was fully understood that, in the event of any foreign Power objecting to the powers and jurisdiction which it was proposed to exercise, Her Majesty's Government must either remove such objection, or, on grounds of policy, take the responsibility of disregarding it.

That, in addition to the draft Order in Council and Memorandum, Mr. Bramston was to inclose the following documents referred to in the latter paper:—

Law Officers' Report to Foreign Office, 29th June, 1887, with the previous Reports mentioned in it.

General Act of Berlin Conference, 1885.

Charter of the Royal Niger Company, 10th June, 1886.

Charter of the East Africa Company, 1888.

Debate in German Reichstag, 3rd February, 1891.

General Act of Brussels Conference, 2nd July, 1890.

Law Officers' Report to Colonial Office, 11th July, 1890, with Order in Council, 30th June, 1890.

That Mr. Bramston was to request that we would be good enough to take the papers into our consideration, and favour your Lordship with our opinion—

1. Whether the views expressed in the Memorandum were sound, and might be lawfully acted upon by Her Majesty's Government.

2. If so, whether the principles embodied in the draft Order were correct.

That Mr. Bramston was also to request that we would assist your Lordship by any observations upon the subject generally that might appear to us to be desirable.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Views expressed in the Memorandum substantially correct.

That, in our opinion, the views expressed in the Memorandum are in substance correct.

The third paragraph appears to qualify the statement contained in our Report of the 29th June, 1887, but that statement does not in fact require qualification, as we were dealing with the question of exercising jurisdiction by virtue of the authority derived from the assumption of a Protectorate, and no one has doubted that the consent of a foreign Power can confer jurisdiction over its subjects.

In our opinion, paragraph 23 is somewhat too large in its terms, and should refer only to such foreign Protectorates as have been recognized by the General Acts of the Berlin Conference 1885, and the Brussels Conference 1890.

We think it desirable that the argument set forward in paragraphs 17, 18, and 19 should be even more distinctly limited to cases within these General Acts than it is by the opening words of paragraph 17 as now drawn.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex 1.

Memorandum as to the jurisdiction and administrative powers of a European State holding Protectorates in Africa.

Memorandum as to the Jurisdiction and Administrative Powers of a European State holding Protectorates in Africa.

1. THIS question must be considered:—
I. With reference to other European States and their subjects.
II. With reference to the native Rulers and peoples of the protected territories.

I.—With reference to European States.

I.—*With reference to European States.*

2. Nothing will be found in the earlier writers upon international law in reference to Protectorates of the kind now in question, that is to say, where a civilized Power takes under its protection an uncivilized territory to which Europeans resort in greater or less numbers, and where, inasmuch as the native Rulers of the territory are incapable of maintaining peace, order, and good government among Europeans, the protecting Power maintains Courts, police, and other institutions for the control, safety, and benefit of its own subjects and of the natives.

3. The Law Officers, in their Report to the Foreign Office of the 29th June, 1887, state that "no Power has any right, according to international law, to exercise jurisdiction over the subjects of another Power, unless they are residing within its own territorial limits." It is clear, however, that this statement only means that jurisdiction cannot be exercised without the consent of the other Power, for the Report cites and approves the opinions of previous Law Officers that Her Majesty can, by Treaty with native Chiefs, obtain civil and criminal jurisdiction over subjects of other civilized Powers, but that it should not be exercised without the assent of the Power concerned.

4. The consent of nations is one of the two foundations of international law; and Vattel (edit. 1834, by Chitty, p. lxv) says: "These *three* kinds of the law of nations, the *voluntary*, the *conventional*, and the *customary*, together constitute the *positive law of nations*. For they all proceed from the will of nations: the *voluntary* from their presumed consent, the *conventional* from an *express* consent, and the *customary* from *tacit* consent; and as there can be no other mode of deducing any law from the will of nations, there are only these three kinds of *positive law of nations*."

5. If, therefore, it can be shown that the nations of Europe have by formal agreement, or by acquiescence which implies consent, or by undisputed usage, recognized the principle that their subjects are judiciable by another nation beyond the

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territorial limits of the latter, a foundation seems to be laid sufficiently strong to uphold jurisdiction over foreigners in British Protectorates in Africa.

6. It will be remembered that in 1885, in the General Act of the Conference of Berlin, Great Britain by Article XXX, France by Article XXXI, and the other Signatories by Article XXXII, undertook on all those portions of the Niger, its affluents, branches, or outlets, which are or may be under their respective sovereignty *or protection*, to protect foreign merchants and all trading nationalities as if they were their own subjects.

By Article XXXIV the Signatory Powers (*i.e.*, all the European Powers and the United States of America) undertake to notify to each other any future taking possession of a tract of land on the coasts of the African Continent, or the assumption of a Protectorate there; and by Article XXXV they recognize the obligation to insure the establishment of authority in the regions occupied by them on the coasts of the African Continent, sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit under the conditions agreed upon.

It is obvious that the obligations assumed by these Articles involve the exercise of coercive authority, and as natural justice, which is the other of the two foundations of international law, forbids punishment without trial, it may be urged that they involve an implied—if not an actual—consent as regards Protectorates to the establishment of Courts exercising jurisdiction over the nationals of each of the Signatories, and to the exercise of administrative authority over them.

7. In the year following the Berlin Conference, a Charter, dated the 10th July, 1886, was granted by Her Majesty to the Company known as the Royal Niger Company, which provides for the administration of justice over the peoples of the specified territories and the inhabitants thereof; prescribes that there is to be no differential treatment of subjects of any Power as to settlement or access to markets, but that foreigners alike with British subjects are to be subject to administrative dispositions in the interests of commerce and of order, and requires that the Company shall observe the stipulations of the General Act of the Berlin Conference and all other Treaties.

Under this Charter the Company maintains order and a civil administration, and has established Courts of Justice, with civil and criminal jurisdiction over foreigners, and none of the Signatories of the General Act have, it is understood, disputed this jurisdiction, while in the Hoenigsberg case Germany practically admitted it by appealing to Her Majesty's Government against the decision, on the ground that the *locus in quo* was outside the British Protectorate (see debate in Reichstag, 3rd February, 1891, F.O. 3628 | 91).

8. In the year 1888 a Charter was granted to the East Africa Company containing similar provisions as to the administration of justice over the peoples of the territories and the inhabitants thereof, as to the treatment of foreigners, and as to subjecting foreigners to administrative dispositions. In this case no foreign nation has, so far as is known, made any protest; the field of the Company's operations, however, has not been specifically declared a Protectorate, unless on that part of the coast which belongs to Zanzibar, and it is understood that there foreign countries enjoy extra-territoriality, which would exclude the Company's jurisdiction.

9. All the German possessions in Africa are Protectorates, and in them jurisdiction is asserted over foreigners without protest from any Power, so far as is known, except Great Britain.

10. The recently published draft Portuguese Charter to the Mozambique Company confers power to administer justice, but it would appear that Portugal claims to possess the full dominion and sovereignty of the territories mentioned in the Charter.

11. It is understood that all the Powers represented at the Berlin Conference of 1884-85, with the exception of Great Britain, maintained that a Protectorate included the right of administering justice over the subjects of other civilized Powers. It would seem, therefore, that if Great Britain were now to adopt this principle in her own Protectorates, the whole body of European Powers and the United States of America are precluded from denying her right to do so; in other words, have consented to the principle.

12. To sum up, it appears that if the exercise of jurisdiction and of administrative control over foreigners in countries not within the dominions of the State claiming the jurisdiction and administration were in principle contrary to the rules of international law, it might, by the consent of the body of civilized nations, be adopted as a new principle of that law. But such exercise of jurisdiction is not in principle opposed to the rules of law, for, as the Law Officers have advised, where the protecting State has obtained jurisdiction from the Ruler of the protected country, it may lawfully exercise it over foreigners if their own Government consents. And all the civilized nations whom it is necessary to consider have expressly given their consent as regards Protectorates on the Niger; have so acted at the Berlin Conference that their consent in other cases may be presumed; and as no protest has been made in respect of the exercise of this jurisdiction in German Protectorates, their tacit consent may also be inferred. So that the three kinds of consent specified by Vattel—voluntary or *presumed* consent, conventional or *express* consent, and customary or *tacit* consent—all appear to have been given by foreign nations in respect of the exercise of coercive jurisdiction and administrative powers over their nationals in British Protectorates.

13. Such would appear to be deductions from principle and from the action of civilized Powers at and since the Berlin Conference, but the position is confirmed in a remarkable way by the proceedings of the Brussels Conference of the 2nd July, 1890. The Ist Article of the General Act of that Conference commences thus:—

"The Powers" (including Great Britain) "declare that the most effective means for counteracting the Slave Trade in the interior of Africa are the following:

"(1.) Progressive organization of the administrative, judicial, religious, and military services in the African territories placed under the sovereignty *or Protectorate* of civilized nations."

And it proceeds (paragraphs 2 to 7) to prescribe the establishment of occupied stations, roads, railways, inland steam navigation, telegraph lines, expeditions and flying columns, and restrictions on the importation of fire-arms and ammunition.

This is a declaration that the civilized Powers of the world recognize, as a principle of international law, that the protection of an uncivilized territory carries with it many of the most important attributes of a sovereign State, and that the subjects of civilized Powers are, within such territory, to have the benefit of, and be subject to, all administrative and judicial institutions established by the protecting Power to the same extent as the subjects of that Power.

II.—*With reference to the Rulers of Protected Territories.*

II.—With reference to the Rulers of protected territories.

14. This branch of the question touches the origin of the jurisdiction which it is sought to exercise, and may be examined under two heads: (*a*) where the protected Ruler has, (*b*) where he has not, expressly given to Her Majesty jurisdiction over all White persons within his territory.

15. As regards (*a*) no discussion is necessary; the grant of jurisdiction, as the Law Officers have advised, carries the right to try foreigners if their Government consents; and, as shown above, the general consent of foreign Governments appears to have been given implicitly, if not in express terms.

16. But as to (*b*) other considerations arise. In cases of protection between civilized nations, the weaker or protected nation usually obtains a guarantee of its territory by the stronger or protecting Power, reserving to itself the full right of administering its own Government; such an arrangement in no way derogates from the sovereignty of the protected Power. But sovereignty is not indivisible, as was shown in the Protectorate of England over the Ionian Islands, and as is shown by the principle of extra-territoriality conceded to European Powers in Turkey, China, Zanzibar, and elsewhere; by the general power of administration in Cyprus granted by Turkey to England, and by the grant of jurisdiction to England in South Africa by Montsioa, Mankaroane, and Khama. In all these cases the protected Power abandons a portion of its sovereignty in favour of another Power; there is, therefore, nothing in the nature of sovereignty which would prevent the relation of protector and protected, as exercised in South Africa, from effecting *ipso facto* a transfer of a portion of the sovereignty of the protected Ruler.

17. When Great Britain or any other European Power assumes the Protectorate of an uncivilized African territory, it necessarily excludes other Powers from holding relations, except through itself, with the Rulers of the protected territory, and so far it assumes a portion of what may be called the external sovereignty of those Rulers. At the same time the protecting Power becomes responsible to other Powers for the safety of their nationals, and as such Powers would not be able to appoint Consuls in these territories, and as no Native Courts exist for the protection of foreigners, the protecting Power can only discharge its responsibility to the country of a sufferer either by forcibly inflicting some personal punishment on the offender, or by establishing Courts for the trial of such cases; and as the individual foreigner may claim

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protection against a wrong done to him, it necessarily follows that he accepts the liability to control for any wrong done by himself.

18. In all these countries the protecting Power exercises a certain amount of control over the internal affairs of the country inconsistent with the continuance of full sovereignty in the native Rulers, and it is apprehended that by accepting a Protectorate the native Ruler surrenders to the protecting Power so much sovereignty as is necessary for giving effect to the protection granted. This protection includes the repression of crime and disorder among White men, which the native Chief is of himself powerless to repress, and the establishment of a judicial system for dealing with such crime appears to be one of the attributes of sovereignty which the protecting Power acquires.

19. To conclude, the matter may be re-stated thus:—

As the protector stands between the protected State and foreign Powers, both as the sole channel of communication, and as shielding the protected State from their attacks, foreign Powers must seek from the protector redress for any injuries which, either directly or in the persons of their subjects, they suffer from the protected State. The Powers must also seek from the protector that justice for their subjects which they cannot get from the local Courts of an uncivilized State, but might get through their Consuls if these were not excluded.

The protector must, therefore, have power to secure subjects of foreign Powers from injury within the protected State. Whether it exercises that power directly, or through the medium of the Local Government of the protected State, is immaterial as regards any foreign Power.

But the protector must also, correlative with its duty of protecting subjects of foreign Powers from injury and supplying them with justice, have a right, as against those Powers, to keep their subjects, when resorting to the protected State, from injuring others, and to punish them if they are wrong-doers. The protector must be responsible to foreign Powers for the proper exercise of this right, but if it is exercised through a proper Court the question whether it is exercised directly or through the medium of the Local Government of the protected State is immaterial as between the protector and the foreign Power, and is merely an internal question as between the protector and the protected State; and the mode of exercise of the right may vary infinitely with the various circumstances of the protected States.

A foreign Power, therefore, which is excluded from holding direct communication with the protected State, cannot complain if the protector of that State exercises jurisdiction over the subjects of the foreign Power who resort there. And in the absence of any special agreement it seems, to say the least, consistent with the principles of international law that when the Crown has assumed a Protectorate in the sense before mentioned over an uncivilized State, it should have power to legislate for and punish persons resorting there who are not natives of that State.

20. This position is strengthened not only by Article I of the General Act of the Conference of Brussels, 1890, but also by the provisions of Article XXXIV of the General Act of the Conference of Berlin, 1885, which provides that a Power who assumes a Protectorate on the coasts of Africa is to notify it to the other Powers who signed the Act, in order that they may complain if necessary.

21. The latter Article, which must now, it is presumed, be considered as international law for the uncivilized countries on the African coast, shows that, by the proclamation of a Protectorate over those countries, the rights of other European Powers are either excluded or limited; and a Power which makes no objection when the Protectorate is signified must be presumed to have assented to such exclusion or limitation. This Article must be construed so as to enable the protector to give effect to the undertaking in Articles XXX and XXXV of the said General Act to protect foreign subjects, and maintain authority sufficient to protect existing rights and the freedom of trade.

As to the machinery for exercising partial sovereignty.

As to the Machinery for exercising partial Sovereignty.

22. If the above view is correct, it will be seen that the partial sovereignty is obtained by cession, express or implied, from the native Ruler, and it is apprehended that it may be exercised by the same methods as if the Ruler had ceded his whole country to Her Majesty—that is to say, by Letters Patent or Orders in Council—and the Law Officers have already approved, in June 1890, of an Order in Council vesting in the High Commissioner the power of regulating the exercise of ceded sovereignty by means of legislative Proclamations, which would therefore seem to be the appropriate method for meeting the case now under discussion, *i.e.*, of part of the sovereignty of the country being impliedly ceded, owing to the nature of the relations existing between the protected and the protector.

23. It must be remembered that if Her Majesty's Government claim to exercise jurisdiction over foreigners by the above methods, they will, if not expressly estopped by their acceptance of the General Act of the Brussels Conference, be necessarily precluded from claiming that British subjects are exempt from jurisdiction in foreign Protectorates. But it is understood that no such exemption is claimed for this country.

J. B.

Colonial Office, February 1891.

P.S.—Since the above Memorandum was in print, attention has been called to Mr. Hall's "Treatise on International Law" (edition 1890, pp. 127-129), where a similar view is maintained.

J. B.

Annex 2.

South Africa.

Order of the Queen in Council providing for the exercise of Her Majesty's Jurisdiction in certain Territories of South Africa.

At the Court at , the day of , 1891.

Dated 1891.

Present:

The Queen's Most Excellent Majesty in Council.

Preamble.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means Her Majesty has power and jurisdiction in the territories of South Africa, situate within the limits of this Order as hereinafter described:

Recites "Foreign Jurisdiction Act, 1890."

Now, therefore, Her Majesty, by virtue and in exercise of the powers by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased by and with the advice of her Privy Council to order, and it is hereby ordered as follows:—

Territorial limits of jurisdiction.

1. The limits of this Order are: The parts of South Africa bounded by British Bechuanaland, the German Protectorate, the Rivers Chobe and Zambesi, the Portuguese possessions, and the South African Republic.

Powers of High Commissioner.

2. The High Commissioner may, on Her Majesty's behalf, exercise all powers and jurisdiction which Her Majesty, at any time before or after the date of this Order, had or may have within the limits of this Order, and to that end may take, or cause to be taken, all such measures, and may do, or cause to be done, all such matters and things within the limits of this Order as are lawful, and as in the interests of Her Majesty's service he may think expedient, subject to such instructions as he may from time to time receive from Her Majesty or through a Secretary of State.

Appointment of officers.

3. The High Commissioner may appoint so many fit persons as, in the interest of Her Majesty's service, he may think necessary to be Deputy Commissioners, or Resident Commissioners, or Assistant Commissioners, or Judges, Magistrates, or other officers, or may define, from time to time, the districts within which such officers shall respectively discharge their functions.

Powers of officers.

Every such officer may excise such powers and authorities as the High Commissioner may assign to him, subject, nevertheless, to such directions and instructions as the High Commissioner may from time to time think fit to give him. The appointment of such officers shall not abridge, alter, or affect the right of the High Commissioner to execute and discharge all the powers and authorities hereby conferred upon him.

Removal of officers.

The High Commissioner may remove any officer so appointed.

Proclamations by High Commissioner.

4. In the exercise of the powers and authorities hereby conferred upon him, the High Commissioner may, amongst other things, from time to time by Proclamation provide for the administration of justice, the raising of revenue, and generally for the peace, order, and good government of all persons within the limits of this Order,

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including the prohibition and punishment of acts tending to disturb the public peace.

Proviso: native laws or customs.

The High Commissioner, in issuing such Proclamations, shall respect any native laws or customs by which the civil relations of any native Chiefs, tribes, or populations under Her Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction.

Publication of Proclamations.

5. Every Proclamation of the High Commissioner shall be published in the Gazette, and shall, from and after the expiration of one month from the commencement of such publication, and thereafter until disallowed by Her Majesty or repealed or modified by any subsequent Proclamation, have effect as if contained in this Order.

Her Majesty may disallow Proclamations wholly or in part.

6. Her Majesty may disallow any such Proclamation wholly or in part, and may signify such disallowance through a Secretary of State, and upon such disallowance being publicly notified by the High Commissioner in the Gazette the provisions so disallowed shall, one month after such publication, cease to have effect, but without prejudice to anything theretofore lawfully done thereunder.

Jurisdiction conferred upon Courts of British Bechuanaland. (Section 9 of "Foreign Jurisdiction Act, 1890.")

7. The Courts of British Bechuanaland shall have in respect of matters occurring within the limits of this Order the same jurisdiction, civil and criminal, and appellate, as they respectively possess from time to time in respect of matters occurring within British Bechuanaland, and the judgments, decrees, orders, and sentences of any such Court made or given in the exercise of the jurisdiction hereby conferred may be enforced and executed, and appeals therefrom may be had and prosecuted in the same way as if the judgment, decree, order, or sentence had been made or given under the ordinary jurisdiction of the Court.

But the jurisdiction hereby conferred shall only be exercised by such Courts, and in such manner and to such extent, as the Governor of British Bechuanaland shall by Proclamation from time to time direct.

Saving for other jurisdictions.

8. Subject to any Proclamation made under this Order any jurisdiction exercisable otherwise than under this Order, whether by virtue of any Statute or Order in Council, or of any Treaty, or otherwise, and whether exercisable by Her Majesty, or by any person on her behalf, or by any Colonial or other Court, or under any Commission, or under any Charter granted by Her Majesty, shall remain in full force.

Evidence.

9. Judicial notice shall be taken of this Order, and of the commencement thereof, and of any Proclamation made under this Order, and published in the Gazette, and of any Treaties affecting the territories within the limits of this Order, and published in the Gazette, or contained in papers presented to both Houses of Parliament by command of Her Majesty.

Commencement of Order.

10. This Order shall be published in the Gazette, and shall thereupon commence and come into operation; and the High Commissioner shall give directions for the publication of this Order at such places, and in such manner, and for such time or times as he thinks proper for giving due publicity thereto within the limits of this Order.

Revocation of Orders in Council of 27th January, 1885, and 30th June, 1890.

11. The Orders in Council of the 27th day of Jannary, 1885, for the establishment of civil and criminal jurisdiction in Bechuanaland, and of the 30th day of June, 1890, providing for the exercise of Her Majesty's jurisdiction in certain territories in South Africa, shall continue in force until the commencement of this Order, and be thereupon revoked, but without prejudice to anything lawfully done thereunder, and any Proclamation theretofore issued under the said Orders shall continue in operation until repealed or altered by any Proclamation of the High Commissioner under this Order.

Power reserved to Her Majesty to revoke, &c., present Order.

12. Her Majesty may from time to time revoke, alter, add to, or amend this Order.

Interpretation.

13. In this Order, unless the subject or context otherwise requires—

"Her Majesty" includes Her Majesty's heirs and successors.

"Secretary of State" means one of Her Majesty's Principal Secretaries of State.

"High Commissioner" means Her Majesty's High Commissioner for the time being for South Africa.

"Treaty" includes any existing or future Treaty, Convention, or Agreement between Her Majesty and any civilized Power, or any native tribe, people, Chief, or King, and any Regulation appended to any such Treaty, Convention, or Agreement.

"Gazette" means any official Gazette published by authority of the High Commissioner, and until such Gazette is instituted, means the Cape of Good Hope Government Gazette.

No. 6.

The Marquis of Salisbury to the Lord Chancellor.

[In reply to the following reference, the Lord Chancellor reported on the 20th April as on p. 18:—]

My Lord, *Foreign Office, March* 21, 1891.

Delagoa Bay Railway arbitration. As to its being between the two Governments.

I SEND you some papers with respect to the Delagoa Bay arbitration, which I have had for greater convenience type-written. The cause of my asking you to take the trouble to look at them is an opinion of the Law Officers of the Crown, which you will find among these papers, and the important paragraph of which I have marked in red.

When the Portuguese Government confiscated the Delagoa Bay Railway, and with it the investment of certain British subjects whose status they had practically recognized, we insisted on the injustice of their proceedings, and, in conjunction with the United States' Government, required them to send the matter to arbitration. In doing so, we sought for redress to British investors against an injustice inflicted by the Portuguese Government. But we did not say that the injustice was to Her Majesty's Government, or claim for them redress, by arbitration or otherwise. This intermediate position was the only one possible to us. We could not leave the matter on one side, or the British investors would have had no redress. We could not, on the other hand, put ourselves in the place of the British investors without making ourselves responsible for the justice of all the claims they put forward, and for the conduct of the proceedings by which they were to be redressed. So, up to the other day, we imagined the matter to stand. We had required the Portuguese Government to submit to arbitration, but it was arbitration of the claims of a Company upon them, not of the claims of Her Majesty's Government. But now the Law Officers tell us that because the Portuguese Government have taken the opposite view, and we have not contested it, we are bound to accept the position that the arbitration is between the two Governments. They found themselves on a passage, which you should consult, in a letter from the Foreign Minister of Portugal. They say that we accepted the 28,000*l.* conveyed in that letter upon the terms that the arbitration was between the respective Governments. I cannot see in the correspondence any trace of such an admission, still less of such an agreement on our part, and I am at an entire loss to know on what basis the Law Officers found that opinion. There is nothing in the papers to sustain it. There can be nothing in any doctrine of law to uphold it, for the law of arbitration current in this or any other country has no bearing upon an international proceeding; and the law of arbitration as between nations is so modern and founded upon so few cases, that it can contain no tradition or prescription to sustain the contention of the Law Officers.

It is primarily on this question that I ask your judgment.

Vis inertiæ of Portugal.

But there is another more difficult one of mixed law and expediency behind it. If we were now ostentatiously to put forward our contention that we are not parties to the arbitration, it is quite possible that Portugal might wrap herself in her dignity and decline to go on, and her *vis inertiæ*, which has already been abundantly proved, might mean in practice several years' delay. On the other hand, I am very unwilling to admit in any formal manner that we are a party to it. That some of their claims are just I have no doubt. But we could not safely indorse them all, nor could we, without interminable discussion and delay, establish for ourselves those items on which we could insist, and still less force, the Company to coincide in the repudiation of that which they have solemnly averred. Again, acceptance of the position which the Portuguese desire to assign to us would almost inevitably force us to conduct the arbitration in a far more expensive manner, and that expense would have to be met. The Company would lustily cry out if asked to pay for an assistance they did not want, and I imagine there is very little chance of obtaining such a contribution from the Treasury.

On all grounds, therefore, I desire very much to follow the road we were formerly following, leaving to the Portuguese to put what construction they please upon our position and that of our clients, but, in practice, ourselves restricting our part to so much intervention as might be necessary to secure full hearing and due arbitration for the Company, and no more. I should carefully avoid any language tending to

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commit the Government either to a full approval of all the Company's claims, or to any liability for any of the Company's expenses.

I have, &c.
(Signed) SALISBURY.

Memorandum by the Lord Chancellor.

Delagoa Bay arbitration.

IT seems to me that some confusion has arisen from not comprehending the nature of the real dispute between the nations, and what was to be referred when the respective Governments agreed to arbitration.

Mr. Petre, 30th January, 1890.

Mr. Petre's despatch of the 30th January, 1890, appears to give the true clue upon which Mr. Petre reports that the position which the Government (that is to say, the Portuguese Government) still maintains is that while fully understanding that they would have to meet *the Company's* claim for compensation, the amount is to be settled either, and in preference, by direct negotiation between them and *the properly accredited agents* of the Company, or, failing that, by arbitration.

Mr. Petre, 21st March, 1890.

Again, in the despatch of the 21st March, 1890 (Inclosure in No. 33), Mr. Petre leads up to the final arrangement by saying—

"I am directed to inform the Portuguese Government that unless provision be made for the prompt settlement of the claims of British subjects interested in the railway, Her Majesty's Government will unite with the Government of the United States in demanding arbitration by an impartial Government."

There is doubtless language in the correspondence which fairly gives rise to the contention that the arbitration when agreed upon was to be of an international character, and so I suppose it was; but the word "international" requires exposition. It is international in this sense, that once the Portuguese Government have agreed with Her Majesty's Government and with the Government of the United States that the claims of a private Company should be referred to an agreed Tribunal, the decision of that agreed Tribunal will bind internationally all three of the parties. But it does not follow, and I should deprecate very much Her Majesty's Government assuming to themselves the character of plaintiffs, as if they represented the claiming Company. Their right of diplomatic intervention, and I think all that the Company could ask, was an insistance that the claims of British subjects should be submitted to a Tribunal which should impartially determine those claims.

But I find no suggestion in the papers for assuming that Her Majesty's Government ever claimed the right to insist on any particular amount which is here the whole question in dispute, inasmuch as the Portuguese Government have from the first admitted that they were bound to make some compensation for the rights of the British subjects which are admitted to have been infringed.

Once it is understood that the arbitration is partly of an international character for the reasons I have pointed out the language which is used becomes quite intelligible, without at all assuming that Her Majesty's Government ever undertook the responsibility of urging the particular amount claimed, the extent of which it must have been quite well known and understood that the British Government could have no knowledge of.

H. M.'s Govt. should not commit themselves either to a full approval of all the Company's claims or to any liability for any of the Company's expenses.

I therefore have no difficulty in advising the Secretary of State to restrict the intervention of the Government to such as may be necessary to secure a due hearing and due arbitration for the Company, and no more, and should strongly advise him to avoid any language tending to commit the Government either to a full approval of all the Company's claims, or to any liability for any of the Company's expenses.

(Signed) HALSBURY.

P.S.—I wish to add that the advance of 28,000*l.* certainly imposes on the British Government the position of stakeholder, and if the Arbitrators were to hold that this sum was more than the award to be ultimately made, the Government would be under an obligation to restore the excess to the Portuguese Government. Perhaps this matter is what has produced the view which the Law Officers have taken of the despatch of Senhor Ribeiro (Inclosure in No. 159), 25th July, 1890, and to that extent, and to that extent only, I agree that there is for the purpose an actual direct obligation between the two Governments.

Senhor Ribeiro, 25th July, 1890.

April 20, 1891. H.

No. 6*.

(*Communicated by the Colonial Office, August* 12, 1893.)

[Colonial Office.]

The Law Officers of the Crown to Lord Knutsford.

My Lord, *Royal Courts of Justice, April* 30, 1891.

Exercise of jurisdiction by Her Majesty within British Protectorates in Africa.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 23rd instant, stating that he was directed by your Lordship to acknowledge the receipt of our report of the 17th April respecting the exercise of jurisdiction by Her Majesty within British Protectorates in Africa.

That Mr. Bramston was to acquaint us that, since the date of our report it had become known that certain persons were preparing to cross from the South African Republic into the territories of Lobengula, and other places within the field of operations of the British South Africa Company, and that it was reported that they intended to set up a Republic in such territories and places. That it would not be possible for Her Majesty's Government to assent to the establishment of such a Republic, and that the Government of the South African Republic had been informed that the territory of Lobengula, our ally, was under the protection of Her Majesty. That that Chief had also been informed by the High Commissioner that he, the High Commissioner, governed on behalf of Her Majesty, and would punish white persons in his territory if necessary.

"Foreign Jurisdiction Act, 1890."

That under those circumstances, which your Lordship considered did in fact constitute a foundation for the exercise of Her Majesty's jurisdiction under "The Foreign Jurisdiction Act, 1890," Mr. Bramston was to invite our opinion specifically on the accompanying draft Order in Council, of which the first draft formed one of the inclosures in the letter from the Colonial Office of the 11th March last, and which, it was therein stated, might receive further additions before it assumed its final shape for our consideration.

That the only additions which your Lordship had considered it necessary to make were a new clause, No. 7, together with certain alterations in the recital and in clauses 4 and 5.

That a copy of the first draft was also inclosed.

That the first recital, referring to the territories in question as being under the protection of Her Majesty, was omitted, as it had not as yet been decided formally to declare a Protectorate over them, and that the 7th clause was added to meet the case (which has already occurred) of an offence being committed outside British Bechuanaland, and all the parties and witnesses being present within that possession.

Africa Order in Council, the 30th June, 1890, Confidential, 5967*.

That Mr. Bramston was to add that there was pressing need for the issue of the Order in Council, and that your Lordship would be glad to be favoured with our views, at our earliest convenience, upon the accompanying draft, which, it would be observed, was an expansion of the Order of the 30th June, 1890, upon which we reported on the 11th July last.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

To give validity to Order in Council, territories comprised therein should be declared to be under protection of the Queen.

That, in our opinion, it is necessary, in order to give validity to the Order in Council in so far as it may affect the subjects of other Powers, that the territories comprised therein should be declared to be under the protection of Her Majesty the Queen.

The right to exercise within any foreign country jurisdiction over the subjects of other civilized States must depend upon the territorial sovereignty or upon the consent of such States. We have already advised th in the regions of South Africa where

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British Protectorates have been established, the provisions of the General Acts of the Berlin and Brussels Conferences are sufficient to justify the exercise of jurisdiction over the subjects of those Powers which were parties to those General Acts. But we find no such consent in relation to territories which have not been declared to be under British protection. In other respects we consider the terms of the draft Order may be approved.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 7.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 12.)

My Lord, *Royal Courts of Justice, May* 11, 1891.

Nyassaland Districts. Proposed Notification placing them under the Protectorate of H. M.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us the draft of a Notification which it was proposed to publish in the "London Gazette," placing the territories therein defined as the "Nyassaland Districts" under the Protectorate of Her Majesty.

British Protectorate over the Niger Districts. Notifications of 5th June, 1885, and 18th October, 1887.

That the Notification was drawn in general accordance with those published in the "London Gazette" on the 5th June, 1885, and 18th October, 1887, relating to the British Protectorate over the Niger Districts, of which copies were inclosed.

That it was proposed to make the Protectorate date from the 21st September, 1889, that being the date of the declaration by Her Majesty's Representative of the Protectorate over the adjacent countries of the Makololo, Yao, and Machinga, as defined in the annexed paper, marked (D).

That Sir Philip Currie was to request that we would take the terms of the draft into our consideration, and favour your Lordship with our opinion as to whether they were right and proper for notifying the Protectorate.

In obedience to your Lordship's commands we have the honour to

Report—

Approves form of Notification adopted on 18th October, 1887.

That in our opinion there is grave objection to the dating back of a Protectorate, unless the date notified is that upon which, in fact, Her Majesty obtained by Treaty, or declared by Proclamation, such Protectorate.

In our opinion, the better form of the Notification is that adopted on the 18th October, 1887, which simply states that the territories described are under the Protectorate of Her Majesty.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Draft Proclamation.

IT is hereby notified for public information that under and by virtue of Agreements with the native Chiefs, and by other lawful means, the territories in Africa hereinafter referred to as the Nyassaland Districts are under the Protectorate of Her Majesty the Queen.

The British Protectorate of the Nyassaland Districts comprises the territories

[Definition follows.]

Measures are in course of preparation for the administration of justice and the maintenance of peace and good order in the Nyassaland Districts.

R. E. W.
E. C.

No. 8.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 7.)

My Lord, *Royal Courts of Justice, July* 6, 1891.

Stoppage of "Norseman," "Agnes," and "Shark," under Sir J. Willoughby, by Portuguese at Beira (Pungwe Bay).

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 29th May last, stating that he was directed by your Lordship to transmit to us a copy of a statement sworn before Her Majesty's Vice-Consul at Delagoa Bay on the 20th April last by Captain Sir John Willoughby, Bart., now serving with the local rank of Major, as second in command of the British South Africa Company's forces in Mashonaland, and a copy of a letter addressed by him on the 28th April to the High Commissioner for South Africa.*

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* Inclosure in Vice-Consul Smith-De la Cour's No. 13; Inclosure in British South Africa Company's letter of May 23; "Africa No. 2 (1890)," No. 34, p. 30; and No. 36, p. 30.

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That the statement described the circumstances in which the party under command of Sir John Willoughby, which was being conveyed in the British vessels "Norseman," "Agnes," and "Shark," all flying the British flag, up the River Pungwe with a cargo of food supplies and road-making tools, and the British mail for the British sphere in Mashonaland, was forcibly stopped on the 18th April by the authorities at Beira, a Portuguese port at the mouth of the river.

Grounds upon which this was done.

That it would be seen that, though Sir John Willoughby offered to pay the proper dues on goods in transit, and all clearance charges, the Customs authorities declined them on the ground that the river was not open; that he gave the Governor-General full notice of the objects of his Mission, and of his intention to carry out his instructions; but that when he eventually started he was followed by three vessels of war, all cleared for action, and that a shot was fired from one of them across the bows of his leading vessel to enforce his discontinuing his journey. That after he had stopped a rifle-shot was fired from the "Liberal," but that although the bullet was seen to strike the water, there was practically no evidence to show that it was aimed at any of Sir John Willoughby's vessels. That subsequently the "Agnes" was boarded by a party of armed soldiers, who took possession of her and her lighters. That the British flag on board the "Shark" was hauled down by the Portuguese, and the Portuguese flag hoisted in its place.

Steps taken to obtain release of vessels.

That on receipt by telegram of intelligence of the action of the Portuguese authorities, Her Majesty's Government at once demanded that the vessels and lighters should be released, on the ground that, under the *modus vivendi* of the 14th November, 1890, the transit of merchandize from the Pungwe to the British sphere of influence was guaranteed.

That it should be observed that, immediately after the signature of the *modus vivendi*, the King of Portugal had issued a Decree (of which a copy was inclosed), declaring that the transit between the port of Beira (Pungwe Bay) and the sphere of British influence should be carried on under the same conditions as those provided by Article 70 of the Decree of the 30th July, 1877, for the transit to the regions situated beyond the confluence of the Rivers Zambesi and Shiré—that was to say, at a tariff not exceeding 3 per cent. *ad valorem* on the goods in transit; that that was the amount of duty offered by Sir John Willoughby, and refused; that, though he was in error in stating that the 3 per cent. duty was fixed under the *modus vivendi*, he was right in tendering, and the Portuguese authorities were wrong in refusing, that amount of duty which had been prescribed by the Royal Decree.

That the Portuguese Minister at this Court called on your Lordship on the 22nd April and endeavoured to excuse the action of the Portuguese officer in command, on the ground that he dreaded a collision between Sir John Willoughby's party and a body of Portuguese soldiers, who appeared to have been in a state of exasperation, and for whose conduct their commanding officer was consequently not able to answer.

That his Excellency insisted that the sole motive for the officer's action had been fear for the consequences to Sir John Willoughby's party if it had proceeded.

Release of vessels ordered.

That on the 24th April, Her Majesty's Representative at Lisbon telegraphed that positive orders had already been sent to the Governor-General at Mozambique to afford facilities at once for transit to British territories of Her Majesty's mail, of passengers only carrying arms for personal defence, and of merchandize on payment of an *ad valorem* duty of 3 per cent.; and, further, to allow vessels under foreign flags to ascend the Pungwe as far as a place called Maponda, where a military station would be established for police purposes.

Vessels cleared on payment of fine under protest.

That in spite of that, it was not till the 18th May that Her Majesty's Government received a telegram from Her Majesty's Vice-Consul at Delagoa Bay, stating that the "Agnes" and lighters had been cleared from the Custom-house on payment of a fine under protest.

Should compensation be demanded? If so, on what grounds?

That Sir T. V. Lister was to request that we would take the papers into our consideration, and favour your Lordship with our opinion as to whether, under the circumstances therein set forth, Her Majesty's Government were entitled to demand compensation from the Portuguese Government for the acts complained of, and, if so, on what especial grounds such a demand would, in our opinion, most advantageously be based.

That your Lordship would, at the same time, be glad to be favoured with any general observations upon the local aspect of the case which we might be good enough to offer.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, Her Majesty's Government are entitled to demand compensation from the Portuguese Government for the acts complained of, on the ground that the Portuguese officials had no right to arrest and detain a British vessel carrying lawful cargo in respect of which a tender had been made of the only amount which it can be pretended they were entitled to exact.

Grounds on which compensation should be demanded.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

ARGENTINE REPUBLIC.

No. 9.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 18.)

[In answer to the following reference, the Law Officers reported on the 16th March as on p. 23:—]

Foreign Office to the Law Officers of the Crown.

(A.)

Gentlemen,

Foreign Office, February 4, 1891.

I HAVE the honour, by direction of the Marquis of Salisbury, to transmit to you the papers noted in the margin,* which relate to a Law recently passed in the Argentine Republic, entitled "*the Excise Law.*" A translation of this Law, as originally submitted to the Argentine Legislature, is inclosed in Mr. Pakenham's despatch No. 46, Commercial, of the 22nd ultimo. The Message of the President of the Argentine Republic presenting this Law to the Legislature will be found in my other letter of this day's date, marked (B).

Excise Law of the Argentine Republic.

It is to be presumed that the Law passed, in the form so translated, without amendment. Clause 5 of this Law enacts that Insurance Companies located (literally "*rooted*") without the Argentine Republic, but with *branches* in that State, shall pay a tax of 7 per cent. on the premiums for policies issued in the Republic.

It is to be presumed that no such tax is levied on the premiums of Insurance Companies "*located*" in the Argentine Republic, and that the word "*located*" is used in such a sense that "*Company located in England*" means "*Company incorporated under English law.*"

Certain British Insurance Companies have protested against the application to them of the above-mentioned "Excise Law," and the question arises whether it constitutes an infraction of the Treaty of 1825 between Great Britain and the Argentine Republic, which State was then called the United Provinces of Rio de la Plata. A copy of the Treaty is inclosed. Article IX thereof stipulates, among other things, that British subjects shall in the Argentine Republic "be exempted . . . . . from all forced loans . . . . ; neither shall they be compelled to pay any ordinary taxes whatsoever greater than those that are paid by native subjects or citizens."

Protest of certain British Insurance Companies against the Law as an infraction of the Treaty of 1825 between Great Britain and the Argentine Republic.

It will be observed that these stipulations are made in favour of British *subjects*, and that Joint Stock or other Corporations are not mentioned in the Treaty. Corpora-

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* Inclosure in Mr. Pakenham's No. 46, Commercial, 1890; ditto, Telegraphic, January 9 and 17, 1891; Sir E. Hertslet's Memorandum thereon; and Mr. Jenner, January 15, 1891. Treaty of February 1825; "Greece No. 1 (1888)," Convention with France relative to Joint Stock Companies (1862).

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tions are not, however, usually mentioned in the national or most-favoured-nation clauses of Commercial Treaties, although trading Corporations and Joint Stock Companies had long been in existence at the time of the signature of most of the British Commercial Treaties now in force, including the Treaty with the Argentine Republic.

The capital of British Companies, *i.e.*, of Companies incorporated under English law, is not necessarily subscribed by British subjects; and a Company, although it may conveniently, for many purposes, be considered in the abstract as having a personal existence, and as being clothed with an artificial, as opposed to a physical, personality, cannot be said to have any true nationality.

Nationality, strictly speaking, is an attribute of physical persons only, and an artificial person, although capable in contemplation of English law of possessing domicil, either British or other, can hardly be said to possess a national status. British domicil would not, however, entitle a physical person to claim for himself or his property the benefits of the above-mentioned stipulations of the Treaty between Great Britain and the Argentine Republic; and, under these circumstances, it is not easy to see in what manner an artificial person can occupy a more advantageous position in this regard by reason merely of his domicil being British.

No precedent has been discovered in the records of this Department which would be of assistance in considering this matter, with the exception of one of doubtful validity, which will shortly be referred to. At the same time it does not appear that any nation has hitherto assumed in practice that incorporated Companies are outside the pale of the provisions of the ordinary Commercial Treaties: nor would it be desirable, as a matter of policy, that such an assumption should be made, for the proportion of the trade of all countries carried on by Corporations, and the proportion of the capital of all countries held by Corporations, is now very large and is daily increasing. There can, moreover, be no doubt that the British and other Governments have constantly made international representations on behalf of Companies incorporated under their respective laws and domiciled in the dominions of the State making such representations, without inquiring as to the nationality of the persons who had subscribed the capital of such Companies.

The precedent of doubtful validity mentioned above is contained in the inclosed despatches from and to Her Majesty's Minister at Athens.* In the despatch to Sir H. Rumbold it is assumed that under a Treaty with Greece (copy of which is inclosed), containing stipulations similar to those in the Treaty with the Argentine Republic now in question, national treatment could not be claimed for a British Company in a matter of taxation in Greece, for the reason that it had been found necessary to conclude Special Conventions with regard to Joint Stock Companies, in addition to the usual Commercial Treaties, and that, therefore, those Treaties could not be held to confer the right to national treatment in certain matters to British Companies, although it conferred that right in those matters on British subjects. The Agreement subsequently concluded in 1888 with Greece by Great Britain merely provides for the reciprocal recognition in the one country of the corporate existence of Companies legally constituted in the other. It does not appear that national treatment had been in this case refused on the ground that Greek law did not recognize the corporate existence of a Company created under foreign law.

A copy of the Agreement with Greece is inclosed. It is similar to the other Joint Stock Agreements or Declarations referred to in the above-mentioned despatch to Her Majesty's Minister at Athens. The inclosed despatches† respecting the earliest in date of these instruments, that, namely, with France, confirms the view that they relate exclusively to the reciprocal recognition of incorporated Companies. The fact that it has been found necessary to conclude such Agreements does not, therefore, appear to have any bearing on the question of the application to Corporations of the favourable treatment provided by Treaties for persons. A copy of the Joint Stock Companies Agreement with France is also inclosed for purposes of comparison.

Commercial Treaty of 1853 between the United States and the Argentine Republic.

It appears from a telegram from Her Majesty's Minister at Washington that the Government of the United States, in the absence of precise information as to the nature of the discrimination made by the Argentine Law now in question, has protested against it on general grounds of equity. A copy of the Commercial Treaty of 1853 between the United States and the Argentine Republic is inclosed. Article X of that Treaty provides national treatment in matters of taxation for United States' citizens in the Argentine Republic in terms similar to those quoted above from Article IX of the Treaty between Great Britain and the Argentine Republic.

It may be presumed from the terms of the Argentine Law now under consideration that Argentine law does not refuse to recognize the corporate existence of Companies constituted abroad. The questions raised appear, therefore, to be limited to the application to incorporated Companies of Treaty stipulations regarding persons.

I have the honour to request you to take the papers transmitted herewith into your consideration, and to favour Lord Salisbury with your opinion as to whether—

1. British Companies, *i.e.*, Companies incorporated under English law, are in the Argentine Republic entitled to the benefit of the treatment provided in the Treaty between Great Britain and that State for British subjects.

2. Whether, in the event of your reply on the first point being in the affirmative, the provisions quoted above from Article IX of that Treaty, or any other provisions of that Treaty, are infringed by the new Argentine Excise Law in such a manner and to such extent as to justify Her Majesty's Government in protesting against the application of that Law to British Companies.

3. Whether, in the event of your reply on the first point being in the negative, Her Majesty's Government would be justified in protesting against the application of the Law now under consideration to British Companies, either on equitable or other grounds.

4. Whether the view expressed above as to the scope and meaning of our International Agreements in relation to Joint Stock Companies with France and with Greece, and consequently of other existing Agreements similar to those with France and Greece, which it has not been thought necessary for the main purposes of this reference more particularly to deal with, and as to their bearing on the points submitted to you in question No. 1, is correct or not.

The opinions you may express on these points will doubtless be sufficient to show whether British Companies can claim most-favoured-nation treatment in matters of commerce under Article III of the Treaty, it being assumed that the business of an Insurance Company is "commerce" within the meaning of the Treaty; but I am also to request you to favour Lord Salisbury with any further observations which you may have to offer generally in connection with the case.

I have, &c.
(Signed) JAMES FERGUSSON.

We have taken the papers which were inclosed in Sir James Fergusson's letter of the 4th ultimo, and also the further despatch from Her Majesty's Minister at Buenos Ayres, which was forwarded to us on the 11th instant, into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Think H. M.'s Govt. should protest against application of section 5 of the new Excise Law to British subjects.

That, in our opinion, British subjects carrying on, in the Argentine Republic, a business of life insurance would not be the less entitled to the national treatment granted by the Treaty of 1825, because they were in fact agents for a Company established under English law, but where the persons acting as agents are Argentine citizens or foreigners, the fact that they represent a British Company does not entitle them, or the Company, to invoke the assistance of Her Majesty's Government in asserting for them the right to the privilege given by the Treaty. In our opinion, the imposition of a special tax of 7 per cent. upon premiums received by Argentine citizens, on behalf of a foreign Company, would not be a violation of the Treaty, but if a special tax were imposed in the case of British subjects carrying on, in the Argentine Republic, the trade of life insurance, whether on their own behalf, or as representing a British Company, there would, in our opinion, be a violation of Article IX of the Treaty, and, having regard to the general terms of section 5 of the new Excise Law, we think Her Majesty's Government should protest against the application of that clause to British subjects.

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* Sir H. Rumbold, No. 41, Commercial, November 16; to ditto, No. 21, Commercial, November 28, 1887.

† To Lord Cowley, No. 348, March 19, 1861; Lord Cowley, No. 436, March 20, 1861.

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We are not prepared to say that every Company constituted under English law is a British subject in a sense which would entitle it to privileges of trade under the Treaty.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Royal Courts of Justice, March 16, 1891.

No. 10.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received March* 18.)

[In answer to the following reference, the Law Officers reported on the 17th March as on p. 25:—]

Foreign Office to the Law Officers of the Crown.

(B.)

Foreign Office, February 4, 1891.

Gentlemen,

New Argentine Stamp Law.

Treaty between Great Britain and the Argentine Republic of February 1825.

WITH reference to my other letter of this day's date (marked A) respecting the new Argentine Excise Law, I have the honour, by direction of the Marquis of Salisbury, to request your advice on a clause of the new Argentine Stamp Law. A translation of this Law is annexed,* as also a copy of the Commercial Treaty now in force between Great Britain and the Argentine Republic.

The points about to be submitted to you involve the question of the application to incorporated Companies of Treaty stipulations regarding persons, and depend, necessarily, on the opinion which, on that point, you may express in reply to my other letter above mentioned.

Discrimination between private and State Banks.

The second clause of the Stamp Law provides that banks of deposit, other than those incorporated under the Law establishing the National Guaranteed Banks, shall pay a special tax not levied on the National Guaranteed Banks. The President's Message (paragraphs 16 and 19) submitting the Law to the Legislature, which is inclosed herewith,† speaks of the tax as one on private banks as distinguished from the National Bank and the Provincial Bank of Buenos Ayres. The private banks established in the Argentine Republic are believed to be chiefly foreign.

I have the honour at the same time to submit to you, for your consideration and opinion, the 1st section of clause 1 of the new "*Law of Licences*" in the Argentine Republic. A translation of that Law is annexed.

The section in question provides that certain licence taxes shall be paid, and that certain guarantee funds shall be found by all Insurance Companies which have not at least 50 per cent. of their capital employed in the Argentine Republic, and which have not a Board of Directors resident in that Republic.

The Law does not state in so many words that these enactments as to licence taxes and guarantee funds apply exclusively to foreign Companies; but the provision is such that its application to any Argentine Company is exceedingly improbable: no Argentine Insurance Company is at all likely to have more than 50 per cent. of its capital employed outside the Republic; and it is stated in the inclosed letter from the London Fire Offices Committee that foreign Companies only will be liable to the imposts created by the new Law. Her Majesty's Government are not, however, in possession of any further or more definite information as to the incidence of these taxes.

The Argentine Laws now submitted to you were transmitted to Lord Salisbury in Mr. Pakenham's despatch No. 46, Commercial, of the 22nd ultimo, which is inclosed in my other letter of this day's date, and it is probable that the protest made by the Government of the United States, mentioned in that letter, refers to the Laws now under consideration, as well as to the Argentine Law regarding the tax on the premiums of foreign Insurance Companies.

I have the honour to request you, in connection with the opinions you may express on the points submitted to you in my other letter above referred to, to favour Lord Salisbury with your opinion—

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* Inclosure in Mr. Pakenham's No. 46, December 22, 1890.

† January 23, 1891.

1. As to whether the discrimination between private and State banks made by clause 2 of the new Argentine Stamp Law is, in the circumstances of the case, such that Her Majesty's Government would be justified in protesting on the ground of infraction of any provision in the Treaty between Great Britain and the Argentine Republic, or on general grounds of equity, against the application of that Law to British banks: (*a*) on the assumption that the private banks are not all foreign, and that one Argentine bank at least is assessed to the tax; (*b*) on the assumption that all the banks assessed are foreign banks, and that no foreign bank prove able to establish an exemption in such a way as to enable British banks to claim a similar exemption under the most-favoured-nation treatment provided under clause 3 of the Treaty.

2. As to whether the provisions above referred to of the Licence Law do, in fact, involve such a discrimination between foreign and Argentine Insurance Companies as to constitute an infraction in practice of the Articles of the Treaty between Great Britain and the Argentine Republic providing national treatment in matters of taxation, and whether the provisions in question violate the spirit of the Treaty though framed so as to avoid breaking the letter thereof, and are, consequently, of such a nature that a protest should be made against them, lest they come to form a precedent by the extension of which the Treaty may, in regard to the taxation of Companies, be made of no practical effect; and

3. As to whether, in the event of your reply to the latter part of question 2 being in the affirmative, the argument there suggested might properly be made use of in regard to the taxation of private banks referred to in question 1, should it appear that the banks liable under the Law are all foreign banks.

I have, &c.
(Signed) JAMES FERGUSSON.

We have taken the matters referred to in Sir James Fergusson's letter of the 4th ultimo into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

H. M.'s Govt. not justified in protesting against clause 2 of the new Argentine Stamp Law.

1. That, in our opinion, the discrimination between private and State banks made by clause 2 of the new Argentine Stamp Law would not justify a protest by Her Majesty's Government either on the ground of the violation of the Treaty of 1825, or on the general grounds of equity.

Requirement of guarantee funds from Insurance Companies could be justified by consideration of public interest.

2. Although the effect of the requirement of guarantee funds from Insurance Companies, having less than half their capital employed in the Republic, and having no Board of Directors resident therein, will probably affect only foreign Companies, it could be justified, and perhaps was prompted, by the consideration of the public interest that persons receiving premiums and undertaking contracts of insurance ought to possess funds which could be reached by the Tribunals of the country in which that business is carried on.

The question as to licence duty depends on considerations dealt with in our Report of the 16th instant.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Royal Courts of Justice, March 17, 1891.

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No. 11.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received June* 5.)

Royal Courts of Justice, June 3, 1891.

My Lord,

Military service in the Argentine Republic and Uruguay. Liability of British subjects to. Cases of Mr. J. S. Grant and Mr. Hoskin.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 15th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the status in the Argentine Republic of Mr. J. S. Grant, born of British parents, but in Argentine territory.

That Mr. J. S. Grant was stated to be the son of a British-born subject, W. B. Grant, deceased, who never divested himself of his British nationality; but that as Mr. J. S. Grant was born on Argentine soil he was an Argentine citizen by Argentine law.

That he had applied, with a view apparently of escaping the provisions of the Argentine law with regard to military service, for a certificate of naturalization as a British subject.

That Sir Thomas Sanderson was to make the following observations with reference to Mr. Grant's case:—

1. That Mr. Grant, being the son of a natural-born British subject, was himself a British subject by English law.

2. That, under those circumstances, it would naturally be quite contrary to the usual practice to issue to him a certificate of British naturalization, and that, moreover, even if an exception were to be made in his favour, it would appear that it would not avail to change his status as an Argentine citizen according to Argentine law, and thus relieve him from military service in the Argentine Republic.

3. That Article IX of the Treaty between Great Britain and the United Provinces of Rio de la Plata of the 2nd February, 1825, provided that the subjects and citizens of the two Contracting Parties should be exempted from all compulsory military service whatsoever, by sea or land, and from all forced loans or military exactions or requisitions. That that Treaty was still in force, but that if Her Majesty's Government were to appeal to it in the present case, the reply would, no doubt, be that though Mr. Grant was a British subject by English law, he was an Argentine citizen by Argentine law, and was therefore not exempted, under the Treaty, from military service in the Argentine army.

4. That the law of this country conferred British nationality on all persons born on British soil, and that although children born in Her Majesty's dominions of alien parents might, under certain circumstances, renounce their British nationality on attaining 21 years of age, it had been held that up to that age the quality of British subject attached to them without possibility of renunciation.

That Sir Thomas Sanderson was also to inclose a correspondence between the Foreign Office and Mrs. Hoskin, relative to the case of her grandson in Uruguay, which was of precisely the same character as that of Mr. Grant in the Argentine Republic.

That it was possible that the difficulty, which in both of those States arose in connection with liability to military service, might be overcome by arrangement on terms of reciprocity between the respective Governments; and that your Lordship was disposed to think that proposals might be made to the two Governments for the conclusion of Conventions or Declarations to the effect that in the Argentine Republic and in Uruguay all persons who by English law were deemed to be British subjects, and in the United Kingdom all persons who by Argentine and Uruguayan law respectively were deemed to be Argentine and Uruguayan citizens, should be exempt from military service.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would inform your Lordship whether, in our opinion, that course might properly be adopted, or whether better means (and, if so, what) existed of meeting the difficulty which had arisen; and that we would also furnish your Lordship with any general observations which we might have to offer on the case.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve making reciprocal arrangement suggested.

That, in our opinion, the best means of meeting the difficulty which has arisen would be the making of the reciprocal arrangement suggested.

It is clear that certificates of naturalization cannot be granted, and that if granted they would not effect the object desired.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Home Office		January 9, 1891.
(B.)	To Home Office		January 12, „
(C.)	To Mr. Pakenham	(No. 1. Treaty)	January 12, „
(D.)	Mr. Pakenham	(No. 3. Treaty)	March 31, „
(E.)	To Home Office		May 1, „
(F.)	Home Office		May 7, „
(G.)	Copy of Treaty		February 2, 1825.
(H.)	Mrs. Hoskin		April 17, 1891.
(I.)	To Mrs. Hoskin		April 18, „
(J.)	Mrs. Hoskin		April 21, „
(K.)	To Mrs. Hoskin		April 24, „
(L.)	Mrs. Hoskin		April 26, „

AUSTRIA-HUNGARY.

No. 12.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received July* 23.)

Royal Courts of Justice, July 22, 1891.

My Lord,

Draft Copyright Convention proposed to be submitted to the Austro-Hungarian Government for negotiation.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us a draft Copyright Convention which it was proposed to submit to the Austro-Hungarian Government for negotiation.

That the aim of the draft Convention was to follow as closely as might be, consistently with the provisions of English law, the form of a Copyright Convention recently concluded between Austria-Hungary and Italy, of which a copy was inclosed.

That the draft Convention had been submitted to, and approved by, the Board of Trade and Colonial Office.

That Sir Thomas Sanderson was to request that we would favour your Lordship with our opinion whether the provisions of the draft Convention were consistent with English law; and whether it was such as might properly be submitted to the Austro-Hungarian Government for negotiation.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve draft Convention.

That, in our opinion, the proposed Convention is consistent with the principles of English law.

We have made some suggestions for the improvement of its drafting.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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List of Papers.

(A.) Draft Convention. (See Confidential No. .)
(B.) Convention between Italy and Austria-Hungary, July 8, 1890.
(In Lord Dufferin's No. 2, Treaty, of January 13, 1891.)

CHILE.

No. 13.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received February* 21.)

Royal Courts of Justice, February 20, 1891.

My Lord

Importation into Chile of arms and munitions of war from this country prohibited by Chilean Government.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to the question of the importation into Chile of arms and munitions of war from this country.

That the Chilean Minister at this Court had, as would be seen from his note inclosed with the papers, notified that his Government had prohibited the introduction into Chile of arms, ammunition, and all sorts of war materials during the revolution now in progress in that country; and that he requested that Her Majesty's Government would bring that prohibition to the notice of the authorities at English ports from which shipments of such war material were likely to be made, and more especially at the ports of Glasgow, Liverpool, and Southampton.

That the inclosed Memorandum by Sir E. Hertslet would doubtless be found of use as affording an indication of the line of action pursued by Her Majesty's Government in former instances when somewhat similar requests had been made, but that it was to be noted that the precedents therein quoted all related to occasions on which two countries had been actually at war with each other.

That those precedents were not, therefore, wholly applicable to the circumstances of the case now under consideration, where there was no question at present of hostilities between two recognized belligerents, but rather of a rebellion by the one party against the constituted authority of the other.

That your Lordship was disposed to think that such a notification as was now requested by the Chilean Government might be desirable both in the interests of British shippers, and also as an act of courtesy to a friendly Power.

That your Lordship would not, however, propose that any such notification should do more than state that an intimation had been received by Her Majesty's Government from the Government of Chile of their decision to prohibit the importation into that country of the articles named.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion as to whether any notification of the nature proposed might properly be published by Her Majesty's Government, and, if so, with what qualifications or explanations we considered it desirable that it should, having regard to the special circumstances of the case, be made.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Notification may properly be inserted in "London Gazette."

That in our opinion a notification may properly be inserted in the "London Gazette," stating that Her Majesty's Government has been informed by the Chilean Government that the importation into Chile of arms, ammunition, and war material of every description is absolutely prohibited *during the continuance of the present civil hostilities in which the Chilean Government is engaged.**

We do not consider it necessary that any further caution or explanation should be given.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Señor Antunez, February 9; Memorandum, February 12, 1891, by Sir E. Hertslet, with three Annexes.

No. 14.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received April* 4.)

Royal Courts of Justice, April 4, 1891.

My Lord,

Chilean insurrection. French Government requested by revolutionary party to stop the departure of three iron-clads built in France for the Chilean Government.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the insurrection now raging in Chile, and more particularly to a request addressed by the President of the Chilean Chambers, who was the Head of the revolutionary party, to the French Government, asking them to stop the departure of three iron-clads built in France for the Chilean Government, and then ready to leave the ports where they were constructed.

That it appeared, from information received from the French Embassy in London, that one of those vessels was coming to an English port for equipment before going to Chile; and that the French Government had asked, confidentially, to be informed of the manner in which a similar request to that made to them by the Head of the Chilean insurrectionary party would by viewed by Her Majesty's Government.

That it would be seen, from the accompanying despatches received from Her Majesty's Minister in Chile, under what circumstances the revolution was brought about, and what was the nature of the declarations issued by the Heads of the rival parties, defining their relative positions.

That, so far as Her Majesty's Government was aware, the status of the revolutionary party in Chile had not been recognized by any of the Great Powers. That it certainly had not been recognized by this country. That hitherto the only steps taken by Her Majesty's Government in regard to the matter had been at the request of the Chilean Government. That, acting on the opinion expressed in our Report of the 20th February last, a notice was inserted in the "London Gazette" on the 23rd February intimating that Her Majesty's Government had been informed by Señor Antúnez, the Chilean Minister in this country, that the importation into Chile of arms, ammunition, and war material of every description was absolutely prohibited during the continuance of the present civil disorders in the Republic.

That a letter was also addressed on the 19th February by the Chilean Consul at Glasgow to Her Majesty's Collector of Customs at that port, relative to instructions he had received from his Government to see that all vessels clearing for Chilean ports should have their manifests viséd by him at his Consulate during the present political troubles in the Republic. That he asked that publicity should be given at the Custom-house to a Notice to that effect, and that he might receive assistance from the Customs authorities at Glasgow to prevent the shipment of any ammunition of war whatsoever to Chile.

That he was informed, in reply, by the Board of Customs in London that the Notice to which he referred should be put up in the Long Room at the Custom-house, but that they could not enable him to inspect the manifest of any ship or the specifications relating to its cargo, and that any information on those points could only be obtained by him on application to the Bill of Entry Office.

Importation of arms and munitions of war into Chile during the revolution prohibited by the Chilean Government.

That Señor Antúnez, the Chilean Representative in London, having been asked whether he had received any instructions from his Government on that point, replied that he had been directed to make it known that the Chilean Government had prohibited the importation of arms and munitions of war into Chile during the revolution, and to exert due diligence in ascertaining that such shipments to Chile did

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* The actual expression used in the notification subsequently published was, however, "during the continuance of the present civil *disorders* in the Republic."

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not take place from the ports under the jurisdiction of the Governments to which he was accredited.

That from the telegrams last received from Her Majesty's Minister at Santiago, and from the Commander of Her Majesty's naval forces on the Pacific Station, it appeared that the Opposition forces had had a considerable success near Iquique, where the Government troops were completely defeated on the 7th ultimo.

That your Lordship had received a telegram purporting to be from the Delegates of the National Congress, and requesting you to prohibit the purchase of arms in this country for President Balmaceda. That your Lordship did not propose to return any reply to that communication.

That the French Ambassador called at the Foreign Office on the 17th ultimo for an answer to the inquiry of his Government in regard to the request from the Head of the insurgent party in Chile, as above described, for the detention of the vessels of war constructed in French ports on behalf of the Chilean Government.

That his Excellency was informed that, in your Lordship's opinion, the answer must necessarily depend on the facts of the case, but that, so far as those facts were known to Her Majesty's Government, it did not appear to them that they or the French Government, as a Government, were aware that the Head of the insurrectionists in Chile possessed any status at all beyond that appertaining to a rebel against the recognized Government of the Republic.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and inform your Lordship whether the circumstances of the case, as explained therein and in the accompanying papers, required that any steps, and, if so, of what nature, should be taken by the authorities in this country in the event of one of the ships destined for the Chilean Government arriving in a British port to receive her equipment, or of a request analogous to that already addressed to the Government of the French Republic by the Head of the insurrectionary party in Chile being made to Her Majesty's Government under present circumstances.

That your Lordship would also be glad to be furnished with any general observations which we might have to offer on the subject.

We were also honoured with a further letter from Sir Thomas Sanderson, dated the 28th ultimo, stating that, with reference to his letter of the 23rd March relative to the question of detention of iron-clads built in France for the Chilean Government, he was directed by your Lordship to transmit to us a letter from Mr. Augosto Matti, a Chilean Senator, and Mr. Augustin Ross, of Valparaiso, asking that a torpedo-boat, offered to Senator Balmaceda, the President of Chile, by Jarrow's building-yard at the Isle of Dogs, might not be allowed to leave for Chile; and that Sir Thomas Sanderson was to request us to favour your Lordship with our opinion as to the course which should be taken with respect to that request in connection with the circumstances already laid before us in his letter of the 23rd ultimo.

We have taken all the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Are of opinion that at present no sufficient ground exists for any action on the part of Her Majesty's Government with respect to ships or ammunition intended for dispatch to Chile.

That in our opinion, at present, no sufficient ground exists for any action on the part of Her Majesty's Government with respect to ships or ammunition intended for dispatch to Chile.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Don Carlos Antúnez		February 9, 1891.
(B.)	Memorandum (Sir E. Hertslet)		February 12, „
(C.)	Law Officers		February 20, „
(D.)	Notification in "London Gazette"		February 23, „
(E.)	Don Carlos Antúnez		March 7, „
(F.)	Mr. J. G. Kennedy	(No. 4)	January 22, „
(G.)	Ditto	(No. 5)	January 22, „
(H.)	Ditto	(No. 6)	January 22, „
(I.)	Ditto	(No. 7)	January 24, „
(K.)	Ditto	(No. 10)	January 29, „
(L.)	Ditto	(No. 8. Telegraphic)	March 14, „
(M.)	Admiralty		March 16, „
(N.)	Mr. Murray (Customs Department)		February 23, „
(O.)	Correspondence respecting International Maritime Law. "North America No. 3 (1862)."		
(P.)	Memorandum on the Recognition of Belligerent Rights between contending Parties.		
(Q.)	Telegram from Delegates of Chilean Congress		March 22, „

No. 15.

The Law Officers of the Crown to the Marquis of Salisbury.

[In reply to the subjoined Memorandum, the Law Officers reported on the 9th April as on next page:—]

Memorandum.

Export duties levied by the Chilean insurgent authorities from the shippers of nitrate at ports in their possession.

THE Chilean insurgent authorities have levied from the shippers of nitrate at ports in their possession export duties on that article.

The Presidential Government have tried to meet this by decreeing that vessels should only receive permission to load nitrate on condition of previous payment of the export duty by the shippers at Valparaiso.

They seem to have been prepared to admit that compensation was due to shippers who had also, under compulsion, paid the duty to the insurgents, but that this compensation was a matter to be subsequently decided by the regular Tribunals.

But they have now adopted a fresh measure. They have declared all ports north of Caldera (being in possession of the insurgents) to be closed to commerce; they hold owners and shippers of nitrate responsible for the export duty, and declare vessels and cargoes, disregarding the closure of the ports, as liable to seizure and confiscation.

At the same time, it seems that the insurgents are threatening with their displeasure and possible seizure any steam-packets who omit to visit their usual ports of call on the northern coast.

The measures for consideration appear to be:—

1. A protest through our Minister against any attempt by the Chilean Government to punish vessels for calling at ports which are in the effective possession of the insurgents, and which the *de jure* Government have no longer the power to close by Decree.

2. An intimation through our Admiral to the insurgents that we will not tolerate any attempt to put compulsion on British vessels to visit ports in insurgent occupation.

3. A protest through our Minister at Santiago against any levy of duties on British subjects on account of nitrate, on which duty has already been paid under compulsion to the insurgents.

4. Advice to British merchants and ship-owners that duties should not be paid to the insurgents except on compulsion and under protest, but that if insisted on, it may then be paid.

And that Her Majesty's Government in such cases will remonstrate against the duty being levied a second time by the Chilean Government.

(Signed) T. H. SANDERSON.

Foreign Office, April 8, 1891.

1891

CHILEAN REVOLUTION.—SHIPPING OF NITRATE.

Memorandum by the Law Officers of the Crown.

As to its being safe for merchants to pay duties to the insurgent authorities.

The question whether it is safe for merchants to pay duties to the insurgent authorities cannot be answered in terms.

Where the insurgent forces are in possession of a port and refuse to allow nitrates to be shipped unless certain dues are paid, the merchants must decide for themselves (making payment—if at all—under protest), and the Chilean Government, if it should re-establish its authority, will not be liable to make compensation.

British vessels pursuing their ordinary course of trading should be protected from molestation either by the Government or the insurgent fleet.

But the Chilean Government has no power to close by Decree ports which are in the actual possession of the insurgent forces, and the right of British vessels to call, or not to call, at such ports as their owners may see fit must be asserted both against the Chilean Government and the insurgents.

Nor can the claim of the Chilean Government that all ships exporting nitrates shall call and pay dues at Valparaiso be admitted.

In our opinion, the measures it is proposed to take are proper and advisable, and instructions should be given to the Admiral to protect British vessels, pursuing their ordinary course of trading, from molestation either by the Government or the insurgent fleet.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Royal Courts of Justice, April 9, 1891.

List of Papers.

Newton and Co.		April 4, 1891.
Admiralty		April 7,
Mr. J. G. Kennedy	(Telegram)	April 5, „
Extract from "Standard"		April 7, „
Pacific Steam Navigation Company	(Telegram)	April 8, „

No. 16.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received April 18.)

Royal Courts of Justice, April 17, 1891.

My Lord,

Seizure of the British vessel "Kilmorey," belonging to Messrs. Kerr, Newton, and Co., when discharging coal at Guayan, by Chilean ships of war in the hands of the party opposed to President Balmaceda.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* relative to the seizure of the British vessel "Kilmorey," belonging to Messrs. Kerr, Newton, and Co., of Glasgow, when discharging coal at Guayan, by Chilean ships of war in the hands of the party opposed to President Balmaceda.

That the position of affairs in Chile since the outbreak of the revolution was explained to us in Sir Thomas Sanderson's letter of the 23rd ultimo.

That the circumstances under which the "Kilmorey" was seized were given in the inclosed letter from Messrs. Kerr, Newton, and Co., and that the action taken by Her Majesty's naval authorities in Chilean waters was contained in the passages marked in the accompanying Report from Admiral Hotham of the 12th February, at pp. 4, 12, and 19.

That your Lordship proposed to reply to Messrs. Kerr, Newton, and Co.'s representations in the terms of the letter of which the draft was inclosed.

That Sir Thomas Sanderson was, however, in the first instance, to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion whether the proposed reply to the owners of the "Kilmorey" was, under the circumstances, fit and proper, and also with any observations which we might have to offer on the case generally.

We were also honoured with a note from Sir Thomas Sanderson, dated the 13th instant, inclosing a despatch from Her Majesty's Minister at Santiago respecting the "Kilmorey" and other British vessels which had been seized or threatened with seizure by the revolted Chilean fleet.

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* To Law Officers, March 23; Messrs. Kerr, Newton, and Co., April 4; Report from Rear-Admiral Hotham, February 12, 1891; and draft to Messrs. Kerr, Newton, and Co.

We have taken the papers into our consideration and, in obedience to your Lordship's commands, have the honour to

Report—

Proposed reply to owners of the "Kilmorey" approved.

That, in our opinion, the proposed reply to the owners of the "Kilmorey" is, in the circumstances, fit and proper.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Draft of Letter from Foreign Office to Messrs. Kerr, Newton, and Co.

Foreign Office, April , 1891.

Gentlemen,

I AM directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 4th instant relative to the seizure of your vessel, the "Kilmorey," by certain Chilean ships of war which have fallen into the hands of the party in opposition to President Balmaceda.

In reply, I am to state that a Report on the state of affairs on the Chilean coast has been received from Admiral Hotham, commanding Her Majesty's naval forces on the Pacific Station, in which he mentions what has occurred with regard to your ship.

It appears that on arriving at Iquique, to which place the "Kilmorey" had been taken by the "Aconcagua," a Chilean transport, under the orders of the "Esmeralda," Admiral Hotham sent for her master, and that an arrangement was made with the Chilean fleet to purchase the cargo of the "Kilmorey" on terms with which he (the master) expressed himself satisfied.

Commodore Montt, who was in command of the insurgent fleet, offered, in satisfaction for the seizure of the English and German colliers "Kilmorey" and "Rajah," by one of the transports belonging to the Chilean insurgent navy:—

1. A salute of twenty-one guns to the English and German flags.
2. A promise of indemnity for any losses or damages which either the ships or the consignees of the cargoes might have sustained in consequence of the seizure.

This offer was accepted by Admiral Hotham, and the unfortunate incident was thereupon treated on both sides as closed.

Lord Salisbury does not, therefore, consider that, for the present at any rate, and until the course of events in Chile becomes more clearly defined, any further action can advantageously or properly be taken by Her Majesty's Government in the matter.

I am, &c.

No. 17.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 6.)

Royal Courts of Justice, May 5, 1891.

My Lord,

Refusal of Chilean Government to grant clearances to ports in the possession of the insurgents.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 2nd instant stating that, with reference to our Memorandum of the 9th ultimo respecting the Decree of President Balmaceda declaring the northern ports of Chile in the possession of the insurgent forces to be closed to trade, he was directed by your Lordship to transmit to us correspondence, as marked in the accompanying list, relative to the refusal of the Chilean Government to grant clearances to those ports.

That it would be seen that the answer which had been returned to complaints on the subject was that Her Majesty's Government did not deny the right of the Chilean Government to refuse facilities to vessels for visiting the ports in question; that that was one of the inconveniences to neutral commerce arising out of the present state of affairs; and that ship-owners must themselves decide what course they should take under the circumstances.

Inquiry of the Ship-owners' Association as to protection of their vessels by H. M.'s Government.

That the Ship-owners' Association now inquired, in their letter of the 30th ultimo, whether vessels leaving the port of Valparaiso without clearances would be protected by Her Majesty's Government from seizure, or other hostile action on the part of the Chilean Government.

That your Lordship apprehended that the answer to that question must be that, while Her Majesty's Government would do what was in their power to protect British vessels engaged in legitimate trade from illegal interference, they could not undertake to shield them from any legal action to which they might be liable, while within Chilean jurisdiction, or upon their return to it, for having sailed with a false clearance, or without clearance at all. But that upon that point your Lordship would be glad to be favoured with our opinion.

Detention of vessels of Messrs. Peter Denniston and Co. As to H. M.'s Government supporting their claim on Chilean Government for compensation.

That, on the other hand, Messrs. Peter Denniston and Co., in their letter dated the 30th April, had stated their intention of conforming to the orders of the Chilean Government, and that they inquired whether Her Majesty's Government would present and support their claim on the Chilean Government for compensation on account of the consequent detention of their vessels.

That attention was drawn to the same question by Mr. Williamson, M.P., in his letter of the 30th ultimo, and that he had personally suggested that the Chilean Government should be called upon to pay daily the expenses which are being incurred by the masters and owners of the vessels detained at Valparaiso.

That in reference to that point Sir Thomas Sanderson was to request our special attention to Article XVII of the Treaty of Commerce between Great Britain and Chile of the 4th October, 1854, which appeared to bear upon the case.

That your Lordship had thought it right, without entering into the legal question, to telegraph to Her Majesty's Minister at Santiago instructing him to warn the Chilean Government of the remonstrances and claims to which their action was giving rise. That a copy of the telegram was inclosed.

That a telegram had been received from Mr. Kennedy (telegram No. 15, 1st May) stating that similar claims were being made at Valparaiso, and asking for instructions. That a copy of this telegram was also inclosed.

That Sir Thomas Sanderson was to request that we would take the papers into our consideration, and favour your Lordship with our opinion—

1. As to the answer to be returned to applications that Her Majesty's Government would protect vessels sailing from the southern ports of Chile to the northern ports in possession of the insurgents, under clearances granted by the Chilean authorities for some other port, or without any clearance at all.

2. As to whether compensation could properly be claimed from the Chilean Government, either under Article XVII of the Treaty of the 4th October, 1854, or otherwise, on account of the detention of vessels which remained in the southern ports of Chile in consequence of their inability to obtain clearances for the ports in the north to which they had been chartered; what answer should be returned to applications to present and support such claims; and what instructions should be sent to Her Majesty's Minister at Santiago on the subject.

That your Lordship would also be glad to be furnished with any general observations which we might have to offer on the case.

We have taken the papers into our consideration and, in obedience to your Lordship's commands, have the honour to

Report—

Approve terms of proposed answer to letter of Ship-owners' Association.

That we approve the terms of the answer which it is proposed to send to the letter of the Ship-owners' Association.

Article XVII of Commercial Treaty of 1854 only applies to vessels detained in ports closed by the Government.

In our opinion, Article XVII of the Treaty of Commerce only applies to vessels detained in the ports which have been closed by the Government, and not to those vessels which are lying in ports still open and which are free to leave but are, for reasons of political necessity, refused clearances to certain other ports of the Chilean territory.

Should any claim be made by ship-owners under this Article it would, if supported by Her Majesty's Government, and admitted by the Chilean Government, have to be dealt with by arbitration, in respect of amount, in the manner provided by the latter part of the Article. Apart from this Article we are of opinion that no ground is shown for a claim against the Chilean Government being made or supported by Her Majesty's Government.

As to dealing with any claim by arbitration.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Law Officers		April 9, 1891.
(B.)	Treaty of Friendship, Commerce, and Navigation between Her Majesty and Chile		October 4, 1854.
(C.)	To Messrs. Doward, Dickson, and Co.		April 11, 1891.
(D.)	Messrs. Thomson, Dickie, and Co.		April 17, "
(E.)	To Messrs. Thomson, Dickie, and Co...		April 18, "
(F.)	Messrs. Thomson, Dickie, and Co.		April 22, "
(G.)	To Messrs. Thomson, Dickie, and Co...		April 25, "
(H.)	Messrs. Peter Denniston and Co.		April 27, "
(J.)	To Messrs. Peter Denniston and Co.		April 29, "
(K.)	Messrs. Peter Denniston and Co.		April 30, "
(L.)	Mr. Williamson, M.P.		April 30, "
(M.)	Ship-owners' Association		April 30, "
(N.)	To Mr. J. G. Kennedy	(No. 13. Telegraphic)	May 1, "
(O.)	Mr. J. G. Kennedy	(No. 15. Telegraphic)	May 1, "

No. 18.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 6.)

Royal Courts of Justice, May 5, 1891.

My Lord,

Refusal of Chilean Government to grant clearances for foreign ports or the high sea to British or German merchantmen unless pledge was given not to call at ports in possession of the insurgents.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of this date, stating that, with reference to his letter of the 2nd instant on the subject of the refusal of the Chilean Government to grant clearances to British vessels for ports in the possession of the insurgents, he was directed by your Lordship to transmit to us a further telegram* from Her Majesty's Minister at Santiago, reporting that the Chilean Government declined to grant clearances for foreign ports or the high sea to British or German merchantmen unless a written pledge was given that they would not call at ports in the possession of the insurgent forces.

That Mr. Kennedy asked whether the Chilean Government had any right to exact such a pledge.

That your Lordship desired to be favoured with our opinion as to the instructions to be sent to Mr. Kennedy in reply.

In obedience to your Lordship's commands we have the honour to

Report—

Chilean Government not entitled to exact any such pledge.

That the Chilean Government is not entitled to exact any such pledge as is mentioned in the telegram from Mr. Kennedy as a condition of granting clearances for foreign ports or the high sea; and that, in our opinion, the Chilean Government should be promptly informed that Her Majesty's Government will require full compensation to be paid for any loss inflicted upon British subjects by the detention of vessels in consequence of such pledge not being given.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 19.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 16.)

Royal Courts of Justice, May 14, 1891.

My Lord,

As to infraction by the Chilean Govt. of the exclusive privileges of the Nitrate Railways Company.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 1st ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relating to questions which had arisen between the Nitrate Railways Company and the Chilean Government, in regard to the infraction, on the part of the latter, of the exclusive privileges which it was alleged were vested in the Company for the construction of railways in the nitrate districts of Tarapacá.

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* Mr. Kennedy, Telegraphic, May 4, 1891.

1891

That your Lordship had already had occasion to consult us on the question, and that two Reports from us dated the 10th February and 28th April of last year, together with the correspondence to which they referred, would be found with the further papers now submitted to us.

That in the month of May last Mr. Kennedy, Her Majesty's Minister at Santiago, was directed to maintain the protest he had previously made on the 13th February against the proposed violation of the Company's rights by the Government of Chile, which had invited tenders for the construction of a railway between Aqua Santa and Caleta Buena, in the Province of Tarapacá.

That he was also told to obtain a legal opinion as to the right of the Council of State to take the matter out of the hands of the ordinary legal Tribunals (see from Mr. Kennedy No. 15 of the 15th February, and to him Nos. 25 and 26 of the 2nd May, 1890).

That the grounds on which the Chilean Government justified their proceedings were given in Señor Mackenna's note to Mr. Kennedy of the 20th March (Inclosure 2 in his despatch No. 23 of the 25th March, 1890).

That in reply to the instructions above referred to, Mr. Kennedy stated that, inasmuch as the Company were engaged in a suit in defence of their privileges before the Supreme Court, and for other political reasons, he concurred with the Company's lawyer and agent in thinking that any direct diplomatic representation should be deferred (see his despatch No. 30 of the 6th May), and that your Lordship acquiesced in that view.

That a copy of the "demanda," or suit, of the Nitrate Railways Company before the Supreme Court would be found in Mr. Kennedy's despatch No. 39 of the 7th May, which also contained observations on the legal and political bearings of the case.

That in the months of April and August 1890 information reached Her Majesty's Government that further Decrees had been issued by that of Chile inviting tenders for the construction of railways in the Province of Tarapacá.

That Mr. Kennedy, however, in a despatch No. 68 of the 17th September, still held the opinion that any further representation to the Chilean Government should be postponed, and that the action of the Supreme Court should not be disturbed. That he also said that the majority of the highest legal authorities in Chile were of opinion that the question at issue between the Company and the Government had been finally settled (whether justly or not was another matter), and that the Government Decree of the 29th January, 1886, declaring the forfeiture of the Company's privileges could not be cancelled (see inclosures in Mr. Budd's letter of the 19th December, 1889).

But that on the 7th September last Mr. Kennedy reported, in his despatch No. 76, that he had decided, after consultation with Mr. Limmick, the Company's agent at Valparaiso, that the time had arrived when it would be desirable to address a note to the Chilean Government stating that Her Majesty's Government maintained the protest recorded in his Memorandum of the 13th February, 1890, and would hold the Chilean Government liable for any damage which the Company might suffer through wrongful action on the part of the Executive, unless it could be shown that the Company had proper and adequate legal remedies open to it for obtaining redress.

That Sir Thomas Sanderson was to call our special attention to the despatches from Mr. Kennedy marked (N), (O), (P), (Q), (R), in which he reported the substance of communications he had had with a late Minister of Public Works and with two of the late Ministers for Foreign Affairs in Chile, with Señor Zeyen, the Legal Adviser, and Mr. Limmick, the agent of the Company, as to the attitude of the Chilean Government towards the claims of the Nitrate Railways Company and the Constitutional power of the Council of State to interfere with their privileges.

That it appeared from a despatch from Mr. Kennedy, No. 1 of the 2nd January, 1891, that he had recently taken the opinion of Señor Martinez, a lawyer of repute as an authority on Chilean Constitutional law, on the question whether the action of the Council of State in taking the matter out of the hands of the ordinary legal Tribunals was in accordance with Chilean Constitutional law, and whether, by the Chilean Constitution, the Council of State had the right of reviewing, and, if they thought fit, overruling the decision of the Supreme Court.

That Señor Martinez's opinion on those points would be found inclosed in Mr. Kennedy's despatch.

That a communication, dated the 24th March, 1891, had now been received from Mr. Budd, on behalf of Colonel North and the Directors of the Nitrate Railways Company, stating that one of the customers of the Railway Company, whose contract was about to expire, had made a contract with the owners of the Aqua Santa Line for the carriage of their produce over that line instead of over that of the Nitrate Railways Company. That the Directors of the Company expressed the hope that Her Majesty's Minister at Santiago might be instructed to make a further strong protest against the continued evasion of their rights.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion whether, having regard to the circumstances mentioned therein and the accompanying correspondence, Mr. Kennedy should be instructed to address any further protest to the Chilean Government, and, if so, in what terms such a remonstrance should be couched.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, Mr. Kennedy should not be instructed to address any further remonstrance to the Chilean Government at the present time.

Are of opinion that no further remonstrance should be addressed to the Chilean Govt. at the present time.

It appears clear that the intervention of the Council of State was justified by the Chilean Constitution, and that further proceedings by the Nitrate Railways Company are now pending before the Tribunals. The final determination as to the propriety of further diplomatic action must be postponed until those proceedings have come to an end.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Law Officers		February	10, 1890.
(B.)	Ditto		April	28, "
	(With correspondence attached to both Reports.)			
(C.)	Mr. J. G. Kennedy	(No. 15)	February	15, "
(D.)	To Mr. J. G. Kennedy	(No. 25)	May	2, "
(E.)	Ditto	(No. 26)	May	2, "
(F.)	Mr. J. G. Kennedy	(No. 23)	March	25, "
(G.)	Ditto	(No. 38)	May	6, "
(H.)	Ditto	(No. 39)	May	7, "
(J.)	Ditto	(No. 35)	April	26, "
(K.)	Mr. Budd	..	August	9, "
(L.)	Mr. J. G. Kennedy	(No. 68)	August	7, "
(M.)	Ditto	(No. 76)	September	7, "
(N.)	Ditto	(No. 24)	March	25, "
(O.)	Ditto	(No. 29)	April	12, "
(P.)	Ditto	(No. 81)	September	25, "
(Q.)	Ditto	(No. 69)	August	28, "
(R.)	Ditto	(No. 77)	September	11, "
(S.)	Ditto	(No. 1)	January	2, 1891.
(T.)	Mr. Budd	..	March	24, "

[Colonial Office.]

No. 20.

The Law Officers of the Crown to Lord Knutsford.

[Transmitted to the Foreign Office by the Colonial Office in their letter of the 28th August, 1891.]

Royal Courts of Justice, August 19, 1891.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 11th instant, stating that he was directed by your Lordship to transmit, for our consideration, a copy of a despatch from the Governor of Queensland, covering copies of a Proclamation which had been issued by his Government at the request of the Consul-General for Chile,* prohibiting the export, during the civil war in Chile, of arms and ammunition to Chilean ports from Queensland, except for the Government of Chile.

Proclamation of Governor of Queensland prohibiting export during civil war in Chile of arms and ammunition to Chilean ports, except for the Govt. of Chile.

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* Governor of Queensland to Colonial Office, No. 66, June 24; Foreign Office, August 7, 1891; "Queensland Customs Act, 1873;" Law Officers, September 1, 1873; Ceylon Customs Ordinance No. 17 of 1869.

1891

That the Secretary of State for Foreign Affairs, to whom a copy of the Proclamation was communicated, had, in the letter of which a copy was inclosed, raised a question as to the legality of the Proclamation, which was issued under the powers conferred on the Governor by section 147 of the Queensland Customs Act of 1873.

L. O. Report No 1* of September 10, 1873.

That a copy of the Report of our predecessors on a similar Proclamation, issued by the Governor of Ceylon in 1873, was also inclosed, with a copy of the Ceylon Customs Act of 1869, under section 95 cf which the Proclamation in question was issued.

That your Lordship would be glad if we would take the papers into our early consideration, and report whether the Proclamation issued by the Government of Queensland was bad in law, as being confined to a particular place.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

The Proclamation is not valid in law.

That, in our opinion, the Proclamation is not valid in law. The powers given by section 147 of the Queensland Act must be exercised without discrimination as to the persons or localities to which the goods, if exported, would be sent. That is a political question, and not one of Customs administration.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 21

Foreign Office to the Solicitor-General.

Dear Sir Edward, *Foreign Office, August* 19, 1891.

Payment of export duties on nitrates to Government and to insurgents.

LORD SALISBURY directs me to consult a legal authority on the inclosed papers; and as Davidson is in Switzerland, and the Attorney-General (who advised on the case before) is in the Orkney Islands, I have recourse to you.

It is about this Chilean insurrection, which was "made to do us harm."

It was decided that, when export dues had been levied by and paid under protest to the insurgent (or Congressional) authorities on cargoes of nitrate loaded in ports in their occupation, a subsequent demand for the same duties by the Presidential or Government authorities at Valparaiso should be contested; but met, if insisted upon, by a bond, leaving the question of principle for subsequent decision.

But, in this case, the circumstances were reversed.

The vessel was lading at Tocopilla, a port in the possession of the insurgents.

A Presidential gun-boat came in, and the insurgent authorities at once ran away.

The gun-boat levied dues on the nitrates, which were in course of being loaded, and then retired.

The insurgent authorities reappeared and also levied the dues.

The Attorney-General considered that the levy of dues by the gun-boat was altogether irregular. We protested at Santiago, and we appear to have obtained a surrender of the dues levied on the nitrates not actually loaded at the time, being about nine-tenths of the total sum.

But the demand of the insurgents for the dues was eventually conceded under protest, and a bill at ninety days given by the agents of the shippers for the amount.

The bill is now about to be presented for acceptance and payment, and the parties ask us what they are to do.

It appears to me that, having given the bill under protest by their agents, they can only now redeem their promise, and accept and pay under protest.

But this is the point on which I am to request your opinion, or, rather, I am to ask you what answer we should give to the inquiry of tho Anglo-Chilean Nitrate and Railway Company on the subject.

Believe me, &c.
(Signed) T. H. SANDERSON.

The Solicitor-General to Foreign Office.—(*Received August* 20.)

Dear Sir Thomas, *Thorncote, Staines, August* 20, 1891.

The Nitrate Company must accept and pay the draft which their agents, with the help of the British Government, induced the Congressional authorities to take in lieu of cash.

THE Nitrate Company must accept and pay the draft which their agents, with the help of the British Government, induced the Congressional authorities to take in lieu of cash. They can, of course, make any protest they please. I gather, from a comparison of the figure stated in Evans' letter of the 22nd June (4,100*l.*) with the amount of the draft now presented for acceptance (3,227*l.*), that the Congressional authorities have allowed for the portion of the dues exacted by the gun-boat and retained by the Government; and, if so, the Company will only have paid the duties to which the goods are liable. However this be, they are bound to honour the draft, and they will only have themselves to blame if their hesitation to do so should involve them in any future difficulties.

I am, &c.
(Signed) EDWARD CLARKE.

No. 22.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received September* 1.)

My Lord, *Royal Courts of Justice, August* 31, 1891.

Orders issued by agents of the Congressional party in Chile for the cessation of all loading of guano at the Island of Lobos Afuera.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 21st instant, stating that he was directed to transmit to us the papers noted in the margin,* relative to orders issued by agents of the Congressional party in Chile for the cessation of all loading of guano at the Island of Lobos Afuera.

That it appeared that the Commander of the war-ship "Esmeralda," under the directions of the Congressional Junta established at Iquique, called at the island which had been temporarily ceded by Peru to the Government of Chile under Article IX of the Treaty of Ancon, dated the 20th October, 1883.

That he then superseded the Governor by an agent of the insurrectionary party, issued the orders above alluded to, and blew up the mole and landing-stage used for facilitating the loading of guano vessels.

That complaints had been received from Messrs. Browne and Watson, owners of the British barque "Ada Browne," that their vessel was compelled to sail before she had completed her full cargo of guano.

That it appeared to your Lordship that the inconvenience caused to the owners of the "Ada Browne" and of other British vessels similarly situated, was due to the existence of a revolution in Chile which the recognized Government of the country had hitherto failed to suppress.

Claims on account of losses sustained by the owners of British shipping.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion whether, under the circumstances, any claim could properly be advanced by Her Majesty's Government against the Provisional Government at Iquique, or eventually against the Government of Chile, for the losses sustained by the owners of British shipping through the above-mentioned acts of the Congressional party, and with any other observations we might have to offer upon the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

H.M.'s Govt. cannot support claims.

That, in our opinion, no claim can properly be advanced in a case of this kind either against the Chilean Government or against the Provisional Government at Iquique.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Mr. J. G. Kennedy No. 27, Telegraphic, July 1; Mr. Jenner, No. 30, June 26, 1891; Article IX of Treaty of Ancon, October 20, 1883; Messrs. Browne and Watson, August 17, 1891.

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No. 23.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received September* 12.)

My Lord, *Royal Courts of Justice, September* 7, 1891.

Conveyance of a consignment of silver specie from Chile by H.M.'s ship "Espiègle."

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 3rd instant, stating that, by your Lordship's direction, he transmitted to us papers, a list of which was inclosed, relating to the conveyance of a consignment of silver specie from Chile by Her Majesty's ship "Espiègle."

That on the 12th ultimo Señor Ross, the Agent in London of the Congressional party in armed opposition to the President of Chile, wrote to the Foreign Office (paper A) stating that a report had reached him that a quantity of silver bullion had been shipped at the instigation of the President on board Her Majesty's ship "Espiègle," and that that bullion was consigned in the first instance to the River Plate *en route* for Europe.

Chilean Law of 1887 relative to bullion guarantee of the national paper currency.

That Señor Ross stated that, by a Chilean Law of the 14th March, 1887, copy and translation of which he inclosed, it was provided that an annual sum of money should be set apart for the purchase of silver dollars or silver bars to be deposited, and kept on deposit, in the Mint at Santiago as a guarantee for the payment of a part of the National Debt issued in the form of national paper currency.

That, according to the information received by Señor Ross, it was the silver bullion thus deposited which President Balmaceda had now taken from the Mint at Santiago and was shipping to Europe for the purpose of selling it and investing the proceeds in munitions of war.

That Señor Ross stated his conviction that Her Majesty's Government could not knowingly be a party to such an attempt on the part of Señor Balmaceda to divert, by the direct intervention of one of Her Majesty's ships of war, this bullion guarantee from the purposes to which it was solemnly dedicated by the Chilean Law of 1887. That Señor Ross trusted that, if the bullion were really on board the "Espiègle," Her Majesty's Government would not allow it to be transhipped at Monte Video or anywhere else, or to be sold, or in any way diverted from the legal and constitutional purpose for which it was destined, especially as the proceeds would be applied to the purchase of munitions of war to be used against one of the contending parties in Chile.

That Señor Ross also stated that the United States' Government had a few months before refused to convey this silver bullion for Señor Balmaceda.

That in two further letters, dated the 17th and 18th ultimo (papers B and D), Señor Ross informed the Foreign Office that the "Espiègle" had arrived at Monte Video on the 15th and had landed 1,000,000 silver dollars.

That a letter was addressed to the Admiralty on the 17th August requesting that inquiry might be made into the truth of these reports.

That on the 20th ultimo the Lords Commissioners communicated to your Lordship (paper F) a telegram received from Monte Video from the commanding officer of Her Majesty's ship "Espiègle," stating that the treasure was shipped by the Chilean Government with the knowledge of the Senior Naval Officer and the approval of the British Minister, was delivered to the Chilean Minister, landed on the 17th ultimo and lodged in the London and River Plate Bank.

That the telegram added that the Chilean Minister stated that the bullion was to be devoted to the purchase of the Italian steamer "Aquila," then at Monte Video.

That on the 28th ultimo, your Lordship inquired of Her Majesty's Minister at Santiago by telegraph to whom the specie belonged, and whether he had authorized its conveyance by Her Majesty's ship "Espiègle. (Paper H.)

That no reply had yet been received from Mr. Kennedy, owing, no doubt, to the serious events which had occurred in Chile in the last few days, and the consequent interruptions of regular communication.

That Sir Thomas Sanderson was, however, to direct our attention to a telegram which appeared in the "Times" of the 2nd September (paper I), purporting to give a circumstantial account of what took place in connection with the conveyance of the bullion, and to an extract of a Report from the Senior Naval Officer on the coast of Chile, dated the 24th July, and just received (paper O), stating that the "Espiègle" had been detained at Coronel, by the telegraphic request of Her Majesty's Minister at Santiago, to ship bullion from the Santiago Government to Monte Video.

That the hostilities in Chile had now resulted in the defeat of President Balmaceda,

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CHILE.

No. 23*.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received November* 7.)

My Lord, *Royal Courts of Justice, November* 5, 1891.

Seizure of the "St. Mary's Bay" outside the 3-mile limit by harbour authorities of Valparaiso.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 8th September last, stating that he was directed by your Lordship to transmit to us a letter from the Admiralty,* detailing the circumstances under which the British barque "St. Mary's Bay" was seized outside the 3-mile territorial limit by the harbour authorities of Valparaiso.

That the Admiralty also inclosed despatches from Captain St. Clair, the Senior Naval Officer on the coast of Chile, detailing his action to obtain the release of the "St. Mary's Bay."

That the Board of Admiralty had been told that your Lordship considered that Captain St. Clair's proceedings, as reported therein, should be approved.

That Sir Thomas Sanderson was to request us to take the papers into our consideration, and favour your Lordship, for future guidance in similar cases, with our opinion as to whether the Chilean authorities were legally justified, under the circumstances, in seizing the "St. Mary's Bay" beyond the 3-mile limit, and also with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Arrest not illegal.

That in arresting and bringing back the barque "St. Mary's Bay" into the port of Valparaiso the Chilean authorities did not, in our opinion, infringe any principle of international law.

A private ship of British nationality is, whilst lying within a foreign port, bound to obey the Regulations of that port, and for an infraction of such Regulations the port authorities may pursue the ship into the open sea, and there arrest her, provided that the pursuit is promptly undertaken whilst the ship is still within territorial waters, or has only just escaped from them.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Admiralty, August 29, 1891.

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CHINA.

No. 24.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received February* 18.)

Royal Courts of Justice, February 16, 1891.

My Lord,

Diplomatic privilege. Sir H. Macartney's case.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 19th ultimo, referring to our Report of the 21st August, 1888 (No. 12, China), and stating that he was directed by your Lordship to transmit to us a letter from the Chinese Minister at this Court, in which he expressed the hope that Sir H. Macartney's name might be replaced on the list annually furnished to the Sheriffs of London and Middlesex under the Statute of VII Anne, cap. 12.

That the circumstances under which the names of the English Secretaries to the Eastern Legations in this country were removed from the list were set forth in the annexed printed copy of our above-mentioned Report.

That in conformity with the opinion expressed by us in that Report, the annexed note was addressed to the Chinese Minister,* informing him that Sir H. Macartney's name could not be replaced on the Sheriffs' list.

That since the date of that note, legal proceedings were commenced by the vestry of St. Marylebone to enforce payment of parish rates in respect of a house in that parish structurally distinct from the Chinese Legation building, and occupied as a private dwelling-house by Sir H. Macartney, who had declined to pay the rates usually chargeable thereon, on the ground that he was entitled to diplomatic privilege in that regard.

That Sir H. Macartney's goods in the house were seized under distraint, and the amount having been subsequently paid by him under protest, an action was brought by him in the Queen's Bench Division of the High Court of Justice to recover the amount so paid.

That the case was heard before Mr. Justice Mathew, sitting without a jury, on the 18th February, 1890, and that on the 24th February the learned Judge delivered a considered Judgment, to the effect that Sir H. Macartney was, under the circumstances, entitled to diplomatic privilege, although he was a British subject, and although his name was not then borne upon the Sheriffs' list.

That the written Judgment, as given in the "Times" of the 25th February, 1890, was annexed, and that the case would also be found reported in the April number of the Law Reports for last year (24 Q. B. D., 368-371).

Should H.M.'s Govt. decline to replace his name on the Sheriffs' list?

That Sir Thomas Sanderson was now to request that we would favour your Lordship with our opinion whether, in view of the decision above alluded to, Sir H. Macartney's name ought to be replaced on the Sheriffs' list, or whether in our view any satisfactory and sufficient reason (and if so what reason) could still be alleged by Her Majesty's Government for declining so to replace it.

That Sir Thomas Sanderson was to add that your Lordship, having regard to all the circumstances of the case, and more especially to the fact that your Lordship's action in another case of a similar kind would probably have to be guided by the course adopted in the present instance, was not desirous of replacing Sir H. Macartney's name upon the list, if Her Majesty's Government could with propriety avoid so doing.

That Sir Thomas Sanderson was also to request that, in advising your Lordship upon that particular point, we would, at the same time, be good enough to add any general observations on the case which we might be desirous of offering for your Lordship's assistance.

We have taken the matter into our consideration, and, in obedience to your your Lordship's commands, have the honour to

Report—

Reply to query.

That, in our opinion, having regard to the decision of Mr. Justice Mathew, and to the fact that the Chinese Minister has been invited to make an official request for the reinstatement of Sir H. Macartney's name upon the list, it is not desirable that Her Majesty's Government should refuse such request.

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* To Lew Ta-jên, September 13, 1888.

We, however, maintain the opinion we expressed in our previous Report, and advise that the concession of this privilege to an English Secretary should be confined to the present case, and that no future appointments should be recognized, except upon conditions which will prevent British subjects from claiming similar diplomatic privileges or immunities.

Should a favourable opportunity arise of reviewing Mr. Justice Mathew's Judgment, we think the question should be again submitted to judicial decision.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Sieh Ta-jên	January 10, 1891.
(B.)	Law Officers' Report (China, No. 12)	August 21, 1888.
(C.)	To Lew Ta-jên	September 13, „
(D.)	Extract from the "Times"	February 25, 1890.
(E.)	Memoranda by Sir H. Bergne and Mr. Davidson	December 19 and 22, 1890.

COSTA RICA.—CENTRAL AMERICA.

No. 25.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received December* 16.)

Royal Courts of Justice, December 15, 1891.

My Lord,

Proposed extension of the episcopal jurisdiction of the Bishop of British Honduras over the regions between British Honduras on the north and the Isthmus of Panamá on the south, Port Limon inclusive being the southern boundary of such extension.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to the proposed extension of the episcopal jurisdiction of the Bishop of British Honduras, which Bishopric was at present vacant.

That it would be seen from Mr. Lee's letter of the 24th July last that it was proposed by the Provincial Synod of the Church of England in the West Indies that the jurisdiction of the Bishop of British Honduras should be extended by a further Order of the Archbishop and Bishop of London over the regions between British Honduras on the north and the Isthmus of Panamá on the south, Port Limon inclusive being the southern boundary of such extension.

That in Mr. Lee's letter of the 3rd November he inclosed a draft of the intended Order providing for such extension of jurisdiction.

That that draft had been approved by the Bishop of Jamaica, who was in England, and who was the superintending Bishop of the Honduras Diocese (*vacante sede*).

That it was proposed to address the Circular of which the draft was inclosed to Her Majesty's Consular officers in the countries which would be included in the new jurisdiction to be exercised by the Bishop of British Honduras in the territories indicated in the first paragraph of Sir T. Sanderson's letter to us.

That the question of the extension of the jurisdiction of the Bishop of Gibraltar was reported on by the Law Officers of the Crown on the 7th October, 1869.

That the Memorandum marked (C) showed what took place when the jurisdiction of the Bishop of Gibraltar was extended over the countries bordering on the Mediterranean in 1869, and later when the British Chaplains in South America were placed under the superintendence of the Bishop of the Falkland Islands in 1874.

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* Mr. Lee, July 24; ditto, November 3; Memorandum by Mr. Streatfeild, July 30, 1891; draft Circular to Her Majesty's Consuls in Central America; Law Officers' Report, October 7, 1869.

1891

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the Order conferring the proposed increase of spiritual jurisdiction on the new Bishop of Honduras, and the Circular to Her Majesty's Consuls in Central America, were such as your Lordship could properly approve their issue, having regard to all the circumstances of the case.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve instructions to H. M.'s Consuls.

That, in our opinion, the proposed Order has no legal validity, and will not confer any authority or jurisdiction whatever.

If, however, the Archbishop of Canterbury and the Bishop of London are desirous of issuing it, we see no reason why Her Majesty should be advised to withhold her approval; and we think that, in the circumstances, the instructions to Her Majesty's Consuls are appropriate.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

EGYPT.

No. 26.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received January 27.)

My Lord, *Royal Courts of Justice, January 26, 1891.*

Case of the Queen *v.* Francesco Gambin, a British subject, convicted of murder of T. Lestan, an Austro-Hungarian subject.

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us a despatch from Sir H. Fawcett, Her Majesty's Consul-General at Constantinople, and Judge of the Supreme Consular Court for the Ottoman dominions,[*] forwarding, in pursuance of the Ottoman Order in Council, 1873, a copy of the Judgment, together with the Minutes and notes of evidence, in the case of the Queen *v.* Francesco Gambin, a British subject.

That the prisoner in question was, as would be seen from the above documents, indicted for the murder on the 8th September last of one Teresina Lestan, an Austro-Hungarian subject, and was on the 19th of the same month tried in Her Britannic Majesty's Chief Consular Court for Egypt, sitting at Alexandria, before Sir Charles Cookson and a jury, and convicted of the full offence with which he was charged.

Ottoman Order in Council, 1873.

That judgment of death was thereupon recorded against him, and that the papers had now been forwarded to the Secretary of State, through the Supreme Court, in accordance with the provisions of section 267 of the Ottoman Order in Council, 1873, for your Lordship's direction respecting the punishment to be actually imposed.

Petition from his mother praying for remission of sentence.

That Sir T. Villiers Lister was also to inclose a Petition from the mother of the prisoner praying for a remission of his sentence,[†] which she had erroneously been given to understand had already been commuted to twenty years' imprisonment.

That your Lordship, as then advised, was disposed to think that the case presented no such circumstances of extenuation as would justify you in directing the imposition of less than the maximum penalty prescribed by the Order in Council, and that your Lordship therefore proposed, in the event of our concurring in the view above expressed, to direct that the actual sentence to be imposed should be twenty years' imprisonment with hard labour.

But that, before taking any action in the matter, your Lordship would be glad to learn whether we agreed in that view; or whether we considered, on the other hand, that the circumstances of the case would be more suitably met by the infliction of any other shorter and, if so, what term of imprisonment.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That we concur in the view that the case presents no such circumstances of extenuation as would justify the infliction of less than the maximum term of imprisonment.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

FRANCE.

No. 27.

The Solicitor-General to Foreign Office.—(Received January 3.)

Dear Sir James, *Royal Courts of Justice, January 2, 1891.*

Postal Convention with France. Memo. on points for which legislation is necessary.

THE Attorney-General and I have further considered the Postal Convention with France, and have put our observations in the form of a Memorandum, which I now inclose, together with other papers relating to the matter.

I am, &c.
(Signed) EDWARD CLARKE.

Inclosure in No. 27.

Memorandum by the Law Officers of the Crown, January 2, 1891.

(Confidential.)

IN consequence of the questions which have arisen respecting this Convention, and the legislation necessary to give effect thereto, we have thought it well to reconsider the matter, and to enumerate the provisions of the Convention which require legislation, and the difficulties which may be raised in Parliament respecting certain of them.

In the following observations, we refer to those Articles only which require legislation in order that they may have effective operation.

Article III. Legislation is necessary in order to enable the postal authorities to compel French ships sailing from ports of the United Kingdom and Ireland to receive and carry letters at the charges named in Article IV.

L. O. Report, December 3, 1890.

Legislation is also necessary if it is considered desirable to take powers to punish in the United Kingdom or Ireland a captain of a ship, British or foreign, who has refused to receive mails in a French port, as suggested by us in our Report of the 3rd December, 1890.

Mr. Jenkyns, in his Memorandum of the 18th December, observes that, assuming that French legislation provides punishment for such refusal, a captain might be punished twice; but it must be remembered that the ship may leave and not return again to the French port. We think it would be better to insert a proviso, that it should be an answer to any proceedings in the United Kingdom or Ireland that the captain had already been fined or punished for the same offence.

Article V. This Article requires legislation. There are, however, several matters arising thereon which require careful consideration.

We assume that the words of the first paragraph are intended to include all detention of the ship by civil process, or for the purpose of execution of civil or criminal process. We agree that the language used is not accurate to embrace all

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[*] Sir H. Fawcett, No. 92, December 3, 1890.

[†] Mrs. Gambin, December 6, 1890.

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such proceedings, but, looking to the succeeding clauses, we think the French would have ground for arguing that the words were intended to have a wide operation.

As framed, the Article does not purport to interfere with arrest without warrant on suspicion of a felony on board a French ship in a port of the United Kingdom or Ireland, nor does it purport to interfere with the execution of a writ of *habeas corpus*. Having regard to the questions which have been raised in connection with French vessels we think that, assuming the Convention to be sanctioned by legislation, the French will contend that the only persons who can be arrested are those for whose arrest a warrant has been issued.

This may raise serious questions as to political offenders and persons suspected of felony, and we do not see how objections upon these matters are to be met if raised in debate.

A further difficulty arises with regard to the two concluding paragraphs of this Article relating to the bond or security. How is it to be enforced or put in suit? What evidence of the existence of the security is to be sufficient to enable the captain to demand release of his ship? It must be remembered that claims in respect of collision are very serious; they often amount to sums far exceeding the statutory limits of 8*l*. and 15*l*. per ton respectively—in many cases, upwards of 50,000*l*.

The ship-owning interest in the House of Commons will certainly require very distinct information as to how the security of the ship is to be replaced, and, in our opinion, very clear provisions must be inserted in the Bill specifying exactly the circumstances under which, and the evidence upon which, the vessel is to be released.

Solicitor-General to Sir James Fergusson, February 5, 1890.

Articles VI, VII. As pointed out by the Solicitor-General in his letter to Sir James Fergusson of the 5th February, 1890, if these Articles are to override local Acts of Parliament respecting harbour Regulations, payment of dues, embarking or disembarking of passengers, they necessitate legislation.

We must further point out that, in the case of Colonies, there probably are local laws in force which must be repealed or varied, in order to give effect to the Convention.

Article X. This Article cannot be carried into effect without legislation. At present, by virtue of 3 & 4 Vict., cap. 96, sections 35 and 36, a captain can carry shipowners' letters, and this is regarded as a very valuable privilege in the case of cargo-carrying ships.

7 Wm. IV; 1 Vict., cap. 33; 1 Vict., cap. 36.

There is a prohibition against inward-bound ships carrying letters other than exempt letters, and the master is bound to collect them (7 Wm. IV, 1 Vict., cap. 33, sec. 2; 1 Vict., cap. 36, sec. 2); but it is doubtful whether this applies to outward-bound ships, and legislation is necessary to make this clear.

If the Postal Acts have not been applied to the Colonies, it is probable that legislation for the Colonies may also be necessary.

If the Article is to have effective operation some penalty must be imposed on passengers or crew declining to give up letters to the captain.

We must further point out that some legislative definition of "letters" will be necessary. Is the word to include parcel post packets and all postal packets, or only packets which go by letter post and post-cards?

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Royal Courts of Justice, January 2, 1891.

Annex.

Articles III, V, VI, VII, and X of the Postal Convention between Her Majesty and the President of the French Republic. Signed at London, August 30, 1890.

ARTICLE III.

The commanders of British and French merchant-ships sailing from the ports of France or Algeria for the United Kingdom of Great Britain and Ireland, on the one part, and the commanders of British and French merchant-ships sailing from the ports of the United Kingdom of Great Britain and Ireland for France or Algeria, on the other part, shall be bound to take charge of the mails which the post-offices at the ports of departure may have to deliver to them.

ARTICLE V.

When the packets employed by the French Postal Administration and by the British Postal Administration are national vessels owned by the State, or vessels belonging to Companies subsidized for the execution of postal service, such packets cannot be diverted from their destination, nor be liable to seizure, embargo, or "Arrêt de Prince."

Passengers on such packets, who may not desire to go on shore during the vessel's stay in a port of either State, cannot be on any account taken from on board.

Nevertheless, the local authorities may claim the expulsion from on board of persons wanted in pursuance of a regular warrant for any crimes or offences who may have taken refuge or embarked in mail-boats, and, in case of necessity, searches may be carried out on board such vessels by the competent authorities. The individuals in question shall then be handed over to them.

It is, however, agreed that the authorities cannot proceed on board unless they have previously given notice, at least one hour before the search, to the Consulate or Vice-Consulate, in order that the Consul or Vice-Consul, or his delegate, may be present at the searches in question. The letter giving notice shall be addressed to the Consul or Vice-Consul, and shall state the exact hour, and if the Agents neglect either to appear in person or to be represented, the proceedings shall go on in their absence.

The execution of such measures shall not delay the departure of the vessel for more than an hour after the time of departure fixed in the time-tables of the Company, which must be duly communicated by the respective Companies to the authorities of each port of call.

The present Article shall not apply to packets intrusted with a mail service and belonging to Companies subsidized by either State until a bond has been entered into, once for all, by the said Companies to satisfy, after due hearing and definitive decision, the legal consequences of any liability incurred either by the captains of their packets or by the Companies themselves.

The aforesaid bond must be guaranteed by a security within the jurisdiction of the Tribunals of the country in which the bond may have been entered into.

ARTICLE VI.

The packets of the two Administrations shall be at liberty to take on board, or land at the port of the two countries at which they touch, whether regularly or accidentally, specie and gold and silver bullion, as well as passengers, of whatever nation they may be, with their wearing apparel or baggage, on condition that the captains of those packets shall submit to the Sanitary, Police, and Customs Regulations of those ports concerning the arrival and departure of travellers and merchandize.

ARTICLE VII.

The packets of the two Administrations may enter and leave the ports of the two States at any hour of the day or night. They may also, if they think proper, without anchoring, embark or disembark the mails and passengers, in the roads or at the entrance of the harbours, so long as they observe the Regulations referred to in the preceding Article.

ARTICLE X.

The captains of the packets engaged in the conveyance of the respective mails of the two Administrations are forbidden to take charge of any letter not included in those mails, with the exception, however, of despatches of their Governments. They must take care that no letters are conveyed illegally by the crews or passengers, and they must give information in the proper quarter of any infringement which may be committed in this respect.

No. 28.

[Colonial Office.]

The Law Officers of the Crown to Lord Knutsford.

[Transmitted in Colonial Office letter of March 9, 1891.]

My Lord, *Royal Courts of Justice, March* 6, 1891.

Lobster factories in Newfoundland.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 23rd ultimo, stating that we should remember that the question of granting compensation to the owners of certain lobster factories in Newfoundland was discussed at a meeting at the Colonial Office which we attended last summer, but that no action was then taken.

That it had since been reported that other factories had been or were being erected, possibly with a view to being closed by Her Majesty's officers, and thereupon being made the subject of a claim for damages; and that Mr. Bramston was directed by your Lordship to transmit, for our consideration, the draft of a despatch which you proposed to address to the Governor of Newfoundland respecting factories begun since the commencement of the *modus vivendi* of last year

That your Lordship would be glad to be favoured with any observations which we might have to offer on the draft, especially as to whether, in paragraph 5, Her Majesty's Government were sufficiently guarded against any admission of present liability, and as to how far the proposed notice would protect Her Majesty's Government against claims for compensation.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to—

Report—

Approve draft despatch to the Governor of Newfoundland.

That, in our opinion, the draft despatch submitted to us may properly be sent to the Governor of Newfoundland. The language of paragraph 5 appears to us sufficiently to guard Her Majesty's Government against an admission of present liability. The proposed notice will not protect Her Majesty's Government against claims for compensation if it should be decided that factories have been closed without legal authority, but we think it desirable that such notice should be given, as its effect will probably be to check the erection of such factories.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Draft of Despatch from Lord Knutsford to Governor Sir T. O'Brien.

Downing Street, February , 1891.

Sir,

I HAVE the honour to acquaint you that it has been brought to the notice of Her Majesty's Government that since the publication of the temporary arrangement entered into with the Government of France last year with respect to lobster factories on that part of the coast of Newfoundland on which the French have certain rights of fishing, several new lobster factories are being erected or are in contemplation.

2. As you are aware, the French Government have always maintained that such factories, being buildings of a more or less permanent character, come within the definition of "fixed settlements," and that they are entitled to call upon Her Majesty's Government to remove them, under the Declaration attached to the Treaty of Versailles 1783.

3. Whether this construction is well founded or not is one of the questions which will shortly have to be decided; and, in the meantime, Her Majesty's Government are undoubtedly bound to prevent British subjects from interrupting the prosecution of the legitimate fishery of the French, and consequently in all Crown grants on that part of the coast a reservation is required of the rights guaranteed to the French by the various Treaties and engagements entered into by the Government of Great Britain.

4. These circumstances are well known in Newfoundland, and Her Majesty's Government cannot admit that they are under any legal liability to pay compensation to the owners of factories which, in pursuance of engagements with the Government of France, they may be called upon to close as interfering with the rights guaranteed to French subjects. Prior, however, to March last, when the temporary arrangement with France was published, there had been, in spite of the frequent complaints of the French Government, practically but little interference with the working of the numerous factories erected and worked by British subjects; and, encouraged by this immunity, many new factories were constructed in 1889 and the earlier part of 1890, the operations of some of which were interfered with under that arrangement, although a large number were allowed to pursue the fishery.

5. The question of the legal right of Her Majesty's Government to give effect to that arrangement is now before the Courts, but some time must necessarily elapse before a final decision can be given.

The Governor of Newfoundland is to give public notice that Her Majesty's Government will not entertain any claims for compensation in respect of factories erected since 12th March,

Her Majesty's Government, therefore, in view of the circumstances mentioned above, though they cannot admit any legal claim to compensation on the part of persons whose factories had to be closed, or who had expended money and entered into contracts, subsequently to the 1st July, 1889, and before the publication of the *modus vivendi*, which that arrangement prevented them from executing, think it desirable that you should appoint a Commission to inquire into all such cases, with the exception of those which form the subject of the legal proceedings referred to, and report for the consideration of Her Majesty's Government what was the actual loss (if any) sustained in each case through the enforcement of the provisions of the *modus vivendi*.

While, however, they are willing to examine into the cases mentioned, it being possible that in some instances persons proposing to erect factories may not have had sufficient notice that such factories were liable to be closed, no such consideration occurs in the case of persons who have erected factories since the 12th March, 1890; and I request that you will give public notice that all persons erecting or having erected lobster factories since that date, will do so, and have done so, at their own risk, and that Her Majesty's Government will not entertain any claims for compensation in respect of such factories if it should be found necessary to close them pending a permanent settlement of the Fishery question.

1890, if it should be found necessary to close them pending a permanent settlement.

I have the less hesitation in desiring you to issue this notice, as from the reports which I have received on the lobster industry it seems clear that the fishery is being exhausted by over fishing, and there is reason to think that factories are being unduly multiplied on the coast.

I have, &c.

No. 29.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 17.)

Royal Courts of Justice, June 16, 1891.

My Lord,

As to interpretation of Article II of the Anglo-French Agreement of 11th March, 1891, respecting Newfoundland Fisheries Arbitration.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to a question which had been raised by the French Ambassador at this Court as to the interpretation of Article II of the Agreement of the 11th March, 1891, between Great Britain and France, for referring to arbitration certain questions connected with the Newfoundland fisheries, and as to the *modus operandi* by which the decisions of the Commission of Arbitration were to be enforced.

That the Agreement above mentioned, after reciting that the Governments of France and Great Britain respectively had resolved to submit the solution of certain difficulties which had arisen on a portion of the coasts of Newfoundland to a Commission of Arbitration, contained a reciprocal engagement on behalf of the two Governments "in so far as each may be concerned to execute the decisions of the Commission of Arbitration" (Article II).

That it was averred by the French Ambassador, on behalf of his Government, that France had a right to look to Her Majesty's Government, and to them alone, for the satisfaction of her Treaty rights on the Newfoundland shore, and that Her Majesty's Government had no right to delegate that duty to any judicial Tribunal.

Objection of French Government to all judicial Tribunals as connected with the case.

That he objected especially to a Colonial Tribunal, on account of the prejudice by which he assumed its proceedings and decisions would be affected, but that generally his objection extended on principle to all judicial Tribunals, whether Colonial or Imperial, on the ground that, according to the modern practice, such Tribunals must be entirely independent of the Executive Government, which could have no influence nor power over their decisions.

That he alleged that if the views of such a Tribunal should be at variance with, and if its decision should consequently derogate from, the Treaty rights of France, Her Majesty's Government could not set aside such decisions when they had been delivered, and would consequently be unable to fulfil their Treaty obligations.

That he argued, therefore, that in proposing to assign the execution of the decisions of the Arbitration Commission to either a Colonial or Imperial judiciary, Her Majesty's Government were surrendering their freedom of action and their power of carrying out their international obligations into the hands of a power over which they have no control; and that he stated that it was impossible for the Government of the French Republic to regard such an arrangement as a satisfactory discharge of the engagement entered into by Great Britain towards France under Article II of the Arbitration Agreement above quoted.

That M. Waddington had pressed the above doctrine with great earnestness upon your Lordship, while the French Foreign Minister had made similar representations to Her Majesty's Ambassador at Paris (see Lord Lytton's No. 192, Confidential, of the 4th June), and that it appeared likely to prove a serious impediment to the further progress of the arbitration.

That it appeared, however, to your Lordship, that the views put forward by the

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French Government had no warrant in international law, and were, moreover, inconsistent with the preliminary declaration of M. Waddington (with which your Lordship found yourself quite in accord), that France had a right to look to Her Majesty's Government, and to them alone, for the satisfaction of her Treaty rights on the Newfoundland shore.

That your Lordship conceived that the one and only right which France had acquired under the Arbitration Agreement was a substantial and honest execution and performance on the part of the Imperial Government of the awards and decisions of the Commission.

That to that engagement Great Britain was, in any circumstances, and under any Government, effectively bound in international obligation to France, and that the latter Power had the fullest right to require from her a due performance of her pledge.

That in a note signed at the same time as the Agreement, your Lordship stated that "Her Britannic Majesty's Government reserves expressly the approval of the British Parliament before the above-mentioned Agreement is put into execution."

Contention of H. M.'s Govt. that France has no right to dictate to Great Britain as to the *modus operandi* for carrying out her engagements.

That that approval had been given by both Houses of Parliament, and that your Lordship had given the French Government full assurances and explanations on that point in your note to M. Waddington of the 1st instant; but that France, having received those assurances, had no right, as it appeared to your Lordship, to investigate the municipal arrangements by which Great Britain proposed to secure the performance of her international duty, nor to dictate to Great Britain the particular *modus operandi* which she must select for the carrying out of her engagements.

That the Arbitration Agreement contained no stipulation whatever with regard to methods or processes to be employed by either Government to ensure the execution of its provisions, and that the inference from that fact, as from the general principles of international law, would equally seem to be that each party was to be left entirely unfettered to choose such means as, in its judgment, were most suitable and effective for the purpose, while the other party retained the right of remonstrance or resistance if those means should, in practice, be found to be inefficacious or illusory.

That Sir Thomas Sanderson was to add that, so far as the Foreign Office was aware, Her Majesty's Government had made no admission either in the various Treaties and Agreements entered into with respect to Newfoundland prior to the Agreement under consideration, and still binding as between Great Britain and France, or in the diplomatic correspondence which had passed between the two Powers, which could be appealed to as modifying in this particular case those general considerations of international law which governed, as between nations, the discharge of their respective Treaty obligations.

That in case, however, of our wishing to consult the principal documents from which the obligations of Great Britain in the matter under consideration were derived, Sir Thomas Sanderson was more particularly to refer us to the following:—

Article XIII of the Treaty of Utrecht, 1713;

Article V of the Treaty of Paris, 1763;

Articles IV and V of the Treaty of Versailles, 1783, together with the Declarations attached thereto (see Hertslet's "Commercial Treaties," vol. i, pp. 237-245); and to—

Article XIII of the Treaty of Paris, 1814 (see Hertslet's "Treaties," vol. i, p. 253).

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the views indicated above as those which your Lordship was disposed to take upon the French contention were sound in international law, as applied to the particular circumstances of the case; or whether we considered that they might advantageously be modified or developed. That in the latter event your Lordship would be obliged for any suggestions or additions, either in the form of a Memorandum or otherwise, as was most convenient to ourselves, with which we might be good enough to favour you.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, we have the honour to

Report—

That, in our opinion, the views expressed by your Lordship, as stated in Sir Thomas Sanderson's letter to us of the 13th June, and in your Lordship's letter to M Waddington of the 1st June, and that to Lord Lytton of the 10th June, are entirely sound in international law as applied to the case before us; and we do not feel it necessary to make any suggestion thereon or addition thereto.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

1.	Agreement between Great Britain and France		March 11, 1891.
2.	M. Waddington		March 11, ,
3.	To ditto		March 11, „
4.	To the Earl of Lytton	(No. 160)	May 27, „
5.	M. Waddington		May 28, „
6.	To ditto		June 1, „
7.	Colonial Office		June 2, „
8.	The Earl of Lytton	(No. 192)	June 4, „
9.	M. Waddington		June 7, „
10.	To the Earl of Lytton	(No. 180)	June 10, „
11.	Ditto	(No. 181)	June 10, „

Annex.

Memorandum by the Lord Chancellor.—(Received June 20.)

Entirely agrees with the L. O. Report.

I HAVE read and entirely agree with the Report of the Law Officers herein. The matter is of the greatest importance as a precedent. It would introduce topics of perpetual disagreement among Powers, the internal constitutions of which varied, and unless the broad proposition is adhered to, that one Power has simply the right to call upon the other Power to fulfil its Treaty engagements, I do not know where the assumed right of dictation or even remonstrance would end.

(Signed) HALSBURY.

House of Lords, June 19, 1891.

No. 30.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 22.)

Royal Courts of Justice, July 20, 1891.

My Lord,

Conditions under which British ships carry pilgrims between Tunis and the Hedjaz.

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us the papers shown in the accompanying list relative to the conditions under which British ships were permitted to carry pilgrims between Tunis and the Mohammedan Holy Places in the Hedjaz. That those conditions were set forth in a Circular to foreign Consuls, copy of which was inclosed in Mr. Consul Drummond Hay's despatch No. 6, Commercial, of the 9th May.

Bearing of F. O. letter of 24th June respecting pilgrims from Algeria.

That, for certain general considerations in regard to the pilgrim traffic, Sir James Fergusson was to refer us to his other letter of the 24th June respecting the carriage of pilgrims from Algeria.

Convention which regulates British commerce.

That the treatment to be accorded to British commerce and navigation in Tunis was regulated by the Convention of the 19th July, 1875, between the Governments of Great Britain and Tunis, a copy of which was inclosed.

Differences between English and French pilgrim vessels.

That the British vessels that carried pilgrims from Tunis were stated to be usually large vessels proceeding to the East, which, on the outward voyage, owing to the lack of bulky outward freights from the United Kingdom, called at many Mediterranean ports for passengers and cargo.

That the French vessels that carried pilgrims were stated to be, on the contrary, small ships chartered *ad hoc*, which proceeded direct from Tunis to the Hedjaz.

Nature of Circular to Foreign Consuls. Is it opposed to Treaty?

That the question arose whether the prohibition (contained in the above-mentioned Circular) to carry pilgrims otherwise than direct to their destination was an infraction of the provisions of the aforesaid Treaty with Tunis. That the only Articles of the Treaty which seemed to have any bearing on the matter were the VIIIth, IXth, and XXXVth. That Article VIII provided that British ships should be free to carry on the coasting trade in Tunis; that it would, therefore, seem that it would not be competent to the Tunisian authorities to prohibit a British ship from taking pilgrims on board at one Tunisian port and then stopping at another Tunisian port either to take more pilgrims on board, or to perform any other operation of commerce or navigation. But that if it were not competent to the Tunisian authorities to prohibit a British ship from taking pilgrims on board at one Tunisian port unless on the condition that the ship should not stop at any other Tunisian port, all the less would it seem to be competent to those authorities, in the absence of any Treaty stipulation permitting such an extraordinary interference with the ship's freedom of navigation, to impose any condition as to the foreign ports at which the ship might, or might not, call; and that, in support of that view, it might also be noted that Article XXXV provided that a British ship arriving in any Tunisian port might not be made to change its destination.

French monopoly practically created.

That it must also be considered whether the different circumstances under which British and French ships respectively competed for the carriage of pilgrims constituted a practical monopoly in favour of French ships, and thus infringed Article IX of the Treaty, which provided against monopolies. That, in that connection, it might be observed that, although from the point of view of international law, Tunis was not an integral part of the dominions of the French Republic, but merely under French protection, yet there could be no doubt that French influence was paramount in the administration of Tunisian affairs, and that the desire to protect the interests of French ship-owners might have prompted the regulation now under consideration. That that was the more probable, as in Algeria the pilgrim traffic had, in so many words, been reserved to the French flag. That that question formed the subject of Sir James Fergusson's other letter of the 24th June.

Treaty, in cases of doubt, to be construed favourably to British subjects.

That it was to be observed that Article XLI of the Treaty stipulated that if any doubt should arise with regard to the interpretation or the application thereof, the interpretation most favourable to British subjects should be given to it in Tunis.

Is obligation to carry pilgrims *direct* to destination opposed to Treaty?

That Sir James Fergusson was to request us to favour your Lordship with our opinion as to whether the obligation to carry the pilgrims direct to their destination constituted an infraction of the above-mentioned, or of any other, Articles of the Treaty between Great Britain and Tunis against which Her Majesty's Government would be justified in protesting, and also with any observations which we might be good enough to offer on the case generally.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Circular is opposed to Treaty, and excludes British vessels from traffic.

That, in our opinion, the Circular is an infraction of the privileges to which British ships are entitled under the Convention of 1875. That Convention is, in case of doubt, to be read in Tunis in the sense most favourable to British subjects. The Tunisian Government is entitled to make regulations as to the carrying of disinfecting apparatus and of competent doctors by ships entering or leaving Tunisian ports and carrying pilgrims, but the requirement that pilgrims shall be carried direct has the effect of excluding British vessels from the trade, and is, in our opinion, a violation of Articles VIII and XXXV of the Convention.

Article IX has no application.

We are of opinion that Article IX has no application to this matter.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

TUNIS.

Mr. Drummond Hay	(No. 6. Commercial)	May 9, 1891.
Ditto	(No. 7. Commercial)	May 14, „
Ditto	(No. 8. Commercial)	May 18, ,
Lloyd's	.. .. ..	June 3, ,
Treaty, Great Britain and Tunis ..	.. .. ..	July 19, 1875

No. 31.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 22.)

My Lord, *Royal Courts of Justice, July 20, 1891.*

Right of British ships to carry pilgrims between Algeria and the Hedjaz.

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us the papers shown on the accompanying list relative to the right of British ships to carry pilgrims between the ports of Algeria and the Mahommedan holy places in the Hedjaz.

That it was presumed that the pilgrim traffic did not differ in nature from any other form of passenger traffic, and that it was to be observed that neither the pilgrim nor the ordinary passenger traffic were specifically mentioned in the Treaties of Commerce and Navigation made by Great Britain with foreign Powers.

That it would seem that the right to ship and carry passengers for hire had been looked upon as an essential part of the rights and privileges of navigation just as much as the right to ship and carry cargo. That, indeed, the passenger traffic had always been one of the principal sources of profit in navigation, and that the shipping of passengers had always been one of the main objects for which ships were chartered, and for which they called at various ports.

Circular of Gov.-Gen. of Algeria.

That the question which formed the subject of the present reference arose on a Circular issued by the Governor-General of Algeria, a translation of which was inclosed in the letter of the 8th May from Lloyd's.

Seems to confine traffic to French shipping.

That the Circular announced that the Mussulmans of Algeria would be permitted to make the pilgrimage, provided they went and returned in French ships, which were bound to carry out certain sanitary provisions. That although the Circular was somewhat loosely worded, and might perhaps be taken as placing restrictions on the Mahommedans of Algeria rather than as imposing a disability on foreign ships, yet the inquiry contained in the latter part of the document, namely, whether the ship-owners to whom it was addressed would be disposed to carry pilgrims on the conditions specified, appeared to show that the real import of the Circular was a prohibition to foreign ships to participate in the pilgrim traffic, and appeared, therefore, to involve a difference of treatment between French and foreign ships in that particular.

Is it a question of "commerce" or "navigation"?

That for the purpose of determining the Treaty rights of Great Britain with regard to the present question, it was, in the first place, necessary to consider whether it was more properly to be classed under the heading of "commerce," or under that of "navigation."

That it was suggested, with regard to that distinction, that *commerce*, within the meaning of Commercial Treaties, was essentially the act of exchanging one thing for another for gain or convenience; that questions might therefore arise in connection with the pilgrim traffic which would be properly matters of commerce; and that, amongst others, the following might be cited as examples of acts of commerce, namely, questions connected with the fare or the form of contract for carrying the pilgrims, and dues levied thereon, the booking or selling of the passage tickets.

That, on the other hand, it was suggested that *navigation*, within the meaning of Treaties of Navigation, was the act of passing a ship from one port to another for gain or convenience; that it would therefore seem that the treatment to be accorded to a ship, or the conditions to be required of a ship, desiring to pass from an Algerian port to the Hedjaz with pilgrim passengers for gain was essentially a matter of navigation, and that, if that were admitted, no matters which could be classed as matters of commerce were raised by the question now under consideration.

Question of sanitary precautions.

That great latitude must, no doubt, be permitted in the interpretation of Treaties where matters of public health were involved; but that it would appear that, although a foreign ship, unlike a French ship, would cease to be under French jurisdiction when beyond French territorial waters, yet that all necessary sanitary precautions could be secured by requiring the fulfilment on board the foreign ship of certain conditions on departure from, or arrival at, a French port by provisions similar, for instance, to those of "The Indian Native Passenger Ships Act, 1887," sections 31 and 38.

That doubtless other analogous provisions might be cited from Imperial Acts regulating the carriage of emigrants and other passengers.

That the Acts did not, however, prohibit foreign ships from engaging in the carriage of any particular class of passengers.

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Treaties regulating British shipping in Algeria.

That the treatment to be accorded to British ships in Algeria was regulated by the Convention of the 28th February, 1882, between Great Britain and France (of which a copy was inclosed), and by that of the 26th January, 1826, the Articles of which, as well as those of the Treaties with other Powers, would be found in the accompanying Return of the various national treatment clauses in Navigation Treaties, either at present or lately in force between Great Britain and foreign Powers.

That national treatment in regard to the passenger traffic was not, as had been stated, specifically mentioned in British Treaties of Commerce and Navigation.

Forms by which national treatment is secured in Treaties.

That there were two principal forms of Article in which national treatment in regard to navigation seemed to be secured.

That a typical example of the one form was Article I of the Treaty of 1862 with Belgium which, as regarded the matters now under consideration, was as follows:—" . . . . the subjects of each of them (the High Contracting Parties) shall throughout the whole extent of the territories and possessions of the other, enjoy the same rights, privileges. liberties, favours, immunities, and exemptions in matters of commerce and navigation, which are or may be enjoyed by native subjects."

That such an Article would certainly seem to preclude the withholding from British ships of the privilege or liberty to ship and carry pilgrims or other passengers from Belgian ports, or to be engaged in any other act of navigation if such privilege or liberty were granted to Belgian ships.

That similar Articles occurred in the Treaties with Colombia (1866), Ecuador (1880), Greece (1886), Italy (1883), Nicaragua (1860), Russia (1859), and others.

That a typical example of the other principal form was Article VII of the Convention with France of 1882, which, as regarded the matters now under consideration, was as follows:—" British ships . . . . shall . . . . in Algeria . . . . be treated in every respect as national ships."

That similar clauses occurred in the Treaties with Austria-Hungary (1868), Germany (1865), Paraguay (1884), Roumania (1880), Uruguay (1885), and others.

That it was to be observed that the two forms of Article did not ever occur in one and the same Treaty; and that, seeing that the importance to Great Britain of securing in all maritime countries national treatment in matters of navigation, including the right to carry passengers, must constantly have been present to the British negotiators of those Treaties, it would seem that the two forms of Article were certainly intended to be, and probably were, in those matters of identic import, and that Article VII of the Treaty with France did secure entire equality of treatment in all matters of navigation, including the passenger traffic.

Does Circular infringe Article VII of Treaty of 1882? If so, may H. M.'s Govt. protest?

That Sir James Fergusson had, therefore, the honour to request us to favour your Lordship with our opinion whether the above-mentioned Circular issued by the Governor-General of Algeria involved an infraction of Article VII of the Treaty of 1882, against which Her Majesty's Government should protest, and whether they would be justified, in view of the terms of that Article, or of any other provision of the Treaties above referred to between Great Britain and France, in demanding that British ships should be permitted to carry pilgrims on the same conditions as French ships.

That Sir James Fergusson had also the honour to request us to favour your Lordship with any observations which we might have to offer on the case generally.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Circular opposed to Articles VII and VIII. H. M.'s Govt. should protest. Regulations which France is entitled to make.

That in our opinion the Circular involves an infraction of Articles VII and VIII of the Treaty of 1882 against which Her Majesty's Government should protest; and Her Majesty's Government would be clearly justified by those Articles in demanding that British ships should be permitted to carry pilgrims on the same conditions as French ships. France is entitled to make Regulations as to the carrying of disinfectors, and of competent doctors, upon ships leaving or entering Algerian ports with pilgrims, but these Regulations must apply equally under the Treaty to French and British vessels.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

ALGERIA.

Lloyd s		May 5, 1891.
Sir L. Playfair	(No. 6. Commercial)	May 6, "
Lloyd's		May 8, "
Sir L. Playfair	(No. 7. Commercial)	May 12, "
Convention, France and Great Britain		February 28, 1882.
" Indian Native Passengers Ships Act, 1887."		
Return: National Treatment Clauses, 1887.		

No. 32.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received August 1.)

My Lord, *Royal Courts of Justice, August* 1, 1891.

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 31st July, stating that he was directed by your Lordship to transmit to us the papers shown in the accompanying list, relative to the proper construction to be placed on certain parts of section 3 of "The Mail Ships Act, 1891."

That we should perceive from the note from the French Embassy that the specific point on which M. Waddington was desirous of receiving your Lordship's assurance was whether his Government were warranted in interpreting sub-section (2) of section 3 of the Act as meaning that the obligation to furnish pecuniary security was only contemplated in default of satisfactory personal security being forthcoming.

That Sir J. Fergusson was accordingly to request that we would be good enough to take the question into our early consideration, and to report whether, in our opinion, your Lordship would be justified in assuring M. Waddington that his interpretation of the section in question was warranted by its words.

In obedience to your Lordship's commands we have the honour to

Report—

"Mail Ships Act, 1891." Construction to be placed on certain parts of section 3.

That we are of opinion that under the terms of paragraph (*a*) of sub-section (2) of section 3 of "The Mail Ships Act, 1891," there must be given, in addition to the bond of the ship-owner and the personal security of the surety, such substantial security as the Court considers adequate.

We think the word "real" in paragraph (*a*) means substantial, as, for instance, the mortgage of a ship or other property.

It is clear that it does not, of necessity, mean the deposit of money or securities, because such deposit is, by paragraph (*b*), made an alternative method of providing security in substitution of that provided by paragraph (*a*).

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

[Section 3 of "Mail Ships Act, 1891."]

Regulation as to giving of security for ships engaged in postal service.

3.—(1.) Where the owner of any ships, British or foreign, applies to the High Court in England, and

(*a*.) Produces a certificate of a Secretary of State that such owner is subsidized for the execution of any postal service within the meaning of a Convention with a foreign State to which this Act applies, by reason of receiving from the foreign State, or from the Government of the United Kingdom or of a British possession, a *bonâ fide* subsidy for the postal service mentioned in the certificate, and

(*b*.) Produces sufficient evidence of the nature of the said service, and the number of, and the prescribed particulars respecting the ships engaged therein, and

(*c*.) Gives notice of the application to the Board of Trade,

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The High Court, after hearing the owner, and the Board of Trade, if they wish to be heard, shall fix the nature and amount of the security which the owner ought to place under the control of the Court for the purposes of this Act as respects the ships engaged in that postal service, and fix the maximum number and tonnage of the ships to which the security is to apply.

(2.) The security shall be the bond of the owner guaranteed either—

(*a.*) By the personal security of a surety, accompanied by an adequate real security given by the surety; or,

(*b.*) By the payment or transfer into Court of cash, or of securities of the Government of the United Kingdom.

(3.) If the owner gives such security to the satisfaction of the High Court, then so long as the security is maintained and is sufficient to the satisfaction of the Court, and the number and tonnage of the ships for the time being actually engaged in carrying mails for the postal service in respect of which the security is given does not exceed the number and tonnage of the ships to which the security applies, the ships actually engaged in carrying mails for the said service shall be deemed to be exempted mail-ships, and be entitled to the exemptions and privileges given by this Act to exempted mail-ships; and the Board of Trade shall give the prescribed notices for informing the arresting authorities that the ships actually engaged in carying the mails for the said postal service are exempted mail-ships.

(4.) Notice of every application respecting any security given in pursuance of this section shall be given to the Board of Trade.

(5.) If at any time it appears to the Board of Trade that a security given as respects ships engaged in any postal service is from any cause (whether pending claims, variation of the conditions of the service, or otherwise) insufficient, the Board of Trade shall apply to the High Court, and that Court, if satisfied of such insufficiency, shall require the security to be made sufficient to the satisfaction of the Court within a reasonable time, and direct that in default the ships engaged in the postal service shall cease to be exempted mail-ships, and that the Board of Trade shall give the prescribed notices for informing the arresting authorities of such cessor.

(6.) The amount and nature of the security may be varied and the whole security may be withdrawn, and the income of the security may be disposed of, by order of the High Court from time to time on such application either of the ship-owners, or of the Board of Trade, or of any person appearing to be interested, and in such manner, and after such notice, and upon such terms and conditions as may be prescribed by Rules of Court, or, so far as the Rules do not extend, as the Court may think just.

(7.) Provided that before the security is actually withdrawn, the High Court shall be satisfied—

(*a.*) That the prescribed notice of the order for withdrawal has been given to the arresting authorities; and

(*b.*) That there is no pending claim for the purposes of which the security may be required;

And upon the prescribed notice of the order for withdrawal being given to an arresting authority, the ships shall, as respects that authority, cease, after the date specified in the notice, to be exempted ships.

(8.) Rules of Court may be made for carrying this section into effect, and in particular for regulating the nature, amount, and value of the security to be given, and the mode of giving security, and of giving notices to the arresting authorities, and for providing for the evidence of the exemption of ships under this section, and for the information to be given from time to time to the High Court respecting the ships to which the security applies, and for the jurisdiction of the High Court under this Act being exercised in Chambers.

List of Papers.

M. Waddington	July 30, 1891.
French Postal Convention	August 30, 1890.
Mail Ships Act, 1891.	

No. 33.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 19.)

My Lord, *Royal Courts of Justice, November* 18, 1891.

Question as to effect, in the event of war, of Article IX of the Postal Convention of 30th August, 1890, between Great Britain and France.

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to a question raised by the Postmaster-General of South Australia as to the effect, in the event of war, of Article IX of the Postal Convention of the 30th August, 1890, between Great Britain and France.

That the communication in which the question was raised would be found inclosed in the letter of the 12th August last from the Post Office.

That your Lordship had caused a draft (which was forwarded to us) of a reply to the Post Office to be prepared in the Foreign Office, and that Sir T. V. Lister was to request that we would take the terms of that draft into our consideration, and would favour your Lordship with our opinion whether (1) they were appropriate to the circumstances of the case; and, if not, (2) in what respects they might be advantageously modified or amended.

Postal Convention of 24th September, 1856, with France. Postal Conventions (with France) of 14th June, 1833; (with U. S. A.), 15th December, 1848.

That Sir T. V. Lister was to add that Article IX of the Convention of 1890 was not new; that it was practically identical in wording with Article XI of the Postal Convention of the 24th September, 1856, with France; and that similar Articles were also contained in the Postal Conventions of the 14th June, 1833, with France and of the 15th December, 1848, with the United States.

That it was believed that no special instructions were ever issued to Her Majesty's naval officers with regard to those Articles, but that inquiry was being made of the Admiralty upon that point.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve draft to P. O., and suggestion as to Article IX.

That, in our opinion, the draft submitted to us is appropriate to the circumstances of the case; but it appears to us that it might be well to point out, as stated in Sir T. V. Lister's letter of the 30th October, that the provisions of Article IX of the Convention are practically identical with those which have been inserted in the Postal Conventions of 1833, 1848, and 1856.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Draft of Letter to Post Office.

Sir, *Foreign Office, November* , 1891.

I AM directed by the Marquis of Salisbury to state to you, for the information of Her Majesty's Postmaster-General, that his Lordship has had under consideration, in consultation with the Law Officers of the Crown, the telegram inclosed in your letter of the 12th August, from the Postmaster-General of South Australia, inquiring what would be the effect of Article X of the Postal Convention between Great Britain and France of the 30th August, 1890. It is assumed, however, from the general purport of the inquiry, that the Article intended to be referred to is Article IX and not Article X.

Lord Salisbury is advised that the point raised in the telegram in question will be settled by the general law of nations and by the provisions of the Declarations of Paris of 1856; and that although the packets referred to in Article IX of the Convention of 1890, would, in the event of war, continue to be protected to the extent provided in that Article, neither troops nor munitions of war would be free from capture by reason of the stipulations of that Article.

I am to suggest that a reply, in the sense of my present letter, should be sent to the Postmaster-General of South Australia.

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It may be added that the provisions of Article IX of the existing Convention are practically identical with those in the Postal Convention of the 24th September, 1856, with France, and that similar Articles were contained in the Postal Conventions of the 14th June, 1833, also with France; and of the 15th December, 1848, with the United States of America.

R. E. W.
E. C.

GENERAL.

No. 34.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received January* 27.)

My Lord, *Royal Courts of Justice, January* 26, 1891.

Renewal of licences to reside abroad to naturalized British subjects. Act of 1844. Mr. H. Meyer's request.

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 1st instant, stating that, with reference to our Report to the Home Department, dated the 5th February, 1890, he was directed by your Lordship to transmit to us the correspondence noted in the accompanying list relative to Mr. Henry Meyer's request for a renewed licence to reside abroad, he having been naturalized in the United Kingdom under the Act of 1844 (7 & 8 Vict., c. 66).

That in accordance with the opinion expressed in our Report above referred to, Regulations were issued by the Foreign Office in March last to the effect that passports unlimited in point of time were thenceforward to be issued to all naturalized British subjects, irrespective of whether their certificates had been granted under the Act of 1844, or under the Act of 1870.

Naturalization Act of 1870.

That we should observe that the annexed correspondence in Mr. Meyer's case terminated with a letter addressed by the Foreign Office to Messrs. Dixon and Co. on the 3rd September last, to the effect that it was no longer necessary that Mr. Meyer's licence to reside abroad should be extended.

That that opinion was expressed in accordance with the view contained in the letter dated the 14th August last from the Home Office.

That that Department had, however, taken the matter into further consideration, and now expressed the opinion of the Secretary of State to be that "in order to maintain the validity of a certificate granted since 1858 under the Act of 1844, a renewal of the original licence to reside abroad is still necessary when an original licence has expired; and that an original licence must still be granted when the holder of such a certificate wishes for the first time to take up a residence abroad." (See Home Office letter of the 22nd December, 1890.)

That under those circumstances your Lordship would be glad if we would take the papers submitted with Sir T. V. Lister's letter into our consideration in connection with our Report of the 5th February last, and would favour you with our opinion on the following points:—

L.O. Report of 5th February, 1890.

Queries.

1. Whether the view expressed by Her Majesty's Secretary of State for the Home Department in the letter from that Department of the 22nd December last, quoted above, was correct.

2. If so, whether we were still of opinion that passports unlimited in point of duration might properly be issued to all naturalized British subjects, irrespective of whether they had been naturalized under the Act of 1844, or under the Act of 1870; and

3. If our opinion should be in the affirmative on both the above points, whether, in order to remove any difficulty which might arise from the possession of a passport unlimited in point of duration by a naturalized British subject, whose licence to reside abroad had expired, it would, in our opinion, be desirable to introduce a Bill into Parliament for the purpose of conferring upon all aliens now living who had been naturalized in the United Kingdom previous to the Act of 1870, the same rights, privileges, and status as were conferred by that Act upon aliens naturalized thereunder.

That your Lordship would also be glad, at the same time, to be favoured with any further general observations which we might be good enough to offer upon the questions raised by the papers.

We have taken the matter into our consideration and, in obedience to your Lordship's commands, have the honour to

Report—

Replies to queries.

1. That without expressing any definite opinion as to the point raised in the letter from the Home Secretary of the 22nd December last, and as to Mr. Meyer's rights under his original certificate of naturalization, we are clearly of opinion that it is not desirable to issue or renew licences to reside abroad, but that in any case in which the question arises, a certificate should be issued under the last paragraph of section 7 of the Act of 1870.

It is not necessary that a naturalized alien to whom such certificate is granted should have the qualification as to previous residence, or service under the Crown, which would be required if he were a non-naturalized alien applying for a certificate under the Act of 1870, but as to residence or service under the Crown, after the date of such certificate the Secretary of State can impose the same terms as in the case of an original applicant.

2. There is no reason for maintaining the distinction between the two classes of naturalized subjects.

3. We see no occasion for legislation.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

[*Note*.—Subsequent to the receipt of the above Report the matter was discussed with the Attorney-General by Mr. Davidson, when the Attorney-General expressed a doubt as to whether the view taken in the last clause of paragraph 1 of the above Report was well founded.]

List of Papers.

(A.) Mr. Meyer	July	24, 1890.
(B.) To Home Office	July	26, „
(C.) Home Office	July	31, „
(D.) To Home Office	August	8, „
(E.) Home Office	August	14, „
(F.) To Mr. Meyer	August	20, ,
(G.) Messrs. Dixon	August	30, „
(H.) To Messrs. Dixon	September	3, „
(I.) Home Office	December	22, „
(J.) Home Office	February	15, 1891

No. 35. [Board of Trade.]

The Law Officers of the Crown to Board of Trade.

[Transmitted to the Foreign Office by the Board of Trade in their Letter of March 12, 1891.]

Opinion.

"Newfoundland Copyright Act, 1890." Construction of.

WE have examined "The Newfoundland Copyright Act, 1890," and, being of opinion that its provisions ought to be construed as confined to works first published in Newfoundland, we think that Her Majesty's assent need not be withheld, but that the Act may be permitted to come into operation.

It should, however, be pointed out to the Newfoundland authorities that, if section 5 should be judicially interpreted to include works other than those first printed and published in Newfoundland, the Act would be inconsistent with the Imperial Statutes, and further legislation would be necessary.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
HENRY SUTTON.

Royal Courts of Justice, March 4, 1891.

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Annex.

Cap. XIX.—*An Act to Amend the Law relating to Copyright.*

[*Passed June* 11, 1890.]

Section.

Short title 1
Expression "legal representatives" 2
Registers shall be kept by Colonial Secretary 3
Any person domiciled in Newfoundland, who is the author of a book, &c., shall have exclusive right of printing, &c., for twenty-eight years 4
Conditions of obtaining copyright 5
Registration 6
Anonymous publications 7
Two copies shall be deposited in Colonial Secretary's Office, and copyright shall be recorded 8
Copies shall be deposited in Legislative Library 9
Not requisite to deliver any copy of second or subsequent edition, unless containing important alterations 10
Insertion of necessary imprint on title-page, &c. 11
Interim copyright 12
Application for registration; how made 13
Right assignable 14
Property of copyright when sold shall be in the vendee 15
When certain exclusive rights shall be continued for a further term of fourteen years.. 16
Renewal of copyright 17
Application to register copyright already registered 18
Publication without consent of author 19
Works becoming out of print, complaint may be lodged with Colonial Secretary .. 20
Fees 21
Nothing herein contained shall prejudice certain rights 22
Clerical errors may be corrected by the Colonial Secretary 23
Copies or extracts 24
The Colonial Secretary may make rules 25
Persons making false entries in Registry Books guilty of misdemeanour 26
Persons fraudulently assuming to act as agents of others guilty of misdemeanour .. 27
Forfeiture for publishing, &c., after copyright is secured.. 28
Forfeiture for reproducing works of art after registration 29
Forfeiture for selling or copying prints, maps, &c., after registration 30
Penalty. Penalties, how recoverable.. 31
No action shall be taken after two years 32
Repealing Section.. 33

Enacting clause.

BE it enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

Short Title.

1. This Act may be cited as "The Copyright Act, 1890."

Expression "legal representatives."

2. The expression "legal representatives" shall include executors, administrators, and assigns, or other legal representatives.

Registers shall be kept by Colonial Secretary.

3. The Colonial Secretary shall cause to be kept in his office books, to be called the "Registers of Copyrights," in which proprietors of literary, scientific, and artistic works or compositions may have the same registered, in accordance with the provisions of this Act.

Any person domiciled in Newfoundland, who is the author of a book, &c., shall have exclusive right of printing, &c., for twenty-eight years.

4. Any person domiciled in Newfoundland, who is the author of any book, map, chart, or musical composition, or of any original painting, drawing, statue, sculpture, or photograph, or who invents, designs, etches, or engraves, or causes to be engraved, etched, or made from his own design any print or engraving, and the legal representatives of such person shall have the sole and exclusive right and liberty of printing, reprinting, publishing, reproducing, and vending such literary, scientific, or artistic works or compositions, in whole or in part, and of allowing translations to be printed or reprinted and sold of such literary works, from one language into other languages, for the term of twenty-eight years from the time of recording the copyright thereof, in the manner hereinbefore directed.

Conditions for obtaining copyright.

5.—(1.) The condition for obtaining such copyright shall be that the said literary, scientific, or artistic works shall be printed and published, or, in the case of works of art, that they shall be produced in this Colony.

(2.) No immoral, licentious, irreligious, treasonable or seditious, literary, scientific, or artistic work shall be the legitimate subject of such registration or copyright.

Registration.

6. Any literary work intended to be published in pamphlet or book form, but which is first published in separate articles in a newspaper or periodical, may be registered under this Act while it is so preliminarily published, if the title of the manuscript and a short analysis of the work are deposited at the Colonial Secretary's Office; and if every separate article so published is preceded by the words "Registered in accordance with the Copyright Act," but the work when published in book or pamphlet form shall be subject also to the other requirements of this Act.

Anonymous publications.

7. If a book is published anonymously, it shall be sufficient to enter it in the name of the first publisher thereof, either on behalf of the unnamed author or on behalf of such first publisher, as the case may be.

Two copies shall be deposited in Colonial Secretary's Office, and copyright shall be recorded.

8. No person shall be entitled to the benefit of this Act unless he has deposited at the Colonial Secretary's Office two copies of such book, map, chart, musical composition, photograph, print, cut, or engraving; and in case of paintings, drawings, statuary, and sculpture, unless he has furnished a written description of such work of art, and the Colonial Secretary shall cause the copyright of the same to be recorded forthwith in a book to be kept for that purpose in the manner adopted by him, or prescribed by the rules and forms made, from time to time, as herein provided.

Copies shall be deposited in Legislative Library.

9. The Colonial Secretary shall cause one of such two copies of such book, map, chart, musical composition, photograph, print, cut, or engraving, to be deposited in the Legislative Library of this Colony.

Not requisite to deliver any copy of second or subsequent book, unless containing important alterations.

10. It shall not be requisite to deliver any printed copy of the second or any subsequent edition of any book unless the same contains very important alterations or additions.

Insertion of necessary imprint on title-page.

11. No person shall be entitled to the benefit of this Act unless he gives information of the copyright being secured, by causing to be inserted in the several copies of every edition published during the term secured, on the title-page or on the page immediately following, if it is a book, or if it is a map, chart, musical composition, print, cut, engraving, or photograph, by causing to be impressed on the face thereof, or if it is a volume of maps, charts, music, engravings, or photographs, upon the title-page or frontispiece thereof, the following words, that is to say: "Entered according to the Act of the Legislature of Newfoundland, in the year , by , at the Colonial Secretary's Office;" but as regards paintings, drawings, statuary, and sculptures, the signature of the artist shall be deemed a sufficient notice of such proprietorship.

Interim copyright.

12. The author of any literary, scientific, or artistic work, or his legal representatives, may, pending the publication, obtain an interim copyright therefor, by depositing in the Colonial Secretary's Office a copy of the title or designation of such work intended for publication, which title or designation shall be registered in an interim copyright register at the said Department, to secure to such author aforesaid, or his legal representative, the exclusive rights recognized by this Act, previous to publication.

Application for registration; how made.

13. The application for the registration of an interim copyright, a temporary copyright, and of a copyright, may be made in the name of the author or of his legal representatives, by any person purporting to be the agent of such author or legal representatives; and any damage caused by a fraudulent or an erroneous assumption of such authority shall be recoverable in any Court of competent jurisdiction.

Right assignable.

14.—(1.) The right of an author of a literary, scientific, or artistic work to obtain a copyright, and the copyright when obtained, shall be assignable in law, either as to the whole interest or any part thereof, by any instrument in writing, made in duplicate, and which shall be registered at the Colonial Secretary's Office on production of both duplicates and the payment of the fee hereinafter mentioned.

(2.) One of the duplicates shall be retained at the Colonial Secretary's Office, and the other shall be returned with a certificate of registration to the party depositing it.

Property of copyright when sold shall be in the vendee.

15. Whenever the author of a literary, scientific, or artistic work or composition which may be the subject of a copyright has executed the same for another person, or has sold the same to another person for due consideration, such author shall not be entitled to obtain or retain the proprietorship of such copyright, which is by the said transaction virtually transferred to the purchaser, and such purchaser may avail himself of such privilege unless a reserve of the privileges is specially made by the author or artist in a deed duly executed.

When certain exclusive rights shall be continued for a further term of fourteen years.

16. If at the expiration of the said term of twenty-eight years the author or any of the authors (when the work has been originally composed or made by more than one person) is still living, or if such author is dead and has left a widow or a child or children living, the same sole and exclusive right and liberty shall be continued to such author or to such authors still living, or, if dead, then to such widow and child

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or children, as the case may be, for a further term of fourteen years; but in such case within one year after the expiration of such term of twenty-eight years, the title of the work secured shall be a second time registered, and all other regulations herein required to be observed in regard to original copyrights shall be complied with in respect to such renewed copyright.

Renewal of copyright.

17. In all cases of renewal of copyright under this Act, the author or proprietor shall, within two months from the date of renewal, cause notice of such registration thereof to be published once in the "Royal Gazette."

Application to register copyright already registered.

18.—(1.) In case of any person making an application to register as his own the copyright of a literary, scientific, or artistic work already registered in the name of another person, or in case of simultaneous conflicting applications, or of an application made by any other person other than the person entered as proprietor of a registered copyright to cancel the said copyright, the person so applying shall be notified by the Colonial Secretary that the question is one for the decision of a Court of competent jurisdiction, and no further proceedings shall be had or taken by the Colonial Secretary concerning the application until a judgment is produced maintaining, cancelling, or otherwise deciding the matter.

(2.) Such registration, cancellation, or adjustment of the said rights shall then be made by the Colonial Secretary in accordance with such decision.

Publication without consent of author.

19. Every person who, without the consent of the author or lawful proprietor thereof first obtained, prints, or publishes, or causes to be printed or published, any manuscript not previously printed in Newfoundland or elsewhere, shall be liable to the author or proprietor for all damages occasioned by such publication, and the same shall be recoverable in any Court of competent jurisdiction.

Works becoming out of print, complaint may be lodged with Colonial Secretary.

20. If a work copyrighted in Newfoundland becomes out of print, a complaint may be lodged by any person with the Colonial Secretary, who, on the fact being ascertained to his satisfaction, shall notify the owner of the copyright of the complaint and of the fact; and if within a reasonable time no remedy is applied by such owner, the Colonial Secretary may grant a licence to any person to publish a new edition, specifying the number of copies and the royalty to be paid on each to the owner of the copyright.

Fees.

21. The following fees shall be paid to the Colonial Secretary before an application for any of the purposes herein mentioned is received, that is to say:—

	Dol.	c.
On registering a copyright	1	00
On registering an *interim* copyright	0	50
On registering a temporary copyright	0	50
On registering an assignment	1	00
For certified copy of registration	0	50
On registering any decision of a Court of Justice, for every folio	0	50

For office copies of documents, not above mentioned, the following charges shall be made:—

	Dol.	c.
For every single or first folio, certified copy	0	50
For every subsequent hundred words (fractions under and not exceeding fifty not being counted, and over fifty being counted for one hundred)	0	25

(2.) The said fees shall be in full for all services performed under this Act by the Colonial Secretary, or by any person employed by him under this Act.

(3.) No person shall be exempt from the payment of any fee or charge payable in respect of any services performed under this Act for such person, and no fee paid shall be returned to the person who paid it.

Nothing herein contained shall prejudice certain rights.

22. Nothing herein contained shall prejudice the right of any person to represent any scene or object, notwithstanding there may be copyright in some other representations of such scene or object.

Clerical errors may be corrected by the Colonial Secretary.

23. Clerical errors which occur in the framing or copying of any instrument drawn by any officer or employé in or of the Department shall not be construed as invalidating such instrument; but when discovered they may be corrected under the authority of the Colonial Secretary.

Copies or extracts.

24. All copies or extracts, certified from the Colonial Secretary's Office, shall be received in evidence without further proof, and without production of the originals.

The Colonial Secretary may make rules.

25. The Colonial Secretary may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms as appear to him necessary and expedient for the purposes of this Act; and such regulations and forms circulated in print for the use of the public shall be deemed to be correct for the purposes of this Act; and all documents executed and accepted by the Colonial Secretary shall be held valid, so far as relates to all official proceedings under this Act.

Persons making false entries in registry books guilty of misdemeanour.

26. Every person who wilfully makes, or causes to be made, any false entry in any of the registry books of the Colonial Secretary hereinbefore mentioned, or who wilfully produces, or causes to be tendered in evidence, any paper which falsely purports to be a copy of an entry in any of the said books, shall be guilty of a misdemeanour, and shall be punished accordingly.

Persons fraudulently assuming to act as agents of others guilty of misdemeanour.

27. Every person who fraudulently assumes authority to act as agent of the author, or of his legal representative, for the registration of an interim copyright, a temporary copyright, or a copyright, shall be guily of a misdemeanour, and shall be punished accordingly.

Forfeiture for publishing, &c., after copyright is secured.

28. Every person who, after the copyright of any book is secured according to this Act, and during the term or terms of its duration, prints, publishes, or reprints, or republishes, or causes to be so printed or published, any copy or any translation of such book, without the consent of the person lawfully entitled to the copyright thereof, first had and obtained by assignment, or who, knowing the same to be so printed, publishes, sells, or exposes for sale, or causes to be published, sold, or exposed for sale, any copy of such book without such consent, shall forfeit every copy of such book to the person then lawfully entitled to the copyright thereof; and shall forfeit and pay for every such copy which is found in his possession, either being printed or reprinted, published, or exposed for sale contrary to the provisions of this Act, such sum not exceeding 1 dollar, and not less than 10 cents, as the Court may determine, which forfeiture shall be recoverable in any Court of competent jurisdiction, and a moiety of such sum shall go to the Receiver-General for the use of the Colony, and the other moiety shall belong to the lawful owner of such copyright.

Forfeiture for reproducing works of art after registration.

29. Every person who, after the registering of any painting, drawing, statue, or other work of art, and within the term or terms limited by this Act, reproduces in any manner, or causes to be reproduced, made, or sold, in whole or in part, any copy of any such work of art without the consent of the proprietor, shall forfeit the plate or plates on which such reproduction has been made, and every sheet thereof so reproduced, to the proprietor of the copyright thereof; and shall also forfeit for every sheet of such reproduction, published or exposed for sale contrary to this Act, such sum not exceeding 1 dollar nor less than 10 cents, as the Court determines, which forfeiture shall be recoverable in any Court of competent jurisdiction, and a moiety of such sum shall go to the Receiver-General for the use of the Colony, and the other moiety shall belong to the lawful owner of such copyright.

Forfeiture for selling or copying prints, maps, &c., after registration.

30. Every person who, after the registering of any print, cut or engraving, map, chart, musical composition, or photograph, according to the provisions of this Act, and within the term or terms limited by this Act, engraves, etches or works, sells or copies, or causes to be engraved, etched or copied, made or sold, either as a whole or by varying, adding to or diminishing the main design with intent to evade the law, or who prints or reprints, or causes to be so printed or reprinted, any such map, chart, musical composition, print, cut or engraving, or any part thereof, without the consent of the proprietor of the copyright thereof first obtained as aforesaid, or who, knowing the same to be so reprinted or printed without such consent, publishes, sells, or exposes for sale, or in any manner disposes of any such map, chart, musical composition, engraving, cut, photograph, or print, without such consent as aforesaid, shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, photograph, or print has been copied, and also every sheet thereof so copied or printed as aforesaid, to the proprietor of the copyright thereof; and shall also forfeit for every sheet of such map, chart, musical composition, print, cut, or engraving found in his possession, printed or published, or exposed for sale contrary to this Act, such sum, not exceeding 1 dollar nor less than 10 cents, as the Court determines, which forfeiture shall be recoverable in any Court of competent jurisdiction, and a moiety of such sum shall go to the Receiver-General for the use of the Colony, and the other moiety shall belong to the lawful owner of such copyright.

Penalty.

31.—(1.) Every person who has not lawfully acquired the copyright of a literary, scientific, or artistic work, and who inserts in any copy thereof, printed, produced, reproduced, or imported, or who impresses on any such copy that the same has been entered according to this Act, or words purporting to assert the existence of a Newfoundland copyright in relation thereto, shall incur a penalty not exceeding 100 dollars.

Penalties; how recoverable.

(2.) Every penalty incurred under this section shall be recoverable in any Court of competent jurisdiction, and a moiety thereof shall go to the Receiver-General for the use of the Colony, and the other moiety shall belong to the person who sues for the same.

No action shall be taken after two years.

32. No action or prosecution for the recovery of any penalty under this Act shall be commenced more than two years after the cause of action arises.

Repealing section.

33. The Act passed in the fifty-first year of the reign of Her present Majesty, chapter 20, entitled "An Act respecting Copyright," is hereby repealed.

No. 36.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 6.)

My Lord, *Royal Courts of Justice, March* 5, 1891.

Telegraphic communication between India and this country during time of war.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list in connection more particularly with the question, which Her Majesty's Government had now under consideration, of maintaining during time of war telegraphic communication between India and this country.

Convention of 1884 for protection of submarine telegraph cables.

That in the year 1884 a Convention for the protection of submarine telegraph cables was concluded at Paris.

That almost all the Powers of the world, including Great Britain, were parties to that Convention.

That it applied outside territorial waters to all legally established submarine cables landed on the territories, Colonies, or possessions of one or more of the High Contracting Parties (Article I), and that it made it a punishable offence to break or injure a submarine cable wilfully or by culpable negligence, in such manner as might interrupt or obstruct telegraphic communication either wholly or partially (Article II).

That the Tribunals competent to take cognizance of infractions of the Convention were declared to be those of the country or State to which the vessel, on board of which the offence was committed, belonged (Article VIII); and that prosecutions for infractions of the Convention were to be instituted by such State or in its name (Article IX).

That Commanders of vessels of war, if they had reason to believe that an infraction of the measures provided for in the Convention had been committed by a vessel other than a vessel of war, might demand proof of the nationality of the offending vessel, and that, whatever her nationality, they might place the facts on formal record for use before the competent Tribunal (Article X).

That Article XVI of the Convention stipulated that the Convention should remain in force for five years from a date to be agreed upon (which was actually fixed as the 1st May, 1888); that unless any of the High Contracting Parties should have announced, twelve months before the expiration of the said period of five years (which would expire on the 1st May, 1893), its intention to terminate its operation, it should continue in force for a further period of one year, and so on from year to year.

That it was also provided that if one of the Signatory Powers denounced the Convention, such denunciation should have effect only as regarded that Power.

That Article XV said:—

"It is understood that the stipulations of the present Convention do not in any way restrict the freedom of action of belligerents."

That the Act of Parliament (1885) (48 & 49 Vict., cap. 49), which, in so far as English Municipal law was concerned, confirmed and gave statutory effect to the provisions of the International Convention, contained a provision (section 13) that it should come into force on such day as might be fixed by a Notice in that behalf published in the "London Gazette;" and that such Notice duly appeared in the "Gazette" on the 1st May, 1888.

That Sir Philip Currie was to inclose a copy of that Act, to which a translation of the Convention was attached as a Schedule.

That it was enacted under section 3 of the Statute that any one who acted, or attempted to act, in contravention of Article II of the Convention—breaking or injuring of cables so as to interrupt or obstruct communication—should be guilty of a misdemeanour, and on conviction, "(*a*) if he acted wilfully, shall be liable to penal servitude for a term not exceeding five years, or to imprisonment with or without hard labour for a term not exceeding two years, and to a fine, either in lieu of, or in addition to, such penal servitude or imprisonment;" and

"(*b*.) If he acted by culpable negligence, shall be liable to imprisonment for a term not exceeding three months, without hard labour, and to a fine not exceeding 100*l*. either in lieu of, or in addition to, such imprisonment."

That section 3, paragraph 5, said: "Any person who within or (being a subject of Her Majesty) without Her Majesty's dominions, in any manner procures, counsels, aids, abets, or is accessory to the commission of any offence under this section, shall be guilty of a misdemeanour, and shall be liable to be tried and punished for the offence as if he had been guilty as a principal."

That in the case of any offence against the Act committed by a vessel or boat belonging to a vessel, the master—until some other person were shown to have been in charge—would be deemed to have been so in charge, and would be liable to the punishments prescribed by the Act, section 9.

That the Courts to try cases under the Act were the Superior Courts in the United Kingdom (which had jurisdiction to try the case wherever the offence might have occurred), or the Supreme Court in India, or a Court exercising in a British possession the like authority as the High Court of Justice in England (section 6, paragraph 5); and that the Act extended to the whole of Her Majesty's dominions, and to all places within the jurisdiction of the Admiral of England, and to all places where Her Majesty had jurisdiction (section 2).

That finally the Act provided that "if the Convention ceases to be binding on Her Majesty [this Act] shall cease to be of any effect."

That Her Majesty's Government had information that in 1885, when war appeared probable between Great Britain and Russia, arrangements were entered into between the Russian Government and certain persons in this country—not British subjects—to engage vessels for the special purpose of cutting the submarine telegraph cables connecting England with her Colonies and possessions so soon as war should be declared.

That Sir Philip Currie was to request that we would favour your Lordship with our opinion on the following points:—

1. Whether, if this country became a belligerent without denunciation by Her Majesty of the International Convention, and without any infraction of its provisions by this country, it could be held "to cease to be binding on Her Majesty" within the meaning of the Act (section 13) so as to relieve private individuals from the penalties provided under the Act.

2. If this country were at war, to what punishments or penalties (if any) in respect of injuries done by them to submarine cables, would the following classes of persons be liable, either at common law or under the provisions of any other Act (see section 10 of the Act of 1885):—

(*a*.) Neutral foreigners on British vessels on the high seas.

(*b*.) British subjects on foreign vessels on the high seas.

(*c*.) British subjects on foreign, neutral, or other vessels within British territorial waters.

(*d*.) Neutral foreigners on foreign vessels within British territorial waters.

We have taken the matter into our consideration and, in obedience to your Lordship's commands, have the honour to

Report—

Breaking out of war without denunciation of the Convention would not interfere with Act of 1885.

1. That in our opinion the mere breaking out of war, without any denunciation of the Convention by this country, would not interfere with the operation of the Act of 1885.

In the event of the Convention being denounced

2. In the event of this country being at war, and the Act remaining in force, all four classes of persons mentioned in paragraphs (*a*), (*b*), (*c*), (*d*), would be subject to, and punishable under the Act. British subjects would also be liable to be punished for treason and, in the event of the Convention being denounced and the Act thereby ceasing to have effect, any persons of any nationality, within the dominions of

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any persons of any nationality within the dominions of the Queen might be punished under Act 24 & 25 Vict., cap. 97, section 37.*

the Queen (which includes persons on board a vessel sailing under the British flag), might be convicted and punished under the Act 24 & 25 Vict., cap. 97, section 37.*

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Memorandum by Mr. Bertie	February 18, 1891.
"Submarine Telegraph Act, 1885."	

No. 37.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 25.)

My Lord, *Royal Courts of Justice, March* 21, 1891.

Extent of privilege attaching to papers laid before Parliament by command of H. M.

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the general question of the extent of privilege attaching to papers laid before Parliament by command of Her Majesty.

Salonica Trade Report. Statements respecting "white shirtings" exported from Manchester to Turkey.

That, in the first place, Sir James Fergusson was to invite our attention to the paper marked (A), which was the Annual Trade Report of Her Majesty's Consul-General at Salonica, printed as it was first received at the Foreign Office, and on pp. 5 and 11 of which would be found certain observations and statements respecting goods known as "white shirtings" exported from Manchester to Turkey, and folded in such a manner as to induce incautious persons to purchase them, in the belief that they actually contained 40 and 42 yards of material respectively, whereas upon measurement each sample was found to be short of that quantity by a few yards, viz., 2 yards in the sample marked "Formosa," and 5 yards in that marked "Oriental."

That it had been thought desirable to eliminate certain portions of that Report before publication, and that a comparison of the paper (A) with pp. 4 and 10 of the paper marked (B) would indicate the amendments which had been effected in the Foreign Office with a view to avoid giving unnecessary offence, or the possibility of affording grounds for litigation on the part of the firm, or firms, concerned.

That it was usually the practice of the Foreign Office to communicate Reports which touched on the question of the cotton industry to the Manchester Chamber of Commerce, and that following that principle your Lordship had had prepared a letter to that body, forwarding the paper marked (B), and calling their attention to the observations contained therein on the subject of the short length pieces of cotton goods; that with regard, however, to the specimens which were referred to on p. 11, and which were forwarded to us, the letter stated that they were retained at the Foreign Office.

That it was possible, however, that the Manchester Chamber of Commerce might express a wish either that those samples might be transmitted to them, or that their representative might be permitted to inspect them at the Foreign Office. That, in view of that contingency, your Lordship would be glad to be fortified with our opinion as to whether such a request might properly, under the circumstances, be complied

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* "37. Whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure, or remove any battery, machinery, wire, cable, post, or other matter or thing whatsoever, being part of, or being used or employed in or about any electric or magnetic telegraph, or in the working thereof, or shall unlawfully and maliciously prevent or obstruct in any manner whatsoever the sending, conveyance, or delivery of any communication by any such telegraph, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years with or without hard labour; provided that if it shall appear to any Justice, on the examination of any person charged with any offence against this section that it is not expedient to the ends of justice that the same should be prosecuted by indictment, the Justice may proceed summarily to hear and determine the same, and the offender shall, on conviction thereof, at the discretion of the Justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money, not exceeding 10*l.*, as to the Justice shall seem meet.

["38. Whosoever shall unlawfully and maliciously, by any overt act, attempt to commit any of the offences in the last preceding section mentioned, shall, on conviction thereof before a Justice of the Peace, at the discretion of the Justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money, not exceeding 10*l.*, as to the Justice shall seem meet."]

with, notwithstanding the fact that the trade-mark stamped on the samples would doubtless enable the Chamber of Commerce to identify the firm which it was alleged was addicted to the practices complained of.

That your Lordship would at the same time be glad to be favoured with any observations we might think well to offer on the general question of the extent of privilege attaching to "Command Papers" as distinguished from those which, being ordered by Parliament to be printed, were entitled to absolute privilege under the Act 3 & 4 Vict., cap. 9.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Chamber of Commerce should be allowed to inspect the samples at the F. O.

That we see no objection to the proposed communication to the Manchester Chamber of Commerce, and are of opinion that the representative of that Chamber should be allowed to inspect the samples at the Foreign Office upon a request for such inspection being made by the Chamber.

Command papers have not absolute privilege.

Papers published by command have not the absolute privilege which attaches to those published by direction of the Houses of Parliament, and we think it would be well that Parliamentary authority should be more habitually obtained for the publication of documents which may raise questions of this nature. We do not, however, in the present instance, see any danger of legal proceedings being taken either against the Consul-General, or against publishers of the Consular Report in this country.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Act 3 & 4 Vict., cap. 9.	
Law Officers	June 20, 1877.
Mr. Davidson (Memorandum)	December 14, 1887.
Salonica Report, original, marked (A).	
" " as published, marked (B).	

No. 38.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 17.)

My Lord, *Royal Courts of Justice, July* 15, 1891.

Bill to alter Extradition Act, 1870, so as to permit prisoner to be surrendered before he has completed term of detention.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 12th May last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to a Bill which it was proposed to introduce into Parliament for the purpose of amending section 3 (4) and section 11 of the Extradition Act of 1870.

That in December of last year the Belgian Minister at this Court inquired whether an extradition prisoner might, at his own request, be surrendered before the expiration of the period of fifteen days, mentioned in Article II of the Anglo-Belgian Treaty of the 21st June, 1876, and in section 3 (4) of "The Extradition Act, 1870," which was in the following words:—

"Section 3 (4). A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender."

That a correspondence thereupon ensued between the Foreign Office and the Home Office, in the course of which it was pointed out that an opinion which was given on the subject in 1888 by the present Law Officers of the Crown was in direct conflict with the view previously expressed in 1885 by Her Majesty's then Law Officers; but that, although the proper interpretation to be given to the Statute might thus be considered to be doubtful, it was very desirable in practice that a prisoner, who had expressed a desire to that effect, might under certain circumstances be surrendered without remaining in custody in this country during the whole of the said period of fifteen days after committal.

That the Belgian Minister was therefore informed, on the 16th February last, that in practice the law had hitherto been administered in the sense most favourable to the prisoner, who had accordingly been surrendered before the expiration of the

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period of fifteen days whenever he had expressed a wish to that effect; and that, in the absence of any legal decision in a contrary sense, Her Majesty's Government were prepared for the present to continue that practice.

That the Lords Commissioners of the Treasury were also requested, on the same day, to instruct the Parliamentary Counsel to prepare a Bill for the amendment of "The Extradition Act, 1870" in the sense indicated above.

That after some consultation between the Foreign, Home, and Colonial Departments, the Bill had been drafted in two alternative forms, and was referred for the opinion of the Home and Colonial Offices on the 1st May.

That the latter Department had no observations to offer thereon, but that the former expressed Mr. Secretary Matthews' opinion that the shorter form of the Bill was preferable, on Parliamentary grounds.

Opinion requested as to—

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the following points:—

Expediency of Bill. Which form of Bill is preferable? Are any alterations necessary?

1. Whether the proposed legislation was expedient.
2. If so, which of the two forms of draft Bill was, in our opinion, to be preferred; and
3. Whether the draft Bill which we preferred would require any alteration, or whether it might properly be introduced in its then shape?

That Sir T. V. Lister was also to request that we would favour your Lordship with any general observations which we might have to offer on the case.

I have taken the papers into my consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

No objection to Bill, subject to proper precautions.

That so far as the matter depends upon legal considerations, I see no objection to a Bill legalizing or permitting the surrender of a fugitive criminal before the expiration of the period of fifteen days, subject to proper safeguards for the protection of such criminal and for the prevention of any abuse of the procedure of his being deprived of the time without clear and distinct evidence that he consents and desires to be surrendered before its expiration.

Form of Bill preferred.

I prefer the first form of draft Bill.

I have, &c.
(Signed) RICHARD E. WEBSTER.

I have also taken the matter into consideration and, in obedience to your Lordship's commands, have the honour to

Report—

Reason why Bill is inexpedient.

That in my opinion the proposed alteration of the law is not expedient.

The delay of fifteen days is not a stipulation in favour of the accused only. It allows a period, after the examination of the evidence, during which the Secretary of State has the opportunity of considering whether the claim of extradition is one which should properly be granted. This delay is no hardship to any one, and, if it could be dispensed with upon some undefined evidence of the consent to his surrender given by a foreigner unfamiliar with our laws, there would, in my opinion, be serious danger of some incident occurring which might excite popular feeling and produce international difficulties.

If the accused person be innocent he will, in most cases, desire, and he ought to have ample time, to be advised as to questions which he may raise before the English Courts upon application for *habeas corpus*.

If he be guilty the mere detention for fifteen days is quite unimportant.

Shorter Bill, if any, preferable.

I do not think any legislation of this kind expedient; but if legislation were decided upon I should prefer the shorter form of Bill.

Section 3 (subsection 1) of the alternative form is absolutely novel, and appears to me quite inadmissible.

I have, &c.
(Signed) EDWARD CLARKE.

No. 39.

The Law Officers of the Crown to the Marquis of Salisbury, dated November 6, 1891.—(Received November 7.)

[After reciting the terms of the following reference from the Foreign Office dated the 23rd October, 1891, the Law Officers report as on p. 70:—]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, October 23, 1891.

I HAVE the honour to acknowledge, by direction of the Marquis of Salisbury, the receipt of your letter of the 5th instant, approving, with the addition of certain amendments, the draft Order in Council which was transmitted to you by this Department on the 20th August last, making certain further Regulations with regard to the marriages of British subjects outside the United Kingdom in accordance with "The Foreign Marriage Act, 1891." I am, however, to state that there are still certain points of importance with regard to which some doubt exists as to the exact construction of the Order in Council, and the Act of Parliament upon which it is based, and with reference to which his Lordship desires further to consult you before that Order is submitted to the Queen in Council for Her Majesty's approval.

After the passing of "The Marriage Act, 1890," no steps were taken for the issue of an Order in Council regulating the fee or fees to be charged for the registration of *lex loci* marriages, both because the word "fee" was not mentioned in that Act, and also because it was not considered to be clear whether the powers conferred by section 18 of the Act 6 Geo. IV, cap. 87 (commonly known as "The Consular Act, 1825"), made it lawful for Her Majesty by Order in Council "to establish and authorize the payment of any new or additional fees or fee for or in respect of" such registration.

The question arises as to whether the difficulty, if it actually existed, has been removed by the provisions of "The Foreign Marriage Act, 1891."

Section 4 (1) of that Act provides that, "subject to the marriage regulations, a British Consular officer, on being satisfied by personal attendance that a marriage between parties being British subjects, or of whom one is a British subject, has been duly solemnized in a foreign country in accordance with the local law of the country, *and on payment of the fee required by law*, may register the marriage in accordance with the marriage regulations as having been so solemnized;" and section 5, sub-section (*d*), provides that the marriage regulations may "make such provisions as may seem necessary or proper for carrying into effect the Foreign Marriage Acts, or any marriage regulations" made thereunder.

The provisions of section 10 of "The Foreign Marriage Act, 1891," include "the charge of such fees as may be prescribed by the marriage regulations; but the marriage regulations in the immediate contemplation of that section are only such as dispense with the requirements of the Foreign Marriage Acts as to residence and notice." It would, therefore, appear impossible under this section to frame a regulation dealing with the fee payable on the registration of a *lex loci* marriage.

"The Consular Salaries and Fees Act, 1891," provides (section 2, sub-section 1) that "it shall be lawful for Her Majesty the Queen, by Order in Council, to fix the fees to be taken in respect of any matter or thing done by a Consular officer in the execution of his office, to vary such fees by way of increase or decrease, and to abolish fees, and to create new fees."

In sections 5 and 9 of the draft Order in Council, the terms of which have recently been approved by yourselves, there is no mention of the fee to be charged in respect of the registration of *lex loci* marriages.

Section 9 (2) says "the Consular officer shall register such a marriage in a book provided for the purpose and in accordance with sections 11 and 12 of 'The Consular Marriage Act, 1849,'" &c. But sections 11 and 12 of "The Consular Marriage Act, 1849," do not authorize the levying of fees; although section 10 of that Act declares what fee a Consul is to charge for marriages solemnized under that Act.

The questions, therefore, remain for decision: (1) whether any, and, if so, what fee is required by law in respect of the registration of a *lex loci* marriage, and (2) by what

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existing law (if any) the imposition of such fee is required, and can be justified; and (3) further, whether (should it be considered that there is not only no special statutory provision enabling fees to be charged for the registration of *lex loci* marriages, but also no general power in the Foreign Marriage Acts wide enough to include their imposition) fees can under those Acts be imposed by Order in Council.

If the decision on this point should be in the negative, the further question arises, (4) whether a fee can be imposed by Order in Council under section 2, sub-section 1, of "The Consular Salaries and Fees Act, 1891" (54 & 55 Vict., cap. 36).

Should the power of levying, by Order in Council, a fee for the registration of *lex loci* marriages be vested in Her Majesty under some or any one of the enactments above mentioned, it is presumed that a special provision with regard to the levy of such fee, and to its amount, should be inserted in the Order in Council now about to be issued.

The second matter upon which the Secretary of State seeks your advice is whether he can, in virtue of section 7 (2) of "The Foreign Marriage Act, 1891," and of section 8 of the draft Order in Council thereunder, declare not only a Consular chapel, but also *any church* or chapel which is entirely unconnected with the Consulate, but is within the place where a Consular officer resides, to be a "place," within the meaning of the Foreign Marriage Acts, where marriages may be solemnized under those Acts.

It is believed that it was not intended to confer any such power as is last mentioned on the Secretary of State, *nor is it desired by his Lordship that he should possess it*, but some doubt has been expressed as to whether, having regard to the actual wording of the draft Order in Council as it now stands, it may not technically have been conferred upon him.

The third matter with respect to which Lord Salisbury desires your opinion is whether, under the wording of the draft Order in Council, section 3 (*a*), and section 9 (1), it is open to the Secretary of State, if he should think fit, to authorize a marriage officer, either generally or in a particular case, to solemnize marriages, or to attend at the solemnization of *lex loci* marriages, beyond the place at which he is appointed to reside, if the parties to the intended marriage are ready to pay all necessary expenses.

It is presumed that the word "required" means "required by the parties," and is not applicable to the orders of the Secretary of State, should such orders be otherwise in accordance with his powers under the Acts.

I am also to call your attention to certain verbal additions and corrections which appear to be necessary for the purpose either of elucidating certain passages in the draft Order in Council, or of removing discrepancies now existing between the definition clauses of the draft and of the Act of Parliament respectively. These additions and corrections are indicated in blue ink upon the copy of the draft Order in Council sent herewith.

I am at the same time to inclose, for convenience of reference, copies of "The Consular Marriage Act, 1849," "The Consular Marriage Act, 1868," "The Marriage Act, 1890," and "The Foreign Marriage Act, 1891," as well as "The Consular Salaries and Fees Act, 1891," together with a copy of the Foreign Marriages Order in Council, 1890.

Lord Salisbury requests that you will take all these matters into your consideration, and will, at your earliest convenience, favour his Lordship with your opinion on the various points raised, and with any further observations of a general character which you may desire to offer.

I am, &c.
(Signed) T. V. LISTER.

In obedience to your Lordship's commands signified to us in Sir T. Villiers Lister's letter of the 23rd October last, we have the honour to

Report—

1. That, in our opinion, there is no fee now required by law in respect of the registration of a *lex loci* marriage, and there is no statutory provision in the Foreign Marriage Acts authorizing the imposition by Order in Council of such fees; but a fee can be imposed by Order in Council under section 2 (1) of "The Consular Salaries and Fees Act, 1891," and the fee so imposed will be the fee required by law under section 4 (1) of "The Foreign Marriage Act, 1891."

2. The Secretary of State cannot, in virtue of section 7 (2) of "The Foreign Marriage Act, 1891," and of clause 8 of the draft Order in Council, declare any church or chapel entirely unconnected with the Consulate to be a place where marriages may be solemnized under the Foreign Marriage Act.

It would, however, be wise to omit from clause 8 of the draft Order the words from "and such other" to "the said Acts" inclusive.

3. A marriage officer cannot be required by the Secretary of State, or the parties, to attend the solemnization of a marriage beyond the place at which he is appointed to reside.

We think clause 1 of the draft Order in Council should read as we have altered it, and that the words, "unless he obtains permission from the Secretary of State," should be struck out from clauses 5 and 6, and that no other words should be inserted in their stead.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Royal Courts of Justice, November 6, 1891.

Annex.

Foreign Marriage Act, 1891.

Draft Order in Council.

WHEREAS by "The Marriage Act, 1890," and "The Foreign Marriage Act, 1891," the Consular Marriage Acts are amended, and as amended are made applicable to marriages in the houses of British Ambassadors or Ministers residing within the country to the Government of which they are accredited, or before Governors, High Commissioners, Residents, Commanders of ships, or Consular or other officers authorized in that behalf without or within Her Majesty's dominions, and by the same Acts Her Majesty the Queen is authorized by Order in Council to make Regulations for the purposes therein specified; 53 & 54 Vict., cap. 47; 54 & 55 Vict., cap. 74; 12 & 13 Vict., cap. 68; 31 & 32 Vict., cap. 61.

And whereas by "The Consular Salaries and Fees Act, 1891," Her Majesty the Queen is authorized by Order in Council to fix the fees to be taken in respect of any matter or thing done by a Consular officer in the execution of his office: 54 & 55 Vict., cap. 36.

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred by the said Acts, or otherwise enabling her in this behalf, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered as follows:—

1. The Foreign Marriages Order in Council, 1890, is hereby repealed, subject to any exceptions and qualifications in this Order mentioned.

Embassy Marriages.

2. The person before and by whom a marriage under the Foreign Marriage Acts may be solemnized and registered in an Embassy House in a foreign country shall either be the Ambassador, or the officer for the time being performing the duties of the Ambassador, or be any of the Secretaries attached to the Embassy from time to time appointed for the purpose in writing by the Ambassador, or by the officer performing his duties; and for the purpose of marriages solemnized in such Embassy House the Foreign Marriage Act shall be construed as if such Ambassador, officer performing his duties, or Secretary, although holding no written authority from a Secretary of State under section 19 of "The Consular Marriage Act, 1849," were a duly authorized Consul within the meaning of the said Acts. **Officer by whom Embassy marriage may be solemnized and registered.** 12 & 13 Vict., cap. 68.

3. For the purpose of marriages solemnized in pursuance of section 2 of "The Marriage Act, 1890," the house in which a British Ambassador resides in the foreign country to the Government of which he is accredited, or which is occupied by him in that country for the purposes of his Embassy, shall be deemed to be the house of such Ambassador, and is in this Order referred to as the Embassy House, and every place within the precincts or curtilage of any such house, and any church or chapel annexed **What is Embassy House.**

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to such house, or for the time being used with the consent of the Government to which the Ambassador is accredited as the chapel thereof, shall be deemed to form part of the Embassy House.

Application to Embassy of expressions referring to Consular marriages.

4. For the purpose of marriages in an Embassy House in a foreign country in pursuance of section 2 of "The Marriage Act, 1890," expressions in the Consular Marriage Acts shall be construed as follows:—

(*a.*) Expressions referring to the district of a Consul, or the district of a Consulate, shall be construed to refer to such parts of the foreign country as a Secretary of State may by writing under his hand from time to time direct, or, where there is no such direction, as are within 10 miles measured in a straight line on the horizontal plane from the Embassy House;

(*b.*) The expression "Consulate" shall be construed to refer to the Embassy or to the Embassy House, as the case requires;

(*c.*) The expression "office of the Consulate" shall be construed to refer to such part of the Embassy House as the Ambassador may from time to time appoint as being sufficiently accessible to the public, and that part may be referred to as the office of the Embassy;

(*d.*) The expression "Consular seal" shall be construed to refer to the official seal of the Ambassador.

Embassy and Consular Marriages.

Restriction on marriages in Embassy where Consulate is available.

5. Where a marriage can be solemnized at a British Consulate in a foreign country, the leave of the Ambassador shall be obtained before the marriage is solemnized in the Embassy House in that country.

Restrictions on marriages where local law is sufficient.

6.—(1.) Where a marriage according to the local law of a foreign country is valid by English law, then before a marriage is solemnized in that country under the Foreign Marriage Acts, whether in an Embassy House or at a Consulate, the officer by or before whom the marriage is to be solemnized and registered must be satisfied either—

(*a.*) That both the parties are British subjects; or

(*b.*) If only one of the parties is a British subject, that the other is not a subject or citizen of the country; or

(*c.*) If one of the parties is a British subject and the other a subject or citizen of the country, that sufficient facilities do not exist for the solemnization of the marriage in the foreign country in accordance with the law of that country.

(2.) If a Consul, by reason of anything in this Article, refuses to solemnize or allow to be solemnized in his presence the marriage of any person requiring such marriage to be solemnized, that person shall have the right of appeal to a Secretary of State, given by section 7 of "The Consular Marriage Act, 1849."

Restriction on marriages when intended wife is a British subject.

7. In the case of any marriage under the Foreign Marriage Acts, if it appears to the officer by or before whom the marriage is to be solemnized and registered that the woman about to be married is a British subject, and that the man is an alien, he must be satisfied that the marriage will be recognized by the law of the foreign country to which the alien belongs.

Modification of requirements of Foreign Marriage Acts as to residence and notice.

8. The following modifications of the requirements of the Foreign Marriage Acts as to residence and notice, which appear to Her Majesty to be consistent with the observance of due precautions against the solemnization of clandestine marriages, shall have effect in the following class of cases, that is to say, where one only of the parties has dwelt within the district of the Ambassador or Consul:—

(1.) A marriage may be solemnized under the said Acts in the Embassy House or Consulate of an Ambassador or Consul in whose district one of the parties has dwelt—

(*a.*) If the officer by or before whom the marriage is solemnized and registered is satisfied that such notice as is mentioned below in Sub-Articles 3 and 4 of this Article, has been given of the intended marriage in the place where the other party has dwelt; or

(*b.*) If a Secretary of State is satisfied that such adequate notice has been given as will prevent the marriage being clandestine, and gives permission for the same to be solemnized.

(2.) In either case the oath, affirmation, or declaration under section 3 of "The Foreign Marriage Act, 1891," shall, in addition to the matters specified in subsections (*a*) and (*c*) of that section, state that one of the parties has, for three weeks immediately preceding, had his usual place of abode within the district of the Ambassador or Consul, and further state the place where the party who has not dwelt within that district has within three months immediately preceding had for three consecutive weeks his usual place of abode, and the notice which has been given in that place during those three weeks.

54 & 55 Vict. cap. 74.

(3.) The notice to be given where the marriage is not solemnized with the permission of a Secretary of State shall, if the party has dwelt in a foreign country, be given, entered, and suspended in the manner and during the period provided by the Foreign Marriage Acts, in like manner as if the marriage were to be solemnized in a Consulate in that country, and the Consul shall, on payment of the proper fee, give a certificate that the notice has been so given and suspended, and that he is unaware of any impediment which should obstruct the solemnization of the marriage.

See 12 & 13 Vict., cap. 68, secs. 4, 7.

See 19 & 20 Vict., cap. 119, secs. 7, 8.

(4.) If the party dwells in a place in the United Kingdom, the notice shall be given in the like manner, and on payment of the like fee, as if that party were about to be married in that place, and, in England or Ireland, shall be given to the Superintendent Registrar or Registrar, and, in Scotland, shall be given by proclamation of banns; and the Superintendent Registrar or Registrar shall deal with the notice and give a certificate for marriage in like manner and on payment of the like fee, as in the case of a marriage in his district; and the Session Clerk of the parish in which the banns were proclaimed in Scotland shall, in like manner and on payment of the like fee as in the case of a marriage in his district, give a certificate of proclamation of such banns.

Consular Marriages.

What is Consulate.

9. For the purpose of marriages at a Consulate under the Foreign Marriage Acts, every place within the curtilage or precincts of the house in which the Consul is for the time being resident or of the building which is for the time being used for the purpose of his office shall be part of the Consulate, and every place to which the public have ordinary access in the Consulate shall be deemed to be part of the office of such Consulate.

Registration of Marriages by Foreign Law.

Registration of marriages by local foreign law.

10.—(1.) A Consular officer shall not be required to attend at the solemnization of a marriage solemnized in accordance with the local law unless the marriage is solemnized at the place where he is appointed to reside nor unless the proper fee has been previously paid to him.

(2.) The Consular officer shall forthwith after the solemnization of the marriage register the marriage in duplicate in books furnished to him by the Registrar-General through a Secretary of State for the purpose, separate from any register books provided for marriages solemnized by him, and shall register the same in accordance with section 11 of "The Consular Marriage Act, 1849," save that if the person by whom the marriage has been solemnized declines to sign the same, the Consular officer shall enter the name of that person, and the fact that he declines to sign the same.

(3.) The Consular officer shall transmit copies and the certificate and the book when filled, in manner provided by section 12 of "The Consular Marriage Act, 1849."

(4.) Nothing in this Order shall authorize any officer who is not a Consular officer to register a marriage solemnized in accordance with the local law.

(5.) The expression "Consular officer" includes a Consul-General, Consul, Vice-Consul, Pro-Consul, Consular Agent, and any person for the time being authorized to discharge the duties of Consul-General, Consul, Vice-Consul, or Consular Agent.

High Commissioners, &c.

Adaptation of Acts to marriages before High Commissioners, Residents, &c.

11.—(1.) A Secretary of State by a written authority under section 19 of "The Consular Marriage Act, 1849," may authorize a person to act in the place of a High Commissioner or Resident mentioned in "The Marriage Act, 1890," outside of Her Majesty's dominions.

(2.) If a Secretary of State gives such authority or in pursuance of section 3 of "The Marriage Act, 1890," authorizes any High Commissioner, Resident, or other officer outside Her Majesty's dominions, not being a Consul as defined by this Order to solemnize and register marriages, then for the purpose of marriages solemnized and registered by or before any High Commissioner, Resident, or officer, or person

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so authorized, expressions in the Consular Marriage Acts shall be construed as follows:—

(*a.*) Expressions referring to the district of a Consul or of a Consulate shall be construed to refer to the district for which such High Commissioner, Resident, or officer, or person, is authorized to act for the purpose of the Foreign Marriage Acts;

(*b.*) The expression "Consulate" shall be construed to refer either to the office held by him, or as the case requires, to the building or part of a building or place specified in the document by which he is authorized to act;

(*c.*) The expression "office of the Consulate" shall be construed to refer to such portion of the building, part, or place so specified as is ordinarily accessible to the public;

(*d.*) The expression "Consular seal" shall be construed to refer to his official seal, or if he has no official seal, to any seal ordinarily used by him, if the latter seal is authenticated by his signature with the addition of his official name or description.

Her Majesty's Ships.

Adaptation of Foreign Marriage Acts to marriages on board one of Her Majesty's ships.

12.—(1.) Marriages under the Foreign Marriage Acts on board one of Her Majesty's vessels may be solemnized by or before a commanding officer of such rank and of such vessel as is for the time being authorized for that purpose by or in pursuance of any Admiralty instructions, and for the purpose of any such marriages the Consular Marriage Acts shall be construed as if a commanding officer so authorized, although not having a written authority under section 19 of "The Consular Marriage Act, 1849," were a duly authorized Consul within the meaning of the Consular Marriage Acts, and for the purpose[s] of such marriages, expressions in those Acts shall be construed as follows:—

(*a.*) Expressions referring to the district of a Consul or of a Consulate shall be construed to refer to such parts of the foreign station to which the commanding officer is attached as may be specified in that behalf by Admiralty instructions;

(*b.*) Expressions referring to the Consulate shall be construed to refer either to the office of the said commanding officer or to his vessel, as the case may require;

(*c.*) Expressions referring to the office of the Consulate shall be construed to refer to the part of the ship on which public notices are affixed.

(2.) Expressions referring to the Consular seal shall refer to the seal ordinarily used by the commanding officer if the latter seal is authenticated by his signature with the addition of his official description.

(3.) The commanding officer, before he solemnizes a marriage, shall be satisfied that at the port or place where the marriage is solemnized sufficient facilities do not exist for the solemnization of the marriage on land, either in accordance with the local law of the country or in accordance with the Foreign Marriage Acts.

(4.) The requirements of the Foreign Marriage Acts as to residence and notice shall be modified as follows, namely, not less than three weeks' notice of the intended marriage must have been given in such public manner, or to such relatives or friends of the parties, as satisfies the commanding officer that as much notice of the intended marriage has been given as would be given if the marriage took place in England, and that the marriage is not clandestine.

Forms.

13. The forms in the First Schedule to this Order, or forms to the like effect, shall be used in all cases to which they are applicable.

Fees.

14. The fees which may be taken in respect of matters under the Foreign Marriage Acts shall be those set forth in the Second Schedule to this Order, and no others.

Definitions.

Definitions.

15. In this Order—

The expression "Ambassador" includes Minister and Chargé d'Affaires, and references to the Embassy or Embassy House shall be construed accordingly;

The expression "Consular Marriage Acts" means "The Consular Marriage Act, 1849," and "The Consular Marriage Act, 1868;"

12 & 13 Vict., cap. 68; 31 & 32 Vict., cpa. 61; 53 & 54 Vict., cap. 47.

The expression "Foreign Marriage Acts" means "The Consular Marriage Act, 1849," "The Consular Marriage Act, 1868," "The Marriage Act, 1890," and "The Foreign Marriage Act, 1891;"

The expression "Consul," as used in Articles 8, 9, and 11 of this Order, includes every officer authorized under section 19 of "The Consular Marriage Act, 1849," as amended by "The Consular Marriage Act, 1868," and "The Foreign Marriage Act, 1891," but not an Ambassador, Governor, High Commissioner, Resident, or person authorized by virtue of "The Marriage Act, 1890."

Other expressions have the same meaning as in the Foreign Marriage Acts.

R. E. W.
E. C.

FIRST SCHEDULE.

FORMS.

Form of Oath.

I, *A. B.*, of , make oath and say as follows:—

1. A marriage is proposed to be solemnized between me and *C. D.*

2. I believe that there is not any impediment in kindred or alliance, or other lawful hindrance to the above marriage.

3. Both I and *C. D.* have for three weeks immediately preceding this date had our usual place of abode within the district of [*here insert the official title of the marriage officer, and, in the case of a Consul, the place where he is appointed to reside*] that is to say, I at , and *C. D.* at .

4. Neither I nor *C. D.* is under the age of 21 years; [*or, as the case may be,* I am under the age of 21 years, but I am the widow of who died on the day of , 18], [*or* I am under the age of 21 years, and the consent of *G. H.*, whose consent is required to my marriage, is given as shown by the writing under his hand now shown to me and marked .]

NOTE.—*Where the requirements of the Foreign Marriage Acts as to residence have been dispensed with, the Form of paragraph* 3 *of the oath by A. B. will be as follows:—*

I have for three weeks immediately preceding this date had my usual place of abode within the district of [*here insert the official title of the marriage officer, and in the case of a Consul, the place where he is appointed to reside*], namely, at , and to the best of my knowledge and belief *C. D.* has within three months immediately preceding this date, namely, for three consecutive weeks from the day of to the day of , had his [*or* her] usual place of abode at , and notice of our intended marriage has been given there during those weeks by , as appears by the certificate now shown to me and marked .

And the form of paragraph 3 *of the oath by C. D. will be as follows:—*

I have within three months immediately preceding this date, namely, for three consecutive weeks from the day of to the day of , had my usual place of abode at , and notice of our intended marriage was given there during those weeks by , as appears by the certificate now shown to me and marked , and to the best of my knowledge and belief *A. B.* has for three weeks immediately preceding this date had her [*or* his] usual place of abode within the district of [*here insert the official title of the marriage officer, and, in the case of a Consul, the place where he is appointed to reside*].

Where the Secretary of State has been satisfied that adequate notice has been given, and gives permission for the solemnization of the marriage, the form of so much of paragraph 3 *of the oath as relates to the notice of the intended marriage will be as follows:—*

A notice of our intended marriage has been given by [*here state what notice has been given*], as appears by the certificate now shown to me and marked , and the Secretary of State has been satisfied that such notice is adequate, and has given permission for the marriage to be solemnized.

N.B.—*Any person entitled, under* 51 & 52 *Vict., cap.* 46 ("*The Oaths Act,* 1888"), *or otherwise, to affirm or declare, may make an affirmation or declaration in lieu of an oath.*

Form of Certificate.

I, *A. B.*, British Consul [*or as the case may be*], of hereby certify that on the day of , 18 , I received the following notice of marriage [*here insert the words of the notice*], and that such notice was entered and was suspended in my Consulate in the manner and during the period provided by the Foreign Marriage Acts, 1849 to 1891, as if the marriage was to be solemnized in my Consulate, and that I am not aware of any impediment which should obstruct the solemnization of the above marriage.

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SECOND SCHEDULE.

Schedule of Fees.

	£	s.	d.
For receiving notice of an intended marriage	0	10	0
For receiving notice of a caveat	1	0	0
For every marriage solemnized under the Foreign Marriage Acts by an Ambassador, Consul, Governor, High Commissioner, Resident, or other officer, or in his presence, and registered by him	0	10	0
For certificate by Consul of notice having been given and suspended (Article 8 of this Order)	0	5	0
For attendance by Consul at a marriage solemnized in accordance with the local law, and his registration of the marriage	1	0	0

R. E. W.
E. C.

No. 40.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received December 18.)

Royal Courts of Justice, December 16, 1891.

My Lord,

Municipal rates levied on certain Embassy and Legation Houses in London.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers respecting the municipal rates levied on certain Embassy and Legation Houses in this capital under the provisions of special Acts of Parliament which enabled the parish authorities to collect them from the landlord.

That it would be seen that the foreign Representatives in London called attention to the subject in a collective note dated the 7th June, 1890, and that it was thought desirable that, before arriving at a decision in the matter, Her Majesty's Government should be in possession of complete information as to the immunities and exemptions enjoyed in that respect by Her Majesty's Representatives abroad. That a Circular was accordingly addressed to Her Majesty's Representatives on the 30th June, 1890, requesting them to furnish full information as to the diplomatic privileges enjoyed by them with regard to the incidence of taxes and rates.

That as soon as all the Reports were received from abroad, and their contents examined, your Lordship, after communication with the Treasury, addressed a note to the French Ambassador suggesting as a solution of the difficulty that, "whenever the Representative of a foreign country at the British Court shows that he pays rates on his house, Her Majesty's Government will accept a similar charge at the capital of the country which he represents."

Proposal of H. M.'s Govt. rejected by M. Waddington and his colleagues.

That M. Waddington replied, on behalf of himself and his colleagues, in a note dated the 18th August last, in which he rejected the proposal of Her Majesty's Government as being unacceptable in principle, and impracticable in its mode of application: and that Sir Thomas Sanderson was to request that we would favour your Lordship with our opinion whether the draft reply which your Lordship proposed to send to M. Waddington, and the Memorandum inclosed therein, were right and proper under the circumstances.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve draft reply to M. Waddington and Memorandum.

That, in our opinion, the draft reply and Memorandum are right and proper under the circumstances.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) Confidential Print: "Correspondence respecting Diplomatic Privileges, 1890-91."
(B.) Draft note to M. Waddington.
(C.) Memorandum inclosed in (B).

Annex.

Draft of Letter from the Marquis of Salisbury to M. Waddington.

M. l'Ambassadeur,

Foreign Office, December , 1891.

HER Majesty's Government have given their careful attention to the note which your Excellency did me the honour to address to me on the 18th August last with regard to the municipal rates now levied on certain Embassy and Legation Houses in this capital under the provisions of special Acts of Parliament which enable the parish authorities to collect them from the landlords.

The question put in the previous note of the 7th June, 1890, signed by your Excellency and certain of your colleagues, was whether the privilege of exterritoriality did not involve the principle that the ground on which a house occupied by a foreign Diplomatist is situated should, during that occupation, be considered as foreign territory, and the house itself as unoccupied, and whether, in consequence, such houses should not be exempt from parochial rates.

The answer to this question must, I apprehend, be in the negative. It is a generally recognized principle of international law that house property ("immeubles") belonging to foreign Diplomatists is liable to taxation. The principle, or, as the text-writers call it, the "fiction," of exterritoriality is applied more specially to the official residence of the Representative of a foreign State, but even in that case it is liable to great restrictions. Such a doctrine as that suggested by your Excellency has never, so far as I am aware, been asserted by any of the principal writers on international law, and, although one or two writers have spoken in rather hesitating language, the general opinion laid down by the best authorities who have treated the subject is that the houses of foreign Missions are properly subject to municipal rates.

Upon this point, as your Excellency has referred in your note to Wheaton, I may invite your attention to an extract from that eminent publicist's "Elements of International Law":—*

"The person and personal effects of the Minister are not liable to taxation. He is exempt from the payment of duties on the importation of articles for his own personal use and that of his family. But this latter exemption is at present, by the usage of most nations, limited to a fixed sum, during the continuance of the Mission. He is liable to the payment of tolls and postages. The hotel in which he resides, though exempt from the quartering of troops, is subject to taxation in common with the other real property of the country, whether it belongs to him or to his Government."

Your Excellency will find in the inclosure to this note extracts from various other authorities to the same effect.

Such being the state of the case according to the text-writers on international law, Her Majesty's Government endeavoured to ascertain whether, according to the practice existing in foreign countries, the immunity of foreign Mission Houses from municipal rates was so generally recognized as to constitute a standard for their own action.

Upon inquiry it appeared that there is, on the contrary, great diversity of practice. In eight countries, including Spain and Denmark, the rates on Her Majesty's Legations appear to be recovered through the landlord in the manner of which you and your colleagues complain. At Athens, where a foreign Legation House is hired, it is the landlord who pays the house tax as well as the water rates; at Munich, foreign Representatives enjoy no privileges in respect of land, house, or trade tax, or the corresponding local taxation; at Brussels, the proprietor of a house occupied by a Diplomatist is still liable for land tax; at St. Petersburgh, the house of which Her Majesty's Embassy forms part enjoys no exemption from taxation on that account, and it is only by a special arrangement made on condition of reciprocity that such exemption has been accorded to the French and German Embassies.

At Berlin, the British Embassy House is subject to both Imperial and municipal taxation. At Washington, the renting or occupying of a house by a Legation does not relieve the owner from the payment of taxes on it, and the taxes are assessed against the property. At Rome there is no regular provision for exemption of the British Embassy House from municipal imposts, and notice was given some time ago of an intention to expropriate part of the garden for public purposes. Even at Paris certain taxes are levied for water and "balayage" on Her Majesty's Embassy, while

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* Wheaton's "Elements of International Law," third English edition, by A. C. Boyd., Esq., LL.B. Camb., 1889, sec. 242, p. 346.

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the separate houses or apartments occupied by the Secretaries of the Embassy enjoy no exemption from municipal taxation, which is levied on the landlord.

Neither, therefore, on the ground of principle, nor in virtue of any generally accepted rule of practice, can it be said that any diplomatic privilege is infringed by the Acts of Parliament, which, while they recognize the immunity of the Corps Diplomatique from all legal process for the recovery of rates, enable the parish authorities to levy rates from the landlords of houses occupied by them.

It was under these circumstances that I troubled your Excellency with some explanations which appear to have been received with surprise. Her Majesty's Government have no reason to believe, and would be most unwilling to suggest, that there would be difficulty in securing the assent of Parliament to any measure necessary to secure the established privileges and immunities of the Corps Diplomatique. But Her Majesty's Government may be allowed to consider and to represent the difficulty of obtaining from Parliament the repeal of measures which cannot be shown to be contrary to those privileges as laid down in principle, and as exemplified in the practice of many other countries.

But your Excellency argues that the taxes levied by the Municipality in London are far higher in amount than those which are so levied at other capitals, and are devoted in great part to quite different purposes. The proposal which I made, that Her Majesty's Government should render themselves liable for municipal imposts on Her Majesty's Missions in those countries whose Mission Houses are so taxed in England, does not seem to you or to your colleagues to be acceptable, and you urge that it would be more satisfactory that Her Majesty's Government should intervene to pay the rates actually levied upon the foreign Missions here.

Admitting that the rates in this metropolis may differ in kind and amount from those which are levied in many foreign capitals, it must, on the other hand, be remembered that in several of those capitals the houses occupied by Her Majesty's Missions are liable to State as well as to municipal taxation, and that in almost all of them Diplomatists also contribute indirectly to the municipal funds by the octroi levied on various articles which they necessarily buy in the open market for their own consumption.

I need not assure your Excellency of the Queen's desire that any privilege which, by general custom or prescription, is accorded to the Representatives of foreign States, and which is enjoyed by Her Majesty's Representatives in other States, should be reciprocally enjoyed by the Representatives of such States accredited to her.

In the present case, a general custom or prescription can scarcely be said to exist. But I have been in communication with the Lords Commissioners of Her Majesty's Treasury, with the view of ascertaining how far it would be possible to meet the wishes expressed in your Excellency's note, and I shall be prepared to discuss the arrangements which they may suggest with your Excellency and with the other foreign Representatives.

I have, &c.

Extract from "Le Droit International Public de l'Europe," par A. G. Heffter; traduit par Jules Bergson, 1866. § 217, *p.* 404.

EN aucun cas, l'immunité des impositions directes et indirectes accordée au Ministre ne comprend :—

1. Les charges réelles qui grèvent les immeubles par lui possédés dans le territoire où il réside, telles que les impôts fonciers.

2. Les impositions personnelles qui grèvent l'exercice de certaines industries, étrangères aux fonctions du Ministre, telles que les droits de patente.

3. Les droits de péage et autres que l'on fait payer aux voyageurs pour l'entretien des routes, des ponts et chaussées ou canaux. Quelquefois on en exempte le Ministre par pure courtoisie ou par convenance. Il en est de même des impositions communales, des droits de portes et fenêtres, &c.

Néanmoins il serait difficile d'établir, au sujet de cette immunité internationale, des règles uniformes et d'une application générale.

Extract from "The Law of Nations," by Sir Travers Twiss, 1861. § 203, *p.* 308.

There are some exceptions to the privilege of extra-territoriality as applied to the hotel of an Ambassador. A foreign Minister is privileged from being called upon to contribute personally to the general taxes of a country, that is, to such taxes as are levied by the Government, and which are available for the general purposes of the State in which the Ambassador is not interested. But a foreign Minister is not exempt from the payment of local dues, which are raised for purposes of local administration, and which are expended on local objects, from which he himself, in common with his neighbours, derives immediate benefit. Thus, he is liable to pay the local rates assessed upon his hotel, or its site, for sewerage, lighting, watching, and similar objects. He is also liable to pay tolls for the use of roads and bridges, and also for the carriage of his letters, if they are conveyed to him by the local post; and as he is at liberty at all times, if he pleases, to send his letters by a privileged courier, it is therefore optional for him to employ the services of the local post, and if he employs it he derives immediate advantage therefrom.

Extract from "Le Guide Diplomatique; Précis de Droits et des Fonctions des Agents Diplomatiques et Consulaires," par le Baron C. de Martens. 4th Edition, 1851. § 32, *p.* 107.

L'hôtel du Ministre étranger, nécessairement affranchi de tout logement de troupes, ou des charges équivalentes qu'on y a substituées, ne l'est point de l'impôt qui frappe la propriété foncière.

Il n'y a, en effet, aucune raison pour que l'hôtel occupé par un Ambassadeur, si cet hôtel, surtout, appartient à un habitant du pays, soit affranchi de l'impôt qui atteint tous les autres immeubles. Si l'Ambassadeur occupait un hôtel appartenant à son Souverain, il est probable que, par égard pour le Prince, la contribution immobilière ne serait point exigée; une pareille exemption n'étant, bien entendu, qu'une faveur et nullement une conséquence des immunités diplomatiques.

Extract from "Précis du Droit des Gens Moderne de l'Europe," by G. F. de Martens, 1831. § 228, *p.* 110.

L'hôtel du Ministre est exempt du logement des gens de guerre et des droits qui y sont substitués. Mais, au reste, soit que cet hôtel appartienne en propre à lui ou à sa Cour, soit qu'il possède d'autres biens-fonds, ces possessions sont assujetties à tous les impôts et à toutes les autres charges qui doivent être payées par le propriétaire.

Extract from "Droit des Gens Moderne de l'Europe," par J. L. Klüber, 1828. § 207, *p.* 327.

Une autre suite de l'exterritorialité des Ministres est la franchise de l'hôtel (l'indépendance ou l'immunité de l'hôtel, *jus franchisiæ s. franchitiarum*). On entend par là l'indépendance des hôtels d'Ambassade de la souveraineté du pays, à l'exception peut-être des droits de contribution et juridiction foncières.

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GERMANY.

No. 41.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received September 2.)

Royal Courts of Justice, August 31, 1891.

My Lord,

Draft Convention extending to German Protectorates the provisions of the Anglo-German Extradition Treaty of 14th May, 1872.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us a draft Convention which your Lordship proposed to submit to the German Government for the purpose of extending to German Protectorates the provisions of the Anglo-German Extradition Treaty of the 14th May, 1872.

That the Convention had been drafted under the following circumstances:—

Extradition Act, 1870.

That on the 1st April, 1891, a *note verbale* was received from the German Embassy proposing that an Agreement respecting extradition should be come to between the German Protectorates on one side and the United Kingdom and the British Colonies on the other, and calling attention to section 25 of "The Extradition Act, 1870," as supporting the view that such an arrangement would be consistent with existing English law.

That that *note verbale* was referred to the Home Office in a letter dated the 3rd April, 1891, in which it was pointed out that the question of extradition arrangements for African Protectorates had hitherto given rise to insuperable difficulties.

L. O. Reports, 3rd March, 1888; 14th March, 1888.

That the Home Office were subsequently, in compliance with their request, supplied with two Law Officers' Reports bearing on the subject, dated respectively the 3rd and 14th March, 1888.

That the opinion of the Home Office was expressed in their letter of the 11th June, 1891, to the effect that, if the Foreign Office were prepared to admit that a German Protectorate was "a dependency and constituent part" of the German Empire, extradition might, without legislation, and by means of a fresh Treaty, take place between German Protectorates on the one hand, and the United Kingdom and British Colonies and foreign possessions on the other; but that as regarded any further extension of the system of extradition, so as to include British Protectorates, Mr. Matthews had nothing to add to what was said in the Home Office letter of the 15th May, 1888.

That your Lordship seeing no objection to the recognition of German Protectorates as dependencies and constituent parts of the German Empire, the draft Convention, submitted for our consideration, was prepared and referred for the concurrence of the Home, Colonial, and India Offices.

That the concurrence of those Departments was expressed in their letters of the 24th January, 2nd July, and 8th July, 1891.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion whether the provisions of the draft Convention with Germany were consistent with English law, and whether the draft in its then shape might properly be submitted, for negotiation, to the Government of Germany.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands have the honour to

Report—

The Convention ought not to be made without further statutory provision.

That the power to enter into the proposed Convention depends upon the question whether a Protectorate is a dependency or constituent part of the foreign State. The only word which can include a Protectorate is dependency, and, in our opinion, it is very doubtful whether the Courts would hold that a Protectorate is a dependency.

It must be remembered that the question will have to be determined by the Courts on application for a *habeas corpus* by some prisoner whom it is proposed to surrender.

We think the Convention ought not to be made without further Statutory provision.

L. O. Report, 29th June, 1887.

The question of extraditing to and from Protectorates is one of general policy, and, so far as it involves legal considerations, has been fully dealt with in our Reports of the 29th June, 1887, and 3rd and 14th March, 1888.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Draft Convention.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Majesty the German Emperor, King of Prussia, being desirous to make better provision for the administration of justice and for the repression of crime within the German Protectorates in Africa, have resolved to conclude a Convention for that purpose, and have named as their Plenipotentiaries, that is to say:—

Who, having communicated to each other their Full Powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The stipulations of the Treaty between Great Britain and Germany, for the extradition of fugitive criminals, signed on the 14th May, 1872, shall be extended so as to include the surrender from the United Kingdom and from the Colonies and foreign possessions of Her Britannic Majesty of those persons who, being accused or convicted of a crime committed within a German Protectorate, shall be found within the territory of Her Britannic Majesty.

ARTICLE II.

Persons who, being accused or convicted of a crime committed within the territory of Her Britannic Majesty, shall be found within a German Protectorate, shall likewise be surrendered.

ARTICLE III.

In the above-mentioned cases the surrender shall take place in the same manner, and subject to the same conditions and exceptions, as are stipulated in the said Treaty of the 14th May, 1872, in regard to the surrender of fugitive criminals from the respective territories of the said High Contracting Parties.

ARTICLE IV.

The present Convention shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties.

It shall have the same force and duration as the Treaty of the 14th May, 1872, to which it relates.

It shall be ratified, and the ratifications exchanged in London as soon as possible.

In witness whereof, &c.

List of Papers.

(A.)	Draft Convention.	
(B.)	*Note verbale*	April 1, 1891
(C.)	To Home Office	April 3, 1891
(D.)	" "	June 1, 1891
(E.)	Home Office	June 11, 1891
(F.)	" "	May 15, 1888
(G.)	" "	June 24, 1891
(H.)	Colonial Office	July 2, 1891
(I.)	India Office..	July 8, 1891

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No. 42.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received December 2.)

Royal Courts of Justice, December 1, 1891.

My Lord,

Case of Captain Zephir, of the German vessel "Carl Linck," charged with having assaulted one Anton Bradtke, a seaman of that vessel.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the case of Captain Zephir, of the German vessel "Carl Linck," who was charged at Greenwich Police Court with having assaulted one Anton Bradtke, a seaman of that vessel, whilst he was on board his ship within the port of London.

That the detailed facts of the case would be found in the Report submitted to the Home Office by the Magistrate of the Greenwich Police Court.

That it would be seen that, notwithstanding the assurance of the captain to appear after an adjournment solicited not only by himself, but by the German Ambassador at this Court, and by an official from the German Consulate, the captain sailed from London before the adjourned summons came on for hearing, taking with him the complainant, who had been in the meantime arrested as a deserter from his ship.

Proposed draft to Count Hatzfeldt.

That the communications which had already passed between your Lordship and the German Ambassador upon the case were inclosed for reference; and that Sir Thomas Sanderson was to request our opinion whether the draft which your Lordship proposed to address to Count Hatzfeldt, and the Memorandum therein inclosed, were right and proper under the circumstances.

We were also honoured with a note from Sir Thomas Sanderson, dated the 23rd instant, inclosing a further letter from the German Ambassador, and requesting us to take it into our consideration in connection with the papers which were transmitted to us on the 14th November.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to

Report—

Approve draft letter and Memorandum as altered.

That, in our opinion, the draft letter and Memorandum, as altered and initialled by us, may properly be addressed to Count Hatzfeldt.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Count Hatzfeldt	November 1, 1891
(B.)	To Count Hatzfeldt	November 5, „
(C.)	To Home Office	November 7, „
(D.)	Home Office	November 9, „
(E.)	Treaty of Navigation with Prussia. (Article IV)	August 16, 1865
(F.)	Agreement with Germany as to deserters	November 5, 1879
(G.)	Draft note to Count Metternich	
(H.)	Memorandum therein inclosed.	
(I.)	Count Hatzfeldt..	November 19 1891

Annex.

Draft of Letter to Count Metternich.

M. le Chargé d'Affaires, *Foreign Office,* , 1891.

WITH reference to my note to his Excellency Count Hatzfeldt of the 5th ultimo, I have now the honour to transmit to you a copy of a Report by the Police Magistrate at Greenwich, from which you will ~~perceive that the~~ *learn the circumstances under which the* seaman Anton Bradtke was arrested as a deserter outside of the Police Court, and, *further*, that the captain of the German vessel "Carl Linck," in direct violation of his undertaking to the Magistrate to appear before him, sailed from London with the seaman Bradtke on board.

It is needless for me, M. le Chargé d'Affaires, to state that, when the request for an adjournment was preferred by his Excellency in his note of the 1st ultimo, and when the similar application made by the captain in Court was supported by a German Consular official, it was assumed that the captain would not violate his solemn undertaking to appear, nor attempt to evade the jurisdiction by flight.

~~I shall be glad if your Excellency would inform me whether the German Consulate can furnish any explanations on this point.~~

I am, however, now in receipt of his Excellency's letter of the 19*th November as to the action taken by the German Consulate in order to induce the captain to perform his undertaking.*

As both the captain of the vessel and the seaman Bradtke are German subjects, and as the vessel "Carl Linck" is of German nationality, I must leave it to the consideration of the German authorities whether the captain's breach of undertaking should be visited by any reproof, or by suitable punishment, such as the suspension of his certificate.

In the meanwhile, I beg leave to inclose the Memorandum to which I alluded in my note of the 5th ultimo as being in course of preparation, and which will, I trust, furnish the Imperial German Government with all necessary information as to the jurisdiction of the Police Magistrate in this case.

R. E. W.
E. C.

Memorandum for communication to Count Hatzfeldt.

THE Police Magistrate at Greenwich is one of the Metropolitan Stipendiary Magistrates appointed by Her Majesty, and Her Majesty's Government have no power or control over his proceedings while he is sitting judicially. His decisions, either with respect to the limits of his jurisdiction or upon the merits of cases which are brought before him, are in no respect within the control of the Executive, and can only be reversed by appeal to some superior Judicial Tribunal in the mode and subject to the limitations provided by law. His jurisdiction can only be fettered by his own discretion in the first instance, and by the control of Her Majesty's Judges, exercised by writ of mandamus, &c., ~~if he should exercise that discretion erroneously~~ *should he decline to exercise the jurisdiction conferred on him.*

The fact that diplomatic correspondence is passing as to the Magistrate's competence to hear and determine any particular case, if the fact were brought before him, would not ~~compel~~ *entitle* him to deprive the complainant *of*, or to postpone the application of, any remedy to which he (the Magistrate), in the exercise of his judicial power and discretion, might think the complainant entitled under the law of this country.

The separation of the Judicial from the Executive Administration is in this country so complete that Her Majesty's Government could exercise absolutely no power to procure an adjournment of the case by direct intervention or appeal to the Magistrate. Neither could they exercise any control over the seaman Bradtke, a private individual, who, under the laws of this country, has as free access to the Courts of Justice as any subject of the Queen. This right of free access to the Courts, although it exists in this country apart from any such stipulation, is usually esteemed to be so valuable a privilege that it is not uncommon to expressly stipulate in Treaties of Commerce that the subjects of the one Contracting Power shall, in the dominions of the other, enjoy, in this respect, the same rights and privileges as native subjects. Such provision is, for instance, made in the XVIth Article of the Treaty of the 15th June, 1883, between Great Britain and Italy.

Treaty of 15th June 1883, between Great Britain and Italy.

It is not alleged that this case has come before the Court through the action of any official person whom Her Majesty's Government might have directed authoritatively not to take such action, if it should have seemed to them inconsistent with their international obligations, or inconsistent with the demands of international courtesy towards a friendly Government.

With regard to the general question of the jurisdiction of the local Court, ~~it is no doubt true that questions of wages, breaches of contract, and breaches of discipline on board ship are, by international agreement between many States, settled in such States, to the exclusion of the ordinary local Tribunals, entirely by the Consul of the ship's nationality. This practice does not, however, prevail in England, and~~ it may be useful, as showing the view taken by Her Majesty's Government ~~of the general question now under consideration~~, to quote section 179 of the instructions issued to British Consular officers abroad, which paragraph was as follows:—

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"Subject to any such Treaties as aforesaid" (*i.e.*, any Treaties with the foreign country in question having reference to the subject), "the Consul will remember that every country has the right of enforcing its own criminal law and police regulations in its own ports and harbours, and that if any offence against such laws or regulations is committed in such ports or harbours, on board a British ship, the offender is liable to be dealt with accordingly. In such cases the Consul's duty will be confined to seeing that the offender is fairly tried, and that justice is properly administered. . . . ."

In the present case, the captain was charged with an offence against the criminal law of this country, committed while the ship was in dock in the port of London, and the Magistrate had a jurisdiction which he was bound to exercise.

With regard to the due execution of Article IV of the Treaty of 1865 between Great Britain and Prussia respecting the recovery of deserters, it is difficult to see in what way the local Court, by hearing a summons for assault committed within British territory while the ship was within the Court's jurisdiction, could obstruct in the very least the operation of the Article in question. The fact that a master is charged with assault by one of his seamen does not excuse the seaman for deserting his ship; and, as is well shown by the actual issue of the case now in question, the circumstance that the seaman has to appear in Court to substantiate his case can but facilitate his identification and subsequent recovery under the Foreign Deserters Act of 1852, and the Mutual Agreement between Great Britain and Germany of the 5th November, 1879, relative to merchant seamen deserters. The latter Agreement is not, however, cited in Count Hatzfeldt's note of the 1st ultimo, but reference is made to Article IV of the Treaty of the 16th August, 1865, between Great Britain and Prussia, which latter Article merely says that "The Consuls-General . . . . . of each of the Contracting Parties residing in the dominions of the other shall receive from the local authorities such assistance as can by law be given to them for the recovery of deserters from the vessels of their respective countries."

Foreign Deserters Act, 1852.

Neither the letter nor the spirit of the Agreement of 1879, or of Article IV of the Treaty of 1865 is in any way infringed by the action of the Magistrate in giving such assistance to the seaman complainant as he is bound by law to give ~~and it must be assumed that he will give no more and no less.~~

R. E. W.
E. C.

Foreign Office, December 7, 1891.

JAPAN.

No. 43.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received November* 27.)

My Lord, *Royal Courts of Justice, November* 27, 1891.

Seizure of British steamer "Arctic" by the Russian authorities while sealing in Russian waters.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the seizure of the British steamer "Arctic" by the Russian authorities while sealing in Russian waters, and her subsequent escape from custody.

That Mr. Fraser, Her Majesty's Minister at Tôkiô, who reported the incident, stated that the "Arctic's" papers had been confiscated, and that the Russian Minister at Tôkiô had demanded her restitution from the Japanese Government if she should arrive in a Japanese port.

That Mr. Fraser reported again, on the 18th instant, that the vessel in question had arrived in Yokohama Bay.

That, in reply to Mr. Fraser's request for instructions, he was informed by telegraph that your Lordship was disposed to think that he should protest against the surrender of the vessel to the Russian Government by the Japanese authorities, and that, if application was made to him for her surrender, he must decline to entertain it.

That, in the meanwhile, search had been made in the Foreign Office for precedents bearing on the case, and that a Memorandum was inclosed giving an account of one incident which had some analogy to it, but the treatment of which was decided by circumstances which were not present in the case of the "Arctic."

That at that stage the correspondence was referred to the Board of Trade for their observations, and more especially for an opinion as to the disabilities which attached to the "Arctic" in consequence of the confiscation of her papers, and the amount of protection which should be afforded her by Her Majesty's Diplomatic and Consular officers.

That to that reference the Board replied that, assuming there was nothing in the recent negotiations with the United States on the Behring's Sea question which would modify the fact stated in the Memorandum that Her Majesty's Government had no Convention with Russia for regulating such fisheries, they concurred in the opinion expressed by your Lordship to Mr. Fraser. That they further suggested, for your Lordship's consideration, that the detention by the Russian authorities of the "Arctic's" papers, and particularly of her certificate, did not deprive the vessel of her privileges as a British ship, and, in support of their view, referred to section 48, and the sections immediately following, of "The Merchant Shipping Act, 1854" (17 & 18 Vict., cap. 104).

Merchant Shipping Act, 1854.

That the Board of Trade went on to state that, if the detention of the "Arctic's" papers was unlawful, and if she was permitted to leave Japanese waters, she should proceed to the nearest port of registry and obtain a provisional certificate.

That the Board suggested that in that case Her Majesty's Diplomatic and Consular officers should be directed to afford her the protection ordinarily accorded to a British ship.

That subsequently telegrams had been received from Mr. Fraser and Admiral Richards showing that the "Arctic" was brought by Her Majesty's ship "Leander" into Yokohama Harbour, where she remained in the Admiral's possession under seizure as having been found flying the British flag without papers.

That Sir Thomas Sanderson was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion on the following points:—

1. Whether the action of the British Admiral as set forth in the telegrams of the 20th November was justifiable, and, if so, on what grounds;

2. Whether the views expressed by the Board of Trade in their letter of the 20th November were correct and should be acted on, or whether they should be modified to any extent, having particular regard to the question left undecided in that letter, viz., whether the detention of the vessel's papers by the Russian authorities was, or was not, unlawful; and

3. Whether, under all the circumstances of the case, a Russian vessel of war falling in with the "Arctic" upon the high seas would be justified in seizing her and conveying her within Russian jurisdiction, there to answer for the alleged offence for which she was originally arrested.

That Sir Thomas Sanderson was to add that your Lordship would be glad to receive a reply to the above questions at as early a date as possible, and also to be favoured with any general observations which we might have to offer on the case, and especially with regard to Mr. Fraser's telegram (No. 15) of the 23rd instant.

We were also honoured with Sir Thomas Sanderson's note of the 24th instant, inclosing a further telegram (No. 16 of the 23rd November) from Her Majesty's Minister at Tôkiô.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion—

Seizure of the "Arctic" by the British Admiral.

1. The British Admiral was not entitled to seize in Japanese waters, and detain at the port of Yokohama, the British schooner "Arctic" for sailing under the British flag whilst her papers were detained by the Russian authorities for alleged illegal fishing in Russian waters.

Detention of her papers.

2. The views of the Board of Trade are correct. The detention of the "Arctic's" papers does not deprive the vessel of her privileges of a British ship, and she should be allowed to leave Japanese waters, and should receive the protection ordinarily accorded to a British ship.

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Russian vessel of war not entitled to seize her upon the high seas.

3. A Russian vessel of war falling in with the "Arctic" upon the high seas would not be justified in seizing her, and conveying her within Russian jurisdiction.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) Mr. Fraser	(No. 12.	Telegraphic)	November 13, 1891
(B.) To Mr. Fraser	(No. 8.	Telegraphic)	November 17, „
(C.) Mr. Fraser	(No. 13.	Telegraphic)	November 18, „
(D.) Memorandum by Sir E. Hertslet ..	..	.. ..	November 18, „
(E.) To Board of Trade	..	.. ..	November 19, „
(F.) Board of Trade..	..	.. ..	November 20, „
(G.) Ditto	..	.. ..	November 21, „
(H.) Admiralty	..	.. ..	November 20, „
(I.) Mr. Fraser	(No. 14.	Telegraphic)	November 20, „
(J.) Merchant Shipping Act.			
(K.) Mr. Fraser	(No. 15.	Telegraphic)	November 23, „

MEXICO.

No. 44.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received April 22.)

My Lord, *Royal Courts of Justice, April 18, 1891.*

Claims of Mr. P. Milmo against the Mexican Govt.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the claims of Mr. Patrick Milmo, a British subject, against the Mexican Government.

That those claims were submitted to the Mixed Commission, consisting of a British and a Mexican Representative, constituted under Articles I and II of the Preliminary Agreement between Great Britain and Mexico of the 6th August, 1884, for the examination and liquidation of the claims of British subjects against the Government of the Republic.

That the powers of the Commission thus appointed were, as would be seen from the document marked (B), limited to examining the different claims and reporting the result to the Mexican Committee of the Direction of Public Debt; *and that any differences of opinion were to be decided by the Mexican Executive.*

That the circumstances out of which Mr. Milmo's claim arose, as appeared from the accompanying papers, were briefly as follows:—

That about the year 1858 Mr. Milmo bought half a share of an estate called the "Mesa de Cartujanos," the other half being owned by his father-in-law, General Vidaurri, Governor of the State of Nuevo Leon.

Estate of General Vidaurri seized in 1864 during the Mexican civil war by the Republican troops.

That the property was worked by them in partnership down to the year 1864, when, during the civil war then proceeding in Mexico, the Republican troops invaded the Province of Nuevo Leon and seized the estate of General Vidaurri, who, having joined the French invaders, had been declared a traitor by the Republican Government.

That the seizure of the estate and the incidents that followed formed the ground of Mr. Milmo's claims, which were presented to the Mixed Commission under three heads, viz.:—

Statement of Mr. Milmo's claims.

1. Losses due to the retention of the "Mesa de Cartujanos" estate by the Government, estimated at 279,000 dollars, or about 56,000*l.*

2. Compensation for imprisonment and for embargo laid on his property, estimated at 855,857 dol. 67 c., or about 171,171*l.*

3. Losses arising out of various acts of the Government since the seizure of the estate, estimated at 20,000 dollars, or about 4,000*l.*

That the British and Mexican Commissioners were unable to agree with respect to those presentments, and that Mr. Carden, the British Commissioner, was of opinion that the decisions of the Mexican Commissioner under each heading of the claim were not fair to Mr. Milmo.

That Mr. Carden's opinion, as well as the particular circumstances on which each of the claims was based, would be found in the document marked (C).

That in the case of the first claim (alluded to by Mr. Carden as No. 280), the President of Mexico, to whom the matter was in due course referred, decided to award Mr. Milmo the sum of 16,750 dollars (see Sir F. Denys' despatch No. 41 of the 12th November, 1889, document D).

That the second claim (alluded to by Mr. Carden as No. 244) was totally rejected by the President (see also document D).

That of the amount of the third claim (alluded to by Mr. Carden as No. 281), only 5,800 dollars was allowed by the Mexican Commissioner, while Mr. Carden considered that on account of two items a further sum of 8,367 dollars should be awarded. That it did not appear that the President had pronounced any definite decision on that point.

That in the year 1889 Mr. Milmo, to whom Mr. Carden's opinion had been communicated, made an appeal to the Foreign Office, through Mr. Maclure, M.P., for a reconsideration of his claims; and that Sir S. St. John, Her Majesty's Minister at Mexico, then on leave of absence in England, was instructed to furnish a full Report on the case when he returned to his post.

That the conclusion at which Sir S. St. John had arrived would be found in his despatch No. 8 of the 4th February, 1891, to which were appended the decisions of the President of Mexico in regard to the two first claims.

That it would be seen that, although Sir S. St. John did not specifically deal with the third or least important of the claims, he had fully discussed the two first, and that, after an independent and thorough examination of the documents bearing on the case, he was of opinion that it would be useless to interfere further in the matter.

That, having regard to all the circumstances of the case, and more especially to the Report of Sir S. St. John thereon, your Lordship was disposed to think that it was one which did not call for any further action on the part of Her Majesty's Government, but that, before instructing Sir S. St. John to that effect, your Lordship would be glad to learn whether, after consideration of the papers transmitted with Sir Thomas Sanderson's letter, we concurred in that opinion.

That, in the event of our not agreeing in that view, Sir Thomas Sanderson was to request that we would be so good as to inform your Lordship upon what grounds, and to what extent, we considered that the claim might with advantage be further pressed upon the consideration of the Mexican Government.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That we concur in the opinion that the case is one which does not call for any further action on the part of Her Majesty's Government.

Case does not call for any further action on the part of H. M.'s Govt.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) Preliminary Agreement between Great Britain and Mexico ..		August	6, 1884.
(B.) Mr. Carden	(No. 31. Confidential)	July	20, 1885.
(C.) Mr. Carden's opinion on decisions of Mexican Commissioner.			
(D.) Sir F. Denys	(No. 41)	November	12, 1889.
(E.) Mr. Wedemeyer to Mr. Maclure, M.P.		October	24, „
(F.) Mr. Maclure, M.P.		November	9, „
(G.) Sir S. St. John	(No. 8)	February	4, 1891.

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MOROCCO.

No. 45.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received September* 30.)

Royal Courts of Justice, September 28, 1891.

My Lord,

Grant of Admiralty jurisdiction in Morocco to Supreme Court of Gibraltar.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 14th ultimo, stating that, by direction of your Lordship, he had to transmit to us the accompanying papers respecting the grant of Admiralty jurisdiction in Morocco to the Supreme Court of Gibraltar.

That that question was submitted to us for our consideration before the issue of the Morocco Order in Council, 1889, in consequence of a representation from the Chief Justice of Gibraltar, but no insertion was made in the Order to meet the case.

That the Chief Justice of Gibraltar was, however, still of opinion that the jurisdiction in Admiralty cases possessed by the Supreme Court of Gibraltar should be extended to Morocco.

That by Article 2 (sub-section 1) of the Order in Council the Supreme Court of Gibraltar was vested, in civil and criminal matters, "with all the powers and authority which the Supreme Court has independently of this Order" over British subjects in Morocco, and such jurisdiction "may be exercised by any Judge of that Court at Gibraltar or at any place within the limits of this Order."

That Articles 78, 79, 80, and 81 of the Order specifically extend to Morocco the jurisdiction of the Supreme Court of Gibraltar in bankruptcy, lunacy, matrimonial causes, and probate.

That "The Colonial Courts of Admiralty Act, 1890," abolished the Vice-Admiralty Court of Gibraltar, and transferred its jurisdiction to the Supreme Court of the Colony. That section 12 of the Act gave power to extend by Order in Council the application of the Act to Courts established under the Foreign Jurisdiction Act.

That Morocco, however, differed from other localities in which Courts were established under the Foreign Jurisdiction Act in that it had, by Order in Council founded on Treaty, been brought within the jurisdiction of the Supreme Court of a Colony, and that being so, it would appear that the application of the Colonial Courts of Admiralty Act had added Admiralty jurisdiction to the "powers and authority" of the Supreme Court exercisable within the limits of the Morocco Order in Council. That if that were so, the extension of jurisdiction considered by the Chief Justice of Gibraltar to be necessary had been already effected without the necessity for further legislation. That if not, the proposed extension of jurisdiction could only be effected by an amendment of the Order in Council of 1889.

That Sir Thomas Sanderson was to request that we would take the inclosed papers into our consideration, and that we would favour your Lordship with our opinion—

1. Whether the extension of the Admiralty jurisdiction of the Supreme Court of Gibraltar to Morocco had already taken place.

2. If not, whether, having regard to all the circumstances, and especially to the opinion of the Chief Justice of Gibraltar, frequently expressed as to the practical necessity for extending such jurisdiction to Morocco, it was desirable that a short amending Order in Council to the Morocco Order in Council, 1889, should be passed for that purpose.

That Sir Thomas Sanderson was also to request that your Lordship might be favoured with any general observations on the subject which we might wish to offer.

In obedience to your Lordship's commands we have the honour to

Report—

The Admiralty jurisdiction of the Supreme Court of Gibraltar does not extend to Morocco.

That, in our opinion, the Admiralty jurisdiction of the Supreme Court of Gibraltar does not extend to Morocco.

No pressing necessity that it should be so extended.

Upon the information before us, we do not see any pressing necessity that this jurisdiction should be so extended, the explanations asked for by Mr. R. S. Wright in his letter of the 1st September, 1889, and the particulars required by the Foreign Office letter of the 29th June, 1891, not having been furnished.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) Colonial Office	November 16, 1888.
(B.) Ditto	January 15, 1889.
(C.) Ditto	August 27, „
(D.) Mr. Wright	September 1, „
(E.) To Colonial Office	September 9, „
(F.) Colonial Office	September 16, „
(G.) Ditto	February 15, 1890.
(H.) To Colonial Office	February 22, „
(I.) Colonial Office	June 23, 1891.
(J.) To Colonial Office	June 29, „
(K.) Morocco Order in Council, 1889.	
(L.) Colonial Courts of Admiralty Act of October 1890.	

No. 46.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received December* 12.)

Royal Courts of Justice, December 12, 1891.

My Lord,

Morocco O. in C., 1889. Table of Fees annexed to the Queen's Regulations.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers respecting a Table of Fees annexed to the Queen's Regulations framed by Her Majesty's Consul-General at Tangier, under Article 143 of the Morocco Order in Council, 1889.

That it would be seen from the papers that your Lordship was at first of opinion that it was not desirable to create any fees not established by the Table of Fees to be taken by the officers of Her Britannic Majesty's Consular Court for Morocco, which was approved on the 17th February last, and that it would therefore be better to omit the Table now under consideration from the Queen's Regulations. But that, in view of the opinions expressed by Sir H. Burford Hancock, Chief Justice of Gibraltar, and by Mr. Consul White, your Lordship was, on further consideration, disposed to think that it might be desirable to allow the Table to remain as an Annex to the Queen's Regulations.

That the Queen's Regulations and Table of Fees leviable thereunder were accordingly referred to the Treasury, and that the Lords Commissioners stated that they had no objection to offer to the Regulations being issued, including the Table of Fees, provided that the Secretary of State was satisfied that it did not clash with the Tables in force under the Consular Fees Order in Council, 1887, and under Article 124 of the Morocco Order, and was framed with due legal authority.

That a Memorandum by the Chief Clerk of the Foreign Office, to which was annexed a comparison in Tabular form of the Special Fees proposed to be inserted in the Queen's Regulations, with fees otherwise leviable, was inclosed.

That, in connection with the question now arising, Sir Thomas Sanderson was to call our attention to our Report of the 15th April, 1887, as to the power of the Minister Resident and Consul-General at Bangkok to levy a fee for the registration of British subjects in Siam, the registration itself being in that case enforceable, not under any special clauses in the Siam Order in Council, but under "Rules and Regulations for the peace, order, and good governance of Her Majesty's subjects being within the dominions of the Kings of Siam," issued by the Minister Resident in virtue of the powers vested in him by Order in Council.

That we had then reported that although, in our opinion, the Regulation, in so far as it made registration compulsory upon British subjects in Siam, was valid and enforceable, it was, in the absence of any special provision to that effect in the Order in Council itself, beyond the powers of the Minister Resident to levy any fee upon such registration by virtue merely of a Regulation of the kind mentioned.

That Sir Thomas Sanderson was to request that we would favour your Lordship with our opinion whether, under Article 143 of the Morocco Order in Council, the Consul-General had power, with the approval of the Secretary of State, to establish a

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Table of Fees, to be levied under the Queen's Regulations, authorized to be made by that Article, or whether any other power existed to enable fees so to be levied by means of the Queen's Regulations under that particular Order in Council.

That Sir Thomas Sanderson was, at the same time, to request that your Lordship might be favoured with any special observations which we might wish to offer on the subject.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the Consul-General has not power, under Article 143 of the Morocco Order in Council, 1889, to establish a Table of Fees to be levied under the Queen's Regulations. No other power exists to prescribe Consular fees by Queen's Regulations. Such fees must be imposed by Order in Council, under "The Consular Salaries and Fees Act, 1891," or by Rules sanctioned by the Treasury under Article 124 of the Order in Council of the 28th November, 1889, according to the nature of the duties in respect of which the fees are charged.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Morocco Order in Council, 1889.			
(B.)	Queen's Regulations (Draft).			
(C.)	Consular Fees Order in Council, 1887.			
(D.)	Table of Judicial Fees		February	17, 1891.
(E.)	Mr. White	(No. 2. Treaty)	April	13, 1891
(F.)	To ditto	(No. 8. Treaty)	August	17, „
(G.)	To Sir H. Hancock		August	17, „
(H.)	Sir H. Hancock		August	28, „
(I.)	Mr. White	(No. 8. Treaty)	September	21, „
(J.)	To Treasury		October	17, „
(K.)	Treasury		October	31, „
(L.)	Memorandum by Chief Clerk		November	18, „
(M.)	Law Officers' Report		April	15, 1887.

PACIFIC ISLANDS.

[Colonial Office.]

No. 47.

[Transmitted by the Colonial Office to the Foreign Office in their letter of August 26, 1891.]

The Law Officers of the Crown to Lord Knutsford.

My Lord, *Royal Courts of Justice, August* 20, 1891.

Execution of certain natives of the New Hebrides by order of Captain Davis for the murder of Mr. Latoor.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 9th ultimo, stating that he was directed by your Lordship to transmit for our consideration:—

1. A Declaration signed at Paris the 26th January, 1888, with the Regulations annexed.

2. Two despatches, dated the 30th August, 1890, and 19th November, 1890, from Rear-Admiral Lord Charles Scott to Sir John Thurston, High Commissioner for the Western Pacific, with the High Commissioner's reply to the latter, dated the 20th December, 1890.

3. A letter from the Admiralty to the Colonial Office, dated the 2nd April, 1891, with inclosures.

4. The Western Pacific Order in Council, 1877.

5. A Report from ourselves, dated the 11th July, 1890.

That it would be seen that two British subjects having been murdered by the natives of an island of the New Hebrides, Captain Davis, of Her Majesty's ship "Royalist," received from the Joint Naval Commission "full authority to finish the case."

That, acting upon that authority, Captain Davis took the measures detailed in his letter to the Admiral of the 12th November, 1890; but that the High Commissioner doubts whether that officer had "any authority or power to hold a quasi-judicial trial of any person he may have made prisoner, or who may have voluntarily surrendered to him, and thereafter to inflict upon such prisoner the death penalty." And that he suggested that, in the absence of such authority or power, Captain Davis, although a naval officer, might, as a British subject, be called upon to answer in the High Commissioner's Court for his action in putting those persons to death.

That the Lords of the Admiralty, on the other hand, considered that Captain Davis, having got unmistakable evidence of the identity and guilt of the murderers, carried out the execution as an act of war, and were of opinion that he was fully justified in the course he pursued.

That it might be taken as a fact that Captain Davis possessed all the authority which it was possible for the Joint Naval Commission to confer, and that the circumstances of the case required that punitive measures should be taken in consequence of the disturbance of peace and good order by the murder of British subjects; and that it seemed clear that if Captain Davis had shelled the island, or had landed a party and come into conflict with the natives, and by so doing had, in either case, killed various unknown and innocent persons, and had destroyed the property of various other unknown and innocent persons, his action would have been fully justified as an act of war.

That he adopted, however, the more humane course of securing and identifying the actual murderers, and, after inquiry and proof of their guilt, executing them.

That it had been suggested that those men, whether they had been captured or had surrendered, should be dealt with as taken prisoners of war in civilized warfare.

That it must, however, be remembered, that the operations of Her Majesty's ships in those cases—although acts of war—were carried out against savage tribes to whom the usages of civilization were unknown, and from whom a captured sailor would inevitably receive most barbarous treatment.

That outrages by natives had to be treated as acts of war, for no other means existed for punishing the perpetrators; that there was no Court before which they could be tried; that there were no such things as native Courts; and that British Civil Courts had no jurisdiction.

That the question raised by the case under consideration seemed really to be whether it was lawful for the Commander of a force engaged in warlike operations, undertaken for the purpose of punishing certain specific acts of violence against British subjects, to limit the operations to the personal punishment of the perpetrators of the acts of violence, instead of inflicting a punishment upon the tribe by the promiscuous and indiscriminate destruction of property, and possibly of human life as well.

That, whether or not Captain Davis had acted strictly within the law, it seemed to your Lordship that, morally, his action was free from blame, as his object was manifestly to restrict as far as possible the scope of the punitive measures which he was called upon to take.

That Mr. Bramston was accordingly to invite us to take the papers into our consideration, and to favour your Lordship with our opinion as to—

1. Whether, under the circumstances, the execution of the natives was lawful as an act of war.

2. If not, whether it was lawful on any other ground, as, for instance, that it was an act done under the authority of the Joint Naval Commission.

3. If not, whether, having regard to Article 5 (6) of the Western Pacific Order in Council of 1877, the jurisdiction of the High Commissioner's Court, as created by Articles 12–17 of that Order, extended to the Island of the New Hebrides in which the occurrence took place.

4. Whether Captain Davis was liable to proceedings in the High Commissioner's Court for his action in the matter; or

5. Whether the circumstance of his being vested with the authority of the Joint

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Naval Commission precluded the High Commissioner's Court from entertaining the matter.

That Mr. Bramston was to add that your Lordship would be glad to be favoured with any observations which might occur to us generally upon the subject.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Are of opinion that no proceedings should be taken against Captain Davis.

1 and 2. That we are of opinion that the execution of the natives in question cannot be justified as an act of war, but we are of opinion that, having regard to the circumstances of the case and the authority given to Captain Davis by the Joint Naval Commission to finish the case (see letter from Lord Charles Scott, dated the 29th January, 1891, paragraph 7), his conduct was justifiable as being an act of retaliation and necessary for the punishment of the murderers of Mr. Latoor. At the same time, the case is one of great difficulty, and it would be well if definite instructions could be laid down for the guidance of officers in such circumstances.

3 and 4. Questions 3 and 4 become, in the view we take, of lesser importance, but we are of opinion that Captain Davis could be put on his trial before the High Commissioner's Court under clauses 6, 7, 22, 27, and 28 of the Western Pacific Order in Council, 1877, or he could be tried in England under 24 & 25 Vict., cap. 100.

The fact that Captain Davis was vested with authority from the Joint Naval Commission would not oust the jurisdiction of the High Commissioner's Court, or of the English Court, if he were charged under the Statute 24 & 25 Vict., cap. 100, though it would have a most material bearing upon the merits.

We have only to add that we are of opinion that no proceedings should be taken against Captain Davis.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

PERSIA.

No. 48.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 14.)

My Lord,
Royal Courts of Justice, March 12, 1891.

Withdrawal by the Shah of Persia of the Lottery Loan Concession.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 10th ultimo, stating that he was directed by your Lordship to transmit to us the inclosed Memorial, which had been addressed to your Lordship by the Anglo-Asiatic Syndicate, relative to the withdrawal by the Shah of Persia of the Lottery Loan Concession, and the claim against the Persian Government put forward by the Syndicate in respect of such withdrawal.

Law Officers' Report, 5th December, 1889.
Ibid., 28th October, 1890.

That the circumstances under which the Concession was originally granted by the Shah on the 20th July, 1889, and the manner in which it had since been dealt with in this country, as well as the particulars of the memorialists' claim, were so clearly and so fully set forth in the Memorial itself that it appeared unnecessary to recapitulate them, but that Sir Philip Currie was to inclose, for convenience of reference, our previous Reports on the subject, dated respectively the 5th December, 1889, and 28th October, 1890.

Case of Macnee *versus* the Persian Investment Corporation.

That, as regarded the legality of the Syndicate's operations in this country, to which our Report of the 5th December, 1889, more particularly referred, attention was specially called to the decision of Mr. Justice Chitty, in the Chancery Division of the High Court of Justice on the 18th April last, in the case of Macnee *versus* the Persian Investment Corporation. That the learned Judge then dismissed an application for an injunction to restrain that Company from dealing with this same Concession, on the ground that such dealing was not contrary to the laws of England. (See Law Reports, 44 Chancery Division, p. 306 *et seq.*)

That the memorialists submitted that they had not only lost the profit on the resale of the Concession to the Persian Investment Corporation, but that their prospects and prestige had gone, and that they had been utterly ruined by the discredit brought upon them by the Shah's action, for which, it had been alleged, they had been in no sense responsible; and that they prayed for the assistance of the Secretary of State in obtaining a settlement of their claim from the Persian Government.

That some correspondence, as noted in the accompanying list, was also inclosed, as to the attitude of Her Majesty's Legation at Tehran in regard to the Concession.

That the notification as to the withdrawal of the Concession was made by a telegram from the Persian Minister for Foreign Affairs to the Persian Minister in London, dated the 5th December, 1889, and that the reason for that step given by the Grand Vizier to Her Majesty's Minister was that the Shah had signed the Concession under a misapprehension, and that he had cancelled it when he found that the conditions were contrary to the religious law of his country.

That, on the 18th June, 1890, a telegram (No. 65) was sent to Sir H. D Wolff to the effect that, in order to put a stop to any dealings with the Concession, it might be desirable that the Shah should instruct his Minister in London to make a public announcement, both here and on the Continent, that it had been cancelled.

That, on the 30th August, 1890, Sir H. Wolff telegraphed that all the Persian Representatives abroad had been ordered to inform their colleagues that the Concession was cancelled; but that, so far as your Lordship was aware, no public announcement of the withdrawal was made in this country previous to the appearance of the paragraph in the "Times" of the 13th September, 1890, mentioned on p. 8 of the Memorial.

That Sir Philip Currie was also to inclose a telegram from Her Majesty's Chargé d'Affaires at Tehran, dated the 16th ultimo, from which it would be seen that the Syndicate had already brought their claims directly to the notice of the Shah and the Persian Minister for Foreign Affairs; and that the latter had instructed the Persian Minister in London to inform the applicants that no attention would be paid to them unless they were supported by the Secretary of State and by Her Majesty's Legation at Tehran. That Mr. Kennedy also stated that the Persian Minister in London had obtained counsel's opinion to the effect that the Persian Government was not responsible for losses arising out of the withdrawal of the Concession.

That Sir Philip Currie was to request that we would take the matter into our consideration, and that we would favour your Lordship with our opinion as to the nature of the reply which should be returned to the memorialists, and with any general observations which we might have to offer in connection with their claim.

We were further honoured with a Memorandum from Sir Philip Currie, dated the 16th ultimo, inclosing a Memorial which had been addressed to your Lordship by the New Oriental Bank Corporation, relative to the withdrawal by the Shah of the Concession above referred to, and stating that the Bank lent to the Anglo-Asiatic Syndicate, on the collateral security of the Concession, the sum of 20,000*l.* at 6 per cent., and that the Bank's total claim against the Persian Government, including interest, amounted to 22,000*l.*

That the Memorial covered much the same ground as that of the Anglo-Asiatic Syndicate, and that your Lordship would be obliged if we would favour you with our opinion as to the nature of the reply which should be returned to it.

That a despatch which had just been received from Her Majesty's Chargé d'Affaires at Tehran relative to the withdrawal of the Concession and the claims of the Anglo-Asiatic Syndicate in connection therewith was also inclosed.

We have also the honour to acknowledge the receipt of a further Memorandum from Sir Philip Currie, dated the 19th ultimo, stating that he was directed by your Lordship to transmit to us a letter from Messrs. Chatteris, Nicholls, and Atkins, with accompanying Memorial, addressed to Her Majesty's Government by the Liquidators of the Persian Investment Corporation, relative to the withdrawal of the Concession above mentioned.

That Sir Philip Currie was to request that we would advise your Lordship as to the reply which should be returned to that Memorial.

That the claim of the Persian Investment Corporation amounted to 45,000*l.*, including a sum of 32,548*l.* paid to the Anglo-Asiatic Syndicate on account of the Concession.

That the dates of payment were stated to have been :—

	£
13th December, 1889	20,000
17th December, 1889	9,000
12th February, 1890	3,548
Total	32,548

That of those sums 20,000*l.* was paid by the Persian Investment Corporation in a cheque which was handed by the Anglo-Asiatic Syndicate to General Mikayl Khan in part payment of the balance of the purchase-money of 120,000*l.* payable by the Anglo-Asiatic Syndicate to General Mikayl Khan as assignee of Buzie de Caerdoel.

That that cheque was paid into Prince Malcom Khan's private account at the Western (Burlington Gardens) Branch of the Bank of England.

That the Concession was withdrawn, as previously stated, by a telegram from the Persian Government to Malcom Khan dated the 5th December, 1889, and that all those payments were, therefore, subsequent to such withdrawal.

That the memorialists further stated that up to July 1890 both Prince Malcom Khan and General Mikayl Khan were continuously pressing and urging the Corporation to commence working the Concession, and to pay the balance of the purchase-money.

We have taken the three Memorials, together with the other papers, into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Persian Government should be pressed to repay to the Anglo-Asiatic Syndicate sum of 40,000*l.* paid to General Mikayl Khan.

That, having regard to the character of the Concession, we are of opinion that Her Majesty's Government would not be justified in pressing upon the Persian Government the claim of the Syndicate for payment of the sums they would have received if the Concession had been allowed to stand.

We do not deal with the question of amount, although it is clear that of the sums to be received by the memorialists a considerable proportion would have to be paid by them under their contract of the 18th November, 1889. It is, however, clear that they have parted with the sum of 40,000*l.* paid by them to General Mikayl Khan, the brother of the Persian Minister in London, and stated to be Councillor to that Legation, and that the payment of the second half of that sum would not have been made but for the assurance given by the Persian Minister upon the 20th November, 1889.

We are, therefore, of opinion that Her Majesty's Government should press upon the Persian Government the payment to the memorialists of this sum of 40,000*l.*, and that the memorialists should be informed that to this extent only Her Majesty's Government would be prepared to support their claim.

We note that in an action brought against General Mikayl Khan by the Persian Investment Company, which came before the Queen's Bench Division on the 6th February last, an affidavit was produced by Prince Malcom Khan in support of the claim of privilege for his brother, upon the ground that he was employed in the Persian Legation.

H.M.'s Govt. should not put forward any claim on behalf of the New Oriental Bank Corporation or of the Persian Investment Corporation.

The claims of the New Oriental Bank Corporation and the Persian Investment Corporation are against the Syndicate, and, in the absence of any reason for believing that the Syndicate would fail to repay the money which it borrowed, or received on a consideration which has wholly failed, we think Her Majesty's Government should decline to recognize, or put forward, any claim on behalf of the Bank Corporation or the Liquidators of the Persian Investment Corporation.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE

List of Papers.

Anglo-Asiatic Syndicate		February 2, 1891.
Law Officers' Report		December 5, 1889.
,, ,, ...		October 28, 1890.
Mr. R. J. Kennedy	(No. 7. Telegraphic)	January 16, 1891.
Sir H. Drummond Wolff	(No. 162. Telegraphic)	November 25, 1889.
,, ,, ...	(No. 167. Telegraphic)	November 30, ,,
To Sir H. Drummond Wolff	(No. 84. Telegraphic)	November 26, ,,
,, ,, ...	(No. 87. Telegraphic)	December 7, ,,
Sir H. Drummond Wolff	(No. 181. Telegraphic)	December 18, ,,
To Sir H. Drummond Wolff	(No 91. Telegraphic)	December 20, ,,
,, ,, ...	(No. 65. Telegraphic)	June 18, 1890.
Sir H. Drummond Wolff	(No. 211. Telegraphic)	August 30, ,,
To Sir R. Morier	(No. 216)	October 8, ,,
To Messrs. Slaughter and May		November 1, ,,
Messrs. Chatteris, Nicholls, and Atkins		February , 1891.

No. 49.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 14.)

My Lord,

Royal Courts of Justice, May 12, 1891.

Withdrawal of Persian Lottery Concession.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 25th ultimo, stating that he was directed by your Lordship to inform us that since the receipt of our Report of the 12th March last, respecting the withdrawal of the Persian Lottery Concession, the Persian Minister at this Court had stated verbally that he was authorized by his Government to give, if necessary, a formal undertaking on behalf of the Shah that His Majesty would not claim diplomatic privilege on behalf of Prince Malcom Khan, or his brother General Mikayl Khan, and would further, as their Sovereign, explicitly disavow and discountenance any such claim should it be put forward by those gentlemen themselves in answer to any legal proceedings which might be taken against them in this country in respect of financial transactions in which they were concerned, while the former was the accredited Representative of the Shah at this Court, and the latter was a recognized member of his brother's official suite.

7 Anne, cap. 12.

That Prince Malcom Khan had since been superseded as Persian Minister, and that General Mikayl Khan had ceased to be recognized as a member of the official suite of the Legation, so that it appeared clear that persons now initiating proceedings against them would incur no personal liability under the penal provisions of the Statute of Anne (7 Anne, cap. 12), which was passed further to safeguard the privileges of diplomatic functionaries in this country, and more especially to punish persons offering them indignity while they were actually serving their Sovereign in a diplomatic capacity at this Court.

Law Officers, 24th January, 1854.

But that the immunity from legal process enjoyed by the members of the official suite of a foreign Embassy or Legation was one which was secured to them by the common law of England, independently of Statute (*vide* Law Officers' opinion of the 24th January, 1854), and that it appeared, moreover, to be a recognized principle of international law that that immunity did not cease from the actual date when the Ambassador or Minister presented his letters of recall, or had been superseded by a successor, but should be continued to him during such "reasonable time" as might elapse between his recall or supersession and his leaving the country. (*Vide* the Queen's Advocate's Report of the 31st March, 1847, and the various authorities therein cited. viz., Vattel, Liv. IV, Ch. 9, § 125; Marten's Manuel Diplomatique, Ch. 7, § 59, Ch. 2, § 15; Marten's Précis, Liv. VII, Ch. 9.)

That probably, in the present case, it would be considered that a reasonable time had elapsed since the supersession of Malcom Khan and his brother, but that it might still possibly be held that the plea that they possessed diplomatic privilege at the time when the cause of action arose afforded a good answer to such action when subsequently brought.

Case of Persian Investment Company *versus* Mikayl Khan.

That in that connection, however, Sir Philip Currie was to call our attention to the inclosed report, which had been extracted from the "Times" newspaper for the 9th April, of certain proceedings before the Divisional Court in the case of the Persian Investment Company *versus* Mikayl Khan.

That it would appear from that report, which was, however, of a somewhat fragmentary description, as though the learned Judges (Mathew and Day, J.J.) were disposed to consider that diplomatic privilege—even if clearly existing at the time when the cause of action arose—afforded no answer to such action when brought if it (the privilege) had ceased to attach before the writ was issued and the action commenced.

That it was, however, doubted whether it would be safe either to assume on the strength of that report that the learned Judges in question did actually intend so to declare the law, or if they did so decide, that the point was so free from doubt as to warrant the decision of an intermediate Court being considered as satisfactorily declaring the law upon the subject.

That in those circumstances, therefore, it still appeared prudent to obtain a formal undertaking of the nature indicated above; and that Sir Philip Currie was accordingly to transmit to us the draft of a note which, if its terms should be approved by us, your Lordship proposed to address to Mirza Mahomed Ali Khan requesting him to furnish such a formal undertaking.

That it appeared to be a well-settled principle of international usage that the

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privilege of exterritoriality attaching to an Ambassador or Minister, and to the members of his *official* suite, was not their personal privilege, but that of the State which they represented, and that, consequently, it could only be waived by the Sovereign or Chief of that State.

That the acts in respect of which legal proceedings had been already initiated against Mikayl Khan, and in respect of which other legal proceedings might subsequently be initiated against Malcom Khan, took place, as had already been intimated, at a time when *primâ facie* a diplomatic character and privilege undoubtedly attached to both of them by reason of their official position at the Persian Legation to this Court, but that it was thought that, if the Shah, as their Sovereign, was prepared to disavow any claims of privilege which might be made on their behalf, the Court, even if otherwise disposed to entertain them, would, on the grounds above mentioned, overrule such claims.

That your Lordship was, however, desirous, before taking any further action, of being fortified with our assent to those views; and that, in the event of our opinion coinciding with them, your Lordship would further wish to be advised as to the most suitable way of putting the decision of His Majesty the Shah, should such a course become necessary, in evidence before the Courts in answer to the claim which had already been set up on behalf of Mikayl Khan, and which would doubtless subsequently be preferred on behalf of Malcom Khan.

That in the event of a formal undertaking to that effect being given and received, and also of its constituting, in our opinion, the basis of a valid answer to the claim of privilege, it was presumed that the Anglo-Asiatic Syndicate, whose claim formed the subject of our Report of the 12th March last, might be informed that their proper remedy would appear to lie in bringing an action against Mikayl Khan for the recovery of the 40,000*l.* which they had paid to him, and that it would be unnecessary for Her Majesty's Government to address the Persian Government in the manner recommended by us in our above-mentioned Report, which, on grounds of general policy, Her Majesty's Government would, at the present juncture, be exceedingly averse from doing in the absence of very pressing necessity.

That Sir Philip Currie was to inclose our previous Reports on the subject in case we should wish to refer to them; and that he was also to forward to us, for our information, copies of certain legal opinions which had been obtained by the Persian Minister, and by him communicated privately to the Foreign Office, with reference more particularly to the question of the legal liability of the Persian Government on account of the withdrawal of the Concession.

That it would, however, be seen that those opinions merely affirm the immunity from legal proceedings of His Imperial Majesty the Shah in respect of his sovereign acts—a proposition which had not been disputed by Her Majesty's Government, and that they did not in any way affect the substance of the Reports with which we had been good enough to favour your Lordship on the more general questions raised by the withdrawal of the Concession.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

The waiver by the Shah of diplomatic privilege in respect of Prince Malcom Khan and his brother would remove any bar to legal proceedings in our Courts.

That, in our opinion, the waiver by His Majesty the Shah of diplomatic privilege in respect of Prince Malcom Khan and his brother would remove any bar to proceedings in our Courts, and the plea that they possessed diplomatic privilege at the time when the cause of action arose would be no answer to such proceedings. It would, however, be prudent to obtain a formal undertaking from the Shah that His Majesty will not claim the privilege, and although the production of such an undertaking might not in itself be sufficient, yet, as it rests upon the person claiming such privilege to establish that claim, there will be no difficulty in giving effect to such an undertaking.

Approve draft to Mirza Mahomed Ali Khan asking him to furnish a formal undertaking that diplomatic privilege will not be claimed.

It would also be desirable to obtain directions from the Government of His Majesty the Shah to the Persian Minister here that the latter should assist in establishing the repudiation of Malcom Khan and Mikayl Khan.

We have deleted from the draft note words which appear to confine the undertaking to actions brought by the Persian Investment Corporation, but otherwise we approve the terms of the note.

The Anglo-Asiatic Syndicate should be informed that, pending the legal proceedings in question, Her Majesty's Government cannot undertake any diplomatic intervention on their behalf.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

1.	To Mirza Mahomed Ali Khan.	
2.	Law Officers	December 5, 1889.
3.	" "	October 28, 1890.
4.	" "	March 12, 1891.
5.	Legal opinions sent by Persian Minister to Sir P. Currie.. ..	March 31, "
6.	Extract from the "Times" .. .. (The Persian Investment Company *v.* Mikayl Khan.)	April 9, "
7.	Opinion of Sir A. Cockburn and Sir R. Bethell, given January 12, 1854, in the case of M. Drouet. (See vol., "Diplomatic Privileges," 1846–74.)	
8.	Opinion of Queen's Advocate, given March 31, 1847, on case of Mr. Murphy. (See vol., "Diplomatic Privileges," 1846–74.)	
9.	Memorandum as to date of Malcom Khan's supersession.	

Annex.

Draft of Letter to Mirza Mahomed Ali Khan.

M. le Ministre, *Foreign Office, May , 1891.*

ON the occasion of a recent visit to this Office you were good enough to state that you were authorized by your Government to give a formal undertaking, if necessary, on behalf of the Shah, that His Majesty would not claim diplomatic privilege on behalf of Prince Malcom Khan, or his brother, General Mikayl Khan, in the event of legal proceedings being instituted in this country in connection with the withdrawal of the Persian Lottery Loan Concession.

I am informed that such proceedings have been taken, ~~at the instance of the Persian Investment Corporation,~~ and I have the honour to request that you will be good enough to furnish me with an undertaking in the above sense.

I have, &c.

No. 50.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 4.)

My Lord, *Royal Courts of Justice, July 3, 1891.*

Persian Lottery Concession; withdrawal of.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us a letter which had been received from the liquidators of the Persian Investment Corporation on the subject of the withdrawal of the Persian Lottery Concession.

Evidence required by liquidators.

That it would be seen that the liquidators requested that Her Majesty's Government would furnish them with such evidence as might constitute legal proof that—

1. The Concession in question was absolutely forfeited and withdrawn by His Majesty the Shah; and

2. That Prince Malcom Khan had full knowledge of such forfeiture and withdrawal at the time he received the money of their Corporation.

British Minister should not be involved.

That it was, in your Lordship's opinion, inexpedient on grounds of public policy that Her Majesty's Minister at Tehran should, in any way, be personally connected with legal proceedings relative to the matter. Moreover, that any information which Sir H. Drummond Wolff might possess as to the withdrawal of the Concession of the Shah and Malcom Khan's subsequent action would mainly be based upon statements made to him (Sir H. Wolff) in conversation with the Persian Prime Minister, and would therefore probably be inadmissible as evidence in the present proceedings.

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Suggests reference to Persian Minister.

That the person who undoubtedly possessed the fullest information on the subject was the present Persian Minister in London, and that the applicants had already been informed that he would, if communicated with, probably be found ready to give evidence concerning the money which Malcom Khan received from their Corporation.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion generally as to what answer should, having regard to the previous communications which had passed upon the subject, be returned to the liquidators' letter of the 17th ultimo.

In obedience to your Lordship's commands, we have the honour to

Report—

H. M.'s Govt. should refer liquidators to Persian Minister.

That, in our opinion, the liquidators should be informed, in answer to their letter, that Her Majesty's Government cannot, in the present state of circumstances, give any further information or any evidence upon the question of the Persian Concession, but that Her Majesty's Government has no doubt that the Persian Minister will be able to give the necessary proof of the facts it is desired to establish.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Mr. Lee (Liquidators of Persian Investment Corporation) ..	June 17, 1891.
(B.)	To Anglo-Asiatic Syndicate	May 26, „
(C.)	To Persian Investment Corporation	May 26, „
(D.)	Law Officers' Report	May 12, „
(E.)	Messrs. Arber and Lewis	March 13, „
(F.)	To ditto	April 4, „

No. 51.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received August 8.)

My Lord, *Royal Courts of Justice, August* 6, 1891.

Withdrawal of Persian Lottery Concession.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 30th June last, stating that he was directed by your Lordship to forward to us a further Petition which had been received from the New Oriental Bank Corporation on the subject of the withdrawal of the Persian Lottery Concession.

Further Petition from the New Oriental Bank Corporation.

That it would be seen that the petitioners had been advised that they were not in a position to act on the suggestion (the draft embodying which was communicated to us on the 24th June) that they should bring an action against General Mikayl Khan, for the reason that the facts and circumstances which were set forth in the Company's Memorial of the 12th February last were not such as to sustain such proceedings on their part.

That, assuming for the moment that the advice in question was sound, and that the Corporation had no remedy against General Mikayl Khan, your Lordship would be glad to be favoured with our opinion as to whether they had not, in any event, a remedy against the Anglo-Asiatic Syndicate, to whom they advanced the 20,000*l.* with which to purchase the Lottery Concession, and that your Lordship would also desire, at the same time, to be advised generally as to the nature of the reply which should be returned to the petitioners.

That the original Petition from the Corporation was also inclosed for purposes of reference.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

The Corporation has a legal remedy against the Anglo-Asiatic Syndicate.

That, in our opinion, the New Oriental Bank Corporation has, in any event, a remedy against the Anglo-Asiatic Syndicate, and has no direct claim against His Majesty the Shah.

We therefore advise that they should be informed that Her Majesty's Government must leave them to their legal remedies against the persons to whom they advanced the money, and cannot undertake to press any claim on their behalf upon His Majesty the Shah.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

New Oriental Bank Corporation	February 12, 1891
Ditto	June 24, „

RUSSIA.

No. 52.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received January 24.)

My Lord, *Royal Courts of Justice, January* 22, 1891.

Position of British Jews travelling in the Russian dominions.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 17th ultimo, stating that he was directed by your Lordship to transmit to us a letter from Sir Julian Goldsmid, M.P., respecting the position of British Jews travelling in the Russian dominions.

That Sir Julian Goldsmid forwarded a copy of a pamphlet entitled "The Persecution of the Jews in Russia," which contained a summary of the special and restrictive laws in force in the Russian Empire concerning Russian Jews, and that he inquired whether, in the opinion of Her Majesty's Government, the Russian Government was entitled, according to international law, the comity of nations, and the provisions of the Treaty between Great Britain and Russia, to impose any or all of those restrictions on British Jews.

That Sir J. Goldsmid stated that he had heard on good authority that the United States' Minister at St. Petersburgh having refused to allow that any such restrictive measures could apply to his countrymen of the Jewish faith, special arrangements had been made with him on the subject.

That Sir Philip Currie was to inform us that that point was referred, by telegraph, to Her Majesty's Ambassador at St. Petersburgh, who, in his reply, stated that the Report in question was entirely without foundation.

Expulsion from Russia in 1881 of Mr. L. Lewisohn, a naturalized British subject of the Hebrew persuasion.

That Sir Philip Currie was also to invite our attention to the Reports of the Law Officers of the Crown of the 30th June and 5th November, 1881, in relation to the expulsion from Russia of Mr. Leon Lewisohn, a naturalized British subject of the Jewish persuasion, as well as to the correspondence which was presented to Parliament in the same year on that subject (see Russia Nos. 3 and 4 of 1881).

That at p. 21 of the latter Blue Book (Russia No. 4), we should find the instructions which, on receipt of the Law Officers' Report of the 5th November, 1881, above referred to, were sent to Her Majesty's Ambassador at St. Petersburgh, which were to the following effect: that the position of the Jews in Russia had formed the subject of a complaint from certain British subjects of that religion at Warsaw in 1862, and that Her Majesty's Government had come to the conclusion that they would not be justified in claiming exemption for British Jews in Russia from disabilities to which their Russian co-religionists were liable by law; and that Her Majesty's Government felt that they could not then insist upon a construction of the Treaty at variance with that which was placed upon it in 1861.

That an extract from the Treaty between this country and Russia of the 12th January, 1859, containing the Articles referred to in the correspondence, would be found at p. 29 of the Blue Book No. 4 (1881).

That the subject was now once more attracting considerable public attention, and that, in those circumstances, your Lordship would be obliged if we would take the papers above referred to into our consideration, and would be good enough to inform

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you whether we saw any reason to alter or modify in any way the opinion expressed by the Law Officers in 1881 respecting the rights of British Jews in Russia, and to favour your Lordship with any general observations which we might have to offer on the subject.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve the interpretation placed upon Treaty of 1859 by Law Officers in 1862 and 1881 upon the hypothesis that the disabilities to which British and Russian Jews are subjected are substantially the same.

That we are of opinion that the interpretation placed upon the provisions of the Treaty of 1859 in the Report of the Law Officers dated the 6th May, 1862, was the correct one; and we concur in the opinion expressed by our predecessors in November 1881 that it is not open to Her Majesty's Government now to insist upon a construction of the Treaty at variance with that Report.

We desire to add that the Reports of the Law Officers above referred to, and our concurrence therein, proceed upon the hypothesis that the disabilities to which British and Russian Jews are subjected are substantially the same.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Sir J. Goldsmid (Pamphlet only)		December 10, 1890.
To Sir R. Morier	(Telegraphic)	December 12, ,,
Sir R. Morier	(Telegraphic)	December 13, ,,
Law Officers' Reports: Russia, Nos. 55-58, 1881.		
Parliamentary Papers: Russia, Nos. 3 and 4, 1881.		
Treaty, 1859, Russia and Great Britain.		

No. 53.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received August .)

My Lord, *Royal Courts of Justice, August* 1, 1891.

Difficulties with regard to solemnization of marriages in Russia.

WE were honoured with your Lordship's commands signified in Sir J. Fergusson's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to certain difficulties which have presented themselves with regard to the solemnization of marriages at Her Majesty's Embassy at St. Petersburgh, and also in certain chapels attached to the English Episcopal Church in Russia.

That Sir James Fergusson was to state that the Anglican Churches at St. Petersburgh, Cronstadt, Moscow, Riga, and Archangel were considered by the Russian Government to be under the direct protection and jurisdiction of Her Majesty's Embassy at St. Petersburgh, and in the enjoyment of complete extra-territorial rights and privileges, and consequently to be entirely exempt from the application of the *lex loci*.

That it was understood that the Russian law did not recognize any kind of civil marriage, but that, on the other hand, every marriage celebrated in Russia by a minister belonging to a recognized community of the Christian faith between persons of that persuasion was held to be valid by the *lex loci*, and would consequently be recognized as valid in this country by our own Courts.

That if, however, the view that the various chapels above mentioned were, for the purposes of marriage, completely extra-territorial, were correct, then all questions of the applicability of the *lex loci* would apparently be eliminated, and the legality or otherwise of any marriages performed therein between British subjects would seem to be wholly determinable according to the provisions of the English law for the time being in force.

"Marriage Act, 1890."

That the question, therefore, arose, whether, when the Foreign Marriages Bill now before Parliament had become law, British subjects in Russia, who, previously to "The Marriage Act, 1890" (53 and 54 Vict., cap. 47), enjoyed certain privileges under the Act 4 Geo. IV, cap. 91, which had been practically repealed by the Schedule to the first-mentioned enactment, would be, in respect of their right to be married at the Embassy in St. Petersburgh and elsewhere, according to the rites of the Church of England, and to have their marriages duly registered, in a worse position than if the latter Act had not been to such extent repealed; and, further, whether British subjects who might apply to be married at an Anglican chapel in any part of Russia could not there have valid marriages performed, and duly registered, under the Foreign Marriage Bill now before Parliament.

That your Lordship requested that we would take the papers into our consideration, and would favour you with our opinion on the questions raised; and, in the event of our being of opinion that the Bill which had been introduced into the House of Commons would not meet the case of these Russian marriages in a satisfactory manner, that we would also favour your Lordship with our views as to the course which it would be desirable to pursue under the circumstances, either by amendment of the Bill in question or otherwise.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Are of opinion that the revival of Act 4 Geo. IV, cap. 67, is not necessary.

That, assuming the law of Russia to be as stated in the Memorandum of Mr. Eliot, and quoted in the Memorandum of Mr. Jenkyns and Mr. Ilbert of the 8th July, 1891, British subjects will not be in any worse position than if the Act 4 Geo. IV, cap. 67, had not been repealed, and British subjects who apply to be married at Anglican chapels in any part of Russia can have valid marriages performed there, which marriages can be duly registered under the Bill now before the House of Lords.

We see no reason to suggest any amendment of the Bill as it has passed the House of Commons.

If it be thought desirable, in order to meet the wishes expressed, we see no objection to the revival of 4 Geo. IV, cap. 67 (which, however, only applies to St. Petersburgh), although such revival is not, in our opinion, necessary.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Law Officers' Report		November 20, 1872.
Memorandum by Sir E. Hertslet		June 24, 1887.
" " Mr. Dering		September 24, 1888.
Sir R. Morier	(No. 170)	June 24, 1891
Memorandum by Parliamentary Counsel		July 8, ,,
Foreign Marriages Bill. Amendments to above to be proposed by the Attorney-General.		

SAN DOMINGO.

No. 54.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received January 24.)

My Lord, *Royal Courts of Justice, January* 23, 1891.

Claim of Messrs. Manlove and Alliott against the Dominican

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 28th November last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to certain Judgments of the Courts of Santo Domingo, by which Messrs. Manlove and Alliott

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Govt., owing to certain Judgments of the Courts of Santo Domingo.

alleged that they had suffered such a denial of justice as entitled Her Majesty's Government to make a representation in the matter to the Dominican Government, and to demand compensation for the injury that firm might be able to show they had suffered owing to the Judgments in question.

That the main facts of the case might be briefly stated as follows :—

Messrs. Manlove and Co.'s mortgage of Messrs. Hachtmann and Co.'s estate in Santo Domingo transferred to a Mr. Cartwright, and subsequently retransferred back to Manlove and Co.

That it appeared that Messrs. Manlove and Co. took a mortgage of Messrs. Hachtmann and Co.'s estate in Santo Domingo as security for certain payments.

That that mortgage was duly registered, and was subsequently transferred to a Mr. Cartwright, but that such transfer was not registered, although Hachtmann and Co. were informed by a private letter, which was not the form required by law, that the mortgage had been so transferred; and that subsequently no notice, either formal or informal, was given to Hachtmann and Co. of a retransfer of the mortgage by Mr. Cartwright back to Manlove and Co.

Purchase of the same mortgage by Ginebra and Co.

That Manlove and Co.'s mortgage was practically a first mortgage, and that they endeavoured to foreclose in their own name, although with the concurrence of Mr. Cartwright; that Ginebra and Co., who held a second mortgage, then bought Manlove and Co.'s mortgage, as Ginebra and Co. would otherwise have lost their security. That that sale was not registered, but that Messrs. Hachtmann were made aware of it in the ordinary form required by the law of Santo Domingo. That Ginebra and Co. then went on with the foreclosure under the first mortgage which they had purchased from Manlove and Co.; that Hachtmann and Co., however, contended that that mortgage had passed out of Manlove and Co.'s hands directly into those of Mr. Cartwright, and not into those of Messrs. Ginebra; and that, therefore, the proceedings of the latter firm were utterly illegal. That Messrs. Ginebra then demanded that Messrs. Manlove should take their (Messrs. Ginebra's) place in the action against Messrs. Hachtmann. That that demand was stated, by the Vice-Consul at Santo Domingo, to have been in strict accordance with the law of the Republic. That Messrs. Manlove refused to comply with the demand. That thereupon Messrs. Hachtmann sued Messrs. Ginebra for disturbance, and that the latter were cast in damages and costs.

Contract for the sale of the mortgage by Messrs. Manlove to Messrs. Ginebra held by the Supreme Court to be rescinded.

That Messrs. Ginebra then sought to recover from Messrs. Manlove, as it was through their refusal to take Messrs. Ginebra's place in the proceedings against Hachtmann that the latter's action had succeeded; while Messrs. Manlove seized Messrs. Ginebra's estate in order to satisfy themselves thereout in respect of the mortgage which they had transferred to Ginebra and Co. But that the contract for the sale of the mortgage by Messrs. Manlove to Messrs. Ginebra was held by the Court to be rescinded, and that Messrs. Manlove were cast in damages to Ginebra and Co., the Court declaring, at the same time, that Messrs. Manlove's right to recover the value of the mortgage from Hachtmann and Co.'s estate remained intact. (Judgment of the Supreme Court, dated the 23rd July, 1888.)

That Messrs. Manlove alleged that it was clearly shown at the trials of the actions that they had authority to deal with the mortgage, and that the Court was wrong in not deciding that they had such power.

That, on the other hand, however, the Vice-Consul at Santo Domingo stated that Messrs. Manlove were badly advised in refusing, on demand, to take Ginebra and Co.'s place in the action against Hachtmann.

That it appeared that Messrs. Manlove's only answer to Ginebra and Co.'s demand was that Mr. Hachtmann could not give evidence of any transfer of the mortgage to Mr. Cartwright, because he (Hachtmann) had not received legal notice of it.

That the Vice-Consul at Santo Domingo also stated that Messrs. Manlove were badly advised in neglecting to act on that part of the Judgment of the Supreme Court which maintained their ownership of the mortgage on Messrs. Hachtmann's estate, and in letting Ginebra and Co. foreclose, without protest, on that estate under the second mortgage given by Messrs. Hachtmann direct to Messrs. Ginebra.

That the Vice-Consul was of opinion, and that his opinion was stated to be founded on that of a legal expert, that the Judgment of the Supreme Court was final, and was in accordance with the law of the Republic as well as justified on the evidence tendered.

Messrs. Manlove's main grounds for impugning the Judgments of the Supreme Court.

That Messrs. Manlove's main grounds for impugning the Judgments appeared to be as follows :—

1. That the Supreme Court was wrong in the suit Hachtmann and Co. *v.* Ginebra and Co., in allowing any weight to Messrs. Hachtmann's evidence of a transfer to Mr. Cartwright, of which they (Hachtmann and Co.) had no legal notice, and in allowing any doubt to rest on Messrs. Manlove's ownership of the mortgage at the time of the transfer to Ginebra and Co., seeing that at that time Messrs. Manlove's name, and that name only, appeared on the Register of Mortgages:

2. That the Supreme Court was wrong in going beyond the question of Messrs. Ginebra's demand that Messrs. Manlove should become Messrs. Ginebra's guarantor, and in rescinding the sale of the mortgage to Messrs. Ginebra, and so assuming original jurisdiction, which it had not in that case, and in pronouncing on matters not brought before it by the appeal; and

3. Various other points which appeared to be consequent on one or other of the above.

That Messrs. Manlove alleged that there was collusion between Messrs. Hachtmann and Messrs. Ginebra, Mr. Hachtmann holding Messrs. Ginebra's power of attorney, and being Mr. Ginebra's representative during his absence.

Principal documents in the case.

That the principal documents in the case were the following :—

The cases for Messrs. Ginebra and for Messrs. Manlove respectively before the Court of First Instance at Puerto Plata, and the Judgment of that Court (inclosures in Messrs. Manlove and Alliott's letter of the 12th November, 1890).

The Judgment in the appeal of the Supreme Court of Santo Domingo, translations of the important parts of which appeared to be given *in extenso* in the inclosure in Messrs. Manlove and Alliott's letter of the 15th April, 1889.

A Memorial presented by Messrs. Manlove and Alliott, setting forth the facts of the case at length, and calling attention to the points in connection with which the alleged denials of justice had occurred. (Inclosure in Messrs. Manlove and Alliott's letter of the 4th March, 1890.)

A Report on the case by the British Vice-Consul at Santo Domingo. (Inclosure in Mr. D. Coen's No. 7, Commercial, of the 10th August, 1890.)

A Report on the case by the British Vice-Consul at Puerto Plata (inclosure in Mr. Zohrab's No. 15, Consular, of the 6th September, 1889). That this Report should not, however, be consulted without remembering that the British Vice-Consul at Puerto Plata was a clerk in the employment of Messrs. Ginebra and Co., although your Lordship had no reason to believe that that circumstance had, as a matter of fact, in any way biassed the Vice-Consul's judgment.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the case was one in which there had been such a denial of justice to Messrs. Manlove on the part of the Tribunals of Santo Domingo as called for the intervention of Her Majesty's Government on behalf of that firm with the Government of the Dominican Republic, and, if so, on what specific grounds a representation might most advantageously be based.

That your Lordship would, at the same time, be glad to receive any general observations with which we might be good enough to favour you on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

H.M.'s Govt. not called upon to intervene on behalf of the firm of Manlove and Co. with the Dominican Govt.

That we find no evidence in the papers laid before us that there has been any such denial of justice to Messrs. Manlove on the part of the Tribunals of Santo Domingo as calls for the intervention of Her Majesty's Government on behalf of that firm with the Government of the Dominican Republic.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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List of Papers.

Messrs. Wells and Hind		December 28, 1888.
To Consul-General Zohrab		January 16, 1889
To Messrs. Wells and Hind		January 23, ,,
Messrs. Wells and Hind		March 27, ,,
To Consul-General Zohrab		March 30, ,,
Messrs. Wells and Hind		April 15, ,,
To Messrs. Wells and Hind		April 23, ,,
Messrs. Wells and Hind		June 22, ,,
Ditto		September 24, ,,
Consul-General Zohrab	(No. 15)	September 6, ,,
To Consul-General Zohrab	(No. 5)	October 1, ,,
Messrs. Wells and Hind		October 3, ,,
To Messrs. Wells and Hind		October 7, ,,
Consul-General Zohrab	(No. 19)	October 5, ,,
To Messrs. Wells and Hind		November 7, ,,
Messrs. Wells and Hind		November 9, ,,
To Consul-General Zohrab	(No. 6)	November 13, ,,
Ditto	(No. 7)	November 14, ,,
Ditto	(No. 8)	November 14, ,,
Consul-General Zohrab	(No. 21)	December 13, ,,
Ditto	(No. 1)	January 6, 1890.
Ditto	(No. 2)	January 8, ,,
Ditto	(No. 3)	January 9, ,,
Mr. Leon..		January 10, ,,
Messrs. Manlove and Alliott		March 4, ,,
To Messrs. Manlove and Alliott		March 10, ,,
Mr. Coen..		August 10, ,,
To Manlove and Alliott		September 17, ,,
Manlove and Alliott		September 19, ,,
Ditto		November 12, ,,

SIAM.

No. 55.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received October 12.)

My Lord, *Royal Courts of Justice, October* 10, 1891.

Siam Order in Council, 1889. Appellate jurisdiction of Supreme Court of Straits Settlements, and appeals in Admiralty suits.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 31st August last, stating that he had to transmit to us, by your Lordship's direction, the accompanying papers respecting a difficulty which had arisen with regard to the appellate jurisdiction of the Supreme Court of the Straits Settlements under the Siam Order in Council, 1889.

That by Article 11 of that Order, appellate jurisdiction was given to the Supreme Court of the Straits Settlements, and it was provided that such jurisdiction should be exercised by "the full Supreme Court sitting in the Straits Settlements."

That the Supreme Court consisted of a Chief Justice and three Puisne Judges, and the Chief Justice observed that the use of the words "full Supreme Court" would appear to require that appeals should be heard by a Court consisting of a Chief Justice and three Puisne Judges. That he accordingly suggested that the Order in Council should be amended by adding to Article 11 words to the effect that "full Court" for the purposes of the Order should mean the Court as constituted for appeals when in the exercise of its ordinary appellate jurisdiction.

Ordinances of Straits Settlements: No. III, 1878; No. XV, 1885; No. XIX, 1889.

That, in regard to that point, Sir Thomas Sanderson was to call our special attention to sections 2 and 67 of the Local Ordinance III of 1878, as amended by sections 2 and 4 of the Ordinance XV of 1885 and section 6 of the Ordinance XIX of 1889.

That Sir Thomas Sanderson was to request that we would take the accompanying papers into our consideration, and that we would inform your Lordship whether, in our opinion, the expression "full Supreme Court sitting in the Straits Settlements" must necessarily be taken as requiring the personal attendance of all the Judges constituting the Court, or whether that expression might be construed as meaning the Court as constituted for appeals when in the exercise of its ordinary appellate jurisdiction.

That Sir Thomas Sanderson was, at the same time, to request that your Lordship might be favoured with any general observations on the question which we might wish to offer.

We were also honoured with Sir Thomas Sanderson's letter of the 2nd September, transmitting to us a despatch from Her Majesty's Minister and Consul-General at Bangkok, and requesting that your Lordship might be favoured with our opinion on the point raised by Captain Jones as to appeals in Admiralty suits.

In obedience to your Lordship's commands, we have the honour to

Report—

That, in our opinion, the presence of all the Judges who are members of the Supreme Court is not necessary, but appeals can be heard before three Judges in accordance with section 6 of the Ordinance No. XIX of 1889.

Appeals in Admiralty cases can be brought to the Supreme Court of the Straits Settlements from the District Court of Bangkok subject to the provisions of clause 63 of the Order of the 28th November, 1889.

53 & 54 Vict., cap. 27.

The provisions of the Colonial Courts of Admiralty Act, 1890, apply to the District Court of Bangkok.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Captain Jones..	(No. 1. Treaty)	July 18, 1891.
Colonial Office		August 22, ,,

Siam Order in Council, 1889.
Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict., cap. 27).
Straits Settlements Ordinances: No. III of 1878, No. XV of 1885, and No. XIX of 1889.

SPAIN.

No. 56.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 21.)

My Lord, *Royal Courts of Justice, March* 20, 1891.

Arrest at Crab Island of Mr. R. Muir, and his detention at Humacao, Porto Rico, in connection with settlement of accounts arising out of wreck of the "Ashdell."

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 9th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the arrest, at Crab Island, of Mr. Robert Muir, marine surveyor, and his subsequent forcible removal to, and detention at, Humacao, in connection with the settlement of accounts arising out of the wreck of the British steam-ship "Ashdell."

That in May 1889 Mr. Muir proceeded, upon instructions received and on behalf of all the underwriters of the "Ashdell," to that vessel, which was then lying stranded at a place called Yebucao, near Humacao, in the Island of Porto Rico, in order to conduct and superintend the salvage operations on behalf of the underwriters.

That Mr. Antonio Roig was the consignee of the vessel, and acted as agent generally for the vessel, and during the latter part of Mr. Muir's visit was performing the duties of the British Vice-Consulate at Humacao, to which post he was appointed in the month of September following.

That on the 27th July, Mr. Muir, having apparently adjusted all outstanding accounts with Mr. Acting Vice-Consul Roig, quitted Humacao and proceeded to Crab Island, with a view to avoid the long quarantine imposed upon direct arrivals from Porto Rico.

That in the meantime Mr. Roig received a telegram from his Hamburg correspondent in these words: "Hundred protested."

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That the receipt of that telegram led Mr. Roig to fear that he would never receive value for Mr. Moir's bills, part of which were given to cover Consular fees and other official expenses.

That Mr. Roig accordingly invited Mr. Muir to return to Humacao, and at the same time called upon the local authorities at Vieques, or Crab Island, to take the necessary steps to prevent Mr. Muir leaving that island until the amount due to the British Vice-Consulate was paid.

That Mr. Hertslet, Her Majesty's Consul for the Island of Porto Rico, having been consulted by Mr. Roig on the subject, agreed with him that if the money owing by Mr. Muir to the Vice-Consulate consisted wholly, or in part, of Consular fees, the latter gentleman should not be allowed to quit Vieques until it was recovered.

That Mr. Muir declined to return, and suggested that Mr. Roig should go to Vieques; and that he added that he himself was on the point of starting for St. Thomas.

That further invitations to return were sent by Mr. Roig to Mr. Muir, but that no reply was given.

That thereupon Mr. Roig, supposing that Mr. Muir intended leaving the country without paying his debts to the British Vice-Consulate, took upon himself the responsibility of bringing the circumstances of the case to the knowledge of the Judge at Humacao, whose jurisdiction extended to Vieques, and requested him to assist in the matter by urging Mr. Muir to return to Humacao, and in the case of his refusal to return to order his removal.

That in the event Mr. Muir refused to go to Humacao unless taken by force, that he was accordingly, by order of the Magistrate at Vieques, acting under instructions from the Judge at Humacao, handcuffed and conducted from his residence to the sea-shore, a distance of 150 yards, and placed in a boat, when the handcuffs were removed.

That he was conveyed by the boat to a schooner bound for Humacao.

That on landing there he was driven in a carriage to the Vice-Consulate, where he was informed by Mr. Roig that he was at liberty.

That at Mr. Roig's request Mr. Muir telegraphed to Messrs. Booth for a guarantee that all his bills would be met, and that Mr. Roig telegraphed in the same sense to Hamburg.

That in forty-eight hours satisfactory answers were received, and Mr. Muir went back to Vieques.

That in addition to the above leading facts of the case, which might be taken as admitting of no dispute, the papers inclosed in Sir Thomas Sanderson's letter to us contained many allegations made by Mr. Muir, which did not, if true, appear to affect the main issue, but which, at the same time, it was, nevertheless, only fair to Mr. Consul Hertslet to point out, were absolutely denied by that gentleman; moreover, that some of the documents forwarded by Mr. Hertslet in connection with those allegations had unfortunately been mislaid since their receipt in the Foreign Office.

That the questions as to the reasonableness or otherwise of the suspicions entertained by Consul Hertslet and Mr. Roig with regard to Mr. Muir's credit, or of their opinion with regard to that gentleman's respectability or credibility, did not appear very pertinent to the specific charge brought forward by Mr. Muir, but that the leading facts of the case might be taken as correct. That there remained, then, the main points as to whether there were any substantial grounds for complaint against Her Majesty's Consul at Porto Rico in respect of the proceedings in question; whether the action of the Acting Vice-Consul at Humacao could be regarded as justifiable; and, finally, as to what course should be taken by the Secretary of State with reference to the letter of Messrs. Botterell and Roche of the 8th March, 1890.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Suggest that Mr. Roig should be informed that

That, in our opinion, the conduct of the Acting British Vice-Consul at Humacao was unjustifiable, and that Her Majesty's Consul at Porto Rico was, even upon his own statement, guilty of a serious error of judgment.

We think that some reparation should be made to Mr. Muir for the indignities to which he was most improperly subjected, but the sum claimed by him is far in excess of any reasonable amount of compensation.

H. M.'s Government view his conduct with great displeasure, and that Mr. Hertslet should be reprimanded for his share in the transaction.

We suggest that Mr. Roig should be informed that Her Majesty's Government view his conduct with great displeasure, but that if he will make an apology to Mr. Muir, and pay to him the sum of 100*l.* as compensation, they will be prepared to allow him to continue to act as Vice-Consul in the hope that he will carefully avoid giving grounds for any similar complaints in the future; and we suggest that Mr. Hertslet should be reprimanded for his share in the transaction.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

To Consul Hertslet (Three Inclosures).	April 19, 1890.
Consul Hertslet	May 3, „
Ditto	August 22, „
Messrs. Botterell and Roche	March 8, „

TURKEY.

No. 57.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 3.)

My Lord,
Royal Courts of Justice, February 28, 1891.

Attempt of the Turkish and Russian police to get into their hands a Russian political refugee from on board the British merchant-steamer "Ashlands" while lying at Constantinople.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Constantinople asking for instructions in connection with a recent attempt on the part of the Turkish and Russian police to get into their hands a Russian political refugee from on board the British merchant-steamer "Ashlands," while lying in that port.*

That the attempt was frustrated by the action of the master of the vessel, who refused to deliver up the individual in question, but that Her Majesty's Ambassador was anxious to know what course should be followed in the event of the Russian Embassy or the Turkish Government applying to Her Majesty's Embassy, or to the British Consulate General for the surrender either of some political refugee, or of some individual fleeing from justice, and "wanted" in respect of a crime of a non-political nature.

That Sir Philip Currie was to inclose a Memorandum which had been prepared by the Librarian of the Foreign Office on the general considerations surrounding the question.

That your Lordship was under the impression that a British ship in Turkish territorial waters was practically in much the same position as the house in which an Englishman resides on Turkish territory, though in theory exactly the same legal considerations might not, of course, apply to both cases.

That Her Majesty's Government had never disputed the right of the Turkish police to arrest a British subject for an offence against Turkish law committed, say, in the streets of Constantinople, such arrest following immediately on the commission of the offence.

That if, however, the accused were to escape within the sanctity of his house, his asylum could not be invaded by the Turkish police except under the supervision of the British Consular authorities. Nor, should a Turkish subject commit a crime and take refuge in an Englishman's residence, could the Turkish police arrest him except under the supervision of the Consul.

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* Sir W. White, No. 2, January 3, 1891; Sir E. Hertslet, Memorandum, January 21, 1891.

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That it was presumed that the same doctrine must be held to apply in cases where British subjects, or Turks, commit crimes on Turkish territory, and subsequently seek the asylum of a British ship in Turkish territorial waters.

That the above considerations did not, however, directly affect the question raised by Sir W. White, though they might be of some use in approaching its examination.

Case specially raised was that in which the subject of a third Power having, like Great Britain, extra-territorial jurisdiction in Turkey, had committed a crime elsewhere than in Turkey, and then took refuge, or was found, upon a British ship in Turkish waters.

That the case specially raised by Her Majesty's Ambassador was that in which the subject of a third Power having, like Great Britain, extra-territorial jurisdiction in Turkey, had committed a crime elsewhere than in Turkey, and then took refuge, or was found, upon a British ship in Turkish waters.

That in the case of a political refugee, or of a person charged with a purely political offence, it was, of course, abundantly clear that the law and practice of this country would entirely preclude any British official from lending his aid to the arrest and surrender of such person.

That cases might, however, arise of individuals charged with serious criminal offences, when the surrender might be desirable upon general grounds, provided only that it could be legally carried out.

That in such event, however, it would appear that the accused, if he could be given up at all, must be surrendered not to the Turkish authorities, but to the authorities of his own nation, and that such surrender would, in fact, amount to a surrender by way of extradition.

Extradition Acts, 1870 and 1873.

That it was presumed (1) that the Extradition Acts 1870 and 1873, and the various Orders in Council thereunder, had no application in any place where Her Majesty exercised extra-territorial jurisdiction, either in respect of a fugitive criminal upon a British merchant-ship within the territorial waters of such extra-territorial place, or otherwise; (2) that neither Her Majesty's Judge and Consul-General, nor Her Majesty's Ambassador at Constantinople possessed any power of dealing with any such alleged criminal not being a British subject, either upon the demand of his Ambassador, or otherwise; (3) that neither the national authorities of the State of which such alleged criminal was a native nor the Turkish authorities, were entitled to present themselves on board of a British vessel lying within the territorial waters of Turkey for the purpose of arresting such criminal, either with notice to, and in the presence of, the British Consular authority, or otherwise; and (4) that the master of a British merchant-vessel, upon which such alleged criminal found himself, would not be justified in handing him over to any of those authorities, but that in the case where he was an unauthorized intruder upon the ship he would be justified in expelling him therefrom.

That Sir Philip Currie was to request that we would take the above questions into our consideration, and that we would favour your Lordship with our opinion on the same, as well as with any general observations which we might have to offer on the matter dealt with in Sir W. White's despatch, Secret, No. 2, of the 3rd January last.

We have taken the matter into our consideration and, in obedience to your Lordship's commands, have the honour to

Report—

That in our opinion the following Memorandum will afford guidance upon any points which may arise as mentioned in Sir William White's despatch.

In no case can the Representative of a Power other than that in whose port the vessel lies make any arrest on board a British vessel.

In dealing with this question it is necessary to distinguish between the case of countries where local jurisdiction is fully exercisable over foreigners without reference to the Consuls of their nations, and the case of a country like Turkey where special provision is made that British subjects should be tried for offences committed against other British subjects or against foreigners only in the Consular Courts; and for offences against Turkish subjects only before a Court of which a Consular officer is a member.

In no case can the Representative of a Power other than that in whose port the vessel lies make any arrest on board a British vessel, nor can any claim by the Representative of such Power for the surrender of any person be complied with. The master of the vessel may, however, expel from such vessel and put on shore any person who is on board without lawful authority.

Presence of British Consul necessary for arrest of British subject on board British ship for crime committed in Turkey.

In Turkish ports the right to arrest a British subject on board a British ship for a crime committed in Turkey is restricted by the necessity of procuring the presence and sanction of the British Consul, whose presence and sanction should be given in all proper cases with a view to the trial of the offender before the proper Tribunal.

For arrest of subject of a third Power, desirable that notice should be given to the Consul of the Power.

Where a claim is made to arrest upon a British vessel the subject of a third Power, it is desirable that notice should be given to the Consul of the Power, whose subject is accused before the arrest by the Turkish authority is permitted.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 58.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received May* 16.)

My Lord,
Royal Courts of Justice, May 15, 1891.

Claims for indemnity on account of destruction of property during Cretan riots.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 16th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to the claims for indemnity put forward by certain British subjects residing in Crete on account of the destruction of their property during the riots in that island.

That, on the 25th December of last year, Her Majesty's Ambassador at Constantinople was instructed to communicate to Her Majesty's Consul in Crete the substance of the opinion concerning those claims which was contained in our Report of the 15th December; and that his Excellency was at the same time authorized to submit Vice-Consul Calocherino's claim to the Turkish Government, subject to any explanation which Mr. Biliotti might be able to furnish with regard to the point raised in our Report in respect of his case. That his Excellency was further informed that the other claims, viz., those of Vice-Consul Cassimati, Mrs. Moazzo, Dr. Ittar, and Mr. Pappadaki did not justify any diplomatic intervention on the part of Her Majesty's Government.

That Mr. Biliotti had now addressed a despatch to your Lordship in which he gave fuller explanations respecting Mr. Cassimati's claim, and stated that, in his opinion, it was the strongest of all the claims originally reported by him.

That, in support of that view, Mr. Biliotti referred to the very strong evidence which appeared to exist that Mr. Cassimati's property was destroyed by Turkish troops, and that he argued that that circumstance brought the claim within the same category as that of Mr. Calocherino, with regard to whose case, in our opinion, reasonable grounds existed for claiming compensation.

That Sir Philip Currie was to request that we would again take Mr. Cassimati's case into our consideration, and that we would favour your Lordship with our opinion as to whether the further facts and details now given by Mr. Biliotti in his above-mentioned despatch in any way modified the opinion at which we had arrived in regard to his claim.

In obedience to your Lordship's commands we have the honour to

Report—

Unable to advise that any claim should be made on behalf of Mr. Cassimati, as it has not been proved that his property was injured by Turkish soldiers.

That, if it could be proved that the injury to Mr. Cassimati's property was done by Turkish soldiers while occupying and pretending to guard the house, the losses alleged might properly be made the subject of claim against the Turkish Government upon the principle laid down by us in our former Report in dealing with the claim of Vice-Consul Calocherino. This, however, is rather inferred than stated as a fact by Mr. Biliotti, and upon referring to Mr. Cassimati's protest of the 18th September, 1889 (Inclosure 3 in Consul Biliotti's No. 72), we find a clear statement by him that sentries were placed to guard his property; that the officer in command at Galata expected an attack and complained of not having sufficient force to resist it; that this was reported to Ibrahim Pasha, who had given instructions that Galata, and especially Mr. Cassimati's property, was to be protected from incendiaries, but that at midnight different houses were set on fire, and that by 9 o'clock in the morning Mr. Cassimati's house was destroyed.

There is not in that protest any suggestion that the Turkish soldiers themselves were responsible for the mischief. We are, therefore, unable to advise that any claim should be made on behalf of Mr. Cassimati.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Consul Biliotti, No. 72, June 3; ditto, No. 141, October 1; Law Officers' Report, December 15; to Sir W. White, No. 346, December 25, 1890; Consul Biliotti, No. 36 April 1, 1891.

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No. 59.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received July* 22.)

My Lord, *Royal Courts of Justice, July* 18, 1891.

Mr. Charnaud's claim owing to seizure of flour-mill at Varna by Turkish Govt. in 1877.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 4th June last, stating that he was directed by your Lordship to transmit to us a despatch, as marked in the margin,* from Her Majesty's Ambassador at Constantinople, inclosing further correspondence with Mr. Charnaud on the subject of his claim against the Turkish Government for compensation on account of the seizure by the Turkish authorities in 1877, during the war with Russia, of a steam flour-mill at Varna, the joint property of the claimant and M. Franchini, a Russian subject.

That it would be within our recollection that the claim in question had already formed the subject of a reference to, and report by, us in September of last year.

Is there any ground for reconsidering decision?

That your Lordship did not see anything in the further materials—consisting as they did, for the most part, in a mere recapitulation of his claim—which had now been submitted by Mr. Charnaud to modify the decision at which Her Majesty's Government had arrived in the matter, and of which Sir W. White was informed in your Lordship's despatch No. 267 of the 22nd September last; but that, before instructing his Excellency to that effect, your Lordship desired to be informed whether we concurred in that view, or whether, on the other hand, we found any grounds in the further papers now submitted for reconsidering our previous decision.

That the previous correspondence, as noted in the margin,† was inclosed for reference.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

No reason for modifying previous decision.

That we concur in the view that there is nothing in the further materials now submitted to us to modify the decision at which Her Majesty's Government have arrived.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

UNITED STATES.

[Board of Trade.]

No. 60.

The Law Officers of the Crown to the Board of Trade.

[Transmitted to the Foreign Office by the Board of Trade in their letter of June 15, 1891.]

[In reply to the following case the Law Officers reported as on p. 112.]

AMERICAN COPYRIGHT.

Case for the Opinion of the Law Officers of the Crown.

New American Copyright Act.

UNDER the new American Copyright Act, the text of which is printed in the "Times" of the 17th March last, and which is to come into operation on the 1st July next, the benefit of American copyright is given to foreigners subject to certain conditions as to printing and the like in the United States; but it is declared by section 13 that the Act is only to apply to a citizen or subject of a foreign State or nation when—

(*a*.) Such foreign State or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or

(*b*.) When such foreign State or nation is party to an International Agreement which provides for reciprocity in the granting of copyright, by the terms of which Agreement the United States of America may at its pleasure become a party to such Agreement.

The existence of either of these conditions is to be determined by the President of the United States by a Proclamation issued from time to time as the purposes of the Act may require.

The question whether the second of these conditions exists in the case of the United Kingdom appears to be a question of fact, on which an opinion is not required.

The question whether the first of the conditions exists in the case of the United Kingdom is a question of English law, and on that question the Board of Trade desire to have the advice of the Law Officers of the Crown.

It would seem that the benefits of English copyright are not confined to British subjects, that they can be obtained by first publication by an alien as well as by a British subject in any part of Her Majesty's dominions (see 49 & 50 Vict, cap. 33, sec. 8), and that contemporaneous publication in a foreign country does not prevent the author from obtaining British copyright (see "Cox *v.* Purday," 5 C.B. 860).

Cases of "Jeffreys v. Boosey;" "Routledge v. Low."

A doubt has been raised whether residence within some part of Her Majesty's dominions is a necessary condition of an alien obtaining British copyright. The judgments in "Jeffreys *v.* Boosey," 4 H.L. 815, indicate that residence is so required. But in the case of "Routledge *v.* Low," L.R. 3 E. and I.A. 100, Lord Westbury and Lord Cairns expressed their opinions that residence was not so required, and in that case the other Judges, though abstaining from an express decision, did not differ.

On this point Sir J. Fitz J. Stephen, in the Digest of Copyright Law appended to the Report of the Copyright Commission of 1878, p. 69, expressed himself as follows:—

"It is probable, but not certain, that an alien friend who publishes a book in the United Kingdom whilst resident out of Her Majesty's dominions, acquires copyright throughout Her Majesty's dominions by such publication.*"

Naturalization Act, 33 Vict., cap. 14.

"* This was the opinion of Lord Cairns and Lord Westbury in "Routledge *v.* Low," but the case does not decide the point. Their view seems to be favoured by the Naturalization Act, 33 Vict., cap. 14, sec. 2, which enacts that personal property of every description may be taken, acquired, held, and disposed of in every respect by an alien in the same manner in all respects as by a natural-born British subject."

5 & 6 Vict., cap. 45.

With respect to Sir J. Fitz J. Stephen's reference to the Naturalization Act, it may be observed that by 5 & 6 Vict., cap. 45, sec. 25, copyright is expressly declared to be personal property.

Under these circumstances, the Law Officers of the Crown are requested to advise the President of the Board of Trade whether, in their opinion, independently of any Order in Council made under the International Copyright Acts—

1. The benefit of English copyright can be obtained by first publication by an alien in any part of Her Majesty's dominions;

2. Contemporaneous publication in a foreign country prevents the author from obtaining British copyright;

3. Residence in some part of Her Majesty's dominions at the time of publication is a necessary condition of an alien obtaining copyright under the English Copyright Law: and

4. Generally, whether the English Law permits to citizens of the United States of America the benefit of copyright on substantially the same basis as to British subjects.

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* Sir W. White, No. 180.

† Sir W. White, No. 346; Law Officers' Report, September 12; to Sir W. White, September 22, 1890.

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Opinion.

English law permits to citizens of the United States of America the benefit of copyright on substantially the same basis as to British subjects.

1 and 2. We are of opinion that an alien by first publication in any part of Her Majesty's dominions can obtain the benefit of English copyright, and that contemporaneous publication in a foreign country does not prevent the author from obtaining British copyright.

3. We see no objection, in principle, to an alien resident in a foreign country obtaining the benefit of English copyright, and, notwithstanding the judgment of the House of Lords in "Jefferys *v.* Boosey," 4 H.L. 815, which turned upon the construction of the Statute of Anne, we are of opinion, upon the proper construction of the existing Statutes relating to copyright, that residence in some part of Her Majesty's dominions is not a necessary condition to an alien obtaining copyright under the English Copyright Law.

4. We are of opinion that English law permits to citizens of the United States of America the benefit of copyright on substantially the same basis as to British subjects.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
HORACE DAVEY.
HENRY SUTTON.

Royal Courts of Justice, June 11, 1891.

No. 61.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 20.)

My Lord, *Royal Courts of Justice, June* 20, 1891.

Seal Fishery (Behring's Sea) O. in C., 1891.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council to be known as the "Seal Fishery (Behring's Sea) Order in Council, 1891," which had been prepared by Mr. Albert Gray, under instructions from the Foreign Office, to enable Her Majesty to make special provision under the Act of Parliament just passed for prohibiting the catching of seals in certain parts of Behring's Sea by Her Majesty's subjects during the period named in the Order.

That Sir Thomas Sanderson was at the same time to inclose a copy of the Act in question and of the Agreement between Her Majesty's Government and that of the United States for the execution of which the Act had been passed; and that he was to request that we would take the draft Order into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion as to whether the draft Order in Council might properly be laid before the Queen in Council for Her Majesty's approval.

That a copy of the instructions which had been issued by telegraph from the Board of Admiralty with regard to the carrying out of the provisions of the Agreement by Her Majesty's naval officers upon the station were inclosed for our perusal.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve O. in C. as altered.

That we approve the draft Order in Council as altered and initialled by us.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Draft Order in Council, Behring's Sea Act, 1891.
Agreement with United States, America, June 15, 1891.
Instructions to Naval Officers.

Annex.

Memorandum.

Lord Salisbury,

I SUBMIT the draft of the Behring's Sea Order in Council.

All the experts continue to shake their heads over the absence of statutory powers, such as are inserted in the Slave Trade Act and the North Sea Fisheries Act, to legalize seizure of United States' vessels by British cruizers, and of British vessels by United States' cruizers.

I have spoken to Davidson, and told him that I understood that the Lord Chancellor had revised the instructions to our naval officers. Davidson thinks it has probably been considered by your Lordship that the absence of statutory powers will occasion no practical inconvenience, but he is not easy in his mind as far as the theoretical legal necessities of the case are concerned, and he asks if, when referring the Order in Council to the Law Officers for approval, it might not be safer to send also the naval instructions, and to ask them to report whether the Order is sufficient for the complete execution of the Agreement and of the instructions, and whether any practical inconvenience is to be apprehended from the absence of the statutory provision legalizing the seizure of vessels of one country by the cruizers of another.

I think it right to submit his suggestion.

(Signed) T. H. SANDERSON.

June 17, 1891.

Opinion of the Lord Chancellor.

I think the instructions are quite right, but I think there should be an understanding between the two Governments for mutual indemnities. Each national ship seizing and arresting a ship of the other can only justify doing so as the agent of the other, and would have to justify a seizure in that character.

Each, therefore, should indemnify the other.

(Signed) HALSBURY.

No. 62.

[Home Office.]

[In reply to the following letter from the Home Office, the Law Officers reported, on June 26, 1891, as below.]

[Transmitted to the Foreign Office by the Home Office in their letter of June 29, 1891.]

Home Office to Solicitor to Treasury.

Sir, *Home Office, June* 18, 1891.

Application for extradition of T. W. Hoit.

I AM directed by the Secretary of State to transmit to you correspondence as noted in the margin,* with regard to the case of T. W. Hoit, a fugitive criminal, for

* *List of Papers.*

Foreign Office to Home Office	June 16, 1891
Ditto	June 16
Metropolitan Police Report	June 17, „
Home Office to Foreign Office	June 17, „
Report from Chief Constable of Southampton, with Inclosure	June 17, „

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Action of the Southampton officers of the of the Hamburg-American Steam-Packet Company in refusing to allow the police officers to go on board the "Normannia."

whose apprehension a provisional warrant was issued by one of the Bow Street Magistrates on the 11th instant, under section 8 (2) of "The Extradition Act, 1870," but whose arrest was prevented by the action of the Southampton officers of the Hamburg-American Steam-Packet Company in refusing to allow the police officers to go on board the "Normannia," and to request that you will advise him whether criminal proceedings can be taken against the officials of the Company for opposing the execution of a warrant of arrest upon a person charged with having committed an extradition offence.

I am, &c.
(Signed) GODFREY LUSHINGTON.

"Sir, *"Detective Office, Bargate, Southampton, June 17, 1891.*

"I beg to report that, at 1.55 P.M. on Thursday the 11th instant, a telegram was handed to me by Inspector Curtis, which had been received from Mr. Superintendent Shore, of Scotland Yard, with instructions to arrest a man named W. Hoit on extradition warrant for larceny and embezzlement committed in the United States, who was on board the steamer 'Normannia,' due at this port on that day. I at once went to the office of the Hamburg-American Steam-Packet Company, and asked what time the tender would be leaving the docks, and Mr. Stailey, the clerk, stated it would leave at 9 P.M., and asked me if I was going by it. I told him I should want to go down by the tender to see if there was a man named Hoit on board, as we had received news that there was. Mr. Stailey said, 'You will not go on board of our tender or the steam-ship "Normannia."' I said, 'You know I am a detective officer of this borough, and you refuse to let me go down on the tender to the ship.' He replied, 'Yes; if there is a man answering the description of the man you are in search of, you will not bring him off.' I said, 'There is an extradition warrant for his arrest.' He said, 'All that I can tell you is that if you want to go on board of the tender or on board of the steamer you will have to take a ticket, pay 2*l.*, and go on to Hamburg, and follow your man.' I said, 'You will not let me go then without paying the fare to Hamburg.' He replied, 'No.' I at once reported the same to the Chief Constable, who wired the result to Superintendent Shore, and on receiving a reply Detective Sergeant Goodacre and myself went, by the direction of the Chief Constable, to the Dock Head, where the tender 'Carisbrooke' was laying to take the passengers and baggage to the 'Normannia.' We saw Mr. Philips, the agent, and Mr. Stailey. I said to them, 'This is Detective Sergeant Goodacre, and he would like to know why you refuse to allow us to go down with your tender.' Mr. Philips said, 'You will not be able to go down with us. If you expect any one you can wait until our return, and if the person you want should land you will be able to see him in the baggage-warehouse, but you will not be able to come with us.' We told them what a serious matter it would be, and Mr. Philips then said: 'I will let you both go on the tender on condition that you will not go on board the "Normannia."' We told him that it might assist us a little, and we went. On our arrival at the 'Normannia' we asked again to be allowed to go on board, but were again refused. Detective Sergeant Goodacre then asked Mr. W. G. Low, Assistant Examining Officer of the Customs, if he would go on board and see if 'Hoit' was there. He did so, and on his return showed us the list of passengers, stating that his name was there, and that the number of the cabin corresponded with the number mentioned in the telegraph message, and that he was bound for Hamburg. When we got back again into the docks at 12·40 A.M. on the 12th instant we immediately wired to Superintendent Shore, stating that 'Hoit' was gone on to Hamburg.

"I am, &c.
(Signed) "WILLIAM LONGMAN,
"Detective Officer.

"Mr. Phillip S. Clay,
Chief Constable."

The warrant was issued under sub-section (2) section 8, 33 & 34 Vict., cap. 52, and such warrant may be executed in any part of the United Kingdom (section 13).

It has been ascertained that the steam-ship "Normannia" was registered at Hamburg in 1890, and sails under the German flag, and belongs to the Hamburg-American Steam-Packet Company.

She is not registered as a British ship.

The Attorney and Solicitor-General are requested to advise whether criminal proceedings can be taken against the officials of the said Company for opposing the execution of a warrant of arrest upon a person charged with an extradition offence.

Law Officers' Opinion.

No criminal obstruction offered in the case.

We are of opinion that there was no such obstruction in this case as would subject the officials of the Hamburg Steam-Packet Company to criminal proceedings. They were under no obligation to allow the police officers to go on board the tender, and only did so on condition that they would not attempt to board the "Normannia," a condition which was observed.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Royal Courts of Justice, June 26, 1891.

No. 63.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 31.)

My Lord, *Royal Courts of Justice, July 31, 1891.*

Seal fisheries in the Behring's Sea. Negotiations for a reference to arbitration of certain questions.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 30th instant, stating that he was directed by your Lordship to transmit to us, in connection with the negotiations now proceeding between Her Majesty's Government and that of the United States of America for a reference to arbitration of certain questions arising with regard to the seal fisheries in the Behring's Sea, the accompanying telegram (Sir J. Pauncefote's No. 101 of the 23rd July) which had lately been received from Her Majesty's Minister at Washington.

That during the progress of the negotiations above referred to Her Majesty's Government had already signified (see Foreign Office No. 38 of the 2nd June, 1891) their readiness to refer to arbitration five questions, which would be found set out in print upon the inclosed paper marked (A); and that they had further accepted (see Foreign Office telegram No. 65 of the 6th July) a sixth Article in the terms also set out upon the same paper (A).

That with regard to the question of the compensation, if any, which might be due —in connection with their respective operations in Behring's Sea—by the Governments of either Power to the subjects or citizens of the other, various forms of an Article of Agreement (which Article was known throughout the late correspondence as Article 7) had been proposed.

That the original form of that Article, and of its several subsequent modifications, would be found on the paper marked (B).

That it would be seen that the President of the United States considered that a particular statement of the claims of the respective Governments was preferable to a reference in general terms such as Her Majesty's Government had advocated; but that, in order to remove what seemed to be the last point of difference between the two Governments, he was willing to some extent to modify his original proposals, and had now offered to substitute for them an Article in the following terms:—

"The Government of Great Britain having presented the claims of its subjects for compensation for seizure of their vessels by the United States in Behring's Sea, and the Government of the United States having presented, on its own behalf as well as of the lessees of the privilege of taking seals on the Pribyloff Islands, claims for compensation by reason of the killing of seals in Behring's Sea by persons acting therein under the protection of the British flag, the Arbitrators shall consider and decide upon such claims in accordance with justice and equity, and the respective rights of the High Contracting Parties; and it shall be competent for the Arbitrators to award such compensation as, in their judgment, shall seem equitable." (See Sir J. Pauncefote's telegram No. 101 of the 23rd July.)

Sir J. Pauncefote's telegram No. 101. 23rd July.

That Her Majesty's Government were desirous to take no objections, except such, if any, as might be found upon careful consideration, from a legal point of view, to be absolutely necessary, to the terms of the Article as now proposed; but that, before instructing Her Majesty's Minister at Washington further upon the subject, your

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Lordship would be glad of our opinion generally on the terms of the proposed Article, and more especially upon the two following questions:—

1. Whether the form of words proposed in Sir J. Pauncefote's telegram No. 101, if accepted by Her Majesty's Government, would involve the admission that Her Majesty's Government were liable for wrongful acts committed in the open sea by British subjects on board vessels flying the British flag?

2. Whether—apart from any specific admission which might be involved in the actual form of words now proposed—Her Majesty's Government would, according to the accepted doctrines of international law, be subject to any such liability?

That Sir Philip Currie was to request, therefore, that we would be good enough to take the papers transmitted with his letter into our consideration, and to favour your Lordship, at our earliest possible convenience, with our opinion on the questions more particularly submitted in his letter, as well as with any general observations on its subject which might, at the same time, occur to us.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Compensation for killing of seals in Behring's Sea. As to liability of British Govt.

1. That, in our opinion, the form of words proposed would, if accepted, involve the admission of the liability of Great Britain to pay compensation for losses occasioned to the United States' Government, or the lessees of the Pribyloff Islands, by the killing of seals in Behring's Sea by British subjects on board vessels flying the British flag.

2. Apart from such admission, the British Government would be liable for injuries caused by British subjects who had acted in the exercise of a right asserted, and, on the hypothesis, wrongly asserted, by Great Britain.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Appendix.

Behring's Sea Arbitration.—Article 7 as proposed by the President.

The Lord Chancellor's Opinion.

The Lord Chancellor's opinion on Article 7, as proposed by the President of the United States.

I concur in the answer of the Law Officers to question 1.

I am wholly unable to concur in their answer to question 2.

The principle involved would be a most formidable one if once admitted. The flying of the British flag is only the emblem of the nationality of the vessel, and only affords protection to the vessel if it is engaged in a lawful occupation. If engaged in an occupation which is unlawful it may be subject to a variety of penalties, according to the nature of the thing done, but unless the particular thing done is done by the direction or express permission of the Government of Great Britain it affords no ground for claiming compensation against that Government.

It seems to me that it is not material that Great Britain claimed and insisted on a right to fish for seals in Behring's Sea on behalf of its subjects, but if that makes a ground for demanding compensation, then, whenever there is a disputed boundary, [? whatever] the subjects of either Power do in the meantime, before that dispute is settled, may be made the subject of a demand for compensation from the Government of that country which has erroneously claimed boundary. I cannot agree that any known principle of international law recognizes the propriety of such a claim.

The formidable nature of the claim here would be enough to justify its rejection. The seals caught by British sealers would not necessarily have been caught at all, and until caught they certainly would belong to no one, since seals might swim out of American waters even if Behring's Sea were found to be American waters.

I very earnestly deprecate agreeing to any such words as are proposed.

(Signed) HALSBURY.

August 1, 1891.

No. 64.

[Board of Trade.]

[Transmitted by the Board of Trade to the Foreign Office in their letter of October 12, 1891.]

Opinion of the Law Officers, dated September 22, 1891.

Draft Convention between Great Britain and the United States relative to Merchant Shipping.

WE have considered the draft Convention, and the suggested alterations of Mr. Moore.

In order to give Articles II to IV, inclusive, legal effect, legislation is necessary, as they affect the jurisdiction of our Courts, the power of the Executive, and the law of evidence. Legislation is also necessary to render Article V effective as regards British possessions other than those enumerated.

As regards Articles II and III, we think them open to objection, the grounds of which we have stated in the following opinion, which expresses our views on each Article requiring consideration:—

"Foreign Deserters Act, 1852." "Merchant Shipping Act, 1854." "Merchant Seamen Act, 1880."

Article I.—There is no objection to this Article, and effect may be given to it by Orders in Council applying the provisions of "The Foreign Deserters Act, 1852," and some of the provisions of "The Merchant Shipping Act, 1854," as amended by "The Merchant Seamen Act, 1880," relating to discipline. It would be desirable that the Article should extend to vessels of war, but to effect this legislation would be necessary.

Article II.—We recognize the desirability of some means being adopted for the prevention of vexatious suits between the captain and crews of vessels belonging to the two countries; we are of opinion, however, that the mode provided by the Article for effecting this object is open to objection, on the ground, amongst others, that it precludes British subjects from having free access to their own Courts, and places in the hands of the American Consul a power the exercise of which might result in abuse. We would further observe that there is nothing to prevent the Consul receiving such instructions from his own Government as would leave him little discretion in the matter, and render even the limited right preserved by the Article wholly illusory. For these reasons, we think difficulty would be experienced in obtaining the sanction of Parliament to this Article. We do not, however, regard these objections as insuperable, and if the Article affords the only practicable basis of agreement, it will be for Her Majesty's Government to consider whether the advantages to be gained to this country by its approval are sufficient to outweigh them. We think a more acceptable remedy would be to give the Courts of each country full discretion and power to dismiss or stay vexatious suits, and by giving the captains of the vessels of each country the right to have a suit stayed on payment of the amount claimed into Court, provision being made for its transmission through the Consul of the one country to the other country, to abide the result of litigation there. Legislation of this nature, with provisions for preventing the unauthorized boarding of vessels terminating their voyages, would, we think, go far in putting a stop to proceedings of this kind.

Article III.—We are fully sensible of the necessity of punishing Englishmen, Americans, or foreigners, who have committed on the high seas any of the offences enumerated in the Convention, and who afterwards come to this country; we have, however, great difficulty in acceding to this Article, on grounds which may be illustrated by assuming an offence committed on an American ship proceeding either to this country or one of the Colonies.

1. Great delay must take place before the offender can be tried, and in the colonial case many months would elapse, whereas the offences are of a class which ought in justice to be promptly dealt with.

2. The trial might frequently take place without the presence of the witnesses (whether fellow seamen or passengers) competent to prove or disprove the offence charged; there is no provision in the Article for taking the depositions of witnesses in this country or the Colonies, and for their admissibility, in the absence of the witnesses, in the American Courts.

3. No discretion is vested in the English or Colonial Magistrate to dismiss the application of the Consul on any ground, as, for example, the trivial nature of the offence charged. The information of the Consul in making the application would in general be derived from the captain and officers, often the persons really to blame: the Article might, therefore, lead to hardship and abuse.

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4. The Article, if considered merely as an extension of the Extradition Act, includes none of its safeguards; it shuts out the accused from applying for a writ of *habeas corpus*. For these reasons, we are of opinion that the Article, considered from a legal point of view, is open to serious objection, and repugnant to our principles of justice. It is to be regretted that the Government of the United States rejected the proposal of giving the local authorities at the port of destination jurisdiction over these offences. A possible compromise would be that the local authorities of the country should only be able to extradite the subjects of the other, and that such local authorities should have jurisdiction to punish those of the crew being either subjects of their own country or foreigners. The present Article would give effect to this view if the expression "appropriate jurisdiction" were suitably defined.

Article IV. Assuming the Convention agreed to, this Article is necessary and free from objection.

Article V. Having regard to Mr. Moore's statement (p. 6) "that the chief value of the Convention would be its application to the Colonies," we think it would be desirable that the Indian and Colonial Offices should be consulted as to the probability of India and the Colonies being willing to be brought within it before proceeding further with the present negotiations.

Article VI. Legislation being necessary in order to give validity to the Convention, it may take one of three forms:—

1. A General Act may be passed the provisions of which can be applied by Order in Council to the United States and other countries if desirable to do so.
2. The present Convention may be agreed to subject to the approval of Parliament, which may take the form either of a General Act to be followed by an Order in Council; or
3. Of an Act simply confirming the Convention.

We think the first is the better course to pursue. To conclude the Convention without Parliamentary sanction would be illusory, and might lead to misunderstanding, and, further, the adoption of either of the two latter courses assumes that Parliament can be depended on to confirm the Convention in its present shape and unaltered, which, in our opinion, is extremely unlikely.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
HENRY SUTTON.

Royal Courts of Justice, September 22, 1891.

Annex.

Draft Convention between Her Majesty the Queen of Great Britain and Ireland and the President of the United States of America.[*]

Preamble.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being equally desirous, for the advantage of the commercial relations of the two countries, that better provision than now exists should be made for the maintenance of discipline and punishment of offences committed on board the ships of the two countries, and that a better procedure than now exists should be provided for the settlement of the civil claims of seamen and others who have agreed to serve in the ships of either country, when such claims are instituted in the other country, and that provision should be made for the recovery of seamen deserting from the ships of either country when in the waters of the other country, deem it expedient to conclude a special Convention for the accomplishment of the above purposes.

Accordingly they have named their Plenipotentiaries as follows:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland,

The President of the United States of America,

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[*] Amendments proposed by Mr. Moore, of the United States' Government, are printed in *italics*.

Who, after communicating to each other their Full Powers, found in due and good form, have agreed upon the following Articles:—

ARTICLE I.

Deserters.

The Consuls of either of the High Contracting Parties, residing in the dominions of the other, shall receive from the local authorities *the* assistance *provided* by law for the recovery of persons who may desert from merchant-vessels of their respective countries, while in the ports of the other country. If, however, any such deserter shall have committed an offence in the country where he is found, his surrender may be delayed until the proper Tribunal before which the case shall be pending or may be cognizable shall have pronounced its sentence and the sentence shall have been carried into effect.

In the interpretation of this Article, and of the following Articles of this Convention, the term "Consul" shall be deemed to include Consuls-General, Vice-Consuls, Consular Agents, and any person for the time authorized to discharge the duties of any such Consular officer.

ARTICLE II.

Civil Suits between Master and Crew.

To the end that the internal order of the merchant-vessels of the Contracting Parties shall be under the charge of their respective Consuls, it is agreed that no suit or action to determine differences which may arise, either at sea or in port, between the captains officers, and crews, whether in reference to personal conduct or to wages, and the execution of mutual contracts, shall be instituted or maintained in any Court of either of the Contracting Parties by the captain, officers, or members of the crews of vessels of the other country, unless the Consul of the country to which the ship belongs shall certify his consent, or unless, where there is a dispute as to wages or contracts, all the parties consent. But nothing in this Article shall prevent the Courts from taking jurisdiction where the differences on shipboard are of a nature to disturb the peace and public order in port or on shore, or when persons other than the officers and crew of the vessel are parties to the disturbance.

ARTICLE III.

Offences against Discipline on the High Seas.

When any of the offences against good order and discipline specified in the schedule to this Convention, and made punishable by the laws of the country to which the vessel belongs, shall have been committed on board any merchant-vessel of one of the High Contracting Parties on the high seas, and beyond the territorial jurisdiction of the other, the accused shall be allowed to be kept in custody on board such vessel on her arrival in the ports of the other High Contracting Party, until the Consul of the country to which the vessel belongs shall have made due inquiry into the charge. If, upon such inquiry, the Consul shall decide that the case is one which should be sent for trial to the appropriate jurisdiction, the local authorities shall[*] afford him all necessary aid and assistance to secure the further detention of the accused for such purpose; and in case he shall escape, they shall take all necessary and lawful steps for his arrest; and on the application and at the cost of such Consul, they shall cause the accused to be imprisoned and confined until he can be sent for trial as aforesaid, in the same or some other merchant-vessel belonging to the same country, provided that no person shall be detained or imprisoned under this Article for a longer period than two months from the date of the arrival of the vessel in port, or, in case he shall escape, from the date of his recapture.

ARTICLE IV.

Evidence of Consuls.

If it should become necessary for carrying out this Convention that evidence should be given in one country of the law of the other country, such evidence may be

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[*] *Qy.* insert here: "on such *primâ facie* evidence as to them shall appear sufficient."—J. P.

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given by a statement to be made by a Consul of the last-mentioned country, and the Consul's statement shall be received as evidence of the law of his country.

ARTICLE V.

Application of Convention to Colonies.

The provisions of this Convention shall extend and apply to the Colonies and possessions of Her Britannic Majesty, subject to the exceptions hereinafter named in the case of the following Colonies and possessions:—

India.
Canada.
Newfoundland.
The Cape.
Natal.
New South Wales.
Victoria.
Queensland.
Tasmania.
South Australia.
Western Australia.
New Zealand.

The provisions of this Convention shall not extend to United States' vessels or the crews thereof, when in the waters or territory of any of the above-named Colonies or possessions, unless notice shall first have been given by Her Britannic Majesty's Representative at Washington that such Colony or possession accedes to this Convention.

ARTICLE VI.

Legislation for carrying out Convention.

The High Contracting Parties engage to take, with as little delay as possible, such legislative measures, if any, as may be necessary to carry this Convention into effect.

ARTICLE VII.

Ratification, Commencement, and Duration of Convention.

The ratification of the present Convention shall be exchanged as soon as possible after the legislative measures, if any, necessary to carry it into effect in both countries shall have been adopted. It shall become operative at the expiration of thirty days from the date of the exchange of ratifications, and shall remain in force for five years after the date of its becoming operative, unless sooner terminated by notice given by either Contracting Party to the other.

~~ARTICLE VIII.~~

~~*Commencement and Duration of Convention.*~~

~~The present Convention shall come into operation at the expiration of thirty days from the date of the exchange of ratifications. It shall remain in force for five years after that date, and thereafter until terminated by a twelve months' notice to be given by either High Contracting Party to the other.~~

Schedule of Offences referred to in Article III.

Misconduct or drunkenness, endangering ship, life, or limb.
Refusing to do any lawful act to preserve life or limb.
Wilful disobedience.
Combination to disobey.
Assaults against officers.
Assaults occasioning bodily harm.
Wilful damage to ship's stores or cargo.
Larceny or embezzlement of stores or cargo.

No. 65.

[Home Office.]

[In reply to the following case submitted to the Law Officers, they reported, on November 7, 1891, as on p. 122.]

[Transmitted to the Foreign Office by the Home Office in their letter of November 28, 1891.]

Re T. W. Hoit.

Extradition Acts, 1870 *and* 1873.

THE following is a copy of a letter from the Home Office:—

"Sir,

"*Whitehall, July* 6, 1891.

Extradition of T. W. Hoit. Obstruction offered to the police by officials of the Hamburg-American Steam-Packet Company.

"I am directed by Mr. Secretary Matthews to acknowledge the receipt of your letter of the 27th ultimo, inclosing opinion of the Law Officers of the Crown to the effect that, in the case of T. W. Hoit, the obstruction offered to the police by the officials of the Hamburg-American Steam-Packet Company was not such as would subject them to criminal proceedings. Mr. Matthews has communicated this opinion to the Secretary of State for Foreign Affairs.

"The Secretary of State, however, considers it important that he should be further advised by the Law Officers as to the course which should be taken by the police to effect an arrest in any future case in similar circumstances. As the recent Extradition Treaty between Great Britain and the United States comprises many offences, *e.g.*, larceny and embezzlement, which are not comprised in the Treaty between the United States and Germany, it is probable that criminals from the United States may attempt to escape to Germany rather than to England; that applications may be made by the United States' Government for their arrest at British ports at which German vessels touch; and that if the officials of the Company can successfully oppose the arrest on board their vessels, the only opportunity of bringing the criminals to justice may be lost.

"Moreover, the English Government has not unfrequently occasion to apply for the arrest of fugitives at ports in foreign countries where the vessels on which they have sailed merely touch, and it is most desirable that it should be clearly shown that this can be done reciprocally.

"The Secretary of State desires, therefore, to be advised by the Law Officers what steps the police are justified in taking in order to execute either an English or an extradition warrant for the arrest of a fugitive criminal—

(*a.*) On board a British vessel;
(*b.*) On board a foreign vessel within the British territorial waters;

if the owners or their agents refuse to allow the police to go on board the vessel.

"I am, &c.
(Signed) "GODFREY LUSHINGTON.

"The Solicitor to the Treasury."

The cases laid before the Attorney- and Solicitor-General on the 20th June, and their opinion thereon of the 26th June, 1891, are sent herewith.

The Attorney- and Solicitor-General are requested to favour Mr. Secretary Matthews with their opinion as asked in Mr. Lushington's letter of the 6th July.

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Extradition Acts, 1870 *and* 1873.

Re T. W. Hoit, a Fugitive Offender.

The Attorney-General's Opinion.

Replies to queries as to arrest of a fugitive criminal (*a*) on board a British vessel; (*b*) on board a foreign vessel within the British territorial waters; if the owners or their agents refuse to allow the police to go on board the vessel.

In my opinion, subject to the provisions of "The Mail Ships Act, 1891," a warrant for the arrest of a person, whether issued in respect of a crime committed in England or under the authority of the Extradition Acts, can be executed on board a British vessel whether in British territorial waters or on the high seas, or on board a foreign vessel (not being a public ship) while such vessel is within British territorial waters; and that the owners, or their agents, are not entitled to prevent the police authorities, when duly armed with a warrant of arrest, from boarding for the purpose of executing such warrant.

(Signed) RICHARD E. WEBSTER,
Attorney-General.

Royal Courts of Justice, November 7, 1891.

The Solicitor-General's Opinion.

In my opinion, an extradition warrant can only be executed upon a foreign vessel in British waters when such vessel belongs to the Power claiming extradition, and the fugitive is either a British subject or a subject of such Power.

In other respects I agree with the opinion of the Attorney-General.

(Signed) EDWARD CLARKE,
Solicitor-General.

Royal Courts of Justice, November 7, 1891.

URUGUAY.

No. 66.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received January* 29.)

My Lord,
Royal Courts of Justice, January 27, 1891.

Question of right of interment in the British cemetery at Monte Video.

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list* relative to the question whether British subjects who are in communion with the Church of Rome, or those subjects or citizens of foreign States who profess any form of the Protestant religion, could legally be buried in the British cemetery at Monte Video.

That, with regard to Mr. Satow's statement that the title-deeds spoke of the old cemetery as being "destined exclusively to the interment of the remains of Protestant British subjects," Sir T. Villiers Lister was to state that he appeared to refer to those which were granted on the 3rd October, 1874, by the Uruguayan Government at the request of Major Munro, Her Majesty's Consul at Monte Video for the time being, in order to set at rest certain doubts respecting the ownership, and to give a good title to the possession of the cemetery. But that Sir Julian Pauncefote, in his letter to our predecessors of the 9th March, 1884, pointed out that there were various inaccurate statements in those title-deeds. That it could not, therefore, be asserted with certainty whether the original purchase, the title to which was confirmed by the deed of the 3rd October, 1884, was actually made subject to such conditions, or by whom, or upon whom, such conditions could be enforceable.

That, however that might be, it was a matter of certainty that the object for which the British cemetery was originally acquired was to provide a proper burial-place for Protestant British subjects.

That that step was taken, as it had been formerly the practice to carry the bodies of Protestants out by stealth and push them into the sand by the sea-shore in order that they might be preserved from desecration at the hands of the bigoted natives.

That the present cemetery was purchased out of the proceeds of the sale of a portion of the old cemetery, and that it was a matter of doubt whether or not the use of the new ground was subject to the conditions supposed to have been laid down with regard to the old cemetery.

That it might, however, be here mentioned that the intentions of the founders of the old cemetery had been systematically set aside in favour of Protestants of foreign nationality, and that there had been a few instances of the burial of Roman Catholic British subjects.

That Sir T. V. Lister was further to draw our attention to the provisions of the Act 6 Geo. IV, cap. 87, which relate, among other matters, to the purchase or hire of any ground to be used as a place of interment for Her Majesty's subjects, and which contain no stipulation with regard to the religious faith of British subjects to be therein interred. And that Sir T. V. Lister was to invite our special attention to section 15 of that Act respecting "Rules, Orders, and Regulations for the due and proper use and management of such . . . . burial-grounds as aforesaid," and respecting the control over them which might be exercised by His Majesty through one of his Principal Secretaries of State.

That it was, however, stated in the above-mentioned letter to our predecessors that, with certain specified exceptions, "there seems to have been no donation of public funds towards the purchase of the cemetery, or annual contribution to its maintenance as contemplated by the Act 6 Geo. IV, cap. 87; and that, in accordance with the Law Officers' Report of the 19th March, 1884, Her Majesty's Consul at Monte Video was instructed to inform the Uruguayan Government that the power of Her Majesty's Government to dispose of the cemetery without the assent of the British community was extremely doubtful.

That though the doubt as to the applicability of the Act 6 Geo. IV, cap. 87, was considered a reason for not disposing of the old cemetery without the assent of the British community, yet it remained a question whether the existence of that doubt could be held to release Her Majesty's Government from the obligation to pronounce upon the matters referred to them for decision.

That your Lordship requested that we would take the papers into our consideration, and would favour you with our opinion—

1. Whether Her Majesty's Government were called upon to express any opinion upon the questions raised in Mr. Satow's despatch No. 28, Consular, of the 24th November, 1890, and, if so,

2. Whether British subjects who are in communion with the Church of Rome could legally be buried in the new British Cemetery at Monte Video.

3. Whether the subjects or citizens of foreign States who profess any form of the Protestant religion could legally be there buried.

4. Whether there was any legal objection to the assignment of a portion of the cemetery in question for the purposes of the burial of Roman Catholic British subjects; and,

5. Whether, if there were no such legal objection, the portion of the cemetery so assigned could legally be consecrated according to the rites of the Church of Rome, notwithstanding the previous solemn act of dedication of the whole cemetery mentioned by the Bishop of the Falkland Islands.

That your Lordship also requested that we would favour you with any general observations which we might have to offer upon the questions raised by the papers.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Are of opinion that Roman Catholic

1. That, having regard to the fact that the land is vested in Her Majesty's Consul, and that public money has been expended upon it, as well as upon the old

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* Mr. Satow, No. 28, Consular, November 24, 1890; Act 6 Geo. IV, cap. 87; Law Officers, March 19, 1884.

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British subjects can legally be buried in the new British cemetery at Monte Video.

cemetery for which it was substituted, we think Her Majesty's Government is called upon to express an opinion upon the questions raised in Mr. Satow's despatch.

2 and 3. In our opinion British subjects in communion with the Church of Rome and Protestant subjects of foreign States can legally be buried in the new British cemetery.

4. We do not see any legal objection to the assignment of a portion of the cemetery for the purposes of the burial of Roman Catholic British subjects, but it appears to us that it cannot be necessary, or desirable, that such a separation should be made.

Nothing illegal in the consecration of a portion of the cemetery according to the rites of the Church of Rome.

5. In our opinion there would be nothing illegal in the consecration of a portion of the cemetery according to the rites of the Church of Rome, notwithstanding the previous act of dedication by the Bishop of the Falkland Islands.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 67.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received October 7.)

Royal Courts of Justice, October 5, 1891.

My Lord,

Draft Order in Council for carrying into effect Extradition Protocol with Uruguay.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 12th September, stating that he had to transmit to us, by direction of your Lordship, the draft of an Order in Council for carrying into effect a Protocol between Her Majesty and the President of the Oriental Republic of the Uruguay, signed at Monte Video the 20th March, 1891, providing for the extension of the period of provisional arrest stipulated in Article IX of the Extradition Treaty between the two countries of the 26th March, 1884.

That Sir Thomas Sanderson was to inclose letters from the Home Office and Colonial Office, stating that there was no objection on the part of those Departments to the issue of the Order in Council.

That Sir Thomas Sanderson was to request that we would take the draft Order in Council into our consideration, and that we would favour your Lordship with our opinion whether in its present shape it might properly be laid before the Queen in Council for Her Majesty's approval.

In obedience to your Lordship's commands we have the honour to

Report—

Approve draft Order in Council as amended.

Assuming that there are no other countries except Canada in which the operation of the Extradition Acts has been suspended, the draft Order in Council, as amended and initialled by us, may properly be laid before the Queen in Council for Her Majesty's approval. If there be any other countries in which the operation of the Acts has been suspended, the recitals and last proviso will require alteration. We are under the impression that we approved the draft of an Order suspending the operation of the Acts in some part of the Cape Colony, but the Order may not have been made.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) Draft Order in Council.	
(B.) Home Office	August 28, 1891
(C.) Colonial Office	August 29, „

Annex.

WHEREAS by the Extradition Acts, 1870 and 1873, it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient; and that if, by any law made after the passing of the Act of 1870 by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying the said Acts in the case of any foreign State, or by any subsequent Order, suspend the operation within any such British possession of the said Acts, or of any part thereof, so far as it relates to such foreign State, and so long as such Law continues in force there and no longer:

And whereas, a Treaty was concluded on the 26th day of March, 1884, between Her Majesty and the President of the Oriental Republic of the Uruguay for the mutual extradition of fugitive criminals:

And whereas, by an Order of Her Majesty the Queen in Council, dated the 5th day of March, 1885, it was directed that the Extradition Acts of 1870 and 1873 should apply in the case of the Oriental Republic of the Uruguay:

And whereas, by an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," provision is made for carrying into effect within the Dominion the surrender of fugitive criminals:

And whereas, by an Order of Her Majesty the Queen in Council, dated the 17th day of November, 1888, it was directed that the operation of the Extradition Acts, 1870 and 1873, should be suspended within the Dominion of Canada so long as the provision of the said Act of the Parliament of Canada of 1886 should continue in force and no longer:

And whereas, a Protocol was concluded on the 20th day of March, 1891, between Her Majesty and the President of the Oriental Republic of the Uruguay, providing for the extension of the period stipulated in Article IX of the above-mentioned Treaty of the 26th day of March, 1884, which Protocol is in the terms following:—

Montevideo, the 20th day of March, 1891, their Excellencies Mr. Ernest Mason Satow, Companion of the Most Distinguished Order of St. Michael and St. George, Her Britannic Majesty's Minister Resident and Consul-General, and Dr. Manuel Herrero y Espinosa, Minister for Foreign Affairs, having met together at the Ministry for Foreign Affairs with the object of providing for the extension of the period stipulated in Article IX of the Treaty for the Extradition of Criminals, in force between their respective countries, for the provisional arrest of persons charged with any of the crimes or offences specified in the said Treaty, and having exchanged their full powers, which were found to be in good and due form, have agreed to the following Declaration, which shall be considered an integral part of the said international compact:—	En Montevideo, á los veinte dias del mes de Marzo del año de 1891, reunidos en el Ministerio de Relaciones Exteriores, suas Excelencias el Señor Don Ernesto Satow, Miembro de la muy Distinguida Orden de San Miguel and San Jorge, Ministro Residente y Cónsul-General de Su Magestad Británica en la República, y el Señor Doctor Don Manuel Herrero y Espinosa, Ministro del Reino, con el objecto de establecer la ampliación del término fijado en el Artículo IX del Tratado de Extradición de Criminales vigente entre ambos países para la detención preventiva de las personas perseguidas por alguno de los crímenes ó delitos especificados en dicho Tratado, despues de cangeados sus plenos poderes, que fueron hallados en buena y debida forma, convinieron en hacer la siguiente Declaración, que se considerará parte integrante del referido pacto internacional:—
"The period of thirty days fixed by Article IX of the Treaty for the Extradition of Criminals in force between the Oriental Republic of the Uruguay and	"Siendo notoriamente insuficiente el término de treinta dias que establece el Artículo IX del Tratado de Extradición de Criminales vigente entre la Gran

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Great Britain, for the provisional arrest of persons charged with any of the crimes or offences specified in the said Treaty, being thoroughly recognized as insufficient, both Governments agree that the said period shall henceforth be fixed at sixty days."

In witness whereof, the said Plenipotentiaries have caused the present Protocol to be drawn up in duplicate, and have signed both copies, and thereto affixed their seals on the date above expressed.

(L.S.) ERNEST MASON SATOW.
(L.S.) MANUEL HERRERO Y ESPINOSA.

Bretaña y la República Oriental del Uruguay, para la detención preventiva de las personas perseguidas por alguno de los crímenes ó delitos especificados en el referido Tratado, ambos Gobiernos convienen en que dicho plazo quede desde luego fijado en sesenta dias."

En fé de lo cual, los Señores Plenipotenciarios hicieron labrar el presente Protocolo por duplicado, cuyos ejemplares firmaron y sellaron con sus sellos en la fecha arriba espresada.

(L.S.) ERNEST MASON SATOW.
(L.S.) MANUEL HERRERO Y ESPINOSA.

And whereas, the ratifications of the said Protocol were exchanged at Monte Video on the 17th day of July, 1891:

Now, therefore, Her Majesty, by and with the advice of her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the* day of , 18 , the said Acts shall apply in the case of the said Protocol of the 20th day of March, 1891, ~~with the President of the Oriental Republic of the Uruguay,~~ as fully to all intents and purposes as in the case of the said recited Treaty of the 26th day of March, 1884:

Provided always, and it is hereby further ordered, that the operation of the said Extradition Acts, 1870 and 1873, shall be suspended within the Dominion of Canada so far as relates to the Oriental Republic of the Uruguay, and to the said Treaty and Protocol, and so long as the provisions of the Canadian Act aforesaid of 1886 continue in force, and no longer.

R. E. W.
E. C.

VENEZUELA.

No. 68.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received September 19.)

Royal Courts of Justice, September 17, 1891.

My Lord,

Death of a British subject named W. Campbell from a gun-shot wound received at hands of Venezuelan police.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 1st ultimo, stating that he had to transmit to us, by direction of your Lordship, the papers noted in the margin of his letter which related to the death of a British subject named William Campbell, from a gunshot wound received at the hands of the police on the Venezuelan bank of the Amakooroo River, which formed the boundary between Venezuela and British Guiana.

That the attention of Her Majesty's Government was first called to this case in an unofficial note from Señor Pimentel (see document A), who arrived in this country last year as Secretary to a special Envoy from the Venezuelan Government, and remained in England after the Envoy's departure.

That in that communication it was stated that the President of the Republic had ordered an investigation into the matter, with a view to the exemplary punishment of the guilty parties.

That full particulars were subsequently received in a letter from the Colonial Office, dated the 10th April (see document B), and an account of the circumstances would be found in the report from Mr. im Thurn, the Colonial Government's Agent in the district, which formed the second inclosure.

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* Date to be inserted by the Council Office, and to be a date ten days after the publication of the Order in the "London Gazette."

That the facts as stated by Mr. im Thurn are briefly that William Campbell, a respectable settler in the north-western district of British Guiana, visited an Englishman on the Venezuelan shore of the Amakooroo, and while in his house was arrested by the Venezuelan police without being informed of the nature of the charge against him. That he did not appear to have actively resisted the police, who requested him to accompany them to the station, but while surrounded by them in the hammock where he lay, he received a gunshot wound in the hand. That the shot appeared to have been fired by one of the policemen acting, it is said, under the orders of a sergeant. After Campbell was wounded he was taken to the police Inspector by whom he was sent up the river to the Venezuelan Governor of the district. That he was then sent down the river accompanied by a Magistrate who had received orders from the Governor to hold an inquiry into the matter. That the exact result of that inquiry had not been ascertained, but the police Inspector and the policemen seem to have been punished, while Campbell himself was released and allowed to return to the English bank of the river. That he proceeded shortly afterwards to a hospital up the Barima River, where he died of the effects of his wound, eight days after the date on which he received it.

That an inquest was held on him by the Colonial authorities at Amakooroo, and the jury returned a verdict of wilful murder against the policeman who fired the shot, and the police officer in command of the party.

That it would be observed that Mr. im Thurn attributed Campbell's arrest to the fact that he had failed to report himself at the Custom-house when arriving on the Venezuelan bank of the river.

That at that stage Her Majesty's Ambassador at Berlin was directed to request the German Government to allow their Representative at Carácas, who was for the moment in charge of British interests in Venezuela, to present a note to the Venezuelan Government expressing the hope of Her Majesty's Government that the guilty parties would be punished and compensation awarded to the relatives of the deceased (see despatch No. 70 to Sir E. Malet, April 29, 1891, Document C).

That the reply of the Venezuelan Government would be found in Mr. Trench's despatch No. 133, July 17, 1891 (Document D), and it would be seen that it contained no admission of their liability to compensate the relatives of the deceased.

That meanwhile, shortly after the representation to the Venezuelan Government had been forwarded to Berlin, further information was received from the Colonial Office in the letter dated the 6th May (Document E).

That from that Report it appeared that the Venezuelan authorities held a further inquiry into the matter, the result of which was that the shooting of Campbell was decided by them to have been accidental, and the policeman detained on the charge of murder was acquitted and released on bail to appear before a higher Tribunal at Carácas, apparently to take his trial on some minor charge connected with the affair.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion whether, having regard to all the circumstances of the case, Her Majesty's Government were justified in formally calling upon the Venezuelan Government to make pecuniary compensation to Campbell's surviving relatives, and also with any general observations we might have to offer on the subject.

In obedience to your Lordship's commands, we have the honour to

Report—

H. M.'s Govt. not justified in calling upon Venezuelan Govt. to pay compensation.

That, having regard to all the circumstances of the case, we are not of opinion that Her Majesty's Government would be justified in formally calling upon the Venezuelan Government to pay compensation.

We have, &c.
(Signed) RICHARD E. WEBSTER
EDWARD CLARKE.

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(B.)	Colonial Office		April 10, „
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(E.)	Colonial Office		May 6, „

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(6347.)

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BY THE

LAW OFFICERS OF THE CROWN, &c.

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CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.: 1892.

AFRICA.

No. 1.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received April 14.)

My Lord,

Royal Courts of Justice, April 13, 1892.

General Act of the Brussels Slave Trade Conference. Calling attention to certain Articles.

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 15th January last, stating that he was directed by your Lordship to transmit to us a copy of the General Act of the Slave Trade Conference held at Brussels 1889-90.

That the Act was signed on the 2nd July, 1890, and by the provisions of Articles XCIX and C, would come into force on the 2nd March, 1892, the ratifications having been duly deposited on the 2nd January last.

That Chapter I dealt with the measures to be taken in the places of the origin of the slave traffic in Slave Trade countries.

That the Contracting Powers, in Articles V and XII, undertook, if necessary, to adapt their Laws to the new state of things created by the Act, and to communicate such Laws to one another within the shortest possible delay.

That Chapter II concerned the "caravan routes and the land transport of slaves," and, in Article XIX, provided that the penal arrangements of Article V should apply to "all offences committed in the course of the operations connected with the transport and traffic of slaves on land."

That Chapter III related to the "repression of the sea-borne Slave Trade." That it delimited a maritime zone within which it declared that the Slave Trade still existed, and dealt with such points as the right of visit, search, and capture, the usurpation of the national flag, the treatment of slaves taking refuge on board a ship of war bearing the flag of one of the Signatory Powers, the grant of the flag to native vessels, and the treatment and disposal of captured vessels, their captains, and crews.

That Chapter IV applied only to "countries to which slaves are sent whose institutions recognize the existence of domestic slavery."

That Chapter V dealt with "institutions intended to insure the execution of the General Act." That it provided for the creation of an International Maritime Office for the exchange between the Governments of documents and information relating to the Slave Trade, including "the texts of the Laws and Regulations of the Administration, whether existing or enacted in application of the General Act," and for the protection of liberated slaves.

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That Chapter VI defined certain "restrictive measures concerning the traffic in spirituous liquors," whilst Chapter VII contained the "final provisions for the repeal of the contrary stipulations of previous Conventions, the introduction of alterations into the Act, and the date of its coming into force.

How far is legislation necessary to enforce the Act?

That Sir T. Villiers Lister was to request that we would take the "General Act" into our consideration, and that we would favour your Lordship with our opinion as to whether legislation would be required, and, if so, on what points and to what extent in the United Kingdom, and likewise in the Colonies and foreign possessions of Her Majesty, to give effect to any of its stipulations, and to fulfil the obligations it imposed on Her Majesty's Government.

What should be done respecting India and Indian ships?

We were also honoured with a further letter from Sir T. Villiers Lister, dated the 19th ultimo, inclosing a letter from the India Office inquiring, on behalf of the Government of India, whether Parliament was going to support the Brussels Act by Imperial Statute, or whether it was intended that the Government of India should legislate for India and Indian ships.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Legislation is desirable.

That, in our opinion, it will be desirable to provide by Imperial legislation for giving effect to the provisions of the General Act of the Brussels Conference.

The matters requiring to be dealt with are:—

1. The application of the criminal law of this country to offences committed by slave-traders (Article V).
2. The application of the Extradition Acts and Fugitive Offenders Acts to such offenders (Article V).
3. The prohibition or regulation of the importation of fire-arms in the zone specified in Article VIII.
4. The prohibition of importing spirituous liquors, or the imposition upon them of the agreed import duties.

We are of opinion that subjects 1, 2, and 3 might be dealt with by Orders in Council under "The Slave Trade Consolidation Act, 1873," "The Foreign Jurisdiction Act, 1890," and "The Fugitive Offenders Act, 1881," but we cannot say that this is free from doubt.

The whole subject might be dealt with by a Bill.

The provisions of the General Act relating to the taxation on imported spirits appear to require Imperial legislation, and we think it would be well to deal with the whole subject by a Bill which might enact any provisions necessary to supplement any of the Statutes above mentioned, and, in addition, might set out in a Schedule the General Act of the Brussels Conference, and enact that it shall be lawful for Her Majesty, by Order in Council, to make such provision for the government of her possessions in Africa, and for the exercise of her authority and jurisdiction in such possessions and in her Protectorates and other territories wherein Her Majesty, by Treaty, Capitulation, grant, usage, sufferance, and other lawful means, has jurisdiction, as may be necessary for giving effect to the provisions of the said General Act.

No separate legislation required for India.

No separate legislation for India will, in our opinion, be required.

In the event of it being determined to introduce legislation on the lines we have suggested, the subject should be carefully considered by the Parliamentary Draftsman, and a preliminary Memorandum and draft Bill prepared for further consideration.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

1 General Act of the Brussels Slave Trade Conference. "Africa No. 7 (1890)." Treaty No. 855.
India Office, March 9, 1892.

No. 1*.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 18.)

(A.)

My Lord, *Royal Courts of Justice, June* 15, 1892.

Draft O. in C. Deportation of foreigners from British Protectorates.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 8th April last, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council extending the provisions of "The Africa Order in Council, 1889," to subjects of States who were parties to the General Act of the Conference of Berlin signed in 1885; and providing for the application to territories within the limits of that Order of British Indian Acts and enactments.

That your Lordship had caused the draft Order to be referred to the Treasury, the Colonial Office, the India Office, and the Home Office; and that it had been agreed to by all those Departments on the understanding that instructions would be given to Her Majesty's Consular officers in regard to the application to foreigners of Part XIII of "The Africa Order in Council, 1889," to the effect that deportation should not be resorted to in the case of foreigners without express authority being obtained from Her Majesty's Government.

That the reason for the proposed instruction was the difficulty of prescribing, either in the Order itself, or in any general instructions thereunder, the place or places to which foreigners ought properly, in case of necessity, to be deported.

That under section 102 of "The Africa Order in Council, 1889," a person could only be deported to "the prescribed African possession of Her Majesty, or to such other part of Her Majesty's dominions as a Secretary of State . . . . . directs;" and that, in the general instructions issued under that Order, it was prescribed that the deportation was to be made "to such place as may appear (to the officer exercising judicial powers) most convenient, due regard being had to the place of birth or domicile of the person to be deported." That that instruction was founded on the objection entertained by British Colonies to receive in that way criminals who had no connection with the Colony in question.

That the Home Office, in their letter of the 11th January last, whilst concurring in the terms of the draft Order, suggested that, in case of it being necessary to deport any foreigner, it might be desirable to deport him, subject to the consent of his Government, to the country to which he belonged, rather than to some part of Her Majesty's dominions.

That, in regard to that suggestion, doubts appeared to arise as to whether Her Majesty had legal power to authorize, or to carry out, the deportation of any person to be made to a foreign country; as to whether the consent of foreign Powers could be obtained; and, if so, as to whether it would not be made subject to the undesirable condition of reciprocity. That difficulties might also be apprehended as to the power to keep such persons in custody when without Her Majesty's jurisdiction.

That it was very important that the power of deportation of foreigners should, if possible, exist, but that it was desirable to prescribe generally how it was to be carried out in practice, and especially whether to some part of Her Majesty's dominions, or to the foreign States to which such foreigners might respectively belong.

That, Sir Thomas Sanderson was to request that we would favour your Lordship with our opinion whether the draft Order in Council as framed might properly be submitted for Her Majesty's approval, and generally with any observations we might have to offer in connection with it.

That, with regard to the particular matter of deportation, Sir Thomas Sanderson was to request our opinion on the following points:—

1. Whether, bearing in mind that it was desirable that the power of deportation of foreigners should, if possible, exist, it was proper to deal with that question in the draft Order submitted for our consideration, or whether it would be more convenient that such power should be provided by other means;
2. If the former, whether the deportation could and should be made, with the consent of the foreign Government, to the country to which the foreigner belonged; or
3. Whether the deportation should be made to some part of Her Majesty's dominions.

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We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Draft Africa O. in C. may be submitted to the Queen.

That, in our opinion, the draft Order in Council, in its present form, may properly be submitted to Her Majesty for approval.

Conditions under which foreigners may be deported from British Protectorates.

The only power of deportation which exists under "The Africa Order in Council, 1889," is a punitive deportation, and is by the draft Order applied to the Protectorates in South Africa.

In our opinion, "The Foreign Jurisdiction Act, 1890," does not confer on Her Majesty the power of administrative deportation, or expulsion, from territories which are not within Her Majesty's dominions, and the only mode of carrying out the desired object is, as indicated in our Report of the 3rd March, 1888, the giving facilities to the authorities of other countries to seize and remove from the Protectorate persons whom they desire to bring to justice. For this purpose instructions to Consular officers will alone be required.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

1.	Draft Africa Order in Council	1892.	Confidential No. 6221*
2.	Africa Order in Council	1889.	Confidential No. 5949*.
3.	General Act, Conference of Berlin	1885.	Confidential No. 5181.
4.	Home Office	January 11, 1892.	
5.	Law Officers' Report	March 3, 1888.	Confidential No. 5785, p. 28.

Annex.

Draft Order in Council.

WHEREAS, by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction in the parts of Africa mentioned in "The Africa Order in Council, 1889;"

And whereas, by the General Act of the Conference of Berlin signed in 1885, the several Powers who are parties thereto (in this Order referred to as the Signatory Powers) declared, with respect to occupations in Africa by any of the Signatory Powers, that the establishment of authority in protected territories was an obligation resting upon the respective protecting Powers;

And whereas, in order to the due fulfilment of the said obligation as respects territories and places within the limits of the above-mentioned Order, which Her Majesty shall have declared to be under the protection of Her Majesty, it is necessary that the subjects of the Signatory Powers, other than Her Majesty, should be justiciable under the said Order in like manner as British subjects, and for this purpose that the provisions of the said Order referring to British subjects should, as far as practicable, be extended to the subjects of those Powers;

And whereas it is expedient that the powers conferred upon a Secretary of State by "The Africa Order in Council, 1889," should be extended so as to provide for the application to territories and places within the limits of that Order of such Acts and enactments for the time being in force in British India as may be deemed necessary for the due administration of justice:

Now, therefore, Her Majesty, by virtue and in exercise of the powers by "The Foreign Jurisdiction Act, 1890," or otherwise, in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. In this Order the expression "foreigners to whom this Order applies" means subjects of any of the Signatory Powers (except Her Majesty) or of any other Power which has consented that its subjects shall be justiciable under "The Africa Order in Council, 1889," and this Order.

Other expressions, defined in "The Africa Order in Council, 1889," and used in this Order, have the same meaning.

2. Where Her Majesty has declared any territory or place within the limits of "The Africa Order in Council, 1889," to be a Protectorate of Her Majesty, the provisions of that Order having reference to British subjects, except Part XIV thereof, shall extend in like manner to foreigners to whom this Order applies, and all such foreigners shall be justiciable by the Courts constituted by the said Order for the Protectorate, under the same conditions as British subjects, and to the extent of the jurisdiction

vested by law in those Courts; and Part XII and so much of the rest of Order as requires the consent of any foreigner as a condition of the exercise of jurisdiction shall be of no force or effect in the Protectorate, so far as respects foreigners to whom this Order applies.

3. A Secretary of State may, from time to time, by order published in such manner as he directs, declare that any Act or enactment for the time being in force in British India or any Presidency thereof, and not inconsistent with "The Africa Order in Council, 1889," and this Order, shall have effect and be administered in relation to any place or places within the limits of any local jurisdiction with such modifications or adaptations as may be necessary, and thereupon such Acts or enactments, as so modified and adapted, shall have effect in accordance with such Order as if they had been applied by the said Order.

4. This Order may be cited us "The Africa Order in Council, 1892." "The Africa Order in Council, 1889," and this Order may together be cited as "The Africa Orders in Council, 1889 and 1892."

And the Most Honourable the Marquis of Salisbury, K.G., and the Right Honourable Viscount Cross, G.C.B., two of Her Majesty's Principal Secretaries of State, are to give the necessary directions therein as to them may respectively appertain.

R. E. W.
E. C.

No. 2.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 18.)

(B.)
My Lord, *Royal Courts of Justice, June 15, 1892.*

Expulsion of obnoxious foreigners from British Protectorates.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 8th April last, stating that, with reference to his other letter of the 8th April requesting our opinion upon the terms of a draft Order in Council having for its object, amongst other things, to extend various provisions of "The Africa Order in Council, 1889," including Part XIII, which had special reference to the deportation and removal of offenders, to subjects of States who were parties to the General Act of the Conference of Berlin signed in 1885, he was directed by your Lordship to call our attention to another question, of a somewhat analogous nature, which had in that connection also been under your Lordship's consideration.

That we should recollect that in his (Sir Thomas Sanderson's) letter of the 14th July last a draft Convention between Great Britain and Germany was referred to us, which had for its object the establishment of a system of extradition between German Protectorates on the one hand, and the United Kingdom and the British Colonies and possessions abroad on the other.

That, owing to legal difficulties it had been considered that such an arrangement could not be made to include the surrender of fugitive criminals who had taken refuge in a British Protectorate, and who might be claimed for extradition either to Germany or to a German Protectorate.

That the subject was becoming, nevertheless, of great and growing practical importance, owing to the existence in Africa of vast areas under British protection, which, for various reasons, and especially on account of the slavery difficulty, could not be placed under the direct sovereignty of the Queen.

That those British Protectorates were conterminous with the Protectorates of other Powers, notably of Germany, and that, without some provision for the extradition of fugitive criminals, the administration of justice in those vast regions must be seriously crippled.

That the comity of nations appeared to require that territories under British protection should not be suffered to become a refuge for malefactors of all descriptions and nationalities who might escape from neighbouring territories under the protection of other Powers.

That, in view of the difficulties which appeared to exist in the way of extending the operation of our Extradition Treaties so as to include the surrender of fugitive criminals by British Protectorates, it had been suggested that it might be possible to empower British Consuls in such territories to exercise a summary power of expulsion in regard to persons considered dangerous to public peace and good order. That such power would appear to exist already in India, both in regard to British Indian territory, and in regard to native-protected States under the circumstances and con-

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ditions stated in the inclosed letter from the India Office of the 20th January, 1891. That it existed also in Cyprus under the Ordinance of the 17th February, 1879.

Cyprus Ordinance, February 17, 1879.

That if Her Majesty's Consuls were empowered to pursue that course in cases where a fugitive criminal from the Protectorate of any foreign Power should take refuge in a British Protectorate, due notice might be given as to the time and place of expulsion, so as to insure that the fugitive should come into the hands of the authorities of the foreign Protectorate whence he had escaped.

That, moreover, in case we should be of opinion that there were difficulties in the way of the deportation of foreigners by means of a jurisdictional Order in Council, which question was referred to us in Sir Thomas Sanderson's other letter of the 8th April, some mode of expulsion might possibly be substituted with convenience for such deportation.

That Sir Thomas Sanderson was to request that we would favour your Lordship with our opinion whether it would be proper to make arrangements for the expulsion from British Protectorates of persons considered dangerous to public peace and good order; and, if so, whether it would be possible to make the necessary arrangements without fresh Parliamentary legislation.

Further, if no fresh Parliamentary legislation was required, whether the proper course would be to proceed by means of an Order in Council, a local Ordinance or Regulation, or a Proclamation to be made by Her Majesty's Consular officers, with the approval of Her Majesty's Secretary of State, or by any other, and what, means.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Fresh Parliamentary legislation necessary for expulsion of obnoxious foreigners from British Protectorates.

That, in our opinion, the arrangements necessary for expelling from British Protectorates persons considered dangerous to public peace and good order cannot be made without fresh Parliamentary legislation.

We have indicated in our Report (marked A) of this date the means by which the desired object can alone be effected.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

1. India Office	January 20, 1891.		
2. Africa Order in Council	1889.	Confidential No. 5949*.	

ARGENTINE REPUBLIC.

No. 3.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 17.)

My Lord, *Royal Courts of Justice, May 14, 1892.*

Claim of Messrs. Shanks and Co. against Argentine Govt. for value of steam-launch pressed into the Govt. service during the revolution in July 1890.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 15th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to a claim preferred by Messrs. Shanks and Co., of Buenos Ayres, against the Argentine Government, for the value of a steam-launch pressed into the Government service during the revolution which took place in that city in July 1890.

That the case was first brought to the notice of Her Majesty's Legation in September 1890, and that representations were then made to the Argentine Government without any result.

That in February of this year fuller particulars of the seizure of the vessel and of the action of the Argentine authorities were furnished by Messrs. Shanks and Co. to Her Majesty's Minister.

That, from the account given in Mr. Pakenham's despatch No. 9 of the 29th February last, it appeared that the launch was ordered in England by Messrs. Shanks and Co. for an Argentine customer, who paid 1,000 dollars in gold (200*l.*) when he gave the order. That the cost of the launch in England was 1,000*l.*, the amount now claimed by the firm being 10,000 dollars (2,000*l.*).

That when the vessel arrived at Buenos Ayres it was taken up the river to San Fernando, a place about 12 miles above the capital. That at the time of the revolution in July 1890 the launch was seized, apparently by the orders of the National Government, though the evidence was conflicting as to whether the Argentine Admiral himself directly issued the instructions. That after about ten days, the revolution being over, the vessel appeared to have been put back by the Government authorities at San Fernando.

That on the 10th September the representative of Messrs. Shanks and Co. first brought the matter to the notice of Her Majesty's Legation, stating that the Commissioners appointed by the Government for the consideration of claims had refused to entertain the case, and that the firm had not only lost the sale of the launch, but was about to be sued for non-fulfilment of contract by the customer for whom it was brought.

That Messrs. Shanks, it seemed, were well aware that the launch had been returned to San Fernando, and had even sent down one of their employés privately to examine it, by whom the vessel was reported to be in an unsaleable condition. But that since the return of the launch had not been notified to them, they preferred to leave her where she was, and to sue the Government for her loss, the authorities having denied all knowledge of the whereabouts of the vessel.

That the steps taken by the firm to obtain the recognition of their claim, and the dilatory action of the Argentine authorities in the matter, were described in Messrs. Shanks' letter to Mr. Pakenham of the 30th January, 1892. That they had, it appeared, been advised by their lawyers that no legal action could be taken against the Argentine Government without the consent of Congress; and that, as it would have been impossible for them to obtain such consent, they were practically debarred of any legal remedy.

That the case had accordingly only been dealt with by various Departments of the Government, and that on the 8th February last Mr. Pakenham was informed by the Argentine Foreign Minister that the matter did not call for diplomatic intervention.

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* Mr. Pakenham, No. 13, March 31, 1891; ditto, No. 9, February 29, 1892.

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That in a further letter to Mr. Pakenham (dated the 20th February) Messrs. Shanks referred to an "Expediente," containing all the documents connected with the case. That notes of that paper were given in Inclosure 15 in Mr. Pakenham's letter of the 29th February, and that attention was drawn to the admission contained in it that the launch was seized in accordance with instructions given by the officials of the Government.

That it further appeared from Messrs. Shanks' letter that so many further formalities, including a possible reference to arbitration, were required, that the prospect of the claimants obtaining redress was very remote and uncertain.

That Sir Thomas Sanderson was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion as to what steps, if any, might properly be taken with regard to the case by Her Majesty's Government on behalf of Messrs. Shanks.

In obedience to your Lordship's commands we have the honour to

Report—

Claim should not be pressed upon Argentine Govt.

That, in our opinion, the claim of Messrs. Shanks and Co. is not one which Her Majesty's Government can properly press upon the Government of the Argentine Republic.

The loss which is now complained of, and placed at an extravagant amount, was caused by the improper conduct of Messrs. Shanks themselves. Upon learning that the vessel had been removed, they should have claimed its return, and they might then have been entitled to a nominal sum for the interference with their property. They, however, chose immediately to send in a claim for the value of the launch, and, although a few days later they knew she had been returned to the place from which she was taken, and that she was at their disposal, they chose to abandon her in the hope of being able to get a sum of money from the Argentine Government.

It is not, in our opinion, likely that any legal Tribunal would, in these circumstances, hold that Government responsible for the value of the launch.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 4.

The Law Officers of the Crown to the Earl of Rosebery.—(Received December 5.)

Royal Courts of Justice, December 3, 1892.

My Lord,

Alleged ill-treatment of British subjects on Argentine men-of-war.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list in connection with a complaint of ill-treatment which Abraham Lawson and Alexandro Delmado, British subjects, had brought against the officers of the Argentine war-vessels "Almirante Brown" and "25 de Mayo."

That those men appeared before Her Majesty's Consul at Cadiz, and lodged their complaint, at the same time stating that other British seamen had been subjected to similar ill-treatment, some of whom were still on board the Argentine vessels, while others had taken opportunities to desert, in order to escape further ill-usage.

That the depositions of Lawson and Delmado, and other information respecting the incident, would be found in the despatches from Her Majesty's Consul at Cadiz (Nos. 34 and 35 of the 21st and 26th October), which were inclosed.

That those papers were at once communicated to Señor Dominguez, the Argentine Minister at this Court, with an intimation that Her Majesty's Government did not doubt that he would take measures for instituting a searching examination into the grave charges which had been brought against the Argentine Naval officers.

That on the 5th instant the Argentine Minister replied, denying that any cruelty had been inflicted on the British seamen, and, at the same time, pointing out that the two men specially referred to were engaged at Buenos Ayres, by their own wish, to serve in the Argentine navy, and that no pressure or force of any kind was employed by the Argentine authorities to induce them to do so.

That according to the laws and constitution of the Argentine Republic any Argentine citizen who entered the military service of a foreign country lost *ipso facto* his Argentine citizenship, and became subject to the laws of the country which employed and paid him.

That he, the Argentine Minister, was informed that the laws of Great Britain contained the same provision in regard to British subjects who might be serving voluntarily in the army or navy of a foreign Government.

That no independent Government could take into its service foreign seamen or engineers, if the latter remained under the protection and observation of the Government of their native country, even after they had voluntarily given up their original nationality by taking service under a foreign Government.

That consequently that Lawson and Delmado, so long as they remained in the military service of the Argentine Republic, were under its flag and subject to its laws and military discipline, and that any complaints they might have to make should be addressed by them direct to the Argentine Government, in whose service they were.

That he, therefore, trusted that Her Majesty's Government would admit that those men were not British subjects while engaged in the Argentine service. That Señor Dominguez' note was inclosed.

That with reference to the Argentine Minister's contention, your Lordship was not aware of any English law now in force, which provided that a British subject serving in the army or navy of a foreign Government lost his British nationality.

That it would be noticed that Señor Dominguez did not assert, in so many words, that a subject of a foreign State on taking service with the military or naval forces of the Argentine Republic became *ipso facto* an Argentine citizen.

That it was, however, considered that, although it was expressed in somewhat different terms, his contention practically did amount, or was at any rate intended to amount, to such an assertion.

That in support, moreover, of that view, it would be noticed that Señor Dominguez, in dealing with the converse case of an Argentine citizen taking service with the forces of a foreign State, said in terms that such citizen lost *ipso facto* his Argentine citizenship, &c.

"Naturalization Act, 1870."

That it was suggested, in so far as English municipal law bears upon the point, that if a British subject, with full knowledge of the law of a particular foreign State, did an act, which amounted by the law of that State to an assumption of nationality, it was a question whether he might not be voluntarily naturalizing himself as a subject or citizen of that State within the meaning of "The Naturalization Act, 1870," and so might cease to be a British subject.

That, on the other hand, if such British subject had no notice or knowledge of the consequences of his act, his action could perhaps scarcely be described as a voluntary renunciation of his British nationality.

That that point had, however, so far as your Lordship was aware, never been decided by a Court of Law, nor were there, to your Lordship's knowledge, any opinions emanating from a judicial source upon the question.

That a somewhat analogous case occurred, however, in 1890, in connection with a new Naturalization Law, which was brought forward by the Brazilian Government. That that Law provided that foreigners residing in the Empire for the period of two consecutive years, who within six months therefrom, and after the promulgation of the Law, did not declare their desire to retain their nationality, should, for all legal purposes, be considered Brazilian subjects as if they had been born in Brazil.

That that question was referred to the Law Officers of the Crown, who reported (amongst other things not material to the present purpose) that Her Majesty's Government were not called upon, from the point of view of international right, to protest against the proposed Law of the 21st September, 1889, and that, in their opinion, a person who, with notice of the Law, and an opportunity of making the declaration therein mentioned, abstained from making such declaration, would be properly held to have voluntarily become naturalized in Brazil within section 6 of the Act of 1870, and to have thereby lost his status as a British subject (Law Officers, Brazil, No. 3 of 1890, 11th February).

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and favour your Lordship with our opinion generally on the contention of the Argentine Minister, and also more particularly upon the questions indicated in paragraphs 14 and 15 of his letter.

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We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

As to the subject of a foreign State, on taking service with the military or naval forces of the Argentine Republic, becoming *ipso facto* an Argentine citizen.

That the Argentine Minister does not state that service by a foreigner in the army or navy of the Republic would, by Argentine law, make such foreigner an Argentine citizen. But even if it were so it would not, *ipso facto*, according to our law cause him to cease to be a subject of the Crown, or deprive him of the right to its protection.

To deprive him of the character of a subject of the Crown he must have become "voluntarily naturalized" within the meaning of section 6 of the Act of 1870, and he may become so "voluntarily naturalized" either by taking formal steps for his naturalization, or by acting in a manner which, by the law of the foreign State, makes him a subject of that State, *but* in the latter case he must have acted with knowledge of the consequences which his acts, according to the law of the foreign State, entailed.

In the present case it is to be noted, first, that it is *not* stated that by Argentine law service in its army or navy effects such naturalization; and, secondly, that, even if the Argentine law did so operate, it does not appear that the operation of that law was known to the men in question.

It follows from this statement that the men remained subjects of the Crown.

The question that remains is a question of policy for your Lordship: How far it is expedient, or indeed possible, in the case of men who voluntarily accept service, with all its risks, in the armies or navies of foreign States, to make their complaints the subject of possible international difference?

It is to be remembered that if this is done in the case of British subjects it may equally be done by their respective Governments in the case of foreigners who have voluntarily accepted service in the army or navy of the Queen.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Consul Henderson	.. (No. 34)	October	21, 1892.		
(B.) Ditto	.. (No. 35)	"	26, "		
(C.) Senhor Dominguez	.. ..	November	5, "		
(D.) Law Officers ..	.. ..	February	11, 1890.	Confidential No. 6113, p. 5.	

AUSTRIA-HUNGARY.

No. 5.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 10.)

My Lord, *Royal Courts of Justice, June* 9, 1892.

Copyright Convention. Austro-Hungarian counter draft.

WE were honoured with your Lordship's commands signified in Sir T. H. Sanderson's letter of the 2nd ultimo, stating that, with reference to our Report of the 22nd July last, Sir T. H. Sanderson had by your Lordship's direction, to state that the Austro-Hungarian Government, to whom the draft Copyright Convention proposed by Her Majesty's Government was submitted, had forwarded, for the consideration of Her Majesty's Government, a counter-draft, of which a translation was inclosed (Paper A).

That Sir T. H. Sanderson was to request our opinion whether the Austrian counter-draft, with the amendments shown in red ink, which were explained in the annexed Memorandum (Paper B), and which had been approved by the Board of Trade, might properly be accepted by Her Majesty's Government.

That for convenience of reference the draft Convention originally proposed by Her Majesty's Government, and approved by us, was annexed (Paper C), and Sir T. H. Sanderson was to add that your Lordship would be glad to accept the Austrian proposal as nearly in its present shape as could properly be done, having regard to the legal considerations involved.

In obedience to your Lordship's commands, we have the honour to

Report—

Approve Austro-Hungarian counter-draft as amended.

That the draft Convention, as amended and initialled by us, may properly be accepted by Her Majesty's Government. We presume that the question of carrying the arrangements with Austria into effect under the Berne Convention and the Act of 1886 has been fully considered. We are not prepared to say that it is not competent to Her Majesty to issue an Order in Council under the earlier Acts, but the clear intention of the Act of 1886 was to provide that all subsequent international copyright arrangements should be carried out under the conditions of that Statute.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) Austrian counter-draft of proposed Copyright Convention.
(B.) Memorandum upon proposed amendments in.
(C.) Draft submitted by Her Majesty's Government, and approved by Law Officers.

No. 6.

The Law Officers of the Crown to the Earl of Rosebery.—(Received December 22.)

My Lord, *Royal Courts of Justice, December* 21, 1892.

Proposed Copyright Convention with Austria-Hungary.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 17th instant, stating that with reference to our predecessors' Report of the 9th June last, respecting the proposed Copyright Convention between Great Britain and Austria-Hungary, he was directed to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Vienna, inclosing a copy of a note from the Austro-Hungarian Government suggesting certain modifications in the English text of the draft Convention.

That the amendments in question were shown in red ink on the accompanying draft, and that Sir Thomas Sanderson was to request that we would favour your Lordship with our opinion whether the Convention (including those amendments) might be properly signed on behalf of Her Majesty.

That Sir Thomas Sanderson was to add that, as the actual text of the Convention had now been agreed to by the Austro-Hungarian Government, and as the Convention would cover important British interests, it was very desirable that no further amendments should be suggested unless such were imperatively required in view of the existing provisions of English municipal law upon the subject.

That Sir Thomas Sanderson was to inclose copies of correspondence in print, and that he was to call our special attention to Nos. 31, 32, and 33 of the same.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve draft Convention as amended.

That in our opinion the draft Convention, as now amended, may properly be accepted and signed on behalf of Her Majesty.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Mr. Barrington	(Treaty No. 10.)	December 2, 1892.
(B.) Draft Convention.		
(C.) Printed Correspondence.		

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Annex.

Draft Copyright Convention with Austria.

His Majesty the Emperor of Austria, King of Bohemia, *&c.*, and Apostolic King of Hungary, ~~&c.~~, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, &c., animated with the desire to secure in the most complete manner, within their respective dominions, the rights of authors, or their legal representatives, over their literary or artistic works, have resolved to conclude a Convention to that effect, and have named as their Plenipotentiaries, that is to say:

His Majesty the Emperor of Austria, King of Bohemia, &c., *and* Apostolic King of Hungary, ~~&c.~~:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, &c.,

Who, having communicated to each other their respective Full Powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

Authors of literary or artistic works and their legal representatives, including publishers, shall enjoy reciprocally, in the dominions of the High Contracting Parties, the advantages which are, or may be, granted by law there for the protection of works of literature or art.

Consequently, authors of literary or artistic works which have been first published in the dominions of one of the High Contracting Parties, as well as their legal representatives, shall have in the dominions of the other High Contracting Party the same protection and the same legal remedy against all infringement of their rights as if the work had been first published in the country where the infringement may have taken place.

In the same manner, the authors of literary or artistic works, and their legal representatives, who are subjects of one of the High Contracting Parties, or who reside within its dominions, shall in the dominions of the other Contracting Party enjoy the same protection and the same legal remedies against all infringements of their rights as though they were subjects of or residents in the State in which the infringement may have taken place.

These advantages shall only be reciprocally guaranteed to authors and their legal representatives when the work in question is also protected by the laws of the State where the work was first published, and the duration of protection in the other country shall not exceed that which is granted to authors and their legal representatives in the country where the work was first published.

ARTICLE II.

The right of translation forming part of the copyright, the protection of the right of translation is assured under the conditions laid down by this Convention. If ten years after the expiry of the year in which a work to be protected in Her Majesty's dominions on the basis of this Convention has appeared, no translation in English has been published, the right of translating the work into English shall no longer within those dominions exclusively belong to the author.

In the case of a book published in numbers the aforesaid period of ten years shall commence at the end of the year in which each number is ~~produced~~ *published*.

ARTICLE III.

Authorized translations are protected as original works. They consequently enjoy the full protection granted by this Convention against the unauthorized reproduction of original works.

It is understood that in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

ARTICLE IV.

The expression "literary or artistic works" comprehends books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions, with or without words; works of design, painting, sculpture, and engraving, lithographs, illustrations, geographical charts, plans, sketches, and plastic works relating to geography, topography, architecture or science, in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

ARTICLE V.

In the British Empire, and in the Kingdoms and States represented in the Austrian Reichsrath, the enjoyment of the rights secured by the present Convention is subject only to the accomplishment of the conditions and formalities prescribed by *the* law ~~in~~ *of* that ~~one of the two Contracting~~ State~~s~~ in which the work is first ~~produced~~ *published*; and no further formalities or conditions shall be required in the other country.

Consequently, it shall not be necessary that a work which has obtained legal protection in one country should be registered, or copies thereof deposited in the other country, in order that the remedies against infringement may be obtained which are granted in the other country to works first ~~produced~~ *published* there.

In the dominions of the Hungarian Crown the enjoyment of these rights is subject, however, to the accomplishment of the conditions and formalities prescribed by the Laws and Regulations both of Great Britain and of Hungary.

ARTICLE VI.

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be, consequently, admitted to institute proceedings in respect of the infringement of copyright before the Courts of the other State, it will suffice that their name be indicated on the work in the accustomed manner.

The Tribunals may, however, in cases of doubt, require the production of such further evidence as may be required by the Laws of the respective countries.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is without other proof, reputed the legal representative of the anonymous or pseudonymous author, until the latter or his legal representative has declared and proved his rights.

ARTICLE VII.

The provisions of the present Convention cannot in any way derogate from the right of each of the High Contracting Parties to control, or to prohibit by measures of domestic legislation or police, the circulation, representation, exhibition, or sale of any work or production.

Each of the High Contracting Parties reserves also its right to prohibit the importation into its own territory of works which, according to its internal Laws, or to the stipulations of Treaties with other States, are or may be declared to be illicit reproductions.

ARTICLE VIII.

The provisions of the present Convention shall be applied to literary or artistic works produced prior to the date of its coming into effect, subject, however, to the limitations prescribed by the following Regulations:—

(*a.*) In the Austro-Hungarian Monarchy—

Copies completed before the coming into force of the present Convention, the production of which has been hitherto allowed, can also be circulated in future.

In the same manner, appliances for the reproduction of works, such as stereotypes, wood-blocks, and engraved plates of every description, such as lithograpers' stones, if their production has not hitherto been prohibited may continue to be used during a period of four years from the coming into force of the present Convention.

The distribution of such copies, and the use of the said appliances, is, however, only permitted if an inventory of the said copies and appliances is taken by the Government in question, in consequence of an application of the interested party, within three months from the coming into force of the present Convention, and if these copies and appliances are marked with a special stamp.

Dramatic and dramatico-musical works, or musical compositions legally ~~produced~~ *performed* before the coming into force of the present Convention, can also be ~~produced~~ *performed* in the future.

(*b.*) In the United Kingdom of Great Britain and Ireland the author and publisher of any literary or artistic work first produced before the date at which this Convention comes into effect shall be entitled to all legal remedies against infringement; provided that where any person has, before the date of the publication of the Order in Council putting this Convention into effect, lawfully produced any work in the United Kingdom, any rights or interests arising from or in connection with such production, which are subsisting and valuable at the said date, shall not be diminished or prejudiced.

ARTICLE IX.

The provisions of the present Convention shall apply to all the Colonies and foreign Possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to—

India.
The Dominion of Canada.
Newfoundland.
The Cape.
Natal.
New South Wales.
Victoria.
Queensland.
Tasmania.
South Australia.
Western Australia.
New Zealand.

Provided always that the provisions of the present Convention shall apply to any of the above-named Colonies or foreign Possessions on whose behalf notice to that effect shall have been given by

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Her Britannic Majesty's Representative at Vienna within two years from the date of the exchange of ratifications of the present Convention.

ARTICLE X.

The present Convention shall remain in force for ten years from the day on which the ratifications are exchanged; and in case neither of the two High Contracting Parties shall have given notice twelve months before the expiration of the said period of ten years of their intention of terminating the present Convention, it shall remain in force until the expiration of one year from the day on which either of the High Contracting Parties shall have given such notice.

Her Britannic Majesty's Government shall also have the right to denounce the Convention, in the same manner, on behalf of any of the Colonies or foreign Possessions mentioned in Article IX, separately.

ARTICLE XI.

The present Convention shall be ratified, and the ratifications shall be exchanged at Vienna as soon as possible. It shall come into effect ten days after its publication in conformity with the forms prescribed by the Laws of the High Contracting Parties respectively.

In witness whereof , &c.

CHILE.

No. 7.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 14.)

Royal Courts of Justice, March 11, 1892.

My Lord,

Claims for detention of vessels in Chilean harbours during the disturbances.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the question of the liability of the Chilean Government to meet claims made by British and German ship-owners on account of the detention of their vessels in Chilean harbours during the recent civil disturbances in Chile.

Treaty between Germany and Chile of February 1, 1862.

That it would be seen from the confidential communication from the German Embassy of the 13th February that the Imperial Government viewed the action taken by the late Chilean Government under President Balmaceda, with regard to the question under consideration, as amounting to an embargo upon the vessels, and consequently as an infraction of the XVIIIth Article of the Treaty between Germany and Chile of the 1st February, 1862, for which the actual Chilean Government, which had, since the date of the acts complained of, overthrown that of President Balmaceda, were bound to give compensation.

That the Chilean Government, on the other hand, apparently not only repudiated, on general grounds, all liability for the action of their predecessors in the matter, but also maintain that the particular interference with those vessels which was alleged did not, as a matter of fact, amount to "embargo," inasmuch as a general prohibition to leave port was not imposed upon the foreign ships, which were merely forbidden to clear for certain specified ports in Chile.

That it appeared from the first and third inclosures of Mr. Kennedy's despatch No. 72 of the 7th July last that the Chilean Government had communicated with Her Majesty's Minister to a similar effect.

That the contention of the Chilean Government was not acceptable to the Imperial German Government, and that the German Representative at Santiago was to receive instructions to protest against the interpretation which was placed on the Treaty.

That the German Government inquired whether Her Majesty's Government would not instruct their Representative at Santiago to make a similar protest which (assuming for the moment that the circumstances justified a protest on the part of the German Government) they would also appear to be entitled to proffer under Article XVII of the Treaty between Great Britain and Chile of the 4th October, 1854.

That despatches had lately been received from Her Majesty's Minister at Santiago from which might be gathered the general line that the Chilean Government were likely to maintain in regard to foreign claims arising out of the recent political disturbances.

That your Lordship was desirous of co-operating with the German Government, and also of supporting British claimants in so far as you could do so without infringing the principles of international law, but that your Lordship was in some doubt how far the proposed protest of that Government was, under the circumstances, justifiable.

That, with special reference to that point, Sir Thomas Sanderson was to draw our particular attention to our Report of the 5th May last, and to the terms of a telegram which was subsequently addressed to Her Majesty's Minister at Santiago.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our views as to what answer should be returned to the inquiry made by the Imperial German Government, and also with any observations which we might desire to offer upon the general question involved.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

H.M.'s Govt. would not be justified in supporting the German protest.

That we see no reason to change the opinion expressed in our Report of the 5th May last that the action of the late Chilean Government in refusing clearances for certain ports did not amount to an infraction of the XVIIth Article of the Treaty of 1854, and that Her Majesty's Government would not be justified in supporting the protest which the German Representative at Santiago is to be instructed to make.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	M. Rücker-Jenisch (German Embassy) ..		February 13, 1892.	
(B.)	Mr. J. G. Kennedy	(No. 72)	July 7, 1891.	
(C.)	Treaty between Great Britain and Chile ..		October 4, 1854.	Treaty No. 395.
(D.)	Law Officers		May 5, 1891.	Confidential No. 6207, p. 33.
(E.)	To Mr. J. G. Kennedy	(No. 16. Telegraphic)	May 7, „	
(F.)	Mr. J. G. Kennedy	(No. 134)	December 7, „	
(G.)	Ditto	(No. 139)	December 22, „	

No. 8.

The Law Officers of the Crown to the Earl of Rosebery—(Received November 4.)

Royal Courts of Justice, November 3, 1892.

My Lord,

Nitrate Railways Chile. Question between the Company and Chilean Government.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 13th September last, stating that he was directed by your Lordship to transmit to us a letter from Mr. Budd, written on behalf of the Nitrate Railway Company, and relating to a question which had arisen between that Company and the Chilean Government in regard to the infraction on the part of the latter of the exclusive privileges which it was alleged were vested in the Company for the construction of railways in the nitrate districts of Tarapacá.

That the question, in its various phases, had already been submitted to the late Law Officers of the Crown on three previous occasions, and that the Reports furnished by them were inclosed for our information.

That the course to be taken by Her Majesty's Government depended upon two points: (1) whether the action of the Chilean Council of State and Executive in declaring the exclusive privileges of the Company to be forfeited, and inviting tenders for new railways was Constitutional and legal according to Chilean law; (2) whether, if that were so, it was so contrary to practice and equity as to call for diplomatic remonstrance in the absence of legal remedy.

That it would be seen from the Report of the 14th May, 1891, that the Law Officers were then of opinion that Her Majesty's Minister at Santiago should not address any further remonstrance to the Chilean Government on the Company's behalf at that time, and considered that the final determination as to the propriety of further diplomatic action should be postponed until the legal proceedings before the Chilean Tribunals came to an end.

That it appeared from a recent despatch from Her Majesty's Minister at Santiago (Mr. Maude, No. 66, of the 10th July), and from Mr. Budd's letter, that the Supreme Court of Chile had again affirmed its competence to entertain the matter, and that a further suit was being instituted by the Company for the defence of its rights.

But that Mr. Maude stated that, although it was understood that the present Government of Chile would not grant any new Concession, so long as the term of the Railway Company's exclusive right was unexpired and the matter remained *sub judice*, a Decree had been issued approving plans for the construction of an inclined plane from Junin to the heights, and a line of railway to connect the inclined plane with nitrate oficinas.

That the Directors of the Nitrate Railway Company consequently expressed their hope that Her Majesty's Government would address a protest to the Government of Chile against that measure.

That Sir Thomas Sanderson was to request that we would take the papers mentioned above into our consideration, together with those enumerated in the accompanying list, which were also inclosed, and would favour your Lordship with our opinion as to whether the action of the Government of Chile, as described in Mr. Budd's letter, called for a remonstrance to them by Her Majesty's Government, and, if so, in what terms that remonstrance should be couched.

That your Lordship would also be glad to be favoured with our opinion on the questions submitted in Sir Thomas Sanderson's letter, and with any general observations which we might have to offer on the case.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Further diplomatic action should not be taken yet.

That, in our opinion, nothing has taken place since the Report of the Law Officers dated the 14th May, 1891, which ought to lead Her Majesty's Government to depart from the decision then arrived at, namely, to defer the consideration of the question of the propriety of further diplomatic action until the legal proceedings before the Chilean Tribunals have come to an end.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

	Mr. Budd		September 2, 1892.	
	Law Officers' Report		February 10, 1890.	Confidential No. 6113, pp. 9–11.
	Ditto		April 28, ,,	
	Ditto		May 14, 1891.	Confidential No. 6205, p. 35.
(A.)	Mr. Maude	(No. 24)	March 23, 1892.	
(B.)	Ditto	(No. 66)	July 10, ,,	

(C.) Correspondence sent to Law Officers in references of February 4 and April 12, 1890, and April 1, 1891. See Lists attached to above-mentioned Reports.

CHINA.

No. 9.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 5.)

Royal Courts of Justice, May 3, 1892.

Consular Fees Draft Order in Council.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence between the Foreign Office and the Treasury, and other papers, respecting the drawing up of a Consular Fees Order in Council, and of a China, Japan, and Corea Consular Fees Order in Council, to supersede the Orders of 1887, the change having been rendered necessary by the alteration in the marriages fees made under the recent Marriage Act, and Order in Council of 1891.

China, Japan, and Corea Consular Fees Draft Order in Council.

That Sir Thomas Sanderson was also to transmit to us the draft Orders in question, which had been drawn up by Mr. Albert Gray; and that he was to request that we would favour your Lordship with our opinion whether the draft Orders in their then shape might properly be laid before the Queen in Council for Her Majesty's approval.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve the draft Orders as altered and initialled.

That, in our opinion, the draft Orders, as altered and initialled by us, may properly be laid before the Queen in Council for Her Majesty's approval.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Consular Fees Order in Council, 1887.		Confidential No. 5526**.
(B.)	Ditto (China, Japan, and Corea), 1887.		Confidential No. 5526*.
(C.)	Consular Salaries and Fees Act, 1891.		
(D.)	Foreign Marriage Act, 1891.		
(E.)	Foreign Marriages Order in Council ..	November 24, 1891.	Confidential No. 6147*.
(F.)	Minutes	November 24 to November 26, ,,	
(G.)	Law Officers' Report	November 6, ,,	Confidential No. 6207, p. 69.
(H.)	Minutes	February, 1892.	
(I.)	Draft to Treasury	February 19, ,,	
(J.)	To Mr. Gray	February 22, ,,	
(K.)	Treasury	February 24, ,,	
(L.)	To Treasury	February 26, ,,	
(M.)	Ditto	March 30, ,,	
(N.)	Treasury	April 14, ,,	

(O,) Consular Fees Order in Council: Draft.
(P.) Ditto (China, Japan, and Corea): Draft.

Annex 1.

CONSULAR FEES.

Draft Order in Council.

Whereas by "The Consular Salaries and Fees Act, 1891," Her Majesty the Queen is authorized by Order in Council to fix the fees to be taken in respect of any matter or thing done by a Consular officer in the execution of his office, and to vary such fees by way of increase or decrease, and to abolish fees, and to create new fees:

And whereas by an Order in Council, dated the 24th November, 1891 (hereinafter referred to as "The Foreign Marriages Order in Council, 1891"), and made under the said Act and the Foreign Marriage Acts, certain fees are prescribed to be taken by Consular officers and others in respect of marriages:

And whereas "The Consular Fees Order in Council, 1887," continues in force under the provisions of the first-recited Act as if it had been issued in pursuance thereof, but the marriage fees comprised therein have in certain particulars been altered by "The Foreign Marriages Order in Council, 1891:"

And whereas under "The Foreign Jurisdiction Act, 1890," Her Majesty in Council has power to make Orders in Council, and also to revoke and vary Orders in Council made, or deemed to have been made, in pursuance of that Act:

And whereas it is expedient that "The Consular Fees Order in Council, 1887," should be repealed, and that the fees established thereby, including the marriage fees fixed by "The Foreign Marriages Order in Council, 1891," should be fixed by an Order in Council made under the provisions of "The Consular Salaries and Fees Act, 1891:"

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Now, therefore, in pursuance of the before-mentioned Acts, it is hereby ordered by Her Majesty, by and with the advice of her Privy Council, as follows:—

1. This Order may be cited as "The Consular Fees Order in Council, 1892."

2. The several fees set forth in the Tables* annexed to this Order are hereby established, and the said Tables and notes thereto shall be construed as part of this Order.

3. Such provisions of any Order in Council made or continued in force under the provisions of "The Foreign Jurisdiction Act, 1890," as are inconsistent with anything in this Order ~~shall be construed as if~~ *are hereby revoked, and* the provisions of this Order and of the said Tables ~~were~~ *shall be and are hereby* substituted for such first-mentioned provisions, and the fees herein prescribed may or shall be taken accordingly.

4. This Order shall not extend to any place in China, Japan, or Corea.

5. "The Consular Fees Order in Council, 1887," is hereby repealed as to all places to which this Order applies, but this repeal shall not revive any Table, provision, or Order in Council abolished or repealed by the said Order, or affect any right or liability existing at the commencement of this Order in any place.

6. This Order shall come into operation in respect of each Consular jurisdiction, on the 1st ~~May,~~ *July*, 1892, or at such later date as in the case of any particular Consular jurisdiction, or part thereof, one of Her Majesty's Principal Secretaries of State by any general or particular instructions may from time to time direct.

7. In this Order—

The expression "Consular jurisdiction" means and includes the district, place, or places for which a Consular officer acts.

The expression "Foreign Marriage Acts" means "The Consular Marriage Act, 1849," "The Consular Marriage Act, 1868," "The Marriage Act, 1890," and "The Foreign Marriage Act, 1891."

And the Most Honourable the Marquis of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

R. E. W.
E. C.

Annex 2.

CONSULAR FEES (CHINA, JAPAN, AND COREA).

Draft Order in Council.

Whereas by "The Consular Salaries and Fees Act, 1891," Her Majesty the Queen is authorized by Order in Council to fix the fees to be taken in respect of any matter or thing done by a Consular officer in the execution of his office, and to vary such fees by way of increase or decrease, and to abolish fees and to create new fees:

And whereas by an Order in Council, dated the 24th November, 1891 (hereinafter referred to as "The Foreign Marriages Order in Council, 1891"), and made under the said Act and the Foreign Marriage Acts, certain fees are prescribed to be taken by Consular officers and others in respect of marriages:

And whereas "The China, Japan, and Corea (Consular Fees) Order in Council, 1887," continues in force under the provisions of the first recited Act as if it had been issued in pursuance thereof, but the marriage fees comprised therein have in certain particulars been altered by "The Foreign Marriages Order in Council, 1891:"

And whereas under "The Foreign Jurisdiction Act, 1890," Her Majesty in Council has power to make Orders in Council, and also to revoke or vary Orders in Council made, or deemed to have been made, in pursuance of that Act:

And whereas it is expedient that "The China, Japan, and Corea (Consular Fees) Order in Council, 1887," should be repealed, and that the fees established thereby, including the marriage fees fixed by "The Foreign Marriages Order in Council, 1891," should be fixed by an Order in Council made under the provisions of "The Consular Salaries and Fees Act, 1891:"

Now, therefore, in pursuance of the before-mentioned Acts, it is hereby ordered by Her Majesty, by and with the advice of her Privy Council, as follows:—

1. This Order may be cited as "The China, Japan, and Corea (Consular Fees) Order in Council, 1892."

2. The several fees set forth in the Tables† annexed to this Order are hereby established, and the said Tables and notes thereto shall be construed as part of this Order.

3. Such provisions of any Order in Council made or continued in force under the provisions of "The Foreign Jurisdiction Act, 1890," and relating or applicable to China, Japan, or Corea as are inconsistent with anything in this Order [~~shall be construed as if~~] *are hereby revoked and* the provisions of this Order and of the said Tables [~~were~~] *shall be and are hereby* substituted for such first-mentioned provisions, and the fees herein prescribed may or shall be taken accordingly.

4. This Order shall apply to all places in China, Japan, and Corea.

5. "The China, Japan, and Corea (Consular Fees) Order in Council, 1887," is hereby repealed as to all places to which this Order applies, but this repeal shall not revive any Table, provision, or Order in Council abolished or repealed by the said Order, or affect any right or liability existing at the commencement of this Order in any place.

6. This Order shall come into operation in respect of each Consular jurisdiction on the 1st August, 1892, or at such later date as, in the case of any particular Consular jurisdiction or part thereof, one of Her Majesty's Principal Secretaries of State by any general or particular instructions may from time to time direct.

7. In this Order—

The expression "Consular jurisdiction" means and includes the district, place, or places for which a Consular officer acts.

The expression "Foreign Marriage Acts" means "The Consular Marriage Act, 1849," "The Consular Marriage Act, 1868," "The Marriage Act, 1890," and "The Foreign Marriage Act, 1891."

And the Most Honourable the Marquis of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

R. E. W.
E. C.

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* See Confidential Paper No. 6238*.

† See Confidential Paper No. 6239*.

No. 10.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received June* 28.)

My Lord, *Royal Courts of Justice, June* 27, 1892.

Sentence on C. Mason for offence against "Explosives Act, 1883," considered inadequate by Chinese Government.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the case of a British subject named Charles A. W. Mason, an employé of the Chinese Customs, who was arrested in September last on suspicion of being concerned in a treasonable conspiracy against the Government of China, and was indicted and sentenced in Her Majesty's Supreme Court at Shanghae for an offence against the "Explosives Act, 1883" (46 Vict., cap. 3) in having dynamite in his possession for an unlawful purpose.

That your Lordship's attention was first called to the matter by a communication last autumn from the Chinese Legation in London in connection with the correspondence that was then taking place in regard to the anti-foreign movement in China.

That it was stated that the Customs authorities at Shanghae had seized thirty-five boxes of foreign rifles, which were being clandestinely passed into the interior of China.

That those arms, which were intended for the use of a Secret Society, came from Hong Kong, and were consigned to a British subject occupying the position of Assistant Commissioner of Customs (in the service of the Chinese Government) at the port of Chin-Kiang, in whose baggage had been found a quantity of a strong explosive, and who was concerned in the affair with other foreigners residing in the American settlement at Shanghae.

That, at the request of the Chinese Government, instructions were sent to the Officer administering the Government of Hong Kong to take precautions against the clandestine shipment of arms to China for possible use by rioters and insurgents.

That a Proclamation was accordingly issued at Hong Kong, and had since been renewed until the 30th September next, temporarily prohibiting the export of arms and munitions of war from the Colony.

That the proceedings against Mason on the charge named above resulted in a sentence of nine months' imprisonment, and of deportation at the end of that period, unless he could find two sureties of 2,500 dollars each for his good behaviour.

That he was further sentenced to pay the expenses of his trial and imprisonment.

That reports of the preliminary examination and subsequent trial of Mason would be found in the despatches from Mr. Mowat Nos. 18 and 19 of the 18th and 30th September, Mr. Jamieson No. 21 of the 14th October, and from Mr. Hannen No. 23 of the 30th October, 1891.

That the sentence had caused great dissatisfaction to the Chinese Government, who instructed their Minister in London to protest against it, as being altogether incommensurate to the gravity of the offence, and to request that, on its expiration, Mason should be removed to Hong Kong, and there put on his trial for some one or more of the various other indictable offences with which they maintained he was chargeable.

That some preliminary observations in reply to that complaint were addressed by your Lordship to the Chinese Minister on the 23rd February last, and that the Chief Justice of the Supreme Court for China and Siam, and the Crown Advocate of

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the Court were requested to furnish your Lordship with their observations as to the criticisms of the Yamên on the conduct of the trial, and their demands for a fresh trial at Hong Kong.

That their explanations would be found in Mr. Hannen's four despatches of the 6th, 7th, and 8th April.

That the Chief Justice also made some observations in regard to the arrest and torture by the Chinese authorities of Mason's servants and others, whose names were mentioned by the prisoner, and who were supposed to be connected with the Secret Society known as the "Kolao-Hwei."

That a further representation (dated the 14th May) had been received from the Chinese Minister renewing his demand for a fresh prosecution of Mason after the expiration of his present sentence, so as at least to secure his deportation from China.

That your Lordship proposed to address to Sieh Ta-jên the note, of which a draft was inclosed, dealing with the criticisms on the conduct of the prosecution, and on the nature and amount of the sentence, and also with the request for further proceedings.

That Sir Thomas Sanderson was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion—

1. Whether, having regard to all the circumstances of the case, the sentence in question was appropriate and adequate to the offence, or might with advantage have been increased.

2. Whether the proposed note to the Chinese Minister was right and proper in its terms, or should in any part be altered or supplemented.

3. Whether any further action on the part of Her Majesty's Government was at present called for.

That your Lordship would, at the same time, be glad to be favoured with any observations of a general nature which we might have to offer on the papers.

We were also honoured with a further letter from Sir Thomas Sanderson, dated the 23rd instant, transmitting a despatch from Her Majesty's Minister at Peking,* inclosing a translation of a Memorial published in the "Peking Gazette" in connection with the trial and execution of members of the Secret Society known as the "Kolao-Hwei."

As that Memorial contained an allusion to the evidence stated to have been obtained against C. W. Mason, your Lordship desired that we should take it into consideration with the previous correspondence in relation to Mason's case.

We have taken all the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Sentence adequate. Approve note to Chinese Minister.

That we see no reason for believing that the sentence was inadequate to the offence; and that, in our opinion, the proposed note to the Chinese Minister is right and proper in its terms and requires no addition.

We are also of opinion that no further action on the part of Her Majesty's Government is at present called for.

We have, &c.
(Signed) RICHARD E. WEBSTER
EDWARD CLARKE.

List of Papers.

(A.)	Confidential Print No. 6161: "Further Correspondence respecting Anti-Foreign Riots in China."			
(AA.)	China and Japan Order in Council		1865.	Confidential No. 1354.
(B.)	Foreign Enlistment Act		1870.	
(C.)	Explosive Substances Act		1883.	
(D.)	Sieh Ta-jên		February 11, 1892.	
(E.)	To Sieh Ta-jên		February 23, "	
(F.)	To Mr. Hannen	(No. 2. Legal)	February 23, "	
(G.)	Mr. Hannen	(No. 3)	April 6, "	
(H.)	Ditto	(No. 6. Legal)	April 6, "	
(I.)	Ditto	(No. 8. Legal)	April 8, "	
(K.)	Ditto	(No. 4)	April 7, "	
(L.)	Sieh Ta-jên		May 14, "	
(M.)	To Sieh Ta-jên		——	

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* Sir J. Walsham, No. 44, May 5, 1892.

Annex.

Draft of Letter from the Marquis of Salisbury to Sieh Ta-jên.

Foreign Office, July , 1892.

M. le Ministre,

Referring to your note of the 11th February last, and to my reply of the 23rd of that month, relative to the trial of the British subject, Charles A. W. Mason, before Her Britannic Majesty's Supreme Court at Shanghae, I have the honour to inform you that I have now received the observations of the Chief Justice of that Court and of the Crown Advocate in reply to the criticisms of your Government as to the manner in which the case was conducted, and the lightness of the sentence inflicted on the prisoner.

It will be desirable, for the sake of clearness, that I should give at full length the material portions of the statement furnished by the Crown Advocate. He writes as follows:—

"My official connection with the case began strictly on Sunday, the 27th September last, when Mr. Mowat, then Her Majesty's Acting Consul-General at Shanghae, showed me a telegram which he had received from Her Majesty's Minister directing the institution of proceedings through the Crown Advocate against Mason, and recommending that the charge should be laid under the Explosives Act, if Mr. Mowat thought that Act applicable, and otherwise under Article 81 of "The China and Japan Order in Council, 1865," which would, however, Her Majesty's Minister remarked, have the disadvantage of involving the risk of contentious matter as to the meaning of the words 'war,' 'insurrection,' and 'rebellion' used in that Article.

"When I received these instructions Mason was already in custody. The day before an information, under section 4 of the Explosives Act, had been sworn by Mr. Robert Edward Bredon, the Commissioner of the Imperial Chinese Maritime Customs at Shanghae, and by Mr. C. C. Yu, the Deputy for Foreign Affairs, to the Imperial Commissioner of Southern Trade (the Viceroy at Nanking), and Mason had been arrested on the charge under a warrant issued by the Supreme Court, and was to be brought up for examination on the following (Monday) morning.

"I at once placed myself in communication with Mr. Bredon, and informed him of the instructions which I had received. He informed me that the Deputy had been acting under the advice of counsel, and he thought the Deputy and the other Chinese authorities would desire that the same counsel should continue to take part in the prosecution. I explained to Mr. Bredon that there was no difficulty in this being done, as such a case was provided for under Rule 4 of the 2nd January, 1879, and Mr. Bredon was to see the Chinese authorities, and inform me of what they wished done in the matter.

"The subject of the nature of the charge was referred to, and Mr. Bredon informed me that they had been advised by counsel that no prosecution could be successfully carried on under Article 81 of the Order in Council in the absence of sufficient evidence of the existence of an insurrection.

"The same evening I received from Mr. Bredon a note, saying, 'Since seeing you we have decided to leave the Mason prosecution entirely in your hands,' and informing me that he would call with his witnesses at my office at 9 the following morning.

"Mr. Bredon called as arranged, and brought with him the Viceroy's Deputy, and during the further conduct of the case I was in constant communication with both Mr. Bredon and the Deputy, and received from them, I believe, all the information they could give me.

"I obtained a remand until Monday, the 5th October. The examination then began, and was continued, with intermissions, till Monday, the 12th October, when Mason was committed for trial.

"The trial was fixed for the 29th October, and up to the day of the trial, besides carefully examining the documents and verbal information supplied to me by Mr. Bredon and the Deputy, I pursued independent inquiries, but I found nothing to aggravate the case as disclosed in the depositions.

"When after Mason had pleaded guilty I was called upon by the Chief Justice to make any observations I thought right upon the evidence disclosed in the depositions, and upon the statement made by the prisoner, I endeavoured to do so in the spirit of fairness in which, it is recognized, Crown prosecutions ought to be conducted. What I said is fairly well reported in the 'North China Herald' of the 30th October.

"The Viceroy's Deputy some time after the trial called upon me and said that the whole of the proceedings, including my speech, having been reported to the Viceroy, he was commissioned by his Excellency to thank me for the trouble I had taken in the case, and to say that, while he demurred to the lightness of the sentence which had been passed, he approved of the remarks which I had made at the trial.

"That the Deputy correctly interpreted the sentiments of the Viceroy appeared from a further communication which I received. Mr. Bredon called upon me and informed me that the Taotai, having been instructed by the Viceroy to make to me some recognition of my services, had consulted him in the matter. Mr. Bredon had told the Taotai that he was quite sure of one thing, that I would accept nothing that was of any pecuniary value, and he had suggested, if I would accept them, that he should present me with a pair of complimentary scrolls. The Taotai had accordingly asked him to see me and ascertain my wishes.

"I told Mr. Bredon that he had accurately represented my views in saying that I would not accept anything of pecuniary value, and that even with regard to the scrolls I felt a hesitation in accepting them, as, while fully appreciating the kind intentions of the Viceroy, and while feeling gratified that my conduct of the case had met with his Excellency's approval, I had only done my duty; and that as I was bound to do that, independently of the view which his Excellency might take, my accepting of anything whatever might give rise to a false impression. I said, however, that I

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would consult the Chief Justice and Assistant Judge, and be guided by their opinion. I did so, and it appearing to them right that I should accept a testimonial which was of itself of no pecuniary value, but which would be evidence of the approval of the Chinese authorities of the action of the executive officer charged with a matter of international importance, I informed Mr. Bredon of the pleasure which it would give me to accept the scrolls, and I have since been (unofficially) informed that they are being prepared.

"I shall now proceed to deal with the criticisms of the Tsung-li Yamên as contained in the note from Sieh Ta-jên.

"The Minister says: 'In the opinion of my' (the Chinese) 'Government, neither the Judge nor the Crown Advocate seemed to realize the importance of the case, or to feel the responsibility imposed on them by the vicarious function devolving on the Crown, in virtue of British subjects residing in China being the objects of an extra-territorial jurisdiction.'

"It does not appear to me that I am called upon to say anything with regard to the action of the Chief Justice who presided at the trial. The diversity of views taken by Judges as to the proper amount of punishment to be awarded under the most similar circumstances is too well known to make any opinion of the counsel engaged in a case of any great value as against the view of the Judge to whom the measure of punishment is always the subject of the most anxious and conscientious consideration.

"With regard to my own action, I can say most truly that I was deeply impressed with the importance of the case, and with the more than usual responsibility imposed upon me by its international character, and I was most anxious that the obligations towards the Chinese Government involved in the circumstance of British subjects being the objects of an extra-territorial jurisdiction should be fully discharged, and while I was more solicitous that the duties of my position should be properly performed than that the performance of them should meet with the approval of the Chinese Government, I was very pleased to have the assurance of such approval from the Viceroy, who from his position was fully authorized to give it.

"I might allow the matter thus to rest, and leave it to the Chinese Minister to explain how my action, which had already been approved in the most flattering manner by the Viceroy, should now be made by him the subject of complaint.

"As the Minister has, however, given some reasons for the opinion he has stated, it may be as well that I should deal with them.

"The Minister, after stating what he conceives were the facts disclosed by the depositions, which he refers to as a 'wealth of material for an indictment,' and 'a wealth which would have increased had the case been probed,' complains that 'the prisoner was indicted only for a breach of the Explosive Substances Act, and then only under section 4, when he might also have been indicted for the graver offence described under section 3 of the same Act, and under section 81, "China and Japan Order in Council, 1865," for aiding and abetting insurrection and rebellion against His Majesty the Emperor of China. But instead of being arraigned on these counts, and perhaps also for a breach of the Foreign Enlistment Act, he was indicted only for having dynamite in his possession.'

"Her Majesty's Secretary of State, in his note to the Chinese Minister of the 23rd February, has so fully disposed of the suggestion that the prisoner could have been indicted under section 3 of the Explosives Act, or under the Foreign Enlistment Act, that it is unnecessary that I should say anything further on these points.

"His Lordship has also pointed out the consideration which rendered an indictment under Article 81 of the China and Japan Order in Council superfluous.

"But I may also draw attention to the circumstance already mentioned, that before I assumed charge of the prosecution the question of the preferring of a charge under the Order in Council had received the fullest consideration from the Chinese authorities concerned, and that, acting upon the opinion of their counsel, they had deliberately arrived at the conclusion that such a charge could not be laid with any chance of success, and that it must therefore be abandoned.

"Even if I had not concurred in the view taken by them, I should have incurred a very serious responsibility if I had, in disregard of their opinion, preferred such a charge and run the risk of an acquittal. To have done so would have been the more inexcusable in view of the circumstance pointed out by Her Majesty's Secretary of State that an indictment under the Order would not have aggravated the offence with which the prisoner was charged, nor tended to increase the punishment awarded.

"The Minister in making his complaint must, I conceive, have been acting in ignorance of what his own authorities had done in the matter; but if he had only carefully considered the grounds which he urged for preferring a charge under the Order in Council, and which he calls a wealth of material, he might have realized the difficulty which impressed itself on them when they decided to abandon such a charge.

"It was by reason of their being unprepared to give evidence of the existence of rebellion or insurrection that the Chinese authorities felt themselves constrained to abandon their first intention of charging an offence under the Order.

"And there was no want of probing the evidence. There being no independent evidence forthcoming as to what the Kolao Hwei Society really was, the Chinese authorities were so anxious to obtain information from Mason that they at first decided not to prosecute him, but promised him immunity if he would only tell them all he knew. This was done at an examination of Mason held at the Custom-house before the Taotai and two Commissioners of Customs on the 16th September, ten days before the information was sworn against him. Mason then made certain statements with regard to the Society and his connection with it, and I was furnished with a Minute of them, but they could not be used in evidence, having been given under the promise of immunity.

"I compared them, however, most carefully with the evidence available. I also further examined Toussaint and the men he had engaged. I also examined Mason's bank account, and compared it with reports received through Mr. Bredon from Hong Kong, and I perused numerous other papers furnished to me, and, so far as I could probe the evidence, I did so. The conclusion I arrived at was that Mason's statements, so far as he pretended to know anything about the Kolao Hwei, were utterly untrustworthy, but that there was no improbability in one statement he had made, that he had expended no money but his own, and that he had received none from any Chinese organization.

"The results of my investigations on other points are reflected in my speech. I there stated the impression made upon me with regard to the Staff of the Maritime Customs. So far as regards the '*entourage* of foreign Consulates,' not once during all the communications I had with the authorities was any suggestion made of the partizanship with the Kolao Hwei which is suggested by the Chinese Minister as a ground for more deterrent punishment, and not the smallest tittle of evidence of such a thing has ever been presented to me."

As regards the sentence inflicted by the Chief Justice, I may observe that it is not in accordance with constitutional practice in this country that a judicial officer should be called upon to render an account to the Executive Government of his action in his judicial capacity, it being of the essence of his office that it should be discharged with complete freedom from administrative interference.

The Chief Justice has, however, addresed to me a reply to the observations contained in your note in so far as they concern his decision in the case. He rightly remarks that some of those observations point to considerations by which he could not, and ought not, to be influenced in giving judgment. It is his duty to administer justice according to the best of his ability, without regard to the impression which his sentence may produce on his own Government or on the Government of any other country. It is the law of Great Britain which he has to administer, and he cannot properly take into account the punishments inflicted on the subjects of another country under a different system of jurisprudence for offences which may or may not be connected with that on which he is adjudicating. He had, of course, nothing to do with the framing of the indictment; all he could properly consider was the indictment as it was put before him, the depositions, the plea and remarks of the prisoner, and the speech of the Crown Advocate. Upon these materials he was of opinion that no conspiracy against the Chinese Government had been proved to exist, and he came to the conclusion that nine months' imprisonment in Shanghae, and deportation in default of substantial securities, was an adequate punishment.

He adds that he is still of opinion that the sentence which he passed met the justice of the case.

Upon the charge as brought before him there was no power to pronounce a sentence of absolute deportation, nor are there any means by which such a sentence could be obtained without a fresh trial. It is, however, his conviction that there need be no fear of Mason remaining in the country; that the idea that the Kolao Hwei, or any other Society in China, desires his presence there is purely chimerical, and that there is no chance of his finding the securities required, or of his even desiring to find them.

These latter views of the Chief Justice have received confirmation from recent investigations.

It has lately become matter of public report that Mason's servants, and other Chinese mentioned in the course of the inquiry concerning him, have been arrested, imprisoned, and subjected to cruel torture, with the object of obtaining evidence as to his accomplices. Mason was made aware of this fact, and his humanity was appealed to to say or do anything in his power to help them. He declared to several persons that all these men are entirely innocent so far as he knows, that the plot which was sketched out in his memoranda had no real existence, but was simply concocted by his fellow-messmate and himself for their own amusement, and that the names there inserted were so inserted simply because they were the names of persons they knew, and to give an air of reality to the scheme, but that the persons themselves were absolutely innocent and ignorant of any complicity in his design. He expressed his readiness to submit all his banking transactions to the inspection of the Chinese, in order to satisfy them that the funds for the purchase of arms were provided by himself.

The Taotai accordingly appointed a Deputy conversant with foreign book-keeping, and Mason's account with the Hong Kong and Shanghae Bank was examined, with the result, as is understood, that no trace of his having received money from a suspicious source was discovered, and that the money which he had expended was practically all accounted for.

The above explanations dispose by anticipation of a considerable portion of the arguments contained in your note of the 14th instant, which reached me shortly after the receipt of the despatches from Shanghae; I need not, therefore, trouble you with any very lengthy reply to them.

I entirely agree with you, that the point to which a foreign Government has to direct its attention in such a case is the question whether the punishment awarded has or has not been adequate. The details of the procedure by which the result has been attained are not matters which it is called upon, or, indeed, in many cases very competent, to discuss.

I may, therefore, be dispensed from examining in detail the arguments contained in your note as to the proper construction to be placed on certain provisions of English statute law, and the most effective manner of framing an indictment under them. My observations on these points were not offered without professional advice, and though they have not, unfortunately, recommended themselves to you, I find that they are confirmed by the opinion of the high legal authorities by whom Her Majesty's Government are advised in such matters. I am assured that such contentions as are advanced in your note would have no chance of acceptance by an English Court of Appeal, and that without some very material alteration in the political situation of China, of a nature which Her Majesty's Government are far from anticipating, it would be hopeless to argue that the Kolao Hwei can be considered a "foreign State" within the meaning of the Foreign Enlistment Act.

The material questions to be considered are, however, firstly, whether sufficient care and diligence were used in the investigation of the case and the preparation of the evidence for the prosecution; and, secondly, whether the sentence of the Judge was proportionate to the offence.

Upon the first of these points the statements contained in your note are diametrically opposed to

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the account given by the Crown Advocate, and to the expressed opinion of the Viceroy and the Chinese authorities on the spot. Until Her Majesty's Government receive some evidence to the contrary, they must be allowed to believe that the view of their officer so supported is the correct one.

As regards the sentence by the Judge, it is clear, as, indeed, it had been from the beginning, that it was pronounced under the settled and honest conviction that the proceedings of the prisoner, however formidable at first sight, were merely the outcome of a crazy imagination; that they would never have had any serious issue; and that the dynamite in his possession, though certainly not acquired with any lawful intent, would not in the event have been put to an unlawful use. I may remark, parenthetically, in reply to the hypothetical case put in your note, that if it had been so used there would have been no occasion to prosecute under the Explosives Act; the prisoner would have been indictable under the common law for attempt to murder, or for the crime of murder itself if loss of life had unfortunately ensued.

I must be allowed to express my dissent from your statement, that "Mason himself declared, and to the end never faltered in his declaration, that he was a member of a secret, illegal, and criminal association, styled 'Kolao Hwei.'" In the accounts of the public examination and trial, which are all that Her Majesty's Government possess, I find no record of such a declaration. It may possibly be said that his own statements and his observations reported by other witnesses amount to a declaration of some connection with that Society, and of communications with certain conspirators. But the statements are vague, mysterious, and contradictory, and it certainly cannot be said that he has unfalteringly adhered to any consistent explanation of his proceedings.

Her Majesty's Government have, moreover, no certain evidence or information as to the nature, proceedings, or objects of the Kolao Hwei, nor as to its connection or the connection of some of its members with the recent outbreaks against foreigners, or with any treasonable designs against the Chinese Government.

Such being the state of their information, as it undoubtedly was that of the Chief Justice, they are unable to say that the sentence pronounced by him was inadequate, or involved, as contended by the Yamên, a grave miscarriage of justice.

Nor do they see any prospect of obtaining evidence on which fresh proceedings could be instituted against Mason with any hope of success. If, however, as you intimate in your note, the Chinese Government consider that they are in possession of evidence of this description, Her Majesty's Government are willing to submit it to the examination of the Law Officers of the Crown, and to take their opinion whether it would justify a fresh prosecution, only premising—

Firstly, that such evidence must relate to the commission of some offence separate and distinct from that for which the prisoner has already been charged, and that the fresh indictment must not be for a subordinate offence comprised in the act for which he has already been sentenced. This is a distinction which does not seem to have been borne in mind in the allusion which you have made to the Tichborne case. In that instance the person Castro (more commonly known under the title of "The Claimant") was sentenced for two distinct acts of perjury committed on two distinct occasions, with an interval of three years between them, at two different places, and in two distinct legal proceedings.

It will therefore be seen that the circumstances of the case of Regina *v.* Castro afford no real analogy to those of that now under consideration.

Secondly, that the witnesses must be such as can be eventually produced for examination and cross-examination before a British jury, and that there must be no suspicion that their testimony has been obtained by torture or intimidation. Such a suspicion would render abortive any prosecution in an English Court, and, indeed, Her Majesty's Government could not accept themselves or allow their officers to use evidence so obtained.

No. 11.

Law Officers to Earl of Rosebery.—(Received September 13.)

[In answer to the following reference, the Law Officers reported on the 13th September, as on p. 23:—]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, September 8, 1892.

Outrage committed by Chinese soldiers near Kirin, in North China, on Dr. J. Greig, a medical missionary.

I HAVE the honour to transmit to you, by direction of the Earl of Rosebery, the papers noted in the accompanying list, which relate to an outrage committed by Chinese soldiers near Kirin, in North China, on Dr. James Greig, a medical missionary serving under the General Assembly of the Presbyterian Church in Ireland.

The circumstances under which the outrage was committed will be found in the letter from the Rev. James Carson of the 17th August, 1891, marked No. 1, inclosed in Dr. Greig's letter of the 22nd ultimo (Paper K), and in the Memorandum inclosed with Sir J. Walsham's despatch No. 8 of the 23rd January last (Paper A).

It appears from the latter document that the Chinese corporal by whom Dr. Greig was assaulted had, under the orders of the Governor of Kirin, been punished with severe corporal chastisement, besides being cashiered and deprived of the allowances he received from Government; subsequently the Taotai at Newchwang reported to the Tsung-li Yamên that the corporal had been sentenced to banishment in the "t'u" degree, and the other culprits severely bambooed.

The question whether these sentences have been properly executed will have to be further investigated, but the matter upon which Lord Rosebery is desirous of obtaining your advice is the amount of compensation to be claimed from the Chinese Government on account of the injuries inflicted on Dr. Greig, which were of a somewhat serious character, and necessitated his returning to this country for the recovery of his health.

Sir J. Walsham reported on the 21st June that he had claimed 5,000 dollars as compensation for Dr. Greig; that this was considered by the Yamên to be too much, but that the amount was, in his opinion, very moderate, and he should press for it (Paper EE).

On his arrival in this country Dr. Greig presented his claim for indemnity on account of the outrage to which he had been subjected, under two heads, viz.: (1) 2,000*l.* as a personal indemnity, or 1,500*l.* if a piece of land was ceded to the Irish Presbyterian Mission for building a hospital and mission-houses; and (2) 983*l.* 2*s.* 8*d.* on account of the expenses entailed on him, as shown under the headings marked (*a*), (*b*), (*c*), and (*d*) of Inclosure 1 in paper marked (G).

Dr. Greig's letter was forwarded to Sir J. Walsham, with instructions to take such steps with regard to the compensation to be claimed for Dr. Greig as might seem to him, under all the circumstances, to be right and proper (Paper E).

Sir J. Walsham replied that the claim advanced by Dr. Greig greatly exceeded the amount which had been demanded from the Chinese Government, viz., 5,000 dollars (about 729*l.* 3*s.* 4*d.*), and that the matter was complicated by mixing it up with that of the purchase of land for missionary purposes (Paper G).

The substance of Sir J. Walsham's observations was communicated to Dr. Greig, and he was informed that, in Lord Salisbury's opinion, the claim for salary and for expenses running on in China during his absence, specified in items (*c*) and (*d*) of the statement in his letter of the 11th April (Inclosure 7 in Paper K), did not appear to his Lordship to have a sufficiently direct connection with the outrage on Dr. Greig himself to justify their inclusion in a claim for compensation of this nature (Inclosure 12 in Paper K).

Dr. Greig, however, acting under the advice of his friends, objects to the amount of compensation claimed by Sir J. Walsham as inadequate (Paper I and Paper K, and Inclosure 13 in Paper K).

In a telegram dated the 10th August Sir J. Walsham stated that the amount of 5,000 dollars was intended to cover both a personal indemnity as well as such expense as might be considered by Dr. Greig or the Irish Presbyterian Mission to be due for the outrage (Paper J).

A Memorandum has been prepared in this Department giving a résumé of cases which have occurred in China since 1868, when compensation has been demanded for outrages committed on British subjects (Paper L).

I am to request that you will take the papers transmitted herewith into your consideration, and favour Lord Rosebery with your opinion whether the claim of 5,000 dollars advanced by Her Majesty's Minister at Peking on behalf of Dr. Greig is adequate, or should be increased, and whether it would be right and proper to make any claim on behalf of the Irish Missionary Society for repayment of Dr. Greig's salary during the time he has been incapacitated, bearing in mind the fact that his employment is purely charitable and religious, and that it is not contended that any *locum tenens* had to be found during his absence from China.

Lord Rosebery will also be glad to be furnished with any general observations that you may have to offer on the case.

I am, &c.
(Signed) T. H. SANDERSON.

Report.

Amount of compensation claimed by Sir J. Walsham inadequate.

This matter involves no legal question. The right of Dr. Greig to compensation being apparently conceded, the only point is: What is the fair measure of that compensation?

Upon this our opinion is of little value. We can only indicate the principles upon which, in the case of a private legal wrong of a like nature, it would be assessed.

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Dr. Greig would be entitled to compensation for (1) the pain and injury inflicted upon him; (2) for any expense to which he was put in consequence; and (3) for any pecuniary loss of salary, &c.

In view of the facts, it seems to us that the 5,000 dollars suggested by Sir J. Walsham is *not* sufficient.

If Lord Rosebery agrees, we suggest that a communication to that effect be sent.

Question should not be mixed up with question of site which Dr. Greig desires.

We do not think that the Government, while insisting on just compensation, should mix up *that* question with the question of the site which Dr. Greig desires.

(Signed) C. RUSSELL.
JOHN RIGBY.

Lincoln's Inn, September 13, 1892.

List of Papers.

(A.)	Sir J. Walsham	(No. 8)	January 23, 1892.
(B.)	Ditto	(No. 11)	January 26, „
(C.)	Dr. Greig		April 11, „
(D.)	Memorandum by Mr. Oakes on Dr. Greig's claim for a grant of land		April 16, „
(E.)	To Sir J. Walsham	(No. 67)	April 28, „
(E.E.)	Sir J. Walsham	(No. 31. Telegraphic)	June 21, „
(F.)	To ditto	(No. 36. Telegraphic)	July 25, „
(G.)	Sir J. Walsham	(No. 35. Telegraphic)	August 8, „
(H.)	To ditto	(No. 39. Telegraphic)	August 9, „
(I.)	Dr. Greig		August 9, „
(J.)	Sir J. Walsham	(No. 36. Telegraphic)	August 10, „
(K.)	Dr. Greig		August 22, „
(L.)	Memorandum		September 2, „

FRANCE.

No. 12.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 4.)

Royal Courts of Justice, February 3, 1892.

My Lord,

Draft Order in Council applying "The Mail Ships Act, 1891," to France.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us a draft Order in Council applying "The Mail Ships Act, 1891," to France.

That copies of "The Mail Ships Act, 1891," and of the Convention between Great Britain and France of the 30th August, 1890, were inclosed for reference.

That the ratifications of the said Convention were exchanged on the 23rd March last, and that as its provisions could not be put into effect until the Order in Council contemplated by "The Mail Ships Act, 1891," was issued, it was desirable that that should be done with as little delay as possible.

That Sir Thomas Sanderson was to request our opinion whether the terms of the draft Order in Council were right and proper, and whether the Order in its then shape might be submitted to the Queen in Council for Her Majesty's approval.

In obedience to your Lordship's commands we have the honour to

Report—

Approve draft Order in Council as altered and initialled.

That, in our opinion, the draft Order in Council, as altered and initialled by us, may properly be submitted to Her Majesty in Council for approval.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

MAIL SHIPS ACT, 1891.

Draft Order in Council.

Whereas by "The Mail Ships Act, 1891," it is provided that where Her Majesty the Queen has made a Convention with a foreign State respecting the postal service between such foreign State and the United Kingdom, or respecting the privileges of mail ships, that is to say, ships engaged in any postal service of such foreign State, or of any part of Her Majesty's dominions, it shall be lawful for Her Majesty in Council to order that the said Act shall, subject to any conditions, exceptions, and qualifications contained in the Order, apply during the continuance of the Order as regards such Convention and foreign State and the postal service and mail ships described in the Convention:

And whereas by section 8 of the said Act it is also provided that an Order in Council may, for the purpose of a Convention with a foreign State, apply the said Act, subject to any exceptions or modifications not inconsistent with the provisions of the said Act, to any British possession, and that the said Act when so applied should, subject to those exceptions and modifications, and subject as thereinafter mentioned, have effect as if it were re-enacted, with the substitution of such British possession for the United Kingdom, provided that, before it should be applied to any British possession named in the Schedule to the said Act, the Government of such possession should have adhered to the Convention:

And whereas on the 30th day of August, 1890, a Convention was made at London between Her Majesty and the President of the French Republic respecting the postal service between France and French possessions and the United Kingdom and British possessions, the terms of which Convention are set forth in the Schedule to this Order:

And whereas the ratifications of the said Convention were exchanged on the 23rd day of March, 1891:

And whereas *the Governments of* certain of the British possessions named in the Schedule to the said Act, namely, Newfoundland, Queensland, New Zealand, Cape of Good Hope, and Natal have adhered to the said Convention:

And whereas it is expedient that "The Mail Ships Act, 1891," should apply as regards the said Convention and the French Republic and the postal service and mail ships described in the said Convention:

And whereas it is also expedient that the said Act should, for the purpose of the said Convention, apply to the above-mentioned British possessions, and also to all British possessions not named in the Schedule to the said Act, subject to the exceptions and modifications in this Order contained:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Mail Ships Act, 1891," or otherwise in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. "The Mail Ships Act, 1891," shall apply during the continuance of this Order as regards the Convention set forth in the Schedule to this Order, and as regards the French Republic and the postal service and mail ships described in that Convention.

2. The said Act shall apply as regards any public ship of the French Republic when employed as a mail ship in the cases authorized by Article V of the said Convention.

3. The said Act shall, for the purpose of the said Convention, apply to the following British possessions, namely, Newfoundland, Queensland, New Zealand, Cape of Good Hope, and Natal, and also to every British possession not named in the Schedule to the said Act, subject, however, to the provisions of section 8 of the said Act, and also to the exceptions and modifications following, that is to say:—

(i.) The expression "officer of Customs" shall mean an officer of the Customs Department of the possession, or, where there is no such Department, an officer or one of the officers appointed for the purposes of the said Act by the Governor in Council, of which appointment notice shall be published in the Gazette of the possession.

(ii.) The provisions of the said Act as to the amount of fines shall, in possessions having a dollar or rupee currency, be read as if the amounts were stated in dollars or rupees, as the case may be, at the rate of 5 dollars *or* ~~and~~ 10 rupees to the pound sterling. In Gibraltar the said provisions shall be read as if the amounts were stated in pesetas, at the rate of 25 pesetas to the pound sterling.

(iii.) In lieu of sub-sections (1) and (2) of section 7 of the said Act the following provisions shall be substituted, that is to say: Every offence may be prosecuted and every fine may be recovered by action or other legal proceeding in any Court of the possession competent to impose fines; but any fine imposed by a Court of inferior or limited jurisdiction shall not exceed either the amount authorized by the said Act and this Order, or the amount of fine which the Court may impose in the exercise of its ordinary jurisdiction, whichever of the said amounts shall be the less; and there shall be the same right of appeal (if any) against any such fine as in other cases of fines imposed by the same Court in the exercise of its ordinary jurisdiction; and every Court, whether of original or appellate jurisdiction, may reduce the amount of any fine.

(iv.) The regulations required to be made under sub-section (4) of section 7 of the said Act by the Commissioners of Customs, with the consent of the Treasury, shall in the possession be made by the Governor in Council.

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(v.) Section 5 of the said Act, so far as relates to the Commissioners of Customs, shall not apply in the possession.

4. This Order may be cited as "The Mail Ships (France) Order in Council, 1892."

And the Most Honourable the Marquis of Salisbury, K.G., and the Right Honourable Lord Knutsford, two of Her Majesty's Principal Secretaries of State, are to give the necessary directions herein as to them may respectively appertain.

No. 13.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received February* 26.)

My Lord, *Royal Courts of Justice, February* 25, 1892.

Draft Order in Council. Treaty between Her Majesty and the Prince of Monaco for mutual extradition of fugitive criminals of December 17, 1891.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council for the purpose of carrying into effect a Treaty between Her Majesty and the Prince of Monaco for the mutual extradition of fugitive criminals, signed at Paris the 17th December, 1891.

That with reference to the observations contained in the separate Report of the Solicitor-General of the 21st January last on the draft Extradition Treaty between Her Majesty and the King of Portugal, Sir Thomas Sanderson was to request us to note, in regard to the last paragraph of Article II of the Treaty with the Prince of Monaco, that the latter Treaty was signed on the 17th December last, and that it was now only awaiting Her Majesty's ratification.

That Sir Thomas Sanderson was to request that we would favour your Lordship with our opinion whether the Treaty might properly be ratified by Her Majesty, and, if so, whether the draft Order in Council might be laid before the Queen in Council in its then shape, after the ratifications of the Treaty had been exchanged.

The Attorney-General's Opinion.

In obedience to your Lordship's commands, I have the honour to

Report—

Approves draft Order in Council.

That, in my opinion, the Treaty may properly be ratified by Her Majesty, and the draft Order in Council may be laid before the Queen in Council, in its present shape, after the ratifications of the Treaty have been exchanged.

I have, &c.
(Signed) RICHARD E. WEBSTER.

The Solicitor-General's Opinion.

I have the honour to

Report—

Approves draft Order in Council, except last paragraph of Article II of the Treaty.

That I agree with the Attorney-General, subject, as regards the last paragraph* of Article II of the Treaty, to my Report of the 21st January last.†

I have, &c.
(Signed) EDWARD CLARKE.

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* "Article II (last paragraph). Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

† Law Officers' Report, 21st January, 1892, p. 53.

No. 14.

The Solicitor-General to Foreign Office.—(*Received December* 26.)

[In reply to the following reference the Solicitor-General reported on the 25th December as on p. 28:—]

Foreign Office to Solicitor-General.

Sir, *Foreign Office, December* 24, 1892.

Statement of French Ambassador as to Mr. D. Willoughby's organizing an expedition in aid of Samory, the Sultan of a territory upon the Upper Niger engaged in campaign against the French.

I HAVE the honour to transmit to you, by direction of the Earl of Rosebery, a communication from the French Ambassador at this Court,* stating that Mr. Digby Willoughby (a British subject) is at the present moment *organizing an expedition* in aid of Samory, the Sultan of a large territory upon the Upper Niger, who is engaged in a campaign against the French.

M. Waddington states that Samory is awaiting Mr. Willoughby's arrival in order to commence operations against the French.

It is, however, believed that Samory, who is a very formidable opponent, and who is apparently incensed at, and altogether repudiates, a claim put forward by the Government of the French Republic that he is under the Protectorate of France, has declared war against that Power, although he may be postponing an actual advance upon the French possessions in the region of the Upper Niger until he has collected a sufficient force.

Lord Rosebery therefore suggests that Samory may be considered (and that he may be assumed for the purpose of this reference) to be "a foreign State at war with a foreign State at peace with Her Majesty," within the meaning of section 4 of "The Foreign Enlistment Act, 1870," 33 & 34 Vict., cap. 90.

It seems somewhat doubtful whether, even assuming them to be capable of establishment by satisfactory and sufficient legal evidence hereafter, the facts stated by M. Waddington constitute an offence against section 11 of the Act on Mr. Willoughby's part.

At the same time, the expression in M. Waddington's note to the effect that Mr. Willoughby is "at the present moment *organizing an expedition* in aid of Samory" is, if construed literally, almost equivalent to the expression employed in section 11 of the Foreign Enlistment Act, namely, "preparing or fitting out a (naval or) military expedition," and it might, therefore, turn out that, if the organization in question is being undertaken within the limits of Her Majesty's dominions—a point as to which Lord Rosebery does not at present feel satisfied—an offence against section 11 is being committed. But however this may be, it appears to his Lordship, as at present advised, that Mr. Willoughby's alleged action does probably constitute, at any rate, a breach both of sections 4 and 5 of the Act—assuming of course that legal evidence sufficiently confirmatory of the statements in M. Waddington's note should eventually be obtained.

M. Waddington has been privately informed, in answer to his representations, that the Law Officers of the Crown would be consulted at once upon the matters which he brought to Lord Rosebery's notice, and he has been requested to furnish any evidence in his power, and also to indicate any other sources from which he thinks such evidence may be obtainable, in support of the allegations made in his note.

Meanwhile, Lord Rosebery will be glad if you will take M. Waddington's note into your consideration, and, assuming for the present purposes that the statements therein contained are capable of legal proof, will advise his Lordship whether, in your opinion, Mr. Willoughby's action amounts to a breach of the provision of the Foreign Enlistment Act, and more particularly of sections 4, 5, and 11 of that enactment. And, if your answer to the above question should be in the affirmative, (2) what action should properly be taken by Her Majesty's Government in the matter.

His Lordship will, at the same time, be glad to be furnished with any other observations of a more general nature which you may have to offer on the case.

I am to add that, although it is very desirable that Lord Rosebery should at this early stage of the case be furnished with a preliminary opinion from the Law Advisers

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* M Waddington, December 23, 1892; "Foreign Enlistment Act, 1870."

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of the Crown on such material as he may be able to lay before them, no proceedings will, in any event, be instituted against Mr. Willoughby until you shall have had an opportunity of considering and advising Her Majesty's Government upon the actual evidence on which it is proposed to proceed.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

Evidence of the charges preferred by the French Ambassador should be procured, and, if sufficient, warrants applied for against Mr. Willoughby and others implicated.

I have been honoured by the transmission to me, by direction of the Earl of Rosebery, of a communication from the French Ambassador at the Court of St. James', stating that Mr. Digby Willoughby, a British subject, is at the present moment organizing an expedition in aid of Samory, the Sultan of a large territory upon the Upper Niger, who is engaged in a campaign against the French; and I am informed that Lord Rosebery will be glad if I will take M. Waddington's note into my consideration, and assuming for the present purposes that the statements therein contained are capable of legal proof, I am to advise his Lordship whether, in my opinion, Mr. Willoughby's acts amount to a breach of the provisions of the Foreign Enlistment Act, and more particularly of sections 4, 5, and 11 of that enactment. And if my answer to the above question should be in the affirmative, (2) what action should properly be taken by Her Majesty's Government in the matter. I have taken the said note into my consideration, and have the honour to report—

That, in my opinion, and assuming for present purposes that the statements contained in M. Waddington's note are capable of legal proof, Mr. Willoughby has been guilty of an offence against the Act under section 4, by agreeing to accept an engagement in the military service of Samory, who may be treated as a foreign State at war with a friendly State within the meaning of the Act. It would also seem highly probable that he has within Her Majesty's dominions induced other persons to agree to accept engagements in the military service of Samory, which would be a further offence within section 4 of the Act; and if he quits Her Majesty's dominions or goes on board any ship with a view of quitting Her Majesty's dominions with intent to accept an engagement in the military service of Samory, or within Her Majesty's dominions induces any other person to quit or go on board ship with a view to quitting Her Majesty's dominions with the like intent, he will be guilty of an offence under the 5th section of the Act.

It will depend upon the particular evidence, which may be forthcoming, whether organizing an expedition in aid of Samory, as mentioned in M. Waddington's note, constitutes an offence within section 11 of the Act; but the words used are apt to describe the preparation of a military expedition, and if that is being carried on in Her Majesty's dominions it is a breach of section 11 of the Act.

2. Her Majesty's Government should use all means in their power to procure evidence of the charges preferred by the French Ambassador, and should ask him to furnish the evidence at his disposal, including that which will establish that a state of war exists between Samory and the French Republic. When sufficient evidence has been obtained, instructions should be given to the Solicitor to the Treasury to apply for warrants against Mr. Willoughby and any other persons implicated.

No intimation should be made to Mr. Willoughby of the charges preferred against him.

Yours, &c.
(Signed) JOHN RIGBY.

Yardley Hastings, Northampton,
December 25, 1892.

GENERAL.

No. 15.

The Law Officers of the Crown to the Earl of Rosebery.—(Received September 21.)

My Lord, *Royal Courts of Justice, September* 18, 1892.

Draft O. in C. under "Foreign Marriage Act, 1892."

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 7th instant, transmitting to us the draft of an Order in Council* making regulations with regard to the marriage of British subjects outside the United Kingdom, in accordance with the provisions of "The Foreign Marriage Act, 1892" (55 & 56 Vict., cap. 23), of which a copy was inclosed for convenience of reference.

Sir Thomas Sanderson was to inclose letters from the Admiralty and Colonial Office on the subject of the draft Order, together with a Memorandum by Mr. Albert Gray upon the suggestions contained in the Colonial Office letter, and was to request that we would take the draft Order into our consideration, and favour your Lordship with our opinion whether it might be laid before the Queen in Council in its present shape for Her Majesty's approval.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve the draft O. in C.

That, in our opinion, the draft Order, as initialled by us, may be laid before the Queen in Council in its present shape for Her Majesty's approval.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

			1892
(A.) Foreign Marriage Act	..	July 29,	„
(B.) Admiralty	..	August 2,	„
(C.) Colonial Office	..	August 10,	„
(D.) Mr. Gray	..		

JAPAN.

No. 16.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 20.)

My Lord, *Royal Courts of Justice, February* 18, 1892.

Mr. King Kiku Kingdon's claim to be deemed a British subject.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 28th ultimo stating that, with reference to our Report of the 24th July, 1889, approving the draft of a letter to Mr. N. P. Kingdon relative to the status in Japan of his son, Mr. King Kiku Kingdon, he was directed by your Lordship to transmit to us further papers respecting Mr. King Kiku Kingdon's claim to be deemed a British subject.

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* See Confidential No. 6266*.

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That Her Majesty's Minister at Tôkiô was informed on the 1st October last that Mr. King Kiku Kingdon must be considered as *filius nullius* in contemplation of English law, and that, since he was also born outside the dominions of Her Majesty, no grounds appeared to exist entitling him to claim British nationality.

That the purport of the despatch conveying that decision was communicated to Mr. N. P. Kingdon by Mr. Fraser, and that Mr. Kingdon now asked for a reconsideration of the case on the grounds stated in his letter to Her Majesty's Consul at Yokohama of the 2nd December last.

That your Lordship would be glad to be favoured with our opinion whether the onus of proving that Mr. K. K. Kingdon was a British subject ought not properly to rest with that gentleman, and whether, in a case presenting so many difficulties and doubts, he ought not to be called upon to have recourse to the Courts of Law to settle the question authoritatively should any method of doing so be open to him.

Legitimacy Declaration Act of 1858, 21 & 22 Vict., cap. 93.

That, in most cases of the kind now under consideration, proceedings under the Legitimacy Declaration Act of 1858 (21 and 22 Vict., cap. 93) afforded an easy and convenient mode of procedure. But that it was possible that if Mr. Kingdon attempted to proceed under that Act he would be met by a technical difficulty since he was not "domiciled in England or Ireland" (see section 1), nor in Scotland (section 9).

That, under those circumstances, Sir Thomas Sanderson was to request that, if we considered it to be desirable that the decision of an English Court of Law should be obtained upon the case, your Lordship might be favoured with our opinion whether it was open to Mr. Kingdon to proceed under the Legitimacy Declaration Act or by any other method.

That Sir Thomas Sanderson was, at the same time, to request that your Lordship might be favoured with any further observations which we might have to offer upon the various points involved, and especially as to whether, even assuming that Mr. N. P. Kingdon had, at the time of the birth of Mr. K. K. Kingdon, exchanged his English domicil of origin for a Japanese domicil of choice, which he had since continuously retained, and, granting that Mr. K. K. Kingdon (as the fact appeared to be) had, in contemplation of Japanese law, become legitimated by the subsequent marriage of his parents, Mr. K. K. Kingdon's nationality of origin was not, for purposes of English law, absolutely determinable at the moment of his birth and incapable of undergoing a change by the mere operation of the law of his parents' marital domicil by way of relation back to the date of such birth.

That it was presumed, under the circumstances stated above, that if he did not become a British subject at the date of his birth, he did not become such subject at any later period solely by virtue of the subsequent marriage of his parents causing him to be regarded as legitimate by the law of their domicil.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Mr. K. K. Kingdon is not a British subject.

That, in our opinion, there is no sufficient ground for suggesting to Mr. K. K. Kingdon that he should attempt to obtain the decision of an English Court.

It is, in our judgment, quite clear that he is not a British subject. He was not so at the time of his birth, being illegitimate; and the subsequent marriage of his parents, whatever its other consequences may be, cannot convert him into a British subject. The point was decided in the case of Shedden *v.* Patrick and Others, 1 Macqueen's (House of Lords) Reports, p. 535.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

	To Mr. Fraser ..	.. (No. 6. Treaty)	July 29, 1889.	See Japan Correspondence, 1889.
	To Mr. Kingdon..	.. .. ..	July 29, "	" " "
	To Mr. Fraser	(No. 8. Treaty. Confidential)	July 31, "	" " "
	Mr. Fraser ..	.. (No. 4. Treaty)	March 17, 1890.	" " 1890.
	To ditto ..	.. (No. 3. Treaty)	May 3, "	" " "
	Mr. Fraser ..	.. (No. 8. Treaty)	June 19, "	" " "
	Ditto ..	.. (No. 12. Treaty)	September 19, "	" " "
	Mr. K. K. Kingdon	.. .. ..	November 7, "	" " "
	To ditto ..	.. .. ..	November 14, "	" " "
	Mr. K. K. Kingdon	.. .. ..	November 16, "	" " "
	Mr. Fraser ..	.. (No 6. Treaty)	April 9, 1891.	" " 1891.
	To ditto ..	.. (No. 2. Treaty)	May 14, "	" " "
	Mr. Fraser ..	.. (No. 8 Treaty)	July 20, "	" " "
(A.)	To ditto ..	.. (No. 5. Treaty)	October 1, "	" " "
(B.)	Mr. Fraser ..	.. (No. 16. Treaty)	December 7, "	" " "

LIBERIA.

No. 17.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received August 16.)

Royal Courts of Justice, August 15, 1892.

My Lord,

Draft of Treaty of Extradition between Great Britain and Liberia.

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us the draft[*] of a Treaty of Extradition proposed for negotiation between Great Britain and the Republic of Liberia; and that he was to request that we would favour your Lordship with our opinion whether it might properly be submitted to the Government of the Liberian Republic.

That Sir T. V. Lister was to add that the draft had already been submitted to and approved by the Home, Colonial, and Indian Departments.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

May be submitted to Liberian Government.

That, in our opinion, the draft Treaty may properly be submitted, in its present shape, to the Government of Liberia.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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[*] Not ratified yet (May 1893).

MADAGASCAR.

No. 18.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received June* 14.)

My Lord, *Royal Courts of Justice, June* 14, 1892.

Proposed surrender of British extra-territorial jurisdiction in Madagascar to French Tribunals.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to an arrangement now in process of negotiation whereby, upon the establishment of a satisfactory judicial system in the French Protectorate of Madagascar, Her Majesty proposed to surrender to the French Tribunals in that island the extra-territorial jurisdiction over British subjects which she had hitherto exercised therein under the provisions of the Treaty of the 25th June, 1865, between Great Britain and Madagascar, and of various Orders in Council, of which the most recent was that known as "The Africa Order in Council, 1889."

That it should, in the first place, be mentioned that France claimed to exercise an exclusive control over the foreign relations of Madagascar, under the terms of the Treaty of Peace of the 17th December, 1885, and that that Treaty was notified by M. Waddington to the Earl of Rosebery on the 17th March, 1886.

That in the Declaration of the 5th August, 1890, in consideration of another Declaration dated the same day, whereby the British Protectorate over the Islands of Zanzibar and Pemba was agreed to by France, the Protectorate established by the abovementioned Treaty was recognized by Great Britain.

That since that date application for exequaturs for Her Majesty's Consular officers in Madagascar had been made through the French Resident-General at Tamatave.

That there existed, however, a serious difference of opinion between the French and Malagasy Governments as to the interpretation to be put on the Treaty of Peace, and the extent of the rights conferred by it upon France. That the consequence of that divergence had been to bring about a condition of strained relations between the French and Malagasy Governments, and a profound reluctance on the part of the latter to accept any measure which tended to increase the power of the French in Madagascar.

That the inclosed papers marked (E), (F), (G), (H), (I), and (J) contained the communications which had passed between your Lordship and the French Ambassador at the Court of St. James' on the question of relinquishing the exterritorial privileges of this country.

That the result up to the present was that your Lordship had offered to accept a French Judiciary in substitution for the present Consular system of extra-territorial jurisdiction which was now enjoyed by Treaty upon precisely the same terms as those which were accepted on the abandonment to the French Tribunals in Tunis of Her Majesty's extra-territorial jurisdiction in that Beylicate upon the establishment of the French Protectorate in 1883-84.

But that the French Ambassador had replied that, as one of the essential conditions in the case of Tunis was that the new system should be established by a Decree of the Bey, the requirement of similar conditions in the case of Madagascar amounted in effect to a refusal to accept that system.

That the French Government were not, it was pointed out, in a position to obtain from the Hova Government a Decree similar to that which they obtained from the Bey of Tunis.

That the chief objection that your Lordship had urged upon the French Ambassador had been that a system of Judiciary adopted without such a Decree was, in practice, entirely unworkable; that its Decrees would have to be enforced, not only without the assistance of the Government of the country, but in direct defiance of it; and that, except under the condition of a permanent military occupation, such a proposal was quite impracticable.

That the French Government urged, in reply, the acceptance of a tentative system which could be terminated if in practice it should be found unworkable. That before, however, that compromise could be considered, it was necessary to determine whether, as a matter of principle, the proposed measure was admissible.

That there were two points of view from which objections might be taken, in principle, to the establishment of the proposed Judiciary in despite of the Government of the country where it was to hold its Courts. That it seemed, in the first place, necessary to inquire from whom did such Tribunals derive their jurisdiction? Not apparently from the Government of the country—for that was hostile. Not apparently from the French Government, for that had neither annexed the country, nor attained that influence in the councils of the actual Government which could of itself authorize the exercise of such jurisdiction. Not, as was apprehended, from our own Sovereign, for it was believed that no Act existed enabling her to delegate her jurisdiction in any country, in spite of the Rulers of the soil, to a third Power which had itself acquired no legal title to jurisdiction from such Rulers. But if the Courts which it was proposed to establish drew their jurisdiction from no legal source, were they theoretically in any better condition than Tribunals which might be established by mere freebooters or pirates? Would their Decrees be binding in the view of English Tribunals upon anybody? Would those Decrees, again, in the view of the English Tribunals, cover and protect the action of any one who might help to execute them? Would they be an answer to a charge of assault, or of breaking into a dwelling-place, or of manslaughter, or of any other infraction of personal rights?

That, secondly, it seemed necessary to inquire in what position would the establishment of such Tribunals, under present circumstances, place us towards the Government of Madagascar? It was a Government which we had recognized, for we had Treaties with it, and by its consent had exterritorial jurisdiction over our own subjects within the limits of the Malagasy dominions. Would the surrender of such a power, and the substitution for it of a totally different system of jurisdiction, which was repudiated by the Hova Government itself, be consistent with our relations of international agreement and comity towards that Government? Would they not be rather in the nature of an act of war? Would it affect the validity of the Treaties which exist? Would it, as some persons had said, destroy the rights of exterritoriality which we possessed, without substituting anything except the Hova Tribunals in place of those rights?

That as far as was known the French proposal was entirely without precedent, and that there appeared to be no case which bore even a distant analogy to it.

That your Lordship would, subject to our opinion and advice, be rather disposed to maintain that judicial jurisdiction was an attribute of sovereignty, and inseparable from it: that it might be delegated to another by the Sovereign, but that it could not be injected into the territory of a third Power by a nation which had not been able to cause its own sovereignty to be accepted there.

And that, of course, if there was any foundation for the apprehensions above expressed, and if the line of argument above indicated was generally sound, it would not be competent for this country to accept the proposed establishment, even on the footing of a tentative measure.

That, having regard to the peculiar nature of the case, your Lordship thought it might be more convenient to us if you abstained from putting, in the first instance, a number of specific questions, but requested us to be good enough to advise you generally upon the case as raised by the reference and accompanying papers.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Extra-territorial jurisdiction over British subjects cannot be surrendered without consent of Hova Government.

That, in our opinion, the proposal to surrender to the French Tribunals in Madagascar Her Majesty's extra-territorial jurisdiction over British subjects, without the consent of the Hova Government, is entirely inadmissible—even as a tentative or temporary measure.

The rights enjoyed by Her Majesty's Government, under Article XI of the Treaty of 1865, are to be exercised by the British Consul, or other officer duly appointed for the purpose by Her Majesty, and cannot, without the consent of the Hova Government, be delegated to the Representatives or officers of another Power.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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List of Papers.

(A.) Treaty between Great Britain and Madagascar ..	June 25, 1865.	Treaty No. 494.
(B.) Africa Order in Council	1889.	Confidential No. 5949*.
(C.) Treaty between France and Madagascar ("Africa No. 2, 1886.") ..	December 17, 1885.	Parliamentary No. 3036.
(D.) Declarations exchanged between Great Britain and France	August 5, 1890.	Parliamentary No. 3464.
(E.)–(J.) Communications between Lord Salisbury and M. Waddington.		
(K.) Correspondence respecting abrogation of foreign Consular jurisdiction in Tunis ("Tunis No. 1, 1884")..	1882–83.	Parliamentary No. 2767.

No. 19.

The Law Officers of the Crown to the Earl of Rosebery.—(Received November 18.)

New French Courts in Madagascar. Decree of President of French Republic establishing constitution thereof.

My Lord, *Royal Courts of Justice, November 16, 1892.*

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 15th September last, stating that, with reference to our predecessors' Report of the 14th June, 1892, on the subject of the establishment of French Tribunals in Madagascar, he was directed by your Lordship to transmit to us a copy of a Decree of the President of the French Republic, establishing the constitution of the new French Courts in Madagascar.

That Sir Philip Currie was to request that we would take the Decree into our consideration, and favour your Lordship with any remarks which we might have to offer upon it, and especially as to whether the judicial system which it created was of a sufficiently satisfactory nature to be accepted by Her Majesty's Government in lieu of the existing Consular jurisdiction enjoyed by Great Britain.

That it would be observed that the Decree did not state that the consent of the Malagasy Government had been obtained to its execution.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Think French Government is not in a position to require Her Majesty to abandon her Treaty rights in Madagascar.

That, in our opinion, if the abandonment of the Treaty rights under which Her Majesty exercises jurisdiction through her Consular Courts in Madagascar is, as a matter of State policy, determined upon, Her Majesty's Government can only expect that British subjects should be dealt with in the same manner as French citizens, and this result would be arrived at if the power contained in Article III (third clause) were so exercised as to extend the jurisdiction of the Tribunals to British subjects.

We see no reason to doubt that the Decree is reasonably sufficient to provide for the wants both of French citizens and British subjects, though, of course, the law administered by the Tribunals will be French law, and the procedure also French.

We have, however, to observe that not only is there no mention of the consent of the Malagasy Government having been obtained, but that it is plain, from the form of the Decree, that no such consent is intended to be asked for, and, indeed, from the earlier correspondence, it would seem that it could not be obtained.

We do not think that the French Government is in a position to require Her Majesty to abandon her Treaty rights in existence before the establishment of the French Protectorate. The abandonment of them without the consent of the protected Power would be going beyond anything that has yet been done in similar cases.

We do not find that the arrangement for a Protectorate expressly conferred jurisdiction on French Tribunals over British or other subjects—foreigners in Madagascar. It would seem that the French Government assume that jurisdiction to arise by reason of their Protectorate. It cannot yet be treated as an established doctrine of international law that such a jurisdiction can be founded on the assumption of a Protectorate without a grant from the protected Power whose right depends upon territorial sovereignty.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

Annex.

Extract from Decree.

Article 3. Les Tribunaux de Madagascar connaissent de toutes les affaires civiles et commerciales entre Français.

Ils connaissent également de toutes les poursuites intentées contre les Français pour contraventions et délits.

Leur compétence peut être étendue à d'autres personnes par des Décrets rendus sur la proposition du Ministre des Affaires Étrangères et du Garde des Sceaux, Ministre de la Justice et des Cultes.

MOROCCO.

No. 20.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 28.)

My Lord, *Royal Courts of Justice, March 25, 1892.*

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 29th ultimo, stating that, with reference to our Report of the 12th December last on the subject of the Table of Fees to be levied in virtue of the Queen's Regulations under "The Morocco Order in Council, 1889," he was directed by your Lordship to transmit to us the accompanying papers, showing that it had been decided to proceed, as regarded the Table of Fees in question, by Order in Council, under "The Consular Salaries and Fees Act, 1891."

That Sir Thomas Sanderson was accordingly to inclose the draft of an Order in Council, prepared by Mr. Albert Gray, to be known as "The Morocco Fees Order in Council, 1892;" and that he was to request that we would favour your Lordship with our opinion whether the draft Order might properly be laid before the Queen in Council, for Her Majesty's approval.

In obedience to your Lordship's commands, we have the honour to

Report—

Approve draft Morocco Fees O. in C. as initialled.

That, in our opinion, the draft Order in Council, as initialled by us, may properly be laid before the Queen in Council, for Her Majesty's approval.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Law Officers' Report..		December 12, 1891.	Confidential No. 6207.
To Treasury		December 14, "	
Sir C. Euan-Smith	(Telegraphic)	December 16, "	
To Treasury		December 18, "	
Treasury		December 18, "	
Ditto		December 23, "	
To Treasury		December 29, "	
To Sir C. Euan-Smith		December 30, "	
Treasury		January 5, 1892.	
To Treasury		January 12, "	
Mr. Gray		February 1, "	
To Treasury (with two Inclosures)		February 16, "	
Treasury		February 22, "	
Morocco Order in Council		1892.	Confidential No. 6199*.

Queen's Regulations, 1892.

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Annex.

Draft Morocco Fees Order in Council.

Whereas by "The Consular Salaries and Fees Act, 1891," it is provided that it shall be lawful for Her Majesty the Queen by Order in Council to fix the fees to be taken in respect of any matter or thing done by a Consular officer in the execution of his office, and to vary such fees by way of increase or decrease, and to abolish fees, and to create new fees;

And whereas "The Consular Fees Order in Council, 1887," continues in force under the provisions of the said Act as if it had been issued in pursuance thereof, and the same is in operation within the Consular jurisdiction of Her Majesty's Consul-General in Morocco;

And whereas by "The Morocco Order in Council, 1889," it is provided that the Consul-General in Morocco has power to make Regulations (to be called the Queen's Regulations) for the purposes therein mentioned, and that such Regulations shall, when allowed by the Secretary of State and published as he directs, have effect as if contained in that Order;

And whereas certain Queen's Regulations have been made as provided in the last-mentioned Order;

And whereas it is expedient to fix certain fees to be taken by Consular officers in Morocco in the execution of their office in respect of matters arising under the said Queen's Regulations and otherwise, and not expressly mentioned in "The Consular Fees Order in Council, 1887;"

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Consular Salaries and Fees Act, 1891," or otherwise, in Her Majesty vested, is pleased by and with the advice of her Privy Council to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Morocco Fees Order in Council, 1892."
2. The several fees set out in the Schedule to this Order are hereby established, to be taken by Consular officers in Morocco in the execution of their office, in respect of the matters referred to in the Table therein.
3. In this Order "Consul-General" and "Morocco" have the same meaning as in "The Morocco Order in Council, 1889."

And the Right Honourable the Marquis of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

R. E. W
E. C.

SCHEDULE.

TABLE of Fees to be taken by Consular officers in Morocco, pursuant to "The Consular Salaries and Fees Act, 1891," and "The Morocco Fees Order in Council, 1892."

No.	Matter in respect of which the Fee is to be taken.	£	s.	d.
	Under Section 24 of the Queen's Regulations.			
1	On every entry in the "Register of Newspaper Proprietors" ..	1	0	0
2	On every subsequent addition to or alteration of such entry ..	0	5	0
3	Ou every search in the "Register of Newspaper Proprietors" ..	0	2	6
	Under Section 28 of the Queen's Regulations.			
4	On order to defendant to attend Tribunal of Kadi	0	10	0
5	On order to defendant to give security for such attendance ..	0	10	0
6	On every such security	0	10	0
7	On order for arrest of defendant in default of giving required security	0	10	0
8	To officer attending Tribunal of Kadi with defendant under arrest	0	5	0
	Under Section 29 of the Queen's Regulations.			
9	On every certificate of protection issued for a "semsar" ..	1	0	0
10	On every certificate of employment issued for an employé ..	0	10	0
	Attendances.			
11	For attendance of Consular officer elsewhere than at the Consular Office for any purpose not otherwise provided for, if absent less than two hours	1	0	0
12	Ditto, ditto, for each additional hour, or fraction thereof .. (not exceeding a total fee of 4*l.* per diem).	0	10	0
13	For attendance of Interpreter for any purpose not otherwise provided for, if absent less than two hours	0	10	0
14	Ditto, ditto, for each additional hour, or fraction thereof .. (not exceeding a total fee of 2*l.* per diem).	0	5	0
15	On application to local authority for escort or guard for travellers or others	0	5	0
16	Ditto, ditto, for permission to sell or purchase realty ..	1	0	0
17	Ditto, ditto, for any pass or permission not otherwise provided for	0	2	0
18	For communication in writing to any local or foreign authority at request of party interested	0	10	0
19	On reference to the archives	0	2	6
20	On every declaration made by a Consular officer before a foreign or local authority or Notary Public, at the request of the party interested	0	10	0

No. 21.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 28.)

Royal Courts of Justice, June 27, 1892.

My Lord,

Registration of *lex loci* marriages in doubtful cases.

WE were honoured with your Lordship's commands signified in Sir Phillip Currie's letter of the 13th instant, stating that he was directed by your Lordship to bring to our attention two points with regard to the registration, under the Foreign Marriage Acts, of marriages solemnized in accordance with the local law of a foreign country, respecting which some doubt had been expressed, and with reference to which, therefore, your Lordship desired to be favoured with our opinion for his guidance.

That the first point was whether in a case where the parties, by reason of some disability or impediment recognized by English law, though not arising under the *lex loci* of the foreign Christian country in which their marriage was solemnized, could not lawfully intermarry according to the law of England, a marriage between such parties ought to be registered by the Consular officer, assuming it to have been duly solemnized in accordance with the local law of the country.

That an instance of such a marriage as was referred to would be a marriage

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between British subjects, standing to one another in the relation of deceased sister's widower and deceased wife's sister, solemnized in Denmark according to the local law of that country.

That, in that case (1) assuming that the parties, though of British nationality, were of Danish domicil, your Lordship believed that their marriage would, even by the English Tribunals, be recognized as valid practically for all purposes except the conferring of a title upon its eldest male and other successive issue to inherit *ab intestato* real property situate in England; and (2) although—if the parties were domiciled in England—their marriage would clearly be invalid for all purposes of English law, yet it would be perfectly valid according to the *lex loci.*

That in neither of those two cases did there appear to be any serious objection either upon grounds of general principle, or upon a consideration of the scope and language of the Act and Order in Council, to the registration of such a marriage for what it might be worth as a record, should the parties desire it; and that your Lordship was disposed to think that the justice of such cases would best be met by authorizing Consular officers to register the marriage under the provisions of the Foreign Marriage Acts, but, at the same time, to append a note to the entry, drawing attention to the prohibited degree of affinity or consanguinity or other impediment existing between the parties.

Case of polygamous countries.

That the other point was whether any marriage, by whatever form, rite, or ceremony solemnized in a Mahommedan or other polygamous country, could be registered under the Foreign Marriage Acts, unless it had been solemnized in pursuance of those Acts.

That the question upon which the determination of that point appeared to rest was whether, in a Mahommedan or uncivilized country where the marriage law was repugnant to the fundamental principles of English jurisprudence and of religion and morality as understood in this country, any marriage which was solemnized in accordance with the local law, and which derived such validity as it possessed wholly and merely therefrom, could be recognized as a marriage within the meaning of that term as employed in Christian countries, and systems of jurisprudence, even for the limited purpose of registration under an English Statute relating to foreign marriages.

That it appeared to be clear that if a British subject attempted to avail himself of the forms of the *lex loci* in a Mahommedan or heathen country, or of the ceremony of marriage observed amongst the Mormons, even though the parties were competent to contract, the marriage was not regarded as valid in English law, and that, consequently, the essential principle underlying the recognition of *lex loci* marriages generally, viz., the fact that it was valid by the law of the place of its celebration, was in that case quite inapplicable.

That your Lordship was disposed to think that the expression "*lex loci* marriages" should be confined, in its interpretation, to such marriages alone as did not violate the essential requirement of Christian wedlock, viz., the union of one man with one woman to the exclusion of all others, and that polygamous marriages being in no sense and for no purpose marriages in contemplation of English law were not such "*lex loci* marriages" as were contemplated by the wording of section 4 of "The Foreign Marriage Act, 1891," and could not be registered thereunder.

That Sir Philip Currie was, at the same time, to transmit copy of a despatch from Mr. Payton,[*] Her Majesty's Consul at Mogador, asking for guidance with regard to his duties under the Foreign Marriage Acts, together with the draft of the reply which your Lordship proposed to send him, if we concurred in its terms.

That it would be found that the correctness and expediency, or otherwise, of the answers suggested in the draft depended on the principles to be decided in connection with the latter of the two points specially raised in Sir Philip Currie's letter to us.

That Sir Philip Currie was to request that we would be so good as to take the papers into our consideration and favour your Lordship with our opinion on the points raised therein, and also with any general observations upon the subject which we might be good enough to offer.

In obedience to your Lordship's commands, we have the honour to

Report—

Distinction between powers of solemnization and registration.

1. That there is a distinction between solemnization and registration of marriages under the Foreign Marriage Acts.

As to solemnization at the marriage office under section 8 of "The Foreign Marriage Act, 1892," no marriage can be solemnized at the official house of the

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[*] Consul Payton, No. 12, April 12, 1892.

marriage officer if by English law the parties cannot lawfully intermarry, but if *lege loci contractûs* the parties can marry, notwithstanding the impediment preventing a valid English marriage, the marriage may still be registered under section 18 of the above Act.

Rules as to registration of *lex loci* marriages in heathen countries.

2. Except in the case, which we do not imagine to exist, of the law of the foreign country expressly providing that valid marriages may be contracted in the way and according to the forms actually adopted, we are of opinion that no form, rite, or ceremony of marriage in a Mahommedan or polygamous country can be registered under the Foreign Marriage Acts.

3. The registration of "*lex loci* marriages" should be confined to marriages which do not violate the essential conditions of Christian wedlock.

Approving despatch to Consul Payton as altered.

4. We approve of the draft reply to Consul Payton as altered and initialled by us.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Foreign Office to Consul Payton.

(No. 6.)

Foreign Office, July 11, 1892.

Sir,

I am directed by the Marquis of Salisbury to acknowledge the receipt of your despatch No. 12 of the 12th April, asking for guidance in your duties under the Foreign Marriage Acts.

You cannot solemnize at the official house, or allow to be solemnized there in your presence under the provisions of those Acts, any marriage which would not be recognized as valid by English legal Tribunals.

The Empire of Morocco being a Mahommedan country where polygamy is recognized by the law, the doctrine of recognition of marriages valid *lege loci contractûs* does not apply.

The marriages to which you refer, viz., those celebrated by Roman Catholic or Hebrew priests, cannot, in Morocco, be registered as marriages under the Foreign Marriage Acts.

The question whether a marriage duly performed in a Mahommedan country with the rights, and according to the marriage law, of the Roman Catholic or Jewish Churches be valid is *primâ facie* determinable by the law of the domicil of the contracting parties. Before, therefore, your inquiries as to the validity of such marriages and the consequent status of their issue can be answered, it will be necessary for you to give further information upon this point.

In no case can bigamous marriages be recognized, since they violate the fundamental principles of Christian religion and morality with reference to the marriage rite, besides being *per se* a serious offence against the English criminal law.

For your personal information, I am to state that the "exhibit" alluded to in the marriage instructions is a copy of the certificate of the marriage according to the local law which is furnished to the parties by the local authorities which is to be appended as an "exhibit" to the certificate signed by the British marriage officer. But, having regard to the fact that Her Majesty's Consulate at Mogador is in a polygamous country, you will have no use for the various forms connected with the registration of marriages solemnized in accordance with the local law of a foreign country, which appear to have been inadvertently forwarded to you.

I am, &c.
(Signed) T. V. LISTER.

PACIFIC ISLANDS.

No. 22.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received May* 4.)

Royal Courts of Justice, May 2, 1892.

My Lord,

As to proposal that the Powers should declare the

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 11th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to a proposal

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decision of the Samoan Land Commission upon construction of section 8 of Article IV of the Final Act to be final.

which had been made by the German Government that a joint Declaration should be issued by the Powers parties to the Conference on Samoan Affairs, affirming that a recent decision of the Samoan Land Commission upon the construction of section 8 of Article IV of the Final Act of that Conference should be held to be ultimate and final.

That it appeared to your Lordship that that proposal involved a departure from the method of procedure prescribed in the Article and section mentioned, which expressly reserved the power of appeal to the Chief Justice of Samoa in cases of that character, and provided that the determination of the Commission should be "subject to the revision and confirmation of" the Supreme Court.

That, for that reason, your Lordship felt grave doubts whether the suggestion of the German Government could with propriety be adopted.

That a draft of reply to Count Hatzfeldt was inclosed, and that Sir Thomas Sanderson was to request that we would take it into our consideration, together with the accompanying papers, and that we would favour your Lordship with our opinion as to whether its terms were right and proper, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands, we have the honour to

Report—

Approve draft despatch to Count Hatzfeldt.

That, in our opinion, the terms of the draft despatch initialled by us are right and proper.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

1.	German Embassy (*note verbale*)	March 31, 1892.	Confidential No. 5870*.
2.	Final Act of Berlin	January 24, 1890.	
3.	Draft to Count Hatzfeldt .. .. .. (See amended text annexed: Note to Count Metternich, May 6, 1892.)	April 1892.	

Annex.

Draft of Letter to Count Metternich.

Foreign Office, May 6, 1892.

M. le Chargé d'Affaires,

I HAVE carefully considered, in consultation with the Law Advisers of the Crown, the verbal communication which Count Hatzfeldt made to me on the 31st March last, proposing that the three Treaty Powers should affirm, by a joint Declaration, that a recent decision of the Samoan Land Commission upon the construction of section 8 of Article IV of the Samoan Act shall be ultimate and final.

I have to observe, in reply, that while Her Majesty's Government are desirous in every way to accelerate the labours of the Commission, the course proposed appears to them to be open to serious objections.

According to the provisions of the Final Act, recourse may be had from a decision of this nature to the Chief Justice of Samoa. A public declaration by the Treaty Powers to the effect contemplated would, in fact, be a modification of the terms of the Final Act, and a limitation of the rights of parties under it. Such a document, in order to have validity and binding force, should be invested with the same formalities as the Act itself, and its issue might produce an unfortunate impression upon public opinion, both native and European, in the islands.

If the decision of the Commissioners is correct, it must be assumed that that decision will be duly confirmed upon revision by the Chief Justice; whilst if, on the other hand, it is a mistaken one, Her Majesty's Government are advised that it should be set right by the Tribunal established for that purpose by the terms of the instrument which created the Commission, and on the faith of which the natives and others are acting in respect of their claims.

As regards the delays which have occurred in the settlement of the question of land titles, it seems evident, in view of the small number of claims already received, and of the very large number still outstanding, that the Commission cannot finish its work within the term of two years originally fixed.

But I have reason to believe that the Commissioners are working in perfect harmony, and that both on public grounds and from considerations of private convenience, they will make every effort to bring the investigation to as rapid a conclusion as the circumstances will permit.

I have, &c.
(Signed) SALISBURY.

No. 23.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 11.)

My Lord, *Royal Courts of Justice, May* 9, 1892.

Final Act of Berlin Conference on affairs of Samoa. Duties of the Chief Justice and the Land Commissioners.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 8th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to a difference of opinion which had arisen between the Chief Justice of Samoa and the Samoan Land Commissioners in regard to the interpretation of those provisions of the Final Act of the Berlin Conference on the affairs of Samoa which affected the rights and duties of the Chief Justice and the Land Commissioners respectively.

Mr. Haggard, February 23, 1892.

That the points in dispute were clearly explained in the joint Memorandum of the Land Commissioners, copy of which was inclosed in Mr. Bazett Haggard's letter of the 23rd February, and which had been forwarded, for their consideration, to each of the three Powers who took part in the Samoan Conference.

That it would be seen that the Land Commissioners claimed, under section 6, Article IV, of the Final Act, the right to decide finally upon all undisputed claims, as well as upon disputed claims, which should be decided as valid by the unanimous voice of the Commission, their decisions to be merely referred to the Supreme Court for confirmation (not reconsideration) and for purposes of record.

That the Chief Justice, on the contrary, maintained that the final decision upon *all* contested claims was vested in himself, and that, to use his own words, "the Land Commission is an investigating Commission, and not a Court."

That he further claimed the right, under section 4, Article III, of the Final Act, to control and modify the procedure adopted by the Land Commissioners, but that the latter had declined to accept his ruling upon those points pending a reference to their respective Governments.

Mr. Haggard, March 1, 1892.

That the Chief Justice, meanwhile, had sought to enforce his views by the issue of two public Proclamations, copies of which would be found in Mr. Haggard's second letter of the 1st March.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion upon the questions thus raised, as well as with any general observations which we might have to offer on the whole case.

To Law Officers, April 13.

Chief Justice of Samoa, February 29, 1892.

We were also honoured with a further letter from Sir Thomas Sanderson, dated the 13th ultimo, stating that he was directed by your Lordship to transmit to us the record of a verbal communication made by the German Embassy on the 12th April, explaining the views of the German Government in regard to the questions raised by the Chief Justice of Samoa in his letter of the 29th February.

That a wish was further expressed that the German Government might be informed what view Her Majesty's Government took of the points in dispute between the Chief Justice and the Land Commissioners.

That it would be seen that the German Government were of opinion that the Chief Justice was technically correct in holding that the final decision upon all contested claims rested with the Supreme Court, and that the Land Commissioners could not be considered as a Court of Justice, but rather as a Court of Inquiry.

That having regard, however, to the fact that the practice hitherto followed between the Commission and the Court had not been in accordance with the view now expressed by the Chief Justice, they proposed, with a view to prevent delay and expense, that the principle, if recognized by the Powers, should only apply to future cases, and should not have a retroactive effect.

That, on the other hand, the German Government were not prepared to admit that the Chief Justice had the right claimed by him of regulating the proceedings of the Land Commissioners.

That if, however, the other Powers, namely, Great Britain and the United States, thought differently, they were prepared to waive their own opinion on that point.

That Sir Thomas Sanderson was to request that we would take the communication of the German Government into our consideration, in conjunction with the papers which were transmitted to us in his letter of the 8th ultimo.

We have taken all the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

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Report—

Construction of section 6 of IVth Article of Final Act of the Berlin Conference. Rights and duties of the Chief Justice and Land Commissioners respectively.

That the first question depends upon the construction of section 6 of the IVth Article of the Final Act of the 14th June, 1889.

The language of that section is certainly not clear, and it is impossible to say that the question is free from doubt; but, in our judgment, looking to the provisions of the earlier sections of the same Article, and the duties to be performed, and the report made by the Commissioners, the final decision upon all disputed claims is to be by the Court, and that, in this respect, the view taken by the Chief Justice is correct.

We think that the meaning of the second paragraph of section 6, though not happily expressed, is that in the case of undisputed claims, which are decided to be valid by the unanimous voice of the Commission, the duties of the Court are purely ministerial; but that in all cases of disputed claims, or of claims as to which, though there be no rival claimant or opposing litigant, the decision of the Commissioners is not unanimous, the Court has power to decide as to the claim.

Upon the second question, we are of opinion that the contention of the Chief Justice is not well founded, and that he has no right to control and direct the actual procedure of the Commissioners except upon the question of the extension of time for the presentation of claims referred to in section 3 of Article IV.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Mr. Haggard	February 23, 1892.
Ditto	February 29, „
Ditto	March 1, „
German Embassy	April 12, „
To Law Officers..	April 13, „

No. 24.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received July* 15.)

Royal Courts of Justice, July 11, 1892.

My Lord,

As to the Powers informing the Chief Justice of Samoa that the decision of Samoan Land Commission upon construction of section 8, Article IV of the Convention is final.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 30th ultimo, stating that, in our Report of the 2nd May last, we advised upon a proposal of the German Government that the Powers parties to the Final Act of the Conference on Samoan Affairs should affirm by a joint Declaration that a recent decision of the Samoan Land Commission upon the construction of section 8, Article IV, of that Convention was ultimate and final.

That a note was in due course addressed to the German Embassy in the terms approved in our Report, and that your Lordship had now received from Count Metternich the accompanying reply, from which we should perceive that the American Government had put forward another proposal in the matter which met with the approval of the German Government, and which the latter submitted for the concurrence of Her Majesty's Government.

That it was to the effect that identic instructions should be issued to the Consuls of the three Powers at Apia, directing them to inform the Chief Justice of Samoa that the Treaty Powers considered the above-mentioned decision of the Land Commissioners to be correct.

That, in view of the fact that the decision concerned a question which would shortly come before the Chief Justice in his judicial capacity, your Lordship presumed that Her Majesty's Government had no warrant for authorizing a formal communication of that kind to a high judicial functionary, who, in the discharge of his judicial duties, was independent of their control. That your Lordship was, however, disposed to think that it might be practicable to bring the view of the Powers upon the point privately and informally to the notice of the Chief Justice, if it should be considered that such a course was open to no objection. But that before deciding as to what steps, if any, should be taken with that view, it was necessary that Her Majesty's Government should form an opinion as to whether the interpretation placed by the Land Commission upon the wording of section 8, Article IV, of the Final Act was in itself such as could be properly upheld.

That Sir Philip Currie was accordingly to request that we would take the papers into our consideration, and favour your Lordship with our opinion upon that point, as well as upon the proposition made to Her Majesty's Government in Count Metternich's note, and also with any other observations which we might be good enough to offer on the case generally.

In obedience to your Lordship's commands, we have the honour to

Report—

Not advisable to do so.

That we are not prepared to say that the decision of the Land Commission is correct. The words "without prejudice to the rights of third parties" appear to be intended to preserve the rights of persons who claim to have been entitled to the lands as against the vendors, the title of the vendor and the sufficiency of the price not being matters with which the Commission is entitled to deal in cases where the sale took place before the 28th August, 1879.

We do not, however, think it necessary to express a decided opinion upon this question, which will be considered by the Chief Justice.

In our opinion, the course proposed by the German Government is not one which Her Majesty's Government can properly be advised to adopt.

The Chief Justice is an independent judicial officer appointed under Treaty provisions, and we cannot suppose that he would allow himself to be influenced in the interpretation of that Treaty by the views of any Governments as to the policy of a particular construction.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Count Metternich (translation)	June 18, 1892.	
Law Officers	May 2, „	p. 39.
German Embassy (verbal communication)	March 31, „	
Final Act of Berlin	January 24, 1890.	Confidential No 5870*. Treaty No. 850.
To Count Metternich	May 6, 1892.	

Annex.

Extract from Article IV of the Final Act of the Conference on the Affairs of Samoa.

SECTION 8. All lands acquired before the 28th day of August, 1879—being the date of the Anglo-Samoan Treaty—shall be held as validly acquired, but without prejudice to rights of third parties, if purchased from Samoans in good faith, for a valuable consideration, in a regular and customary manner. Any dispute as to the fact or regularity of such sale shall be examined and determined by the Commission, subject to the revision and confirmation of the Court.

No. 25.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received July* 30.)

Royal Courts of Justice, July 28, 1892.

My Lord,

Dispute as to proper destination of import and export duties in Samoa leviable under provisions of Article VI of Final Act of Berlin Conference on affairs of Samoa.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 10th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to a dispute which had arisen as to the proper destination of the import and export duties in Samoa leviable under the provisions of Article VI of the Final Act of the Berlin Conference on the affairs of Samoa.

That in February last Baron S. von Pilsach, the Adviser of the Samoan Government and the President of the Municipal Council of Apia, submitted a Memorandum to the three Treaty Powers in which he explained the system hitherto followed for the apportionment of those duties, and suggested certain modifications of the Final Act, with a view to avert the bankruptcy of the Samoan Government, and provide it with a more equitable share of the revenue.

That that Memorandum he subsequently withdrew by telegram in consequence of a decision of the Chief Justice that the customs duties belonged to the Samoan Government.

That detailed reports respecting that decision had now been received.

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That Sir Philip Currie was to call our attention to Mr. Consul Cusack-Smith's despatch No. 13 of the 26th April, in which was inclosed the written decision of the Chief Justice, assigning the import and export duties leviable under section 2 of Article VI of the Final Act to the use of the Samoan Government.

That in the same despatch would be found a case submitted by the Municipal Council protesting against that decision, and appealing to the Treaty Powers.

That nothing was known in the Foreign Office of a previous verbal decision of the Chief Justice, to which reference was made in the case for the Municipality, beyond what was stated in the papers.

That under section 4, Article III, of the Final Act, the Supreme Court was invested with jurisdiction over all questions arising under the provisions of the General Act, and that it would appear, therefore, at first sight, that the Chief Justice was competent to decide the question which had arisen.

That Consul Cusack-Smith, however, took exception to the decision of the Chief Justice on the ground that it was given without the judicial proceedings provided for in section 5 of Article III, and without previously informing the Municipal Council, or giving them an opportunity of stating their views. But that it was not clear that the provisions of that section applied to the case in point.

That, as matters at present stood, it would appear that, if they were deprived of the customs duties, the Samoan Government would be practically bankrupt, and unable to carry on the duties of administration, as it was generally admitted that the capitation tax could not be collected.

That, on the other hand, the Municipality stated that they would be reduced to the same position if the customs duties were withdrawn from them. That public opinion among the European community had been much aroused by the incident, and that it was obvious that Baron S. von Pilsach, the Municipal President, was placed in a very difficult position, for, in the dual capacity conferred upon him by the Berlin Act, of Adviser to the King and Government of Samoa and, at the same time, President of the Municipal Council, he represented two parties whose interests conflicted.

That under those circumstances a temporary compromise had been effected through the intervention of the Consuls pending the result of the appeal to the Treaty Powers.

That a modification of the provisions of the General Act had been suggested both by Consul Cusack-Smith and the Municipal President with a view to meet the exigencies of the situation.

That the question of modifying the Act was, however, one of policy, and would have to be considered in conjunction with the other Treaty Powers, viz., Germany and the United States.

That, before communicating with those Governments, it was necessary that Her Majesty's Government should determine whether or not the Chief Justice's decision in the matter was correct and should be upheld.

That Sir Philip Currie was accordingly to request that we would favour your Lordship with our opinion on the following points:—

1. Was it within the competence of the Chief Justice, under the provisions of the General Samoan Act, to decide the questions in dispute?

2. If so, was the decision itself such as, on the merits of the case, and according to the tenour and meaning of the Act, should be upheld?

3. Were there any proper grounds for contesting its validity owing to its having been delivered, not in open Court, but on the application of the Adviser to the King and President of the Municipal Council, and without reference to the Municipal Council itself?

That your Lordship would also be glad to receive any general observations we might have to offer on the whole case.

We were also honoured with a further letter from Sir Philip Currie, dated the 28th June, stating that, with reference to his letter of the 10th ultimo, he was directed by your Lordship to transmit to us a Memorandum of a verbal communication from the German Chargé d'Affaires explaining the views of his Government in regard to the difference of opinion which had arisen as to the proper destination of the import and export duties in Samoa leviable under the provisions of Article VI of the Samoan Final Act.

That it would be seen that the opinion of the German Government was adverse to the decision of the Chief Justice; that they expressed a hope that Her Majesty's Government would concur in their view; and that, in that event, they proposed that the three Treaty Powers should overrule the decision of the Chief Justice, and instruct their Consuls to direct the Municipal President to receive and apply the import and export duties on account of the Municipality.

That Sir Philip Currie was also to inclose a despatch from Her Majesty's Consul at Apia, inclosing copies of correspondence between the President of the Municipality and the Consular Board, from which it would appear that the statement of the legal advisers of the Municipality, inclosed in Mr. Consul Cusack-Smith's despatch No. 13 of the 26th April, was not submitted to the President, as it should have been, before being handed to the Consuls.

That the existence of that informality, however, would probably not prevent us from coming to a conclusion as to the merits of the case.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter of the 28th June into our consideration, in connection with those already submitted to us, and that we would favour your Lordship with our opinion as to whether the view taken by the German Government of the matters in dispute was sound, and was one which Her Majesty's Government could properly support; and more especially whether, in the event of there being a concurrence of opinion among the Treaty Powers that the decision of the Chief Justice was incorrect, and could not be upheld, the contention of the German Government that the Treaty Powers were not bound by the decision of the Chief Justice in questions of the construction of the Samoan Act was borne out by the terms of that Act.

We have taken all the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

The decision of the Chief Justice is not in accordance with the provisions of the Final Act.

That, in our opinion, the decision of the Chief Justice is not in accordance with the provisions of the Final Act.

If the two parties, *i.e.*, the Municipal Council and the Representatives of the Government, had submitted the question to the decision of the Chief Justice under section 4 of Article III, it would, in our opinion, have been within his competence to adjudicate upon it, and his decision would have been binding upon all parties; but in our judgment, having regard to what had taken place under the Final Act, and the system of administration actually in force thereunder, it was not competent to the Chief Justice to make, as he did in this case, a declaration as to the rights of the parties under section 3 of Article VI of the Final Act upon an informal reference, and without the matter being properly argued before him.

In our opinion, the view taken by the German Government is correct, and, assuming the Treaty Powers to be unanimous, they may, under the circumstances, decline to accept the decision of the Chief Justice, but, in the event of there being any difference of opinion between them and Samoa, and the question being referred to the Chief Justice under section 7 of Article III, his decision would be binding.

Section 3 of Article VI of the Final Act is ambiguous.

We desire to add that we think the language of section 3 of Article VI of the Final Act is ambiguous, and it would be well that a clear and explicit distribution of the duties, taxes, and charges between the Samoan Government and the Municipality of Apia should be made.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.)	Final Act of the Conference on the Affairs of Samoa. Parliamentary: "Samoa No. 2 (1890)." Treaty No. 850.			
(B.)	Baron S. von Pilsach		February 29, 1892.	Confidential No. 6251.
(C.)	Ditto		March 30, "	" "
(D.)	Consul Cusack-Smith	(No. 13)	April 26, "	" "
(E.)	Baron S. von Pilsach		April 25, "	" "
(F.)	Consul Cusack-Smith	(No. 16)	May 25, "	" "
(G.)	*Note verbale* from Count Metternich ..		June 24, "	" "

1892

No. 26.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received September* 5.)

Royal Courts of Justice, September 3, 1892.

My Lord,

As to action of Chief Justice of Samoa in enacting an Ordinance affecting real property in Navigators' Islands.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 29th August, stating that he was directed by your Lordship to transmit to us the accompanying correspondence relative to the action of the Chief Justice of Samoa in enacting an Ordinance affecting real property in the Navigators' Islands.

That, in transmitting that Ordinance home, Consul Cusack-Smith called attention to the fact that the Final Act of the Berlin Conference on Samoan Affairs did not appear to invest the Chief Justice with the power of enacting laws himself, though under section 8 of Article III he "may recommend to the Government of Samoa the passage of any law which he may consider just and expedient," &c.

That attached to the Ordinance was a Table of Fees, and amongst them is one of 5 dollars for the registration of every certificate of title.

That to that fee the German Government took grave exception, and, for the reasons explained in the accompanying note from the German Ambassador, they proposed to instruct their Consul at Apia not to assent to it. They further inquired whether Her Majesty's Government were inclined to instruct the British Consul in a similar sense.

That your Lordship could not find that any Article of the Samoan Final Act vested in the Chief Justice a power of legislating on his own mere motion, and your Lordship was disposed to agree generally in the views of the German Government respecting the registration fee of 5 dollars.

That before replying to the communication of the German Government, however, Sir Thomas Sanderson was to request that we should take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion upon the following questions:—

1. Was the issue of "The Real Property Ordinance, 1891," by the Chief Justice *ultra vires* in view of the stipulations of the Final Act?

2. Are the objections of the German Government to the registration fee of 5 dollars well founded, and can Her Majesty's Government properly instruct Her Majesty's Consul in the sense of those objections?

3. If so, should a direct communication be also made to the Chief Justice intimating the views of the three Treaty Powers, assuming that they are unanimous in regarding "The Real Property Ordinance, 1891," as *ultra vires*?

In obedience to your Lordship's commands, we have the honour to

Report—

That—

Issue of "The Real Property Ordinance, 1891," by the Chief Justice was *ultra vires*. He should be so informed.

1. We are of opinion that the issue of "The Real Property Ordinance, 1891," by the Chief Justice was *ultra vires*.

The only power to which it could be referred with any plausibility is that contained in section 7 of Article IV of the Final Act: "The Court shall make provision for a complete registry of all valid titles to land in the Island of Samoa which are or may be owned by foreigners."

No doubt the clause should be construed liberally, but it cannot, in our opinion, be treated as authorizing the substantial alterations in positive law of real property contained in the Ordinance. These alterations form so important a part of the Ordinance that, in our opinion, they vitiate the whole Ordinance, which must be treated as *ultra vires*.

2. The power to make provision for a complete registry, if validly exercised, would, in our opinion, justify the imposition of a reasonable fee for registration, but, having regard to the terms of (D) 2 of section 2, Article VI, of the Final Act, we are of opinion that the fee of 5 dollars is not reasonable, and that material parts of the objections of the German Government are well founded, and that Her Majesty's Government may properly instruct her Consul in the sense of those objections.

3. Having regard to the fact that no appeal is given by the Final Act from any act of the Chief Justice within his jurisdiction, we are of opinion that a direct communication should be made to the Chief Justice intimating the views of the three Treaty Powers, assuming that they are unanimous in regarding "The Real Property Ordinance, 1891," as *ultra vires*.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Final Act, "Samoa No. 2 (1890)." Treaty No. 850.		
Consul Cusack-Smith	(No. 7)	March 1, 1892.
Count Hatzfeldt		August 14, "

No. 27.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received September* 28.)

[In answer to the following reference, the Law Officers reported on the 26th September as on page 48:—]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 15, 1892.

Gentlemen,

Regulations to enforce provisions of Final Act of Berlin Conference on Samoan affairs.

I HAVE the honour to transmit to you, by direction of the Earl of Rosebery, the papers noted in the accompanying list, which relate to the question of passing Regulations to enforce on British subjects the provisions of the Final Act of the Berlin Conference on Samoan affairs, which formed the subject of a Report by your predecessors, dated the 1st December, 1890.

I am to draw your special attention to the letter from Baron Senfft von Pilsach, Adviser to the King of Samoa, inclosing a copy of an Ordinance passed by the Samoan Government to provide for the collection and management of the customs revenue in the port of Apia.

In forwarding this Ordinance to Her Majesty's Government, Baron von Pilsach states that it has been drawn up in conformity with the Customs Regulation Ordinance of 1881 enacted in Fiji, a few clauses having been modified to suit local requirements, and he asks that the necessary steps may be taken to render it applicable to British subjects in Samoa.

In connection with this matter, a correspondence took place in 1891 relative to the imposition of penalties under the tax laws in Samoa, and to the steps to be taken against vessels landing goods which had not been entered and passed by the Customs at Apia. These papers also appear to call for special notice.

Inquiry has been made of the German and United States' Governments as to what action, if any, they propose to take for the purpose of making the Ordinance now in question obligatory upon their respective nationals, and you will observe, by the annexed despatch from Her Majesty's Ambassador at Berlin, that the opinion of the former is opposed to the Ordinance both on the ground of its unsatisfactory character, and because it rests on the assumption that customs dues can be administered by the Samoan Government, which assumption is held by the German Government to be an erroneous one. The reply of the United States' Government has not yet been received.

L. O. Report, July 28, 1892, p. 43.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Rosebery with your opinion as to the answer which should be returned to Baron von Pilsach's letter, having regard to the views expressed by your predecessors on the 28th July last, relative to the apportionment of the import and export duties in Samoa leviable under the provisions of Article VI of the Final Act of the Berlin Conference on Samoan affairs.

His Lordship would also be glad to be favoured with any general observations that you may have to offer on the case.

I have, &c.
(Signed) P. W. CURRIE.

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Report.

We have considered the letter of Sir P. W. Currie (annexed to this Report) and the matters therein referred to, and beg to report as follows:—

As to making the Ordinance binding upon British subjects.

1. We are of opinion, having regard to the views expressed by our predecessors on the 28th July last, that the objection taken by the German Government, to the effect that the proposed Ordinance proceeds upon the basis of the decision of the Chief Justice which cannot be accepted as valid, affords a sufficient reason for declining in the present state of things to make the Ordinance binding upon British subjects. The letter of Baron von Pilsach ought, therefore, in our opinion, to be answered in that sense.

Section 39 of Article VI requires amendment.

2. As to the other points arising upon the papers submitted for our consideration, it would seem that the provisions of Article VI, section 39, of the Final Act with reference to the appropriation of the revenues paid into the Treasury require amendment, with a view to a clearer and more equitable division as between the Samoan Government and the Municipal Council, and if the three Treaty Powers adopt this view they may effect a proper adjustment under the power reserved by Article VIII, section 1, of the Final Act.

As to manner of enforcing payment of the duties.

3. It will be desirable that the Treaty Powers should, if possible, arrive at an agreement as to the manner in which payment of the duties leviable under the Final Act should be enforced, with a view to making the provisions agreed upon simultaneouly effective as against their own subjects. In the meantime, we do not think that anything should be done making British subjects liable to penalties which cannot also be enforced against subjects of the other Treaty Powers.

(Signed) C. RUSSELL.
JOHN RIGBY.

Lincoln's Inn, September 26, 1892.

List of Papers.

Final Act. Treaty No. 850.					
Law Officers		December	1,	1890.	Confidential No. 6113.
Consul Cusack-Smith	(No. 19)	March	28,	1891.	
Colonial Office .. .. (Inclosing Sir J. Thurston's letter of May 12, 1891.)		July	23,	"	
Ditto		August	3,	"	
Ditto		August	7,	"	
To Consul Cusack-Smith	(No. 16)	August	10,	"	
Colonial Office		August	17,	"	
Baron Senfft von Pilsach .. .. .. (Inclosing Customs Ordinance.)		June	16,	1892.	Confidential No. 6299.
To Colonial Office		July	27,	"	" "
Colonial Office		August	16,	"	" "
To Colonial Office		August	19,	"	" "
To Sir E. Malet (No. 185) and Mr. Herbert ..		August	19,	"	" "
Sir E. Malet	(No. 191)	August	26,	"	" "
Ditto	(No. 197)	September	3,	"	" "
Law Officers		July	28,	"	" "
To Count Hatzfeldt		August	12,	"	" "

PERSIA.

No. 28.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received January 5.)

My Lord, *Royal Courts of Justice, January* 4, 1892.

Persian Lottery Concession. Mr. Nichols'

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 24th ultimo, stating that, with reference to our Report of the 3rd July last, he was directed by your Lordship to transmit to us the accompanying

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No. 27*.

[Colonial Office.]

The Law Officers of the Crown to the Marquis of Ripon.

My Lord, *Royal Courts of Justice, November* 17, 1892.

Draft Order in Council for the Pacific Ocean.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 20th August last, stating that he was directed by your Lordship to transmit for our consideration the accompanying draft Order in Council for the Pacific Ocean.

That the draft was prepared by Mr. Justice Wright before his elevation to the Bench, and was based upon "The Africa Order in Council, 1889," and the three existing Western Pacific Orders in Council.

That certain alterations of detail had been made in the original draft at the suggestion of the Secretary of State for Foreign Affairs and of the High Commissioner for the Western Pacific, but that it did not appear necessary to trouble us with the particulars of those alterations.

That the divorce jurisdiction conferred by section 47 was not possessed by the Court under the existing Orders, but was added under the advice of the Law Officers in their Report, dated 9th May, 1890; that it was unnecessary to trouble us with the correspondence mentioned in that Report.

That Mr. Bramston was to refer us to section 85, applying "The Fugitive Offenders Act, 1881," and to ask whether in our opinion the exceptions (*c*) and (*d*) might properly be included in the proposed Order. That it might be anticipated that that Act would on occasion be put into operation by a Deputy Commissioner on an island remote from any higher Court, and that a vessel might be at hand by which the accused could be conveyed promptly to the British possession from which he was a fugitive, while the opportunity might be lost if a delay of fifteen days was prescribed, and that, in the absence of any Court competent to review the proceedings, the accused would gain no such advantage from such delay as was apparently contemplated by the Act.

That a more important question was raised by the definition of British subject in section 3.

That Mr. Bramston was to explain that the islands of the Western Pacific were scattered over so many hundred miles of ocean, that communication between them was difficult, and that they might be classed under three heads—

(*a*.) Islands inhabited by native tribes and under no civilized Government.

(*b*.) Similar islands over which Her Majesty has declared a Protectorate.

(*c*.) Islands which have become part of Her Majesty's dominions, and have been licensed for limited periods to British subjects for the purpose of collecting guano, planting cocoa-nuts, or other industry of the like nature.

That islands of the last class (*c*) were inhabited only by the licencees and their servants; and that it was apprehended that they might be regarded as territory acquired by settlement, and were subject to the common law of England and Statutes of general application; while by "The British Settlements Act, 1887," Her Majesty in Council might make laws for such islands.

That Mr. Bramston was to inquire whether it would be proper and in accordance with the terms of "The British Settlements Act, 1887," to make all persons in such islands subject to the provisions of the Order, and, if so, whether the additions in the Appendix to his letter would be sufficient for the purpose.

That as regarded the islands of class (*a*), it was most desirable that, if possible, persons naturalized in the Australian Colonies should be made subject to the jurisdiction of the Court, and that, unless the words "British subjects" in the Pacific Islanders Protection Acts and "The Foreign Jurisdiction Act, 1890," were to be confined to natural-born subjects of Her Majesty, there would seem to be sufficient authority in those Acts for doing what was desired; and that it would be seen that in the Western Pacific Order of 1877, Article 4, the definition of British subject included a subject of Her Majesty by naturalization as well as by birth. That that Order was approved by the Law Officers of the time in their Reports, dated 3rd January and 16th March, 1877, and that no question appeared to have been raised on that point.

That persons who had been naturalized in the Colonies were granted Foreign Office passports entitling them to protection as British subjects on the continent of Europe except in their country of origin, but that doubts had been suggested whether under

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section 16 of the Naturalization Act of 1870, 33 Vict., cap. 14, persons naturalized in a British Colony could be regarded as British subjects in the Pacific Islands, and that your Lordship would be glad to receive our advice upon the point.

That Mr. Bramston was to inclose, for our perusal in connection with the question, extracts of correspondence, as noted in the margin.* That he was also to invite attention to the accompanying copy of a Report from the late Law Officers, dated the 14th June, 1892, where the question was incidentally raised in connection with the ownership of a British vessel.

That with regard to the islands in class (*c*), the further question arose whether the jurisdiction of the High Commissioner's Court might be exercised over the native inhabitants of islands which had been taken under the protection of Her Majesty, and over foreigners resorting thereto.

That it was submitted that when an uncivilized people asked for or accepted the protection of a civilized State, the assumption of a Protectorate by the latter carried with it the acquisition of so much of the sovereignty of the uncivilized State as was necessary to make the protection effective, including the power of dealing judicially with persons of whatever nationality who oppressed or ill-treated the subjects of the protected States, or committed crimes against the person or property of other foreigners who, for want of competent Courts, were unable to obtain redress from the Rulers of the protected State, and that Mr. Bramston was to invite our attention to the papers noted in the margin and to the extracts of correspondence above referred to, and to request that we would advise your Lordship whether in protected islands (*a*) foreigners, (*b*) natives, might be made justiciable under the proposed Order, and, if so, whether the additional words shown in red ink in the Appendix were sufficient for the purpose.

That Part XV of the draft Order relating to births, marriages, and deaths would also require careful consideration. That Mr. Bramston was to invite attention to the extracts of correspondence noted in the margin, which would place the matter fully before us, and to request us to advise upon it.

That your Lordship would be glad to be advised generally upon the sufficiency of the draft Order, and more particularly upon the special questions adverted to in Mr. Bramston's letter.

We were further honoured with a letter from Mr. Bramston, dated the 25th August last, stating that he was directed by your Lordship to transmit to us a copy of a Report by the late Law Officers (Law Officers to Colonial Office, 30th April, 1891), and of the Order in Council to which it related, as your Lordship thought that it might be desirable that we should be aware of the steps taken in South Africa for enforcing jurisdiction in the British Protectorate south of the Zambesi.

We have also the honour to acknowledge the receipt of a further letter from Mr. Bramston, dated the 3rd September last, inclosing copy of a letter from the Foreign Office with the Report of the late Law Officers therein referred to.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion—

1. The exceptions (*c*) and (*d*) may properly be included in the proposed Order. It is by no means clear that they are justified by the terms of "The Fugitive Offenders Act, 1881," but we think that they are within the powers conferred by section 5 of "The Foreign Jurisdiction Act, 1890." The changes proposed may, we think, be regarded as adaptations and modifications of the Act within the meaning of that section.

2. It would, from a legal point of view, be proper, and in accordance with the terms of "The British Settlements Act, 1887," to make all persons in islands which have become part of Her Majesty's dominions, and have been licensed for limited periods as above mentioned, subject to the provisions of the Order.

The additions in the Appendix to Mr. Bramston's letter of the 20th August last would not be sufficient for the purpose, but, after a conference with Mr. Bramston, we have approved of recitals and consequential alterations sufficient to show that the scheme of the Order is to extend to islands which are British possessions, or under British protection, if as a matter of policy it is determined so to extend the Order, and we have identified the draft by our initials.

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* See List of Papers.

3. Persons naturalized in the Australian Colonies are not British subjects for any purposes outside the limit of the Colonies in which they are naturalized, and cannot properly be dealt with otherwise than as foreigners.

The definition in the Western Pacific Order of 1877 would not include such persons, and adds nothing to the meaning of the words "British subject." We think that, on the whole, it would be better to omit the definition altogether, leaving the general law to say who is and who is not a British subject. The instructions sent out to local authorities might explain the full force of the expression "British subject."

4. The right to make foreigners or natives in protected islands "justiciable" under the Order should only be exercised with the assent, express or implied, of their respective Sovereigns in cases where there is a Sovereign to give jurisdiction. As to the natives, the right will depend in each case upon the Treaties made with the local Sovereign Power where there is such local Sovereign Power.

As to foreigners, the late Law Officers have advised that, in the case of Protectorates recognized under the Berlin Act of 1885, such assent by the Signatory Powers may be inferred from the terms of that Act, and in this we concur.

It is going a considerable step further to imply assent in the case of Protectorates not contemplated by the Berlin Act, but the precedent set by that Act, and the general arguments in support of the jurisdiction of a Protecting Power in similar cases, make it right, in our opinion, to assume that the signatories of the Berlin Act will not object to the exercise of jurisdiction over their respective nationals, and we think that such jurisdiction may be assumed by the Order, if it be thought advisable as a matter of policy.

With reference to the alterations proposed in the Appendix, we refer to and repeat the observations contained in our answer No. 2.

5. We have considered the sections of Part XV of the proposed Order, and see no reason in law why they should not stand as part of the Order. In particular we are of opinion that section 115 validating past marriages *en masse* may, in point of law, properly be included in the Order. The section is in fact founded upon, and, in its material parts, is, the same as section 1 of "The Foreign Marriages Act, 1892," following the repealed Statute of 1849.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Pacific Islands Order in Council, 1877. Confidential No. 3966.
Africa Order in Council, 1889. Confidential No. 5846**.
Law Officers' Report, January 3, 1877. Confidential No. 4028, p. 39.
Ditto March 16, 1877. Confidential No. 4028, p. 41.
Ditto June 29, 1887. Confidential No. 5597, p. 50.
Ditto May 9, 1890. Confidential No. 6113, p. 49.
Ditto October 9, 1890. Confidential No. 6113, p. 53*.
Ditto April 17, 1891. Confidential No. 6207, p. 10.
Ditto April 30, 1891. Confidential No. 6207, p. 18*.
Ditto June 14, 1892. Confidential No. 6347, p. 32.
Pacific Islanders' Protection Acts, 35 and 36 Vict., cap. 19; 53 and 54 Vict., cap. 39.
Fugitive Offenders' Act, 1881. 44 and 45 Vict., cap. 69.
Foreign Marriages Act, 53 Vict., cap. 23.
British Settlements Act, 50 and 51 Vict., cap. 54.
Foreign Jurisdiction Act, 53 and 54 Vict., cap. 37.
Naturalization Act, 1870. 33 Vict., cap. 14.
Berlin Act, 1885. Parliamentary No. 2951.
Brussels Act, 1890. Parliamentary No. 3352.
High Commissioner, March 21, 1890.
Colonial Office, June 9, 1890.
To Colonial Office, July 11, 1890.
Colonial Office Memorandum, February 1891.
Colonial Office, October 14, 1891.
To Colonial Office, July 9, 1892.
Colonial Office, August 20, 1892.
To Colonial Office, August 26, 1892.

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request for copy of note from Persian Government of December 10, 1889.

letter from Mr. C. L. Nichols,* one of the liquidators of the Persian Investment Corporation (Limited), asking to be furnished with a copy of the communication addressed to Her Majesty's Legation at Tehran on the 10th December, 1889, by the Persian Government, notifying the cancellation of the Lottery Concession.

That the despatch from Her Majesty's Minister at Tehran sending home the document in question was inclosed.

That the precise purpose for which the paper was required was not mentioned, and that it was only stated that the liquidators were advised that it was necessary for them to produce it at the trial of the action against Malcom Khan. But that it might be assumed that it was with a view to establishing the contention of the liquidators that Malcom Khan had full knowledge of the forfeiture and withdrawal of the Concession at the time he received the money of the Persian Investment Corporation.

That the letter which was addressed to the liquidators on the receipt of our Report of the 3rd July was also inclosed.

That in your Lordship's opinion it was not desirable that the Foreign Office should be mixed up more than might be absolutely unavoidable in the legal proceedings.

That, at the same time, having regard to the nature of the document in question, which was sent to Her Majesty's Legation "in order that those concerned may be informed," your Lordship doubted whether you would be justified, in the event of your being called upon under a *subpœna duces tecum* of a Court of Justice to produce it, in taking the objection that its production would be contrary to the interest of the public service.

That Sir T. Villiers Lister was, accordingly, to request that we would take the matter into our consideration, and that we would favour your Lordship with our opinion as to the nature of the reply, which should be returned to the liquidators.

In obedience to your Lordship's commands we have taken the matter into our consideration, and have the honour to

Report—

Document may be furnished under conditions.

That, in our opinion, under the circumstances of the case, the document of the 10th December, 1889, should be produced upon a *subpœna duces tecum*; and that a copy may be furnished to the solicitors for the liquidators.

We think, however, that the solicitors for the liquidators should be required to state in writing that they are advised by their counsel that the production of the document is necessary for the purposes of evidence in their case, and that it will not be used for any other purpose. Upon this assurance being given the copy may be supplied.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 29.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 20.)

My Lord, *Royal Courts of Justice, July 19, 1892.*

Libel published in this country upon H. M. the Shah by Jemal-ed-Din.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us a communication which had been addressed to you by the Persian Minister at this Court. That it related to the proceedings of a certain Sheikh Jemal-ed-Din, who was residing in London.

That that person was born in Persia, his parents being natives of Afghanistan. That, at the beginning of last year, the Shah received an anonymous letter grossly abusing him, and, being convinced that Jemal-ed-Din was its author or instigator, His Majesty caused him to be arrested and expelled across the Turkish frontier.

That frequent complaints had been addressed to Her Majesty's Government by the Shah with regard to the proceedings of Jemal-ed-Din since he had taken up his residence in this country.

That His Majesty alleged that that person sends from here to Persia papers grossly abusing him, and inciting the priests and others to rebel against his authority.

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* Mr. Nichols, December 15, 1891; Sir H. D. Wolff's No. 239 of December 20, 1889; and to Liquidators of Persian Investment Corporation, July 4, 1891.

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That as specimens of those documents, the Persian Minister inclosed in his letter to your Lordship translations of circular letters or exhortations addressed to the priests of various parts of Persia, urging them to proclaim the dethronement of the Shah, and to declare it unlawful to obey him.

That those circulars also brought charges against the Shah which His Majesty considered to be of a nature to call for action on the part of Her Majesty's Government.

That your Lordship would be glad if we would report to you whether any, and if so what, legal proceedings could be taken in this country against Jemal-ed-Din, either by Her Majesty's Government or by the Persian Government, supposing him to be the writer of such documents as were inclosed in the letter from the Persian Minister.

That other papers, as marked in the margin,[*] connected with the matter, were inclosed for our information.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

H. M.'s Govt. cannot be advised to take any action in this case.

That, in our opinion, the facts stated afford no ground for the institution of legal proceedings by Her Majesty's Government.

It is competent to the Persian Representatives in this country to prosecute the author or publisher of any libel published here upon His Majesty the Shah.

Her Majesty's Government cannot be advised to take any action in this case, and has no administrative power of expelling the author of the letters complained of.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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[*] *List of Papers.*

Mr. Kennedy	(No. 194.	Telegraphic)	September	23, 1891.	Persia Correspondence, 1891.
To Mr. Kennedy ..	(No. 49.	Telegraphic)	September	25, ,,	,, ,, ,,
Sir F. Lascelles ..	..	.. (No. 82)	May	11, 1892.	
Ditto	..	.. (No. 83)	May	11, ,,	
To Sir F. Lascelles ..	(No. 34.	Telegraphic)	June	3, ,,	
Mirza Mahommed Ali Khan	..	.. ..	June	22, ,,	

No. 30.

The Law Officers of the Crown to the Earl of Rosebery.—(Received November 4.)

[In reply to the following reference, the Law Officers reported on November 4 as on p. 53:—]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November 3, 1892.*

Persian Lottery Concession.

BY direction of the Earl of Rosebery, I have the honour to request your attention to the Reports from the late Law Officers of the Crown noted in the margin, and for convenience of reference inclosed herein. They relate to a Concession granted by the Shah of Persia, dated the 20th July, 1889, conferring for a period of seventy-five years the exclusive privilege of conducting all operations in connection with lottery loans and other similar issues in Persia.

The Concession in question was on the 5th December cancelled by the Shah, on the ground that he had signed it under a misapprehension, and that he found that its conditions were contrary to the religious law of Persia.

Out of this act of the Shah there arose various claims against the Persian Government, to which it is not now necessary to refer; but litigation has ensued, in which Malcom Khan, late Persian Minister at this Court, and his brother, Mikayl Khan, late a member of the Persian Legation, are involved; and the Earl of Rosebery desires to have your advice on some points which will be mentioned hereafter.

It is important to call your attention in the first instance to the dates of certain

transactions in the matter. The Persian Government allege that they officially informed the Persian Minister in this country of the withdrawal of the Concession by a telegram, dated the 5th December, 1889. The fact of its being cancelled was notified in writing to Her Majesty's Minister at Tehran by the Persian Foreign Office on the 8th December; and Sir H. Wolff on the same day telegraphed the information to the Secretary of State for Foreign Affairs. On the 10th December the official notification of that date, of which the original is inclosed in Sir F. Lascelles' despatch No. 25 of the 8th February, 1892, was substituted for the one of the 8th December, which was thereupon cancelled.

On the 25th November, 1889, a telegram was received from Her Majesty's Minister at Tehran, stating that he had just been informed by the Amin-es-Sultan (Grand Vizier) that Malcom Khan, the Persian Minister, who was interested in the Lottery Concession, had been recalled. On the 3rd December Malcom Khan himself, in conversation with the Permanent Under-Secretary of State, formally announced his recall as definitive. His letters of recall were dated December 1889, but no particular day is mentioned in them, and he did not have audience of Her Majesty the Queen to deliver them till 10th March, 1890.

The Concession was originally granted to the nominee of Malcom Khan, a certain Buzie de Caerdoel. This person by agreement of 3rd October, 1889, undertook to sell his rights to the Anglo-Asiatic Syndicate (Limited), who, in order to pay part of the purchase money, borrowed 20,000*l.* from the New Oriental Bank Corporation on the collateral security of the Concession, and on the 12th October paid this 20,000*l.* to General Mikayl Khan (a member, as has before been stated, of the Persian Legation), who by assignment of M. Buzie de Caerdoel, dated 12th October, had become the holder of the Concession.

On the 15th November the Anglo-Asiatic Syndicate entered into a preliminary contract for the sale of the Concession to the Persian Investment Corporation; and on the 18th of the same month they further contracted with General Mikayl Khan for a reduction of the price to be paid to him on account of the Concession.

The Contract of Sale of the 15th November was, with some modifications, accepted by the Persian Investment Corporation, and under the terms of the Contract of Adoption, the Persian Investment Corporation paid certain sums, out of which General Mikayl Khan, as assignee of the original concessionnaire, received on the 14th December a cheque for 20,000*l.*, which was handed to him by the Anglo-Asiatic Syndicate, and paid into Malcom Khan's private account at the Western Branch of the Bank of England, such further payment having been made on the faith of a written assurance from Malcom Khan, dated the 20th November, 1889, and addressed to the solicitors of the Persian Investment Corporation, who were also acting for the Anglo-Asiatic Syndicate, that "La dite Concession signée et ratifiée par le Schah est parfaitement correcte et inattaquable."

Legal proceedings were instituted some time ago against Mikayl Khan and his brother, Malcom Khan, by the liquidators of the Persian Investment Corporation, and on the recommendation of the Law Officers of the Crown (see their Report of the 12th May, 1891), a written assurance was obtained from the Persian Minister at this Court that "His Imperial Majesty the Shah will not claim diplomatic privilege on behalf of Mirza Malcom or his brother, Mikayl Khan, in the event of proceedings being instituted in this country in connection with the withdrawal of the Persian Lottery Loan Concession."

The Law Officers further advised that it would be desirable to obtain directions from the Government of His Majesty the Shah to the Persian Minister here that the latter should assist in establishing the repudiation of Malcom Khan and Mikayl Khan. The Secretary of State for Foreign Affairs did not, however, consider it advisable to take any steps beyond obtaining from the Persian Minister the assurance on the part of the Shah contained in the Persian Minister's letter of the 22nd May, quoted above.

On the 24th June the liquidators requested that Her Majesty's Government would furnish them with such evidence as might constitute legal proof that—

1. The Concession was absolutely forfeited and withdrawn by the Shah, and
2. That Malcom Khan had full knowledge of such forfeiture and withdrawal at the time he received the money of the Corporation.

The applicants had already been informed by this Department that the Persian Minister would, if communicated with, probably be found ready to give evidence concerning the money which Malcom Khan received from their Corporation, and on the advice of the Law Officers (see their Report of the 3rd July, 1891), it was further

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intimated to the liquidators that Her Majesty's Government could not, in the state of circumstances then existing, give any further information or any evidence upon the question of the Persian Concession, but that Her Majesty's Government had no doubt that the Persian Minister would be able to give the necessary proof of the facts it was desired to establish.

On the 15th December, 1891, the liquidators of the Persian Investment Corporation asked for a copy of the communication addressed to Her Majesty's Legation at Tehran on the 10th December, 1889, by the Persian Government, notifying the cancellation of the Lottery Concession. The Marquis of Salisbury, after consulting the Law Officers of the Crown (see their Report of the 4th January, 1892), informed the solicitor for the liquidators that, before complying with their request, he must call upon him to state in writing—

1. That he was advised by Counsel that the production of the document would be necessary for the purposes of evidence in the case, and

2. That it would not be used for any other purpose. His Lordship said that upon such an assurance, a copy of the Notification would be supplied to the liquidators.

The Law Officers also advised that the document itself should be produced upon a *subpœna duces tecum.*

In the early part of the present year some further correspondence took place with the liquidators of the Persian Investment Corporation regarding the production of documents required by them, and on the 18th March they were informed that a responsible person from this Office would attend the court to prove the receipt and handwriting of these documents.

In reply to a request from them for assistance in obtaining from the Persian Legation evidence that Malcom Khan had received the telegram of the 5th December, 1889, hereinbefore mentioned, the liquidators were informed (8th April) that inquiries would be made at Tehran whether the Persian Government would authorize such evidence being given, and on the 25th April Lord Salisbury, having ascertained that instructions on the subject had been sent to the Persian Minister, so informed the liquidators.

In a letter of the 24th October, herein inclosed, the solicitors to the Persian Investment Corporation state that Counsel advises that, in their action against Malcom Khan, it will be necessary to produce evidence of the recall of Malcom Khan, and of the date when his appointment was cancelled; also to produce at the trial the telegram of the 8th December, 1889, from Her Majesty's Minister at Tehran, as well as his despatch forwarding the official Notification of the 10th December, 1889, from the Persian Government. They also state that they are advised that the Persian Minister in London should put forward some member of his Staff to give evidence as to Malcom Khan's recall, and to officially disclaim diplomatic privilege for the defendant, who is pleading complete immunity from process of the English Courts on the ground that he was Persian Minister.

Lord Rosebery proposes, in the matter of these proceedings, to follow, subject to your opinion, the lines of the advice given to Lord Salisbury by your predecessors in office. His Lordship, however, before taking action in the matter, wishes to know whether you concur in intimation being made to Messrs. Arber and Lewis that upon a *subpœna duces tecum* a responsible person from the Foreign Office will produce in court the telegram from Sir H. D. Wolff of the 8th December, 1889, and the despatch from Sir F. Lascelles of the 8th February, 1892, inclosing the Notification of the 10th December, 1889, from the Persian Government, also Malcom Khan's letters of recall, dated December 1889, and the Notice of his audience of the Queen to present them, inserted in the "London Gazette" of the 11th December, 1889, and the letter from the Persian Minister of the 22nd May, 1891, stating that the Shah will not claim diplomatic privilege for Malcom Khan or his brother.

As to any evidence to be procured from the Persian Legation, Lord Rosebery proposes to inform Messrs. Arber and Lewis that they should apply to the Persian Minister, and that this Department cannot assist them in the matter further than has already been done.

I am to request that you will take this letter, together with the accompanying papers, into your consideration, and that you will favour Lord Rosebery, at your earliest convenience, with your opinion on the questions more particularly raised therein, as well as with any observations which you may think it desirable to offer upon the present aspect of the case, in so far as it concerns this Department.

I am, &c.
(Signed) P. CURRIE.

We have taken the questions submitted to us in Sir Philip Currie's letter of the 3rd instant into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

List of documents that may be produced in Court. Messrs. Arber and Lewis should apply to Persian Minister for evidence from Persian Legation.

That, in our opinion, intimation *may* properly be made to Messrs. Arber and Lewis that, upon a *subpœna duces tecum*, a responsible person to be named by the Foreign Office will produce in court the telegram from Sir H. D. Wolff of the 8th December, 1889, the despatch from Sir F. Lascelles of the 8th February, 1892, inclosing the Notification of the 10th December, 1889, Malcom Khan's letters of recall of December 1889, the Notice in the "London Gazette" of the 11th December, 1889, and the letter from the Persian Minister of the 22nd May, 1891.

It would be right that Messrs. Arber and Lewis should be informed that as to evidence to be procured from the Persian Legation they must apply to the Persian Minister, and that the Department cannot assist them further.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

Royal Courts of Justice, November 4, 1892.

List of Papers.

Law Officers' Report		December 5, 1889.	Confidential No. 5956, p. 84.
Ditto		October 28, 1890.	Confidential No. 6113, p. 55.
Ditto		March 12, 1891.	Confidential No. 6207, pp. 92–98.
Ditto		May 12, „	„ „ „
Ditto		July 3, „	„ „ „
Ditto		August 6, „	„ „ ,
Ditto		January 4, 1892,	p. 48.
Sir H. Drummond Wolff	(No. 243. Telegraphic)	September 29, 1890.	
Ditto	(No. 245. Telegraphic)	October 2, „	
Ditto	(No. 239)	December 20, 1889.	Confidential No. 5899.
Ditto	(No. 251)	December 25, „	„ „
Ditto	(No. 176. Telegraphic)	December 8, „	„ „
Ditto	(No. 164. Telegraphic)	November 25, „	„ „

PORTUGAL.

No. 31.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received January 23.)

Royal Courts of Justice, January 21, 1892.

Draft Treaty with Portugal for the mutual extradition of fugitive criminals.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 25th November last, stating that he was directed by your Lordship to transmit the accompanying papers respecting a Treaty which your Lordship proposed to negotiate with Portugal for the mutual extradition of fugitive criminals.

That the Treaty was based generally on the lines recently concluded by Her Majesty's Government with foreign countries, but that Sir Thomas Sanderson was to call our special attention to the last paragraph of Article 2, which provides that the Portuguese Government may, in its absolute discretion, refuse to deliver up any person, whether a subject of Her Majesty or not, charged with a crime punishable by death in this country.

That there was no English precedent for a clause of that description, but that in the present instance it had been adopted as a basis of negotiation in order to meet the views of Portugal, in which country no death penalty could be imposed by law.

That Sir Thomas Sanderson was to add that the Government of India was desirous of making a separate arrangement with Portugal respecting the extradition of criminals between British and Portuguese India, and that the Portuguese Govern-

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ment would be requested to give some assurance that they would be ready to conclude such an arrangement as part of the basis on which the Treaty was submitted to them for negotiation.

That Sir Thomas Sanderson was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion whether the draft Treaty might be properly submitted to the Portuguese Government, and with any general observations from a legal point of view which we might wish to offer.

We were also honoured with a note from Sir Thomas Sanderson, dated the 17th ultimo, inclosing a letter from the India Office (14th December, 1891) respecting the draft Treaty.

We were further honoured with a letter from Sir T. Villiers Lister, dated the 23rd December last, transmitting a further despatch from Sir G. Petre on the subject.

The Attorney-General's Opinion.

I have taken the papers into my consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approves of the draf Treaty.

That, in my opinion, the draft Treaty may properly be submitted to the Portuguese Government.

It is to be regretted that that Government is unwilling to agree to extradite persons charged with capital offences, but the objection is of less importance having regard to Portuguese law, and it is certainly desirable that there should be an arrangement for the extradition of persons charged with other offences.

As regards the last paragraph but one of Article II, it should, in my opinion, be permitted to stand. My reasons for the opinion are partly those expressed by the Law Officers in their opinion respecting the Extradition Treaty with Russia (Law Officers to Treasury, 12th December, 1885); and, in addition, I would call attention to the fact that the clause, being permissive only, could not in practice be used to obtain the surrender of persons for trivial offences, and extradition under it will always be subject to the control of the Secretary of State. In my opinion, the provisions contained in the paragraph are salutary, and not open to any serious objection.

I have, &c.
(Signed) RICHARD E. WEBSTER.

The Solicitor-General's Opinion

I have also taken the papers into consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approves of the draft Treaty with the exception of the last paragraph but one in Article II which should be omitted.

That, in my opinion, the draft Treaty, subject to the excision of the paragraph hereafter mentioned, may properly be submitted to the Portuguese Government; and I agree with the Attorney-General in his observation as to the extradition of persons charged with capital offences.

The last paragraph but one in Article II, in my opinion, is open to serious objection, and should be omitted.

It purports to confer upon the Secretary of State a discretionary power of surrendering persons to Portugal for offences which are not specified in the Treaty, which may be of a trivial character, and in respect of which there is no obligation to reciprocal action on the part of the Portuguese Government.

This provision comes before me for consideration for the first time.

Extradition Treaties.

It appears to have been first inserted in 1885, and I ascertain that objection was then made to it by Sir J. Ingham, and that his objection was overruled by the then Law Officers. The Treaties with Russia and Mexico were then being considered, and, in accordance with the opinion given by the Law Officers, it was inserted in those Treaties. It has since been adopted in at least one Treaty, that with Colombia, which was not submitted in draft to the Law Officers.

I feel bound to make the strongest protest in my power against its adoption. The Treaty, when the Extradition Acts have been put into force in respect of it by Order in Council, becomes part of the criminal law of this country; and it is, in my judgment, wholly unconstitutional to put the operation of that law in the discretion of the Secretary of State.

The provision is not needed, for the offences to which, if operative at all, it would apply, are not offences of a gravity which requires, or, in my opinion, justifies, their being made the subject of extradition. I doubt myself whether the Courts would hold that this provision had the effect of allowing the Secretary of State, at his discretion, to surrender to Portugal a person charged with committing an offence not mentioned in the Treaty, on the ground of contravention of some Law in Portugal said to correspond with provisions in English Statutes not specified in the arrangement made between the countries; and if a claim were made by Portugal for the surrender of such a person, and the High Court were to hold that the clause was inoperative, some diplomatic unpleasantness would probably result. I, however, assume it to be operative, and ask to what crimes it will apply.

They are such indictable offences under the Criminal Law Consolidation Acts of 1861 as have not been enumerated in the list of crimes contained in the Treaty. I take a few examples. Under 24 & 25 Vict., cap. 96, the following are indictable offences:—

Unlawfully hunting deer in uninclosed land after one summary conviction (section 12);

Unlawfully hunting deer in inclosed land (section 13);

Fraudulently destroying, cancelling, or obliterating a valuable security (section 27), a document of title to lands (section 28), or a will (section 29);

Sacrilege (section 50).

Taking reward for recovery of stolen property (section 101).

Under 24 & 25 Vict., cap. 97:—

Injuries to buildings by rioters (section 12); unlawful and malicious injuries to dwelling-houses, or the severing of fixtures therefrom by the tenant (section 13);

Destroying a tree or shrub, &c., in pleasure grounds to the value of 1*l.* (section 20);

Injuring a turnpike gate maliciously (section 34);

Malicious injury to property of any kind, public or private, to the amount of 5*l.* (section 51).

Under 24 & 25 Vict., cap. 100:—

Not providing apprentices or servants with food (section 26);

Setting spring guns against trespassers (section 31);

Causing bodily harm by furious driving (section 35);

Obstructing a clergyman or other minister in the performance of his duty (section 36);

Wilfully obstructing a peace officer in the execution of his duty (section 38).

As the Treaty now stands it will be impossible for any one to know whether extradition will be claimed or granted in regard to these matters by either the British or the Portuguese Government.

I submit that the penalty of being arrested in the one country, detained there, often necessarily for a long period, while evidence is obtained, and then sent as a prisoner to the other country, is far too serious a procedure to be properly applied to offences of this character.

In the second edition of my book which was published in 1874 I protested against the provisions of the Act of 1873, and I feel it my duty now to urge the omission of a clause which is quite unnecessary, and in my belief mischievous, and likely to cause legal and diplomatic difficulties.

I have, &c.
(Signed) EDWARD CLARKE.

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List of Papers.

(A.)	To Home Office, Colonial Office, and India Office, with draft Treaty and separate Minute	July 10, 1891.
(B.)	Colonial Office	July 28, „
(C.)	Home Office	August 5, „
(D.)	To ditto	August 12, „
(E.)	India Office	November 18, „
(F.)	Draft Treaty. (Proof dated August 11, 1891.)	
(G.)	India Office	December 14, „
(H.)	Sir G. Petre (No. 28. Treaty)	December 18, „

Draft Treaty between Her Majesty and His Majesty the King of Portugal for the Mutual Surrender of Fugitive Criminals.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and of the Algarves, having judged it expedient with a view to the better administration of justice and to the prevention of crime within their respective territories, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; the said High Contracting Parties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India;

And His Most Faithful Majesty the King of Portugal and of the Algarves;

Who, having communicated to each other their respective Full Powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party under the circumstances and conditions stated in the present Treaty.

ARTICLE II.

The crimes or offences for which the extradition is to be granted are the following:—

1. Murder, or attempt, or conspiracy to murder.
2. Manslaughter.
3. Maliciously wounding, or inflicting grievous bodily harm.
4. Assault occasioning actual bodily harm.
5. Counterfeiting or altering money, or uttering counterfeit or altered money.
6. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.
7. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited, or altered.
8. Embezzlement or larceny.
9. Malicious injury to property, if the offence be indictable.
10. Obtaining money goods, or valuable securities by false pretences.
11. Receiving money, valuable security, or other property, knowing the same to have been stolen, embezzled, or unlawfully obtained.
12. Crimes against Bankruptcy Law.
13. Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any Company, made criminal by any law for the time being in force.
14. Perjury, or subornation of perjury.
15. Rape.
16. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.
17. Indecent assault.
18. Administering drugs or using instruments with intent to procure the miscarriage of a woman.
19. Abduction.
20. Bigamy.
21. Child stealing.
22. Abandoning children, exposing or unlawfully detaining them.
23. Kidnapping and false imprisonment.
24. Burglary or housebreaking.
25. Arson.

26. Robbery with violence.
27. Any malicious act done with intent to endanger the safety of any person in a railway train.
28. Threats by letter, or otherwise, with intent to extort.
29. Piracy by law of nations.
30. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
31. Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.
32. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.
33. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

* *Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.*

The Portuguese Government, however, may in its absolute discretion refuse to deliver up any person charged with a crime punishable with death.

ARTICLE III.

Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Portuguese Government, has already been tried and discharged or punished, or is still under trial, within the territories of the two High Contracting Parties respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the British Government, or if the person claimed on the part of the Portuguese Government, should be under examination, or is undergoing sentence under a conviction, for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal, or on expiration of his sentence, or otherwise.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

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* Omitted by the Solicitor-General.

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ARTICLE X.

If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the dominions of Portugal, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:—

1. A warrant must purport to be signed by a Portuguese Judge, Magistrate, or officer.

2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Portuguese Judge, Magistrate, or officer, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.

3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Portuguese Judge, Magistrate, or officer.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Portuguese Minister; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken may be substituted for the foregoing.

ARTICLE XI.

If the fugitive has been arrested in the dominions of Portugal his surrender shall be granted if upon examination by a competent authority it appears that the documents furnished by the British Government contain sufficient *primâ facie* evidence to justify the extradition.

The Portuguese authorities shall admit as valid evidence records drawn up by the British authorities of the depositions of witnesses, or copies thereof, and records of conviction or other judicial documents, or copies thereof: Provided that the said documents be signed or authenticated by an authority whose competence shall be certified by the seal of a Minister of State of Her Britannic Majesty.

ARTICLE XII.

The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. In Her Britannic Majesty's dominions, the fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

ARTICLE XIII.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIV.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI.

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of both of the High Contracting Parties, so far as the laws for the time being in force in such Colonies and foreign posssesions respectively will allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions may be made to the Governor or chief authority of such Colony or possession by the chief Consular authority of the other State in such Colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender, or to refer the matter to his Government.

The High Contracting Parties shall, however, be at liberty to make special arrangements in their respective Colonies and foreign possessions for the surrender of criminals who may take refuge therein, on the basis, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of either of the High Contracting Parties shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII.

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months' notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at , the

No. 32.

The Law Officers of the Crown to the Earl of Rosebery.—(Received October 27.)

My Lord, *Royal Courts of Justice, October* 25, 1892.

Claim against Portuguese Government of Messrs. A. Cohen and Co. for illegal detention of goods. Case of the "Norseman."

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 9th September last, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* relative to a claim advanced against the Portuguese Government by Messrs. A. Cohen and Co., British subjects, trading at Beira, in the Portuguese possessions on the East Coast of Africa, on account of losses alleged to have been sustained by them through the arbitrary acts of the Portuguese authorities at Beira in April 1891.

That the circumstances were as follows:—

That Messrs. A. Cohen and Co. shipped from Cape Town, per the "Norseman," a stock of goods for opening up stores at M'panda's, some way inland from Beira.

Law Officers' Report, July 6, 1891. Confidential No. 6207, p. 19.

That the "Norseman" was one of the vessels under the command of Sir John Willoughby, which were stopped at Beira under circumstances which formed the subject of the reference to our predecessors from the Foreign Office of the 29th May, 1891, and as to which they reported, on the 6th July, 1891, that, in their opinion, Her Majesty's Government were entitled to demand compensation from the Portuguese Government.

That a copy of the statement, sworn before Her Majesty's Vice-Consul at Delagoa Bay, describing the details of the occurrence, which accompanied the reference of the 29th May, 1891, was inclosed, together with a full report on the items of the claim. (See inclosures to Colonial Office letter of the 12th August, 1892.)

That Sir Philip Currie was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion—

1. Whether Her Majesty's Government were entitled to demand, on behalf of Messrs. Cohen and Co., compensation from the Government of Portugal in respect of the acts complained of;

2. If yes, to what extent could the items and amount of the claim of 5,000*l.* now presented be properly supported by Her Majesty's Government; and

3. On what special grounds could such claim most advantageously be based.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion—

1. Her Majesty's Government is entitled to demand on behalf of Messrs. A. Cohen and Co. compensation from the Government of Portugal in respect of the acts complained of.

2. The greater part of the items claimed cannot properly be supported.

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* Inclosures in Colonial Office letters of January 11 and August 12, 1892; Statement by Sir J. Willoughby.

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The item of 2,500*l.* alleged to have arisen from loss of credit occasioned by the registration of the deed of hypothecation is too speculative and remote, and cannot be maintained.

The item of 1,500*l.* for loss of profit seems to be greatly exaggerated, though some allowance might fairly be claimed under this head, say 500*l.*

The item of 100*l.* for loss of interest on capital cannot be maintained together with the claim for loss of profit.

1,000*l.* damages may be claimed.

The other items, though imperfectly vouched and not clearly made out, would justify a further demand for damages, say 500*l.*, making altogether 1,000*l.*

3. The special ground on which the demand may fairly be made is the illegal detention of the goods.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

ROUMANIA.

No. 33.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received August 6.)

My Lord, *Royal Courts of Justice, August 4, 1892.*

Draft of Treaty of Extradition between Great Britain and Roumania.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 12th ultimo, stating that he was directed by your Lordship to transmit to us* the draft of a Treaty of Extradition proposed for negotiation between Great Britain and Roumania; and that he was to request that we would favour your Lordship with our opinion whether it might properly be submitted to the Government of Roumania.

That Sir Thomas Sanderson was to add that the draft had already been submitted to the Secretary of State for the Home Department, who concurred in its terms.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

May be submitted to Roumanian Government.

That, in our opinion, the draft Treaty may properly be submitted in its present shape to the Government of Roumania.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

SPAIN.

No. 34.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 4.)

My Lord, *Royal Courts of Justice, February 3, 1892.*

Question as to validity of Mr. M. J. Monckton's marriage at

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us a letter which had been received from Mr. M. J. Monckton, of Sunnyside, Plumstead, Cape Colony, on the question of the validity of his marriage

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* See Treaty Series.

RUSSIA.

No. 33*.

The Law Officers of the Crown to the Earl of Rosebery.—(Received November 23.)

My Lord, *Royal Courts of Justice, November 23, 1892.*

Seizure by Russians of six British sealing-vessels. Pursuit beyond 3-mile limit.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the seizure by Russian Government vessels in Behring Sea of six British sealing-vessels, named the "Ariel," "Willie McGowan," "Rosie Olsen," "Vancouver Belle," "Mary," and "Carmolite," and of three of the boats of the "W. P. Sayward," and to the loss of one boat belonging to the "E. B. Marvin," with three men on board.

That under "The Seal Fishery (Behring Sea) Act, 1891," Orders in Council were passed on the 24th June, 1891, and 9th May, 1892, prohibiting the catching of seals by British ships in Behring Sea to the east of certain limits therein described, but that none of the above-named vessels were, at the time they were seized, in the waters affected by those Orders.

That the circumstances under which the seizures of the three first-named vessels took place were given in a letter from the Colonial Office of the 13th October last, which was accompanied by affidavits on the part of the masters and others on board those vessels.

That an affidavit by the master of the "W. P. Sayward" respecting the seizure by the Russians of three of the boats belonging to that vessel formed Inclosure 3 of the Colonial Office letter of the 20th October, 1892.

That it would be observed, on examination of the affidavits in the cases of the "Ariel," "Willie McGowan," and "Rosie Olsen," that the crews of those vessels had strongly protested, not only against the treatment they received at the hands of the Russian authorities, but also with reference to the alleged illegality of the seizures, which it was asserted were effected outside Russian territorial waters, at distances from the nearest Russian land, in the case of the "Ariel" of between 30 and 40 miles, of the "Willie McGowan" of 42½ miles, and of the "Rosie Olsen" of 30 miles.

That according to the affidavit of the master of the "W. P. Sayward" his vessel was about 20 miles from Copper Island, which was a Russian possession, when three of her boats were seized by a Russian steam-launch.

That the case of the "E. B. Marvin" appeared to differ from those of the other sealers, inasmuch as in the affidavit received from the master of that vessel there was no direct evidence that her missing boat had been captured, nor was it distinctly laid down at what distance from land the vessel was situated when the boats left her on the morning of the 5th August for the purpose of seal-hunting (see Inclosure 4 in Colonial Office letter of the 1st November).

That in a note addressed to Sir R. Morier by M. Chichkine, the Acting Minister for Foreign Affairs at St. Petersburgh, it was stated that the "Vancouver Belle," "Mary," and "Carmolite" were released with a warning by their captors, to whom their officers expressed their gratitude for the treatment received by themselves and their crews while detained on board the Russian cruiser "Vitias" (Inclosure 1 in Sir R. Morier's No. 251 of the 16th October).

That the same document contained a denial of alleged ill-treatment of the crews of the "Ariel," "Willie McGowan," and "Rosie Olsen," who were said to have been guilty of riotous behaviour after being landed on Russian territory at Petropavlovsk.

That M. Chichkine subsequently furnished Sir R. Morier with a translation in French of a "Communiqué" in the Russian "Official Messenger" containing a detailed account of the facts relating to the seizures of the British sealers, which it stated were effected in the cases of the "Willie McGowan," "Ariel," and "Rosie Olsen" at distances of 21, 22, and 13 miles from the nearest Russian coast, and in those of the "Vancouver Belle," "Mary," and "Carmolite" at 18, 8, and 28 miles respectively

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from the nearest Russian coast (Inclosure in Sir R. Morier's No. 255 of the 21st October).

That thus it would be seen that, according to the statements of the Russians, as well as of the masters of all the schooners, the seizures were effected beyond the usually recognized territorial limit of 3 miles.

That in consideration of the question at issue between Her Majesty's Government and that of Russia, it was necessary to bear in mind what rights were claimed by Russia in her waters in the Pacific.

That in a note addressed by M. de Giers to the United States' Chargé d'Affaires at St. Petersburgh on the 8th (20th) May, 1882, it was laid down that "the prohibition of hunting and fishing in these waters extends strictly to the territorial waters of Russia only" (see United States' White Book, Ex. Doc. No. 106, H.R., 1889, p. 262).

That in the case of the "Araunah" the late Law Officers of the Crown laid it down, in their Reports of the 2nd May and 9th October, 1890, that even if that vessel, at the time of seizure, was herself outside the 3-mile territorial limit, the fact that she was, by means of her boats, carrying on fishing within Russian waters without the prescribed licence, warranted her seizure and confiscation according to the provisions of the municipal law regulating those waters.

That in the reports received from Mr. Howard and Sir R. Morier of their interviews with the Representatives of the Russian Foreign Office (Mr. Howard's No. 213 and Sir R. Morier's No. 217 of the 17th and 23rd September), the latter appeared to have raised the question whether, supposing the sealers had been taken in the open sea, the Russian cruisers would not have been justified, if they had previously observed them *in flagrante delicto* in territorial waters, in pursuing them thence into the open sea until they overtook and captured them.

That on that point our attention was invited to a Memorandum sent home with Sir R. Morier's despatch No. 218 of the 23rd September, bearing on the claims of Russia to territorial rights beyond the limit of 3 marine miles from low-water mark.

That with regard to the right of the authorities of a foreign State to pursue within a reasonable time and bring back into harbour a ship which had sailed beyond the territorial water of that State, we should find that, in the case of the British barque "St. Mary's Bay," which was seized outside the 3-mile territorial limit of Chilean waters by the harbour authorities of Valparaiso, our predecessors were of opinion that the Chilean authorities did not by their action infringe any principle of international law (Law Officers, 5th November, 1891).

But that it appeared clearly from the affidavits above referred to, and the accompanying Russian protocols, that the three vessels in question were not followed out of the territorial waters of Russia, but were taken in the open sea.

That your Lordship was yourself disposed to think it would be difficult for Her Majesty's Government to object to such seizures, in cases where the offence and flight of the incriminated vessels had been continuous, and the pursuit had been commenced while they were still within territorial waters.

That it seemed, moreover, that much might be said in justification of a pursuit and subsequent capture, even if the offending vessel had made good her escape from territorial waters before the pursuit was commenced, provided always that the pursuit was begun within a reasonable time after the offence, and also at the earliest possible moment available, having regard to the means of pursuit at hand.

That on those points, however, your Lordship specially desired to be favoured with our opinion for your assistance in the further consideration of the general question.

That on receiving the protests and depositions of the masters, mates, and others on board the British vessels respecting their capture and subsequent treatment, Sir R. Morier was instructed to communicate to the Russian Government the evidence forwarded to Her Majesty's Government, and to state that they would await the result of the inquiries being made before advancing any definite claims on behalf of the owners and crews (see R. Morier's No. 202 of the 18th October).

That a draft of a note* had been prepared by his Excellency for presentation to the Russian Government, and, after some slight alterations, was forwarded for our opinion.

That Sir Thomas Sanderson was to request that we would take the papers which were transmitted with his letter into our consideration, and that we would favour your

Lordship with our opinion whether the terms of the proposed draft note to the Russian Government sufficiently and properly meet the requirements of the case, or, if not, in what respects they might advantageously be altered or amended; and that Sir Thomas Sanderson was to add that your Lordship would, at the same time, be glad to be favoured with our views upon the questions specially raised on p. 17 of his letter, as well as with any observations which we might desire to offer on the matter generally.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

1. That we have made some unimportant alterations in the draft of the proposed note to the Russian Government, and we think it sufficiently and properly meets the requirements of the case subject to this observation: The argument beginning on p. 4 of the draft proceeds on the ground that even if the vessels had been poaching in territorial waters their subsequent seizure was not the result of a "hot pursuit" under circumstances to justify such seizure in the open sea upon principles of international law, but there is nowhere the allegation that they had not been so engaged.

It is obvious that the position of the Government would be morally, as well as legally, much stronger if it feels justified in denying the alleged fact that the vessels had been poaching in territorial waters on the occasions in question.

2. We think your Lordship's views (set forth at pp. 16 and 17 of Sir Thomas Sanderson's letter of the 16th instant) correctly indicate the considerations by which the legality of a seizure *outside* territorial waters for an offence *within* them ought properly to be determined.

We have, &c.

(Signed) C. RUSSELL.
JOHN RIGBY.

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* For draft of note, see Inclosure in Sir R. Morier's No. 242.

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LIST of Papers to accompany Reference to the Law Officers of November 16, 1892.

No. of Document in Collection.	From whom received or to whom sent.	No. of Despatch.	Date.
1	Admiralty	..	September 1, 1892
2	Colonial Office	..	,, 13, ,,
3	,, ,,	..	,, 14, ,,
4	To Mr. Howard	34	,, 15, ,,
5	Mr. Howard	Telegraphic 52	,, 16, ,,
6	,, ,,	Telegraphic 214	,, 17, ,,
7	To Sir R. Morier	167	,, 20, ,,
8	To Admiralty	..	,, 20, ,,
9	Sir R. Morier	55	,, 23, ,,
10	Mr. Herbert	Telegraphic 257	,, 16, ,,
11	Mr. Howard	213	,, 17, ,,
12	Sir R. Morier	217	,, 23, ,,
13	,, ,,	218	,, 23, ,,
14	,, ,,	222	,, 27, ,,
15	,, ,,	59	October 3, ,,
16	,, ,,	Telegraphic 223	September 27, ,,
17	,, ,,	232	October 1, ,,
18	To Sir R. Morier	180	,, 5, ,,
19	,, ,,	181	,, 5, ,,
20	,, ,,	192	,, 10, ,,
21	Admiralty	..	,, 10, ,,
22	Colonial Office	..	,, 13, ,,
23	Sir R. Morier	242	,, 11, ,,
24	,, ,,	244	,, 11, ,,
25	Admiralty	..	,, 17, ,,
26	To Sir R. Morier	202	,, 18, ,,
27	Sir R. Morier	251	,, 16, ,,
28	Admiralty	..	,, 19, ,,
29	Colonial Office	..	,, 19, ,,
30	,, ,,	..	,, 20, ,,
31	To Sir R. Morier	217	,, 22, ,,
32	Sir R. Morier	64	,, 24, ,,
33	,, ,,	Telegraphic 65	,, 25, ,,
34	,, ,,	Telegraphic 255	,, 21, ,,
35	Admiralty	..	,, 19, ,,
36	To Sir R. Morier	44	,, 26, ,,
37	Sir R. Morier	Telegraphic 256	,, 25, ,,
38	,, ,,	262	,, 26, ,,
39	,, ,,	263	,, 26, ,,
40	To Sir R. Morier	221	,, 31, ,,
41	Colonial Office	..	November 1, ,,
41 A	Sir R. Morier to M. Chichkine (draft note)	..	..
42	Law Officers' opinion, "Araunah" case	..	May 2, 1890
43	,, ,, ,, ,,	..	October 29, ,,
44	,, ,, "St. Mary's Bay" case	..	November 5, 1891
45	,, ,, "Arctic" case	..	,, 27, ,,
46	Seal Fishery (Behring Sea) Act	..	1891
47	,, ,, Order in Council	..	1891
48	,, ,, ,, ,,	..	1892
49	Seal Fisheries in Behring Sea. Correspondence communicated by Mr. Cleveland to the Senate of the United States in accordance with the Resolution of the Senate of the 2nd January, 1889. [Senate Ex. Doc. No. 106]	..	1889
50	Correspondence respecting the seizure of the British schooner "Araunah" off Copper Island. ["Russia No. 1 (1890)"]		1890

British Vice-Consulate at Las Palmas.

solemnized at the British Vice-Consulate at Las Palmas, Grand Canary, on the 14th July last. That the facts, as stated by Mr. Monckton, were as follows:—

That after due notice had been given, as required by "The Marriage Act, 1890," section 7 (1), and at the time and place above mentioned, the marriage was solemnized by Captain Harford, Her Majesty's Consul for the Canary Islands, whose public office was at Santa Cruz, in the Island of Teneriffe, and who was a Consular officer authorized to solemnize and register marriages in the manner provided by the 19th section of "The Consular Marriage Act, 1849," the Vice-Consul at Las Palmas not being so authorized.

That it was also alleged, and that it might be assumed as proved for the purposes of the reference to us, that in respect of the hours between which a marriage must take place, and of all other matters, the requirements of English law were duly complied with.

Marriage Circular of 20th August, 1853.

That the instructions relating to Consular marriages which were embodied in a Circular despatch of the 20th August, 1853, contained the following direction:—

"The only place where marriages under this Act ('The Consular Marriage Act, 1849,') may be solemnized is the British Consulate, that is, the public office of the Consul-General, Consul, Vice-Consul, or Consular Agent, as the case may be."

That the terms of that Circular were subsequently approved by the then Queen's Advocate, Sir R. Phillimore, in a Report with which he favoured Lord Stanley on the 4th June, 1867 (see Law Officers' Reports for 1867, France, No. 50, at pp. 40 and 41).

That the interpretation placed on that direction by the Consul was, according to Mr. Monckton, that the Vice-Consul's office was temporarily the Consul's office when the Consul was there, such Vice-Consul being an officer under the Consul's superintendence, and such office being within the district of the said Consul.

That is was clear, however, that that view could not be entertained, having regard to our Report of the 10th March, 1888 (see Law Officers' Reports for 1888, Madagascar, No. 31, at pp. 37-39).

That the 7th section, paragraph 1, of "The Foreign Marriage Act, 1891" (which was passed in the month following the solemnization of the incriminated marriage), however, provided:—

"Where a marriage purports to have been solemnized and registered, in pursuance of the Foreign Marriage Acts or any of them . . . . . , in a British Consulate, it shall not be necessary in support of the marriage to give any proof of the authority of the marriage officer within the meaning of this Act by or before whom the marriage was solemnized and registered, nor shall any evidence to prove his want of authority, whether by reason of his not being a duly authorized officer, or of any prohibition or restriction under the Marriage Regulations, or otherwise, be given in any legal proceedings touching the validity of the marriage."

That your Lordship requested that we would be so good as to take the case into consideration, and would favour you with our opinion (*a*) whether section 7 (1) of the Act of 1891 could be held to operate retrospectively, and, if so, whether the marriage would be entitled to the benefits of that section; and (*b*) assuming that the marriage should, in our opinion, be invalid, whether the parties should be advised to go through a legal form of marriage without delay.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

The parties should be advised to be legally married without delay, as a grave question may arise as to the validity of the marriage.

That, in our opinion, the provisions of the Act of 1891, even if retrospective, would not cure any defect in the marriage due to the fact of its having been solemnized at the office of the Vice-Consul at Las Palmas instead of at the Consulate of Captain Harford at Santa Cruz; and, inasmuch as a grave question may arise as to the validity of the marriage, we are of opinion that the parties should be advised to be legally married without delay.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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List of Papers.

Mr. M. J. Monckton..	..	December	29, 1891.	
Queen's Advocate's Report, France, No. 50	..	June	4, 1867.	Confidential No. 1745, p. 40.
Law Officers' Report, Madagascar, No. 31	..	March	10, 1888.	Confidential No. 5785, p. 37.

TURKEY.

No. 35.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received February* 27.)

[After reciting the reference which follows, they report on 25th February as on p. 66:—]

Foreign Office to the Law Officers of the Crown.

Case of the "Trojan." Compensation to parties injured by the action of the Kaïmakam of Tenedos.

Gentlemen,

Foreign Office, January 8, 1892.

I HAVE the honour, by direction of the Marquis of Salisbury, to transmit to you the papers noted in the accompanying list which relate to the case of the "Trojan."

Certain other books and papers referred to in the course of this reference, which do not form a part of the correspondence in the case, are also inclosed, and will be found noted on a second list.

This case is laid before you at some length, because the precedents, so far as they have been discovered, appear *primâ facie* to be somewhat contradictory, and because the appeals to writers on international law in the course of the correspondence with the Porte give the case an importance greater than it would otherwise have deserved.*

The facts of the case appear to be briefly as follows:—

The British steamer "Trojan" appeared off the Island of Tenedos in the month of October 1889, and was met by the Harbour-master, who stated that she must not enter the harbour; the master did, nevertheless, land by means of a small boat, and at the Health Office was referred to the Kaïmakam, who refused permission for the "Trojan" to touch at Tenedos. Certain reasons were subsequently given by the Kaïmakam to the Sublime Porte in justification for his action; but the facts on which these reasons were founded are disputed by the owners of the "Trojan," and it would appear that the Ottoman Government recognized that they were insufficient; for six months after the events just related the Kaïmakam was removed by the Porte for his conduct in this case. It may be added that from the British point of view the "Trojan" had a perfect right to touch for trade or otherwise at Tenedos, and that the circumstances alleged by the Kaïmakam, even if they had been such as he stated to the Porte, would not in any way have authorized the refusal to allow the ship to touch. It may be assumed that the Porte, judging by its subsequent dismissal of the Kaïmakam, held the same view of the case as that held by Her Majesty's Government.

The owners of the "Trojan" now claim pecuniary compensation from the Ottoman Government for the loss suffered by them through the action of the Kaïmakam.

The case raises the question of the responsibility of a Government for the acts of its Agents.

It may be assumed, it is thought, from the account of the case given in the papers—

1. That the Kaïmakam was acting within the scope of his official duties, *i.e.*, that had any of the facts alleged by him to the Porte been sufficient to justify a refusal to permit the "Trojan" to touch at Tenedos, he was the officer whose duty it was, at least in the first instance, to take cognizance of those facts and to act on them.

2. That his action was not taken in any military capacity, although he called armed policemen to enforce his decision; and that his action was not prompted by any such considerations for the direct benefit of the Ottoman Government as usually prompt the actions of the private agents of private principals.

3. That his action may be attributed to mistake, to ignorance, or to error of judgment.

4. That he is, in his private capacity, liable under Ottoman law to a civil suit for damages at the instance of the owners of the "Trojan."

5. That such a suit, even if successfully prosecuted, is hardly likely to indemnify the owners of the "Trojan" for the loss his action entailed on them.

6. That although the Kaïmakam was not dismissed for some six months after his refusal to allow the "Trojan" to touch at Tenedos, the Porte did by such dismissal disavow the action of its Agent as quickly as the circumstances of the case and the general slowness of Ottoman administrative procedure allowed.

7. That although the "Trojan" was, on two successive visits to the island, refused permission to touch, it can hardly be said that the Porte made itself responsible for the Kaïmakam's action because it had failed to furnish him with proper instructions before the second visit. For the Porte pleads, and probably justly, that the interval between the visits was too short to allow of the necessary inquiries being made.

In his note to the Porte of the 25th May last Sir W. White quoted from section 350 of Calvo's International Law, 3rd edition, a passage to show that a Government is bound to make compensation for the wrongful acts of its Agents, even though it neither authorized such acts nor approved them. This passage appeared, on the face of it, strongly to support the view that in the present case the Porte was bound to compensate the owners of the "Trojan." But in a note of the 1st October last, the Porte has, correctly it would seem, pointed out that the passage cited is not apposite, as its application is limited by words omitted from Sir W. White's quotation, to acts committed *abroad* by the Agents of the Government. The paragraph quoted by Sir W. White from Bluntschli also fails, it is thought, to give that writer's opinion on cases similar to that now under consideration. The opinion of both Bluntschli and Calvo appears to be correctly quoted by the Porte, and is very clearly to the effect that in the case of the wrongful acts of Government Agents (with the exception, in the case of Calvo, of acts done abroad), the Government which appointed them is not materially responsible for acts which it neither brought about nor concurred in.

This question appears to be somewhat summarily treated by writers on international law, with the exception of Calvo, who has written on it in considerable detail. His statement respecting the material responsibility of Governments for the acts of their Agents is as follows:—

"Dans l'intérieur des limites juridictionnelles, les Agents de l'autorité de toute classe sont personnellement seuls responsables dans la mesure établie par le droit public interne de chaque État. Lorsqu'ils manquent à leurs devoirs, excèdent leurs attributions ou violent la loi, ils créent selon les circonstances, à ceux dont ils ont lésé les droits, un recours légal par les voies administratives ou judiciaires; mais à l'égard des tiers, nationaux ou étrangers, la reponsabilité du Gouvernement qui les a institués reste purement morale et ne saurait devenir directe et effective qu'en cas de complicité ou de déni de justice manifeste."

The same writer sums up as follows:—

"Lorsqu'il s'agit de ses fonctionnaires ou agents, un Gouvernment peut être tenu pour responsable des conséquences de leurs actes, dans les circonstances suivantes: si, ayant été en temps opportun pour l'empêcher prévenu du fait illicite que son Agent avait l'intention de commettre, il ne l'a pas empêché;

"Si, ayant eu le temps d'annuler l'acte de son Agent, il ne l'a pas fait immédiatement;

"Si, informé du fait accompli, il ne s'est pas empressé de blâmer la conduite de son Agent et de prendre les précautions nécessaires pour en empêcher le renouvellement."

The passages quoted in the Ottoman note inclosed in Sir W. White's despatch No. 125, Commercial, of the 1st October, 1891, from Bluntschli, are to the same effect.

Sir R. Phillimore's International Law contains the following passage on diplomatic intervention in support of private claims:—*

"The State must be satisfied that its citizen has exhausted the means of legal

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* See Sir W. White's No. 112, Commercial, October 29, 1889.

* Sir R. Phillimore's Commentaries, 3rd edition, vol. ii, p. 4.

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redress afforded by the Tribunals of the country in which he has been injured. If those Tribunals are unable or unwilling to entertain and adjudicate upon his grievance, the ground for interference is fairly laid. But it behoves the interfering State to take the utmost care (1) that the commission of the wrong be clearly established; (2) that the denial of the local Tribunals to decide the question at issue be no less clearly established."

In harmony with these expressions of opinion are the carefully reasoned theoretical positions set out by Sir A. Cockburn at pp. 36 and 37 of his "Reasons for dissenting from the Award" of the "Alabama" Arbitration Tribunal. It is true that Sir A. Cockburn was the sole dissenting member of the Tribunal; but the Award does not in any way affect the soundness of the arguments to which attention is now called; the Award was founded on the ground that "due diligence" had not been used by the Government of Great Britain, whereas Sir A. Cockburn held the contrary opinion.

A very important case in support of Calvo's opinion is cited in section 1269 of his work (fourth edition). It is thought that much weight should be attached to this case, because it involved the repayment by the Government of the United States to that of Brazil of a sum of 14,000*l.* exacted fifteen years before from the latter Government as compensation for injuries caused by the corrupt or mistaken decision of a Brazilian Judge.

The opinion of the United States' Attorney-General will be found at p. 553 of vol. xiii of the published "Opinions of the Attorneys-General of the United States."

In this opinion reference is made to a Report by Mr. Caleb Cushing, given at p. 229 of vol. vii of the above-mentioned collection of opinions, in which the question of the liability of a Government for the acts of its non-military and non-diplomatic Agents is very carefully considered.

Mr. Cushing observes that the Government of the United States guarantees neither to natives nor to foreigners the honesty or capacity of its officials. He makes what appears to be a most important distinction between (*a*) such Agents of a Government as stand towards it in the same relation as a private agent does to a private principal; these agents act for the direct benefit of the principal; and (*b*) such Agents of a Government as are appointed by it in its capacity of *parens patriæ*, who are not moved by considerations of the immediate benefit of the Government. As examples of Agents included in the first category may be cited revenue officials, whose acts, like those of private agents, may be assumed to have been, or to have been intended to be, for the advantage of their principals. In the second category will be placed judicial and most administrative officials, whose actions are not *primâ facie* prompted by any consideration for the immediate benefit of their principal, the Government.

To the acts of the former class of officials the legal maxim "respondeat superior" would, in Mr. Cushing's opinion, as a rule apply, but not to the acts of officials of the latter category.

Calvo, whose work is again referred to because he appears to have treated the question of a Government's responsibility for the acts of its Agents at greater length than other modern writers on international law, holds a Government to be materially responsible when it acknowledges that, or it is clearly shown that, the injury suffered was the direct consequence of its own Regulations and orders, and that it is similarly responsible for acts carried out *abroad*, where such acts have a truly national character and the Agents accomplishing them are official representatives, the delegates of the public force or otherwise; it so happens, however, that the only Government Agents who well can act abroad are Diplomatic and Consular Representatives and officers of the military (naval) forces; it is suggested that the distinction made by Calvo should be made to rest not on the place where the acts are carried out, but on the character of the Agent. Diplomatic Agents are to a very considerable extent appointed for the express purpose of declaring the opinions held by their Governments, while one of the most important functions laid upon Consuls consists in issuing papers required for sending goods to, or for visiting, the countries for the Governments of which they act; they are, in most cases, required to charge fees for these and other services, and are often to a very large extent fiscal officers. The strict discipline and implicit obedience which are essential to the very existence of a military force worthy of the name, and which a Government would hardly acknowledge to be lacking in its army or navy, afford good ground for holding that its acts must be considered as the acts of the Government from which it depends; at the same time,

the overwhelming power wielded by a military force usually renders resistance, or appeal to a higher authority, impossible. These considerations weigh equally, whether the force act at home or abroad.

It is thought that the distinction referred to above, made by Mr. Cushing between Government Agents who may be supposed to act for the direct benefit of their principal, and others who do not so act, together with the distinction just suggested between Diplomatic, Consular, and Military Agents, as opposed to other agents, will, in part at least, account for the many apparent contradictions which are afforded by the cases which have come before this Department.

It is stated in the accompanying Memorandum, prepared by Sir E. Hertslet in 1877, that there appears to be no instance on record in which the British Government has given compensation to a foreigner for an injury sustained at the hands of a public officer, but several cases are cited in which compensation has been demanded by Her Majesty's Government of foreign Governments on account of the improper action of the Agents of those foreign Governments. It will be perceived that in nearly every one of the cases cited the military, or quasi-military, element of the Government was largely concerned.

Convention between Great Britain and the United States, 8th February, 1853.

Under a Convention signed on the 8th February, 1853, the Governments of Great Britain and of the United States appointed Commissioners to settle various claims made by private individuals against the one or the other of the Contracting Parties. The Commissioners were to decide on the matters brought before them "according to justice and equity;" it is therefore thought that their decisions will not have been in disagreement with international law (Article 1). In the following among the cases decided compensation was awarded, or, but for special circumstances unconnected with the points now under consideration, would have been awarded for mistakes or errors of judgment on the part of the officials:—

1. The "Jones" was seized by a British naval officer as being engaged in the Slave Trade, but the Court at Sierra Leone, before which she was brought, held that there had been "no probable cause of seizure." (See especially pp. 133 and 141.)

2. The "Lady Shaw Stewart," improperly seized and sold by the United States' Customs authorities. (See pp. 208 and 209.)

3. The "Beaver," the same circumstances as No. 2. (See pp. 212 and 214.)

4. The "Only Son." Customs duty improperly levied by British Customs officials on merchandize not intended for importation. (See pp. 244 and 245.)

5. The "Prince of Wales," a British ship which the United States' Customs officials wrongly supposed not to be entitled to participate in the carrying trade on Colombia River, and which they threatened to confiscate (no doubt for the benefit of the United States' Treasury), if she did carry on that trade.

It will be observed that in all these cases the Government Agents implicated were either military or fiscal officers.

In the case of the "Jane Francis," Her Majesty's Government claimed compensation from the Venezuelan Government for losses accruing to that ship by reason of a mistake made by a Venezuelan Consul, to the effect that a certain Venezuelan port was open to the direct foreign trade. In this case the official concerned was a Consul, a part of whose duty it was to issue clearances to vessels proceeding to Venezuelan ports.

Attention is also called to the case of the murder of Mr. Tunstall in the United States by a Sheriff's *posse* while executing a process against certain property, which execution Mr. Tunstall did not attempt to prevent by force.

Law Officers' Report, 10th December, 1885.

The most important documents in this case are the United States' note of the 1st June, 1885, Mr. Calderon Carlisle's Report thereon of the 27th June, 1885, and the Report by the Law Officers of the Crown of the 10th December, 1885.

The view underlying the opinions of Calvo, of Phillimore, and of the United States' Government, as expressed in the note on the Tunstall case, and the view very clearly put forward by the British Government in Mr. Benuzzi's case (p. 6 of the above-mentioned Memorandum), that a Government is not responsible for such acts of its Agents as it neither orders nor approves, is coupled with the view that the proper remedy of the injured party is an application to the Courts of Law.

Law Officers' Report, 26th August, 1879.

This view is supported by a Report by the Law Officers of the Crown, dated the 26th August, 1879, which is in harmony with Calvo and Phillimore, in stating that a claim may be made diplomatically against the Government where there is either a manifest denial of justice, or where, owing to the peculiar laws of the country concerned, no appeal to the Courts of Law is possible.

It will be perceived that the Porte refers the parties aggrieved, in connection

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with the "Trojan" case, to the Ottoman Tribunals, and points out that in Ottoman law the Kaïmakam is materially responsible for his official actions.

I have the honour to request you to favour Lord Salisbury with your opinion as to whether the parties aggrieved by the action of the Kaïmakam of Tenedos in the case of the "Trojan" should be referred for their remedy to the Ottoman Tribunals, or whether Her Majesty's Government should apply to the Ottoman Government for compensation for those parties; in the latter case, I am to request you to indicate generally the substance of the arguments which should be used in support of the claim to be made on the Porte.

Finally, I have to request you to favour Lord Salisbury with any general observations which, in your opinion, will be of use to his Lordship in treating this case.

I have, &c.
(Signed) T. V. LISTER.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands signified to us in Sir T. Villiers Lister's letter of the 8th January last, have the honour to

Report—

H. M.'s Govt. should apply to Ottoman Govt. for compensation to parties injured by action of Kaïmakam of Tenedos.

That, in our opinion, Her Majesty's Government should apply to the Ottoman Government for compensation to the parties injured by the action of the Kaïmakam of Tenedos.

Important distinction between injuries alleged to have been suffered by persons resident in the foreign State and injuries inflicted upon persons visiting or desiring to visit such State for lawful, but temporary, purposes.

It appears to us that there is an important distinction between injuries alleged to have been suffered by persons resident in the foreign State and injuries inflicted upon persons visiting or desiring to visit such State for lawful, but temporary, purposes. A British subject who takes up his residence in a foreign country is entitled, sometimes under Treaty and sometimes by the comity of nations, to the same protection from the Government and the Tribunals of Justice as is given to subjects or citizens of the country, and, if he has reason to complain of injuries to person or property, or of a denial of justice, he must adopt such means of obtaining redress as are provided by the laws of the State in which he has chosen to reside, and it is only upon clear proof that such means are ineffective, or that the injury of which he complains was caused by an act authorized by the Executive Government of the country in which he resides, that he can appeal to his Government for diplomatic intervention.

But it cannot be required of British subjects that they should resort to the Tribunals of a country in which they do not reside, there to carry on litigation against a private individual who, when holding public office and clothed with Government authority, has prevented their visiting such country for lawful purposes of trade.

The importance of this distinction is recognized by Sir Robert Phillimore in his Commentaries (3rd edition, vol. ii, p. 6), and we observe that the passage quoted, in Sir T. V. Lister's letter to us from Sir Robert Phillimore, refers only to the case where the person complaining has been denied ordinary justice in the foreign country, and it is in the same passage laid down that the State of the foreigner may insist upon reparation immediately when he has received positive maltreatment.

The distinctions suggested by Mr. Cushing in his Report, or those indicated by Calvo, do not appear to us to be relevant to the present case where British subjects not resident in Turkey were injured by the wrongful act of a Government official who could and did employ armed force to compel obedience to his orders.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Royal Courts of Justice, February 25, 1892.

List of Papers.

Law Officers' Report..	August 26, 1879.	Confidential No. 4328, p. 30.
Ditto	December 19, 1885.	Confidential No. 5246, p. 176.
Sir W. White .. (No. 128, Commercial)	October 16, 1891.	
Convention: Great Britain and the United States..	February 8, 1853.	Treaty No. 371.

List of Books and Papers.

M. Calvo.—"Droit International:" vol. i, 3rd edition; vol. iii, 4th edition.
Mr. Hornby.—Report (Commission of Claims, Great Britain and United States, 1853).
Opinions of the Attorneys-General of the United States, vols. vii and xiii.
Murder of Mr. Tunstall (Confidential Print 1878–1886). Confidential No. 5175.
Memorandum by Sir E. Hertslet, 1877 (Confidential No. 3279).
Report from the Law Officers of the Crown, July 12, 1879 (ill-treatment of Mr. Miller by French gendarmes). Confidential No. 4328, p. 27.
Report from the Law Officers of the Crown, August 26, 1879 (general principle of asking compensation in cases of ill-treatment by Government officials). Confidential No. 4328, p. 30.
Report from the Law Officers of the Crown, November 5, 1877 (question of asking compensation from Venezuelan Government in consequence of a mistake made by a Venezuelan Consul in connection with the "Jane Francis"). Confidential No. 4216, p. 100.
Sir Alexander Cockburn.—Reasons for dissenting from the award given by the Geneva Tribunal of Arbitration ("Alabama," &c.).
Law Officers' Report, April 13, 1874 (ill-treatment of British subjects by Italian officials). Confidential No. 4331, p. 62.

Annex.

Sir R. Phillimore's Commentaries, Third Edition, Vol. II, pp. 4 *and* 6.

The State, to which the foreigner belongs, may interfere for his protection when he has received positive maltreatment, or when he has been denied ordinary justice in the foreign country. The State of the foreigner may insist upon reparation immediately in the former case. In the latter, the interference is of a more delicate character. The State must be satisfied that its citizen has exhausted the means of legal redress afforded by the Tribunals of the country in which he has been injured. If these Tribunals are unable or unwilling to entertain and adjudicate upon his grievance, the ground for interference is fairly laid. But it behoves the interfering State to take the utmost care, first, that the commission of the wrong be clearly established; secondly, that the denial of the local Tribunals to decide the questions at issue be no less clearly established.

* * * * *

The distinction between *domiciled persons* and *visitors* in or passengers through* a foreign country is never to be lost sight of; because it must affect the application of the rule of law which empowers a nation to enforce the claims of its subjects in a foreign State. The foreign domicil does not indeed necessarily take away this rule of law, but it renders the invocation of it less reasonable, and the execution of it more difficult.

A subject who has deliberately domiciled himself in another State can have no ground of complaint if he be subjected to many taxes and impositions, from which the simple stranger would, by the usage of nations, be exempt. Moreover, he must be taken to have considered the habits of the people, the laws of the country, and their mode of administration, before he established therein his household gods, and made it the principal seat of his fortunes. He cannot therefore expect that every complaint which, with respect to these matters, he may be disposed to urge upon his native Government, will of necessity be entertained by it. More especially, if, being permitted by the law of his domicil, he have purchased land, and thus incorporated himself, as it were, into the territory of a foreign country, he cannot require his native Government to interfere on the subject of the operation of municipal laws, or the judgment of Municipal Tribunals, upon his rights of immovable property in this foreign land.

The case must be one of flagrant violation of justice, which would lay the foundation of an international remonstrance in such a matter, unless, indeed, the provisions of some particular Treaty, or some public Proclamation of the foreign Government, take the case out of the application of the general law.

No. 36.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 3.)

My Lord, *Royal Courts of Justice, March* 2, 1892.

Production of papers in Courts of Law.

Loss of registered packet sent by post by Consul Henderson.

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 1st ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers relating to the loss of a registered packet which was sent by post from Cadiz to Alexandretta, and on which a policy of insurance was effected by Mr. Henderson, formerly Her Majesty's Consul at Aleppo, and now holding a similar position at Cadiz.

That the packet contained the original transfer deed, duly stamped (as well as a duplicate of that deed), by which, in circumstances fully explained in the correspondence, two persons named Catoni and Vaquil (or Vequil) agreed to transfer to Mr. Henderson certain property at Aleppo.

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Suit between Mr. Henderson and Lloyd's.

That it appeared that Vequil pleaded the loss of the stamped deed as a pretext for declining to carry out his contract; and that Mr. Henderson, being thus unable to recover the property, had made a claim upon the underwriters under the policy of insurance.

That, at the instance of the underwriters, who declined to believe that the position assumed by Vequil was legally tenable, and at the request of Lloyd's Committee, a Report was called for by the Secretary of State from Her Majesty's Embassy at Constantinople. That the Report received was drawn up by Mr. Stavrides, Dragoman to the Embassy, who, after declaring himself unable to give a reasonable explanation of the legal devices adopted by Mr. Henderson with regard to the projected sale of the property, expressed his belief that before claiming an indemnity from Lloyd's he should first exhaust all legal remedies against Vequil, and that Vequil's bad faith and the worthlessness of his plea would be alike susceptible of easy proof.

That a copy of the Report of Mr. Stavrides was sent to Lloyd's Committee. That it was the practice of the Foreign Office in writing to Lloyd's to mark "Confidential" all letters which were to be so treated, but that on the occasion in question there was no intimation that the communication was of a confidential nature.

That the Secretary of State, having been later requested by Lloyd's to permit a copy of the Report to be communicated confidentially to the underwriters interested, inquired by telegraph of Her Majesty's Ambassador at Constantinople whether his Excellency had any objection to the proposal, and that on learning that his Excellency had none, your Lordship gave the required authority.

That it now appeared probable that, in a suit between Mr. Henderson and the Underwriting and Agency Association of London, which was shortly to come before a Court of Law, the Secretary of Lloyd's would receive a subpœna from Mr. Henderson's solicitors, calling for the production of his correspondence with the Foreign Office. That the Secretary was advised by the solicitors of Lloyd's that he should claim "privilege" as to its production; and that he inquired whether the Secretary of State would wish any representation to be made on behalf of the Foreign Office against the production of the correspondence in Court.

That it was not stated, nor was it clear, to whom it was suggested that that representation should be addressed (that it was, however, presumably to be made to the Court before which the case was to be tried, and not to Mr. Henderson or his solicitors).

That Sir T. Villiers Lister was accordingly to request that we would take the case under our consideration, and would favour your Lordship with our opinion—

1. Whether the Secretary of Lloyd's could claim "privilege" in respect of the production of the documents mentioned, and, if so, on what grounds;

2. Whether it was competent for the Secretary of State, and, if it were within his power, whether, under the circumstances, it was in our opinion proper and desirable that he should raise objection to the production by the Secretary of Lloyd's of the correspondence, including copies of despatches from Her Majesty's Ambassador at Constantinople, and of the Report by Mr. Stavrides now in the possession and control of the Secretary;

3. Whether, should the Secretary of State be subsequently subpœnaed to produce the original documents, your Lordship should take the responsibility of refusing so to do; and

4. Generally as to what answer should be returned to the letter from Lloyd's of the 18th January, 1892.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Secretary of State should make no objection to the production of the documents.

That, in our opinion, there is no ground for making objection on the part of the Secretary of State to the production of any of the documents referred to in Sir T. V. Lister's letter to us. The defendants in the action could probably object to their production on the ground that they were communications made, and opinions obtained, for the purpose of their defence; and we do not see how, under any circumstances, they could be used as evidence in the cause.

Should the Secretary of State be subpœnaed to produce the original documents, a clerk from the Foreign Office should attend the Court with them.

We advise that the letter of the 18th January, 1892, should be answered by

saying that the Secretary of State makes no objection to the production of the documents.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Lloyd's	.. ..	August 28, 1890.
To Lloyd's	.. ..	September 9, „
Ditto	.. ..	September 25, „
(Inclosing copy of Sir W. White's No. 67 of 1890.)		
Ditto	.. ..	October 10, „
(Inclosing copy of Sir W. White's No. 71 of 1890.)		
Lloyd's	.. ..	October 16, „
To Sir W. White	.. .. (Telegraphic)	October 20, „
Sir W. White	.. .. (Telegraphic)	October 22, „
To Sir W. White	.. .. (Telegraphic)	October 23, „
Sir W. White	.. .. (Telegraphic)	October 24, „
To Lloyd's	.. ..	October 31, „
Lloyd's	.. ..	January 18, 1892.

No. 37.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 30.)

My Lord, *Royal Courts of Justice, July* 29, 1892.

Surrender of six Armenian Turkish subjects to the Turkish police by the master of the "Izgar." Action of Vice-Consul Russell.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Constantinople, as noted in the margin,* reporting the circumstances under which six Armenian Turkish subjects were surrendered to the Turkish police by the master of the British steam-ship "Izgar," and inclosing copy of a despatch which his Excellency had addressed to Mr. Vice-Consul Russell, disapproving his action in the matter, and giving him instructions for his future guidance in like cases.

That the six persons in question had taken passage on board the vessel at Constantinople for Marseilles. That at the Dardanelles they were, with the concurrence of the British Vice-Consul, removed from the vessel by the Turkish police on the ground that they were guilty of an offence against Turkish law through leaving Turkey without permission and without passport.

That Turkish law, in the absence of evidence to the contrary, was presumed to have conferred upon the Turkish authorities the right to apprehend those men within Turkish jurisdiction in respect of the breach of the Turkish law which they had apparently committed in leaving Turkey without passports and without permission to emigrate from that country.

That the question, however, arose whether the British authority whose concurrence was necessary for the arrest of persons on board British vessels in Turkish waters would, on general principles, be justified in withholding his assent to the arrest of a Turkish subject accused of an offence against the law in Turkey on the ground of the offence being of a political nature, or one of a trivial character such as that of which the six Armenians were accused.

That, in any case, it was presumed that if the surrender of the Armenians was necessary to secure the ends of justice, Mr. Russell should not have instructed the master of the "Izgar" to hand them over to the Turkish police without a request made in due form by the Judicial authorities conveyed to him officially in writing, such request specifying the nature of the charge made against them.

That it was also presumed that the British Consular officer applied to by the Turkish authorities should, whenever possible, communicate with, and take the instructions of, Her Majesty's Embassy before authorizing an arrest on board a British vessel by Turkish police.

Law Officers' Report, February 28, 1891.

That, in connection with the general question of the surrender of political and other criminal offenders when on board British merchant-vessels in Turkish territorial waters, Sir Philip Currie was to call our attention to the Memorandum of the 28th February, 1891,† with which we were good enough to favour your Lordship in answer

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* Sir Clare Ford, No. 198.

† Law Officers' Report, February 28, 1891. Confidential No. 6207, p. 107.

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to the reference made to us from the Foreign Office on the 27th January of that year. That it would, however, be seen that the reference and Memorandum in question directly dealt only with the surrender of fugitive offenders who were the subjects of Great Britain or of other foreign Powers enjoying extra-territorial jurisdiction in Turkey, and not with the surrender under analogous circumstances of subjects of the Ottoman Porte within the limits of the territorial jurisdiction of the Power to which they owed allegiance.

That Sir Philip Currie was to request that we would favour your Lordship with our opinion as to the instructions which should be addressed to Sir C. Ford in regard to the proceedings of Mr. Vice-Consul Russell, and his Excellency's directions to him on the question of arrests on board British vessels under such circumstances as were described in the inclosed papers.

In obedience to your Lordship's commands, we have the honour to

Report—

Approve action of Vice-Consul Russell.

That, in our opinion, Mr. Vice-Consul Russell acted rightly in permitting the arrest upon a British ship in Turkish waters of Turkish subjects who were charged with an offence against the law of that country. No question of extradition arises, and the British authority would not be justified in withholding assent to the arrest of a Turkish subject accused of an offence against the law in Turkey on the ground of that offence being of a political nature, or one of a trivial character.

It appears to us that a sufficient demand was made by the Turkish officials having the duty of executing Turkish law to entitle them to be allowed to arrest the persons in question, and, although it may be advisable, as a general rule, that Her Majesty's Embassy should be consulted before sanction is given to an arrest by Turkish police on board a British vessel, we are unable to see that in this particular case any advantage would have been gained by such consultation.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 38.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received August* 8.)

Royal Courts of Justice, August 5, 1892.

My Lord,

Case of British steamer "Euxine," prevented by the Turkish authorities from trading with Bartin. Compensation claimed by the owners.

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 29th June last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the case of the British steamer "Euxine."

That the facts of the case were briefly as follows:—

That the Turkish authorities had prevented the British steamer "Euxine" from trading with, and landing and embarking passengers at, Bartin, a small port in the Black Sea, on the ground that it was situated at a distance of 4½ miles from the mouth of the river of the same name, and was consequently not a seaport, but came under the designation of "inland waters."

That it appeared that the "Euxine" had previously been in the habit of trading with Bartin, for the service of which port she was specially built, and was never interfered with till 1889, and that as she drew very little water she was able to reach Bartin, whereas other vessels could not; but that in that year, owing to the recent action of the sea on the river-bed, it had become possible for certain Turkish steamers, of greater draught than the "Euxine," which had been previously unable to do so, to reach that place; and that Sir W. White, Her Majesty's Ambassador at Constantinople, was of opinion that it was on that account that the "Euxine" was excluded from Bartin, although on the occasion in question she was furnished at Constantinople with the usual Firman, in which Bartin was named as one of the Turkish ports at which she intended to call.

That Sir W. White protested against the proceedings of the Turkish authorities, and claimed compensation for the loss sustained by the owners of the "Euxine."

Law Officers, June 14, 1864. Confidential No. 1405, p. 118.

That the Porte had, in correspondence on other cases, maintained that Ottoman rivers and internal waters were not open to the ships of foreign nations, and that the Law Officers reported in 1864, with regard to the proposed formation of an International Company for facilitating the navigation of the Nile and of all navigable canals, that the right of navigating the rivers and canals of the Ottoman Empire under the British flag was not secured to British subjects by Treaty.

That the Porte had admitted the right of taking part in the "coasting trade" to the subjects of any country which granted a similar right to Ottoman subjects, and would, therefore, presumably allow British vessels to trade at Bartin, were that port situated on the coast. But that the Porte had maintained that, as Bartin was situated 4½ miles up the river, it was not a seaport.

That the most important documents in connection with the case would be found in Sir W. White's despatch No. 67, Commercial, of the 5th July, 1889; Sir W. White's despatch No. 125, Commercial, of the 28th November, 1889; Sir W. White's despatch No. 133, Commercial, of the 2nd November, 1891; Sir C. Ford's despatch No. 26, Commercial, of the 30th March, 1892; and Sir C. Ford's despatch No. 40, Commercial, of the 20th May, 1892.

That it would be perceived from the papers that Her Majesty's Government had always maintained that British subjects had a right to participate in the coasting trade of the Ottoman Empire, so long as other Powers were permitted to do so; and that, in regard to the port of Bartin, numerous British and foreign vessels were long in the habit of running to that port, which, it would be seen from Sir W. White's note to the Porte inclosed in his despatch No. 133, Commercial, of the 2nd November, 1891, was not considered by Her Majesty's Government to be an inland port in any such sense as that ships running to it from the sea were to be considered as engaging in "internal" or river navigation.

That Sir T. Villiers Lister was to request us to take the papers into our consideration, and to favour your Lordship with our opinion on the following questions:—

1. Should Her Majesty's Government press the Ottoman Government for compensation to the owner of the "Euxine" for the interruption of the voyage which his ship made to Bartin in May 1889?

2. Should compensation be demanded for the owner of the "Euxine" for the action of the Ottoman Government in preventing that vessel, after that date, from running to Bartin, for the service of which port she was specially constructed?

That Sir T. V. Lister was, at the same time, to add that your Lordship would be glad to be favoured with any other observations which we might be good enough to offer upon the case generally.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

No good grounds exist upon which Her Majesty's Government can claim compensation.

That, in the absence of distinct evidence that Bartin is a seaport and frequented by sea-going vessels of other nations, no good grounds exist upon which Her Majesty's Government can make a claim for compensation to the owner of the "Euxine," either in respect of the interruption of the voyage in May 1889, or for preventing, after that date, the continuance of the voyages of that vessel to Bartin.

We see no justification for the contention that the river at Bartin is excepted from the proposition laid down in the Report of the Law Officers of the 14th June, 1864, and the fact that the voyages of the "Euxine" continued without interruption from November 1888 to November 1889 cannot prevent the Turkish authorities from at any time asserting the exclusive privilege of their own subjects to the river trade.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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List of Papers.

Sir W. White	(No. 67. Commercial)	July	5, 1889.
Memorandum	..	July	17, „
To Sir W. White	(No. 65. Commercial)	July	22, „
Sir W. White	(No. 125. Commercial)	November	28, „
Memorandum	..	December	9, „
To Sir W. White	(No. 112. Commercial)	December	18, „
Sir W. White	(No. 72. Commercial)	April	18, 1890.
To ditto	(No. 63. Commercial)	May	7, „
Mr. Fane	(No. 136. Commercial)	July	15, „
To ditto	(No. 105. Commercial)	July	28, „
Messrs. Layton, Steel, and Co.	..	September	3, 1891.
To ditto	..	September	7, „
To Sir W. White	(No. 82. Commercial)	September	7, „
Messrs. Layton, Steel, and Co.	..	September	8, „
To ditto	..	September	10, „
Messrs. Layton, Steel, and Co.	..	September	18, „
To Sir W. White	(No. 83. Commercial)	September	21, „
Messrs. Layton, Steel, and Co.	..	October	27, „
To ditto	..	October	30, „
Sir W. White	(No. 133. Commercial)	November	2, „
To ditto	(No. 98. Commercial)	November	20, „
Sir Clare Ford	(No. 26. Commercial)	March	30, 1892.
To ditto	(No. 35. Commercial)	April	19, „
Sir Clare Ford	(No. 40. Commercial)	May	20, „

No. 39.

The Law Officers of the Crown to the Earl of Rosebery.—(Received September 21.)

[In reply to the following reference, the Law Officers reported on September, 18, 1892, as on p. 73 :—]

Foreign Office to the Law Officers of the Crown.

Christian marriages in Ottoman dominions.

Gentlemen, *Foreign Office, September* 2, 1892.

A BRITISH subject and a citizen of the United States having been married at Smyrna according to the forms of the Established Church of Scotland, by a minister thereof, application has been made to Her Majesty's Consul-General to register the marriage as a marriage duly solemnized in accordance with the local law.

As, however, it appeared that the Consul-General was not present at the particular ceremony in question, there was no difficulty in disposing of the case by informing him that he could not comply with the request on that ground.

The circumstance has, however, raised a question of principle of some importance as to whether one of Her Majesty's Consular officers could properly register such a marriage if he had been duly present at it.

Law Officers' Report, June 27, 1892, p. 37.

In a Report inclosed herewith and marked (A), which was furnished to the Marquis of Salisbury by your predecessors on the 27th June last upon a somewhat analogous case, the following passage occurs :—

"Except in the case, which we do not imagine to exist, of the Law of the foreign country expressly providing that valid marriages may be contracted in the way and according to the forms actually adopted, we are of opinion that no form, rite, or ceremony of marriage in a Mahommedan or polygamous country can be registered under the Foreign Marriage Acts."

Inquiry as to the existence in Turkey of such a Law having been addressed to Mr. Stavrides, Dragoman to Her Majesty's Embassy at Constantinople, as an expert in Ottoman jurisprudence, that gentleman has reported in the paper also herewith inclosed and marked (B) that "Christian communities, whether Greek, Armenian, or Catholic, have the right, according to the Sheriat and in virtue of the Berats and Firmans which are invariably granted to their respective Patriarchs and Bishops, to solemnize marriages according to their own laws; and that such marriages, which are of course monogamous, are held good by the whole of the Ottoman authorities; in other words, the marriage is valid whenever it is performed according to the ritual of the community to which the parties belong."

On a previous occasion, in answer to a question as to the nature and provisions of the laws (if any) regulating the marriages of Christians, whether Ottoman subjects or otherwise, in the Ottoman dominions, Mr. Stavrides reported in the paper inclosed

and marked (C), that Ottoman law has nothing to do with foreign subjects; that the moment the marriage of a foreigner is declared valid by his own authorities, it is recognized as valid by Ottoman law; that the marriage of Christians, whether Ottoman subjects or otherwise, are governed by the laws of their respective Churches; and that no distinction is drawn between Christian Ottoman subjects and foreign Christians.

It is the desire of the Secretary of State that British subjects residing in the Ottoman dominions should enjoy, as far as possible, any facilities for the registration of marriages which can properly be afforded to them under the Foreign Marriage Acts. But it would obviously be very unfortunate that Consular officers should be authorized to register, and give encouragement to the celebration of marriages in a form which might subsequently render their validity open to serious question in an English Court of Law.

I have, therefore, the honour to request, by direction of the Earl of Rosebery, that you will favour his Lordship with your opinion as to (1) whether, on the statements of Mr. Stavrides as given above, Her Majesty's Consular officers in the Ottoman dominions can under any circumstances rightly and properly be authorized to attend and register marriages of British subjects as being valid according to the *lex loci;* and, if so, (2) what classes of marriages may be so registered, that is to say, whether the authority should apply only to marriages celebrated according to the rites of the Church of England by a clergyman of that Church, or also, without distinction, to those celebrated by the Ministers of other Christian religious persuasions according to the ritual of their several Churches.

I am, &c.

(Signed) T. H. SANDERSON.

Report.

H. M.'s Consular officers may register marriages valid according to the *lex loci.*

Section 18 of the Act of 1892 provides in express terms for the registration by Consular officers of marriages duly solemnized in a foreign country, in accordance with the local law, between parties one of whom at least is a British subject. This must mean the local law applicable to the parties to the marriage.

In Turkey the local law applicable to Christian marriages is, upon the statement before us, *not* Mahommedan but the appropriate Christian law.

No distinction between the various Christian religious communities.

Section 21 of the same Act authorizes the making by Her Majesty of Regulations determining the conditions under which, and the mode in which, marriages solemnized in accordance with the local law of a foreign country may be registered under the Act.

We are of opinion—

1. That upon the statement of Mr. Stavrides of the local law Her Majesty's Consular officers may rightly and properly be authorized, and, indeed, are by the Act of 1892 authorized, to attend marriages and, on being satisfied that they have been rightly solemnized according to local law, as above explained, to register the same in accordance with the Regulations made by the Order in Council (sections 18 and 21).

2. We are further of opinion that such authority *does* apply not only to marriages celebrated according to the rites of the Church of England, but also and without distinction to those celebrated by other Christian religious communities according to the ritual of their several Churches.

(Signed) C. RUSSELL.
JOHN RIGBY.

Lincoln's Inn, September 18, 1892.

List of Papers.

(A.) Law Officers	..	June	27, 1892, p. 37.
(B.) Sir Clare Ford	(No. 33. Consular).	July	29, „
(C.) Mr. Stavrides	..	May	3, „

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UNITED STATES.

No. 40.

Law Officers of the Crown to the Marquis of Salisbury.—(*Received February* 20.)

My Lord, *Royal Courts of Justice, February* 19, 1892.

Behring's Sea Seal Fisheries Arbitration.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 16th instant, stating that, with reference to our Reports, as marked in the margin,* on the question of the right claimed by the Government of the United States to prohibit seal fishing in certain portions of Behring's Sea, he was directed by your Lordship to transmit to us a copy of a despatch from Her Majesty's Minister at Washington, forwarding a draft of Convention proposed by Mr. Blaine, Secretary of State of the United States, for the reference of the matters in dispute to arbitration.

That the draft embodied certain Articles already agreed upon between the two Governments, defining the questions to be so referred.

That copies of those Articles, and of another also previously agreed upon for the appointment of a Joint Commission to examine into the conditions of seal life, and the measures necessary for its preservation, would be found in a despatch from Sir Julian Pauncefote (marked E).

That it had further been agreed between the two Governments, as shown in the correspondence marked (B) and (F), that the Tribunal of Arbitration should consist of seven members, of whom two should be chosen by the United States, two by Great Britain, and three by France, Italy, and Sweden respectively.

That it was the intention of Her Majesty's Government that of the two Arbitrators chosen by Great Britain, one should be selected by the Canadian Government, whose choice would no doubt fall on a Canadian jurist.

Treaty of Washington, May 8, 1871. Treaty No. 529.

That the Articles of the Convention relating to the procedure before the Tribunal were taken, with certain modifications, from the provisions of the Treaty of Washington of the 8th May, 1871, relative to the arbitration with regard to what have been commonly known under the generic title of the "Alabama claims." That a copy of that instrument was inclosed (marked C). That copies of our previous Reports were also forwarded for convenience of reference (marked G, H, J).

That Sir Thomas Sanderson was to request that we would take the papers into our consideration, and would favour your Lordship, at our earliest convenience, with any observations or criticisms on the terms of the draft Convention which might occur to us, and with our opinion whether it might properly be accepted by Her Majesty's Government as it stood, or whether, from a legal point of view, it required amendment in any, and, if so, in what respects.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to

Report—

Approve draft of Convention proposed by Mr. Blaine.

That, in our opinion, the draft Convention may properly be accepted by Her Majesty's Government as it stands.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Law Officers' Report, August 18, 1890 (Confidential No. 6113, p. 88); ditto, June 20 and July 31, 1891 (Confidential No. 6207, pp. 112–115).

Annex.

SEAL FISHERIES ARBITRATION.

Draft of a Convention.

(CORRECTED ON FEBRUARY 3, 1892.)

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being desirous to provide for an amicable settlement of the questions which have arisen between their respective Governments concerning the jurisdictional rights of the United States in the waters of Behring Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of citizens and subjects of either country as regards the taking of fur-seal in or habitually resorting to the said waters, have resolved to submit to arbitration the questions involved, and to the end of concluding a Convention for that purpose have appointed as their respective Plenipotentiaries:

The President of the United States of America, James G. Blaine, Secretary of State of the United States; and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Sir Julian Pauncefote, G.C.M.G., K.C.B., Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States:

Who, after having communicated to each other their respective Full Powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:—

ARTICLE I.

The questions which have arisen between the Government of the United States and the Government of Her Britannic Majesty concerning the jurisdictional rights of the United States in the waters of Behring Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in or habitually resorting to the said waters, shall be submitted to a Tribunal of Arbitration, to be composed of seven Arbitrators, who shall be appointed in the following manner, that is to say: two shall be named by the President of the United States; two shall be named by Her Britannic Majesty; his Excellency the President of the French Republic shall be jointly requested by the High Contracting Parties to name one; His Majesty the King of Italy shall be so requested to name one; and His Majesty the King of Sweden and Norway shall be so requested to name one. The seven Arbitrators to be so named shall be jurists of distinguished reputation in their respective countries.

In case of the death, absence, or incapacity to serve of any or either of the said Arbitrators, or in the event of any or either of the said Arbitrators omitting or declining or ceasing to act as such, the President of the United States, or Her Britannic Majesty, or His Excellency the President of the French Republic, or His Majesty the King of Italy, or His Majesty the King of Sweden and Norway, as the case may be, shall name, or shall be requested to name forthwith, another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such Head of a State.

And in the event of the refusal or omission for two months after receipt of the joint request from the High Contracting Parties of His Excellency the President of the French Republic, or His Majesty the King of Italy, or His Majesty the King of Sweden and Norway, to name an Arbitrator, either to fill the original appointment or to fill a vacancy as above provided, then in such case the High Contracting Parties shall nominate by joint agreement, or, if they fail to agree, his Excellency the President of the Swiss Confederation shall be jointly requested by the High Contracting Parties to name one or more persons, as the case may be, to act as such Arbitrator or Arbitrators.

ARTICLE II.

The Arbitrators shall meet at . . . . within three months after the date of the exchange of ratifications of this Treaty, and shall proceed impartially and carefully to examine and decide the questions that shall be laid before them as herein provided on the part of the Governments of the United States and Her Britannic Majesty respectively. All questions considered by the Tribunal, including the final decision, shall be determined by a majority of all the Arbitrators.

Each of the High Contracting Parties shall also name one person to attend the Tribunal as its Agent to represent it generally in all matters connected with the Arbitration.

ARTICLE III.

The written or printed Case of each of the two parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the Agent of the other party as soon as may be after the organization of the Tribunal, but within a period not exceeding three months from the date of the exchange of the ratifications of this Treaty.

ARTICLE IV.

Within three months after the delivery on both sides of the written or printed Case, either party may, in like manner, deliver in duplicate to each of the said Arbitrators, and to the Agent of the other

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party, a Counter-Case, and additional documents, correspondence, and evidence, in reply to the Case, documents, correspondence, and evidence so presented by the other party,

The Arbitrators may, however, extend the time for delivering such Counter-Case, documents, correspondence, and evidence, when, in their judgment, it becomes necessary, in consequence of the distance of the place from which the evidence to be presented is to be procured.

If in the Case submitted to the Arbitrators either party shall have specified or alluded to any Report or document in its own exclusive possession, without annexing a copy, such party shall be bound, if the other party thinks proper to apply for it, to furnish that party with a copy thereof; and either party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrators may require.

ARTICLE V.

It shall be the duty of the Agent of each party, within one month after the expiration of the time limited for the delivery of the Counter-Case on both sides, to deliver in duplicate to each of the said Arbitrators and to the Agent of the other party a written or printed argument showing the points and referring to the evidence upon which his Government relies; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by counsel, upon it; but in such case the other party shall be entitled to reply either orally or in writing, as the case may be.

ARTICLE VI.

In deciding the matters submitted to the Arbitrators, it is agreed that the following five points shall be submitted to them, in order that their award shall embrace a distinct decision upon each of said five points, to wit:—

1. What exclusive jurisdiction in the sea now known as the Behring Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

3. Was the body of water now known as the Behring Sea included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia, and what rights, if any, in the Behring Sea, were held and exclusively exercised by Russia after said Treaty?

4. Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?

5. Has the United States any right, and, if so, what right, of protection or property in the fur-seals frequenting the Islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit?

ARTICLE VII.

If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the Arbitrators shall then determine what concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such Regulations should extend, and to aid them in that determination, the Report of the Joint Commission, to be appointed by the respective Governments, shall be laid before them, with such other evidence as either Government may submit.

The Contracting Powers furthermore agree to co-operate in securing the adhesion of other Powers to such Regulations.

ARTICLE VIII.

The High Contracting Parties having found themselves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it, and, being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions, do agree that either may submit to the Arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiation.

ARTICLE IX.

The High Contracting Parties having agreed to appoint two Commissioners on the part of each Government to make the joint investigation and Report contemplated in the preceding Article VII, and to include the terms of the said Agreement in the present Convention, to the end that the joint and several Reports and recommendations of said Commissioners may be in due form submitted to the Arbitrators, should the contingency therefor arise, the said Agreement is accordingly herein included as follows:—

Each Government shall appoint two Commissioners to investigate, conjointly with the Commissioners of the other Government, all the facts having relation to seal life in Behring Sea, and the measures necessary for its proper protection and preservation.

The four Commissioners shall, so far as they may be able to agree, make a joint Report to each of the two Governments, and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree.

These Reports shall not be made public until they shall be submitted to the Arbitrators, or it shall appear that the contingency of their being used by the Arbitrators cannot arise.

ARTICLE X.

Each Government shall pay the expenses of its members of the Joint Commission of Investigation referred to in the preceding Article.

ARTICLE XI.

The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides,

It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

The decision shall be in duplicate, one copy whereof shall be delivered to the Agent of the United States for his Government, and the other copy shall be delivered to the Agent of Great Britain for his Government.

ARTICLE XII.

Each Government shall pay its own Agent and provide for the proper remuneration of the counsel employed by it and by the Arbitrators appointed by it, and for the expense of preparing and submitting its Case to the Tribunal. All other expenses connected with the Arbitration shall be defrayed by the two Governments in equal moieties.

ARTICLE XIII.

The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

ARTICLE XIV.

The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration as a full, perfect, and final settlement of all the questions hereinbefore referred to.

ARTICLE XV.

The present Treaty shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty; and the ratifications shall be exchanged either at Washington or at London within six months from the date hereof, or earlier if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate, at Washington, the day of , 1892.

No. 41.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received March* 2.)

My Lord, *Royal Courts of Justice, February* 29, 1892.

Extradition of a fugitive criminal, Leda Lamontagne, from the United States to Canada.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the accompanying papers* respecting the extradition of a fugitive criminal, Leda Lamontagne, from the United States to Canada.

That the criminal in question was extradited by the United States upon a charge of arson, and was arraigned in Canada upon that charge, but that before she was tried she was called as a witness against her brother, then on his trial for murder, and that upon her refusal to give evidence under those circumstances she was eventually sentenced by the Court to a year's imprisonment for contempt.

That a representation from the United States' Government, alleging that Leda Lamontagne's extradition was sought rather for the purpose of obtaining her evidence

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* See Confidential No. 6267.

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on the occasion of the trial of her brother on a charge of murder than on the ground ostensibly put forward in the extradition demand, and that there had been an abuse of of the Treaties and of the process of extradition, would be found at p. 1 of the printed correspondence.

That your Lordship requested Lord Knutsford to cause an immediate inquiry to be made into the circumstances of the case, and that copies of two despatches from the Governor-General of Canada, inclosing Reports by the Committee of the Privy Council of Canada, were received in explanation. That these were printed as inclosures in the letter from the Colonial Office of the 1st October, 1891 (see p. 8 of print).

That the correspondence was sent to the Home Office on the 22nd October, with a request that your Lordship might be favoured with the opinion of Mr. Secretary Matthews upon the case; and that Sir Thomas Sanderson was to call our special attention to the letter from the Home Office of the 6th November, and to the Memoranda by Mr. F. Lushington and Mr. Godfrey Lushington therein inclosed (*vide* pp. 23 and 27 of print), as well as to the various Minutes by the Superintendent of the Treaty Department of, and by the Legal Adviser to, the Foreign Office, which were to be found at pp. 13, 14, 27, 28, 29, 31, and 32 of the same document.

That Sir Thomas Sanderson was to request that we would be good enough to take the papers into our consideration, and to favour your Lordship with any observations which we might have to offer upon the case, which was in some respects novel, and raised points of extradition law and usage of considerable difficulty and importance.

That your Lordship, therefore, thought it might be found more convenient if you referred the whole matter to us for our general consideration, instead of requesting our opinion specially on any particular questions which might arise in connection with the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the letter of the Home Office of the 6th November, 1891, and the Memorandum by Mr. Godfrey Lushington inclosed therein, correctly state the law upon this matter.

It would probably be convenient to establish the rule suggested in Mr. Wharton's letter of the 11th July, 1891, "that the fugitive is delivered up for the sole purpose of being tried for the offence for which he was surrendered, and that in regard to other matters occurring previously to his extradition, he is not to be regarded as being subject to the jurisdiction of the Government which obtains his surrender until he shall have had an opportunity to leave it and return to the jurisdiction of the surrendering Government;" but it is not yet established, by any decision of the Supreme Court, that this rule represents the law of the United States, and, as Mr. Lushington points out, there have been conflicting decisions in the State Courts.

Think the remission of a portion of the sentence passed upon Leda Lamontagne by the Canadian Court should satisfy the United States.

It is clearly not the law in this country, for Pooley *v.* Whetham decided that a person surrendered to this country for an extradition offence might, after being acquitted of that charge, be detained in custody under an attachment for contempt of Court committed before the surrender, the Court holding that such contempt was not an offence within section 19 of "The Extradition Act, 1870."

We agree that the action of the Canadian Judges was of very questionable propriety, and might naturally give rise to suspicion and remonstrance on the part of the United States; but having regard to the fact that the prisoner was tried and convicted of the extradition offence, which was one of a very grave character, we think the remission of a portion of the sentence should satisfy the United States, and prevent the prisoner suffering from the excessive sentence inflicted by the Canadian Judges for contempt of Court.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 42.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 19.)

My Lord, *Royal Courts of Justice, March* 17, 1892.

Claim of Messrs. Oakes and Foster, U. S. citizens, on account of illegal seizure and detention of their fishing schooner "Howard Holbrook" by Colonial authorities of Newfoundland.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* relative to a representation made by the United States' Minister at this Court respecting the claim of Messrs. Oakes and Foster, United States' citizens, of Gloucester, Massachusetts, for 7,232 dol. 42 c. on account of the illegal seizure and detention of their fishing schooner "Howard Holbrook" by the Colonial authorities of Newfoundland.

That it appeared from Mr. Lincoln's note and the other papers that the "Howard Holbrook" sailed on the 22nd April, 1890, on a voyage to the fishing-grounds off the east coast of Cape Breton Island, and arrived on the 30th of that month at St. Jacques, Newfoundland, where a bait licence was procured, for which Pinelli Dominique, the master, paid 92 dollars.

That on the same day the vessel proceeded to take bait-fish on board, which was shipped under the supervision of the Captain of the Government vessel belonging to the Bait Protection Service.

That on the following day (the 1st May), the "Howard Holbrook" was boarded by the master of another vessel, in the service of the Newfoundland Government, the "Fiona," who, after examining the amount of bait on board, seized her, on the ground that she was in possession of more bait-fish than was allowed by the licence aforesaid.

That Pinelli Dominique, the master of the "Howard Holbrook," was also arrested on a warrant issued by the Stipendiary Magistrate, on the complaint and information of one James McGrath, of the Bait Protection Service.

That he was taken on board the "Fiona," and there tried, where the following Judgment was pronounced by the Stipendiary Magistrate upon him:—

"That the said defendant, for his said offence, do pay a fine of 500 dollars, or, in default, be imprisoned in Her Majesty's gaol at Harbor Breton for three months; to forfeit the penal amount of his bond and also his licence; and that the said vessel, the 'Howard Holbrook,' on board of which said herring have been found to be unlawfully shipped, with the herring so taken, in violation of the provisions of the said Bait Act, shall be confiscated and sold."

That subsequently the owners of the "Howard Holbrook" made a deposit of 5,000 dollars, by way of security to abide the result of an appeal to the Supreme Court of Newfoundland, and that the master and his men were released. That in the meanwhile, however, the voyage of the vessel was stated to have been broken up, and a great loss occasioned to the owners, as shown in the documents inclosed in Mr. Lincoln's letter.

That it appeared from the Judgment of Mr. Justice Little, in the Supreme Court on Circuit of Newfoundland, inclosed with the Colonial Office letter of the 10th February, that the result of Messrs. Oakes and Foster's appeal was as follows:—

That the Newfoundland Bait Act of 1889, in section 1, made the issue of a licence obligatory, but that it did not enjoin the levy of a fee, nor authorize any limitation in the licence as to the amount of bait-fish to be obtained.

That no sufficient legal sanction could be pleaded in support of the imposition of those two latter conditions, which had been simply laid down by Circular instructions forwarded to the officers of the Bait Protection Service in a letter signed by the Colonial Secretary (*vide* Memorandum of Instructions relative to carrying out the provisions of the Bait Act of 1889, dated Colonial Secretary's Office, St. John's, April 9, 1890. Inclosure 1 in Colonial Office letter of the 8th February, 1892).

That the Court held that that was not the intention of the Act, and that Regulations of that kind should have been enacted by Proclamation; and that, consequently, the master of the "Howard Holbrook," having complied with the law in obtaining a licence, was wrongly prosecuted for having any excess of fish on board, and should not have been charged a fee in respect thereof.

That in a letter from the Colonial Office of the 8th ultimo would be found a copy of the Newfoundland Bait Act of 1889, and of the Regulations issued under it for

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* Mr. Lincoln, April 13, 1891; Colonial Office, January 4, February 8 and 10, 1892.

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the contravention of which the "Howard Holbrook" was seized; and that in a further letter from the Colonial Office of the 4th January last was inclosed an opinion of the Attorney-General of Newfoundland, commenting on Mr. Justice Little's Judgment, and on the claim now advanced.

That Sir Thomas Sanderson was to request that we would be good enough to take the papers into our consideration, and favour your Lordship with our opinion as to—

1. Whether the action of the Newfoundland authorities entitled the owners (and master) of the "Howard Holbrook" to compensation; and, if so,

2. Whether they should be referred to their remedy by an action for damages, and, in that case, against whom should that action be brought.

That your Lordship would, at the same time, be glad to be favoured with any observations on the case generally which we might be good enough to offer.

We were also honoured with two notes from Sir Thomas Sanderson, dated the 3rd and 16th instant, inclosing further letters from the Colonial Office on the subject.*

We have taken all the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

As to grant of compensation to owners and master of the "Howard Holbrook."

That, in our opinion, the action of the Newfoundland authorities does entitle the owners and master of the "Howard Holbrook" to compensation, and that it is advisable that the amount of such compensation should be settled by the direct action of Her Majesty's Government, without recourse to legal proceedings.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 43.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received April 30.)

Behring Sea seal fisheries. Draft O. in C. under Convention of April 18, 1892.

My Lord, *Royal Courts of Justice, April* 29, 1892.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 28th instant, stating that he was directed by your Lordship to transmit to us a copy of a Convention concluded on the 18th day of April, 1892, between Her Majesty and the President of the United States for the preservation of fur-seal in Behring's Sea during the pendency of the arbitration on that subject which had been agreed upon by the said two High Contracting Parties.

That the Order in Council issued on the 23rd day of June, 1891, under the provisions of "The Seal Fishery (Behring's Sea) Act, 1891," expired on the 1st day of May, 1892, and that, in view of the provisions of Article I of the said Convention of the 18th April, 1892, it was necessary to prohibit seal catching by British ships in Behring's Sea during the pendency of the arbitration.

That the exact period to be occupied by the arbitration could not be known, and that it might therefore be desirable, in view of the terms of section 1 (i) of "The Seal Fishery (Behring's Sea) Act, 1891," to prohibit seal catching within the area defined in the previous Order, until the 1st May, 1893, when a further Order could, if necessary, be issued.

That Sir Thomas Sanderson was to inclose a draft of an Order in Council for that purpose; and that he was to request our opinion whether it might properly be submitted in its then form to Her Majesty in Council for her approval.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve draft O. in C.

That, in our opinion, the draft Order, as initialled by us, may properly be submitted to Her Majesty in Council for her approval.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Colonial Office, March 1 and 15, 1892.

List of Papers.

(A.) Convention between Great Britain and the United States .. April 18, 1892. Treaty No. 890.
(B.) Order in Council .. ..
(C.) "The Seal Fishery (Behring's Sea) Act, 1891." .. .. June 23, 1891. Confidential No. 6107*.
(D.) Draft Order in Council. See Confidential No. 6194*.

Annex.

Draft Order in Council.

At the Court at

Present:

THE QUEEN'S MOST EXCELLENT MAJESTY.

Whereas by "The Seal Fishery (Behring Sea) Act, 1891," it is enacted that Her Majesty the Queen may, by Order in Council, prohibit the catching of seals by British ships in Behring Sea, or such part thereof as is defined by the said Order, during the period limited by the Order:

And whereas the expression "Behring Sea," in the said Act, means the seas known as Behring Sea within the limits described in an Order under the said Act:

And whereas an Order in Council was issued on the 23rd day of June, 1891, prohibiting the catching of seals by British ships in Behring Sea, as therein defined, until the 1st day of May, 1892:

Now, therefore, Her Majesty, in virtue of the powers vested in her by the said recited Act, by and with the advice of her Privy Council, is hereby pleased to order, and it is hereby ordered, as follows:—

This Order may be cited as "The Seal Fishery (Behring Sea) Order in Council, 1892."

2. From and after the date of the present Order until the 1st day of May, 1893, the catching of seals by British ships in Behring Sea, as hereinafter defined, is hereby prohibited.

3. For the purposes of the said recited Act and of this Order, the expression "Behring Sea" means so much of that part of the Pacific Ocean known as Behring Sea as lies between the parallel of 65° 30′ north latitude and the chain of the Aleutian Islands, and eastward of the following line of demarcation, that is to say, a line commencing at a point in Behring Straits on the said parallel of 65° 30′ north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern or Ignalook and the Island of Ratmanoff or Noonarbook; and proceeding thence in a course nearly south-west through Behring Straits and the seas known as Behring Sea, so as to pass midway between the north-west point of the Island of St. Lawrence and the south-east point of Cape Choukotski to the meridian of 172° west longitude; thence from the intersection of that meridian in a south-westerly direction, so as to pass midway between the Island of Attou and the Copper Island of the Kormandorski couplet or group in the North Pacific Ocean, to the meridian of 193° west longitude.

R. E. W.
E. C.

No. 44.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received August 11.)

As to whether the payment of an "honorarium" to Sir G. Baden-Powell will affect the tenure of his seat in Parliament.

My Lord, *Royal Courts of Justice, August* 9, 1892.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 18th ultimo, stating that he was directed by your Lordship to inform us that it was considered necessary for the proper presentation of the British arguments in the Behring Sea Arbitration that Sir George Baden-Powell, who had acted as one of Her Majesty's Commissioners for inquiry into the conditions of seal life in that sea, should be employed to assist the British Agent and the Counsel appointed by Her Majesty's Government to conduct the proceedings on their behalf, in drawing up the Case and Counter-Case, and throughout the course of the Arbitration.

That recognizing the value of the work already gratuitously performed by Sir George Baden-Powell on the Behring Sea Commission, and the constant attendance and work which his further employment would entail, your Lordship proposed to offer him, as an honorarium, the sum of 1,000*l.*

That Sir George Baden-Powell sat in the Parliament recently dissolved as Member for the Kirkdale Division of Liverpool, and had been re-elected to serve as Member for the same Division in the new Parliament.

That the Lords Commissioners of the Treasury had sanctioned the payment of the

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above-mentioned sum to Sir George Baden-Powell, but that before proceeding to make any offer on the subject to that gentleman, your Lordship would be glad to be favoured with our opinion as to whether the acceptance of the amount in question would in any way affect the tenure of the seat in Parliament to which Sir George Baden-Powell had recently been elected.

The Attorney-General's Opinion.

I have taken the matter into my consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

It will not do so.

That I am of opinion that the payment to Sir George Baden-Powell of an "honorarium" in respect of his services will not affect the tenure of his seat in Parliament.

The amount should be paid to him in respect of his past services, say up to the completion of his Report in June last.

I have, &c.
(Signed) RICHARD E. WEBSTER.

The Solicitor-General's Opinion.

I have also taken the matter into my consideration, and have the honour to

Report—

It will not do so. Danger of precedent.

That I agree that if the payment be made solely in respect of services rendered before the date of Sir George Baden-Powell's return at the last election, his seat will not be vacated; but I feel bound to add that the making of such payment would be a serious departure from Constitutional practice, and would constitute a very dangerous precedent.

I have, &c.
(Signed) EDWARD CLARKE.

No. 45.

The Law Officers of the Crown to the Earl of Rosebery.—(Received September 10.)

[In answer to the following reference, the Law Officers reported on the 9th September as on page 83:—]

Gentlemen, *Foreign Office, August 13, 1892.*

Right of United States' citizens to copyright in Canada.

I HAVE the honour, by direction of the Marquis of Salisbury, to transmit to you the papers noted in the annexed list, which relate to the right of United States' citizens to copyright in Canada.

In the year 1891 an Act (Paper A) was passed in the United States to amend title 60, cap. 3, of the Revised Statutes of the United States, relating to copyrights. This Act grants copyright in the United States to aliens under certain conditions stated therein.

The final section of the Act provides for its application to the subjects or citizens of foreign States, under certain circumstances, by Proclamation of the President.

On the 16th June, 1891, a note was addressed by the Marquis of Salisbury to the United States' Minister at this Court (Paper B), in which it was stated "that the law of copyright in force in all British possessions permits to citizens of the United States of America the benefit of copyright on substantially the same basis as to British subjects."

On the faith of this assurance, the President of the United States issued his Proclamation applying the Act to subjects of Great Britain. (Mr. Lincoln, 2nd July, 1891: Paper C.)

On the 4th January, 1892, a complaint was received from the United States' Government, that citizens of the United States were refused copyright in Canada. (Sir J. Pauncefote, No. 35, Treaty, 22nd December, 1891: Paper D.)

This complaint was repeated on the 9th January, 1892, by the United States' Minister at this Court (Paper E).

The Canadian Government were requested to furnish a Report upon the subject, which was received on the 26th July last. (Colonial Office letter, 26th July, 1892: Paper F.)

The contention of the Canadian Government is, that the Canadian Copyright Act (cap. 62 of the Revised Statutes of Canada: Paper G) is the only Act under which copyright can be granted in Canada, and that it does not apply to citizens of the United States not domiciled in Canada, because no International Treaty relating to copyright exists between Great Britain and the United States.

No such Treaty does in fact exist.

The whole question is discussed in paragraphs 44 to 48 and 51 of the Report of a Departmental Committee (Paper H) appointed to consider a Canadian Copyright Act which was passed by the Dominion Government in 1889, but which has not been confirmed, and is not now in force.

It would seem that, irrespective of the Canadian Copyright Act now in force (cap. 62 of the Revised Statutes of Canada) any literary or artistic work first produced in Canada, or simultaneously first produced in the United States and Canada, is entitled under section 8 (1) of "The International Copyright Act, 1886" (Paper I) to copyright throughout Her Majesty's dominions, and, therefore, in Canada; and that if no provision for registration has been made in Canada under section 8 (1) (*a*) of the said Act of 1886, then any person, whether a British subject or an alien, whose work has been first published in Canada, or simultaneously first published in Canada and the United States, can entitle himself to a remedy against infringement by registering at Stationers' Hall under the Imperial Copyright Acts.

No Order in Council has been issued under section 8 (3) of "The International Copyright Act, 1886;" no Act such as is contemplated in section 8 (4) of the Act of 1886 has since been passed or is now in force.

The Canadian Copyright Act could probably be made to apply to citizens of the United States by the conclusion of a Copyright Treaty between Great Britain and the United States in the sense of the assurances given in Lord Salisbury's note of the 16th June, 1891 (Paper B); but it would be preferable to avoid this course, which would probably be distasteful to Canada.

Under these circumstances, I am to request that you will favour Lord Salisbury with your opinion whether a work simultaneously first produced in the United States and in Canada by a citizen of the United States is entitled to copyright in Canada under section 8 (1) of "The International Copyright Act, 1886;" and generally with any observations which you may have to make as to the proper course to be taken in the matter.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

United States' citizens have the benefit of copyright on the same basis as British subjects in all British possessions.

We are of opinion that a work "simultaneously first produced" in the United States and in Canada by a citizen of the United States *is* entitled to copyright in Canada by virtue of section 8 (1) of "The International Copyright Act, 1886."

We think also that the law of copyright in force, not only in the United Kingdom, but in all British possessions, including Canada, does give to citizens of the United States the benefit of copyright on substantially the same basis as to British subjects, and that there is *not* any necessity for negotiating a Treaty with the United States of America.

(Signed) C. RUSSELL.
JOHN RIGBY.

Lincoln's Inn, September 9, 1892.

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List of Papers.

(A.)	An Act to amend Title 60, Cap. 3, of the Revised Statutes of the United States, respecting copyrights.		
(B.)	To Mr. Lincoln		June 16, 1891.
(C.)	Mr. Lincoln		July 2
(D.)	Sir J. Pauncefote	(No. 35. Treaty)	December 22
(E.)	Mr. Lincoln		January 9 1892.
(F.)	Colonial Office		July 26, ,,
(G.)	Canadian Copyright Act (Cap. 62 of the Revised Statutes of Canada).		
(H.)	Report of Departmental Committee.		
(I.)	International Copyright Act, 1886. See Treaty No. 794.		

No. 46.

[After reciting the following reference, the Law Officers report on the 9th September as on p. 85:—]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 25, 1892.

Behring Sea fisheries. Seizure of the British steamer "Coquitlan" by U. S. revenue-cruizer "Corwin."

I HAVE the honour to transmit to you, by direction of the Earl of Rosebery, the papers noted in the accompanying list which relate to the seizure of the British steamer "Coquitlan" by the United States' revenue-cruizer "Corwin."

This seizure is reported to have been made in the harbour of Port Etches, and consequently within the territorial waters of Alaska; but it was effected in respect of an alleged violation of the United States' Revenue Laws, which apparently took place (if at all) outside the 3-mile zone, and also outside the limits of the waters of the Behring Sea, viz., in 60° 15′ north latitude and 146° 47′ west longitude. (See Map, Paper B.)

The circumstances under which it was said to have occurred were reported to the Governor-General of Canada by the Sealers' Association at Victoria, British Columbia. (Papers A, C, D, F, G, I, M.)

The owners of the "Coquitlan" having signified their desire to give suitable security to the United States' Government, in order that the release of the vessel and her cargo, including seal-skins (Paper F), might, if possible, be effected, Mr. Herbert, Her Majesty's Chargé d'Affaires at Washington, was authorized to endeavour to ascertain whether security would be accepted by the United States' Government, and, if so, what security would be required, and at what place, and to whom it should be given. But he was also told to make it clear that this suggestion did not come from Her Majesty's Government, but from the owners of the vessel, and was made without prejudice to any contention against the legality of the seizure which Her Majesty's Government might have to advance. (Paper H.)

The United States' Secretary of State replied that it was not within the power of the Executive to intervene to determine the conduct of the Judicial Branch within whose control the vessel and her cargo would appear to be, and he suggested that an application should be made to the Court of Sitka. (Papers J, K, P, S.)

The United States' Government have informed Mr. Herbert that the "Coquitlan" was seized for violating Sections 2867, 2868, 2806, and 3109 of the Revised Statutes of the United States, copies of which are inclosed in Mr. Herbert's despatch No. 206 of the 2nd instant. (Papers I and W.)

Your attention is invited to a Memorandum drawn up by Mr. Calderon Carlisle, the legal adviser of Her Majesty's Legation at Washington, containing his opinion as to the legality of the seizure of the "Coquitlan" on the facts stated by the Sealing Association of Victoria. (Paper Q.)

Mr. Carlisle has also furnished Mr. Herbert with a further Memorandum, from which it appears that his opinion is adverse to the grounds on which the United States' authorities base their action in regard to that vessel. (Papers V and W.)

Mr. Carlisle maintains that the seizure was unlawful, and considers that only a narrow and unjust construction of Sections 2806 and 3109 of the United States' Revised Statutes would enable the Court to deliver a decision adverse to the owners.

I am now to request that you will take the papers transmitted herewith into your consideration, and favour Lord Rosebery with your opinion whether they afford ground for a protest on the part of Her Majesty's Government against the action of the United States' authorities in regard to the seizure of the "Coquitlan," and the proceedings to be taken against her in the District Court of Sitka; and, if so, as to the nature of the protest which should be addressed to the Government of the United States, together with any general observations which you may have to offer on the case.

I am, &c.
(Signed) P. CURRIE.

List of Papers.

(A.)	Colonial Office		July 4, 1892.
(B.)	Map annexed to above.		
(C.)	To Mr. Herbert	(No. 63. Telegraphic)	July 6, ,,
(D.)	Colonial Office		July 4, ,,
(E.)	Mr. Herbert	(No. 98. Telegraphic)	July 7, ,,
(F.)	Ditto	(No. 99. Telegraphic)	July 7, ,,
(G.)	Colonial Office		July 8, ,,
(H.)	To Mr. Herbert	(No. 66. Telegraphic)	July 8, ,,
(I.)	Colonial Office		July 8, ,,
(J.)	Mr. Herbert	(No. 101. Telegraphic)	July 9, ,,
(K.)	Ditto	(No. 102. Telegraphic)	July 11, ,,
(L.)	Ditto	(No. 175)	July 4, ,,
(M.)	Colonial Office		July 19, ,,
(N.)	To Mr. Herbert	(No. 71. Telegraphic)	July 19, ,,
(O.)	Mr. Herbert	(No. 107. Telegraphic)	July 19, ,,
(P.)	Ditto	(No. 183)	July 9, ,,
(Q.)	Ditto	(No. 184)	July 9, ,,
(R.)	To Mr. Herbert	(No. 165)	July 23, ,,
(S.)	Mr. Herbert	(No. 180)	July 11, ,,
(T.)	Ditto	(No. 119. Telegraphic)	August 2, ,,
(U.)	Ditto	(No. 206)	August 2, ,,
(V.)	Ditto	(No. 122. Telegraphic)	August 11, ,,
(W.)	Ditto	(No. 222)	August 11, ,,

(All in print except Mr. Herbert's No. 222.)

Opinion of the Law Officers.

H. M.'s Govt. should claim release of the vessel and compensation, and should also specially protest against the assumption of jurisdiction in respect of foreign vessels for anything done outside the 3-mile limit.

It appears from the papers before us that the steam-ship "Coquitlan" twice entered the territorial waters of the United States within the 3-mile limit, viz., at Tonki Bay on the 18th June, and at Port Etches on the 22nd June.

On the first occasion she put in for shelter, and finding there certain sealing-schooners, towed six of them outside the 3-mile limit, and there transferred stores and received skins, apparently within 4 leagues of United States' territory. At the time of the transhipment the schooners were not bound to the United States, nor was the steamer. On the second occasion the reason for entering the territorial waters was the necessity of obtaining water for the steamer, added to the desire to meet the sealing-schooners at the port, deliver the mails, and make an appointment to exchange stores for skins outside the 3-mile limit.

On neither occasion was there any intention to discharge or take in cargo otherwise than by transhipment and outside the 3-mile limit.

On this state of facts we are of opinion that no right to seize ships or cargo, or to detain crew or passengers, arose under Sections 2806, 2867, 2868, or 3109 of the United States' Revised Statutes, and that no breach was committed of any of those Sections. As to 2806, because that Section would seem to apply only to merchandize brought into the United States for the purpose of landing there. As to Sections 2867 and 2868 (independently of any question of the legality of the provision relating to a 4-leagues limit), because neither the transferring nor the receiving vessel was bound to the United States. As to 3109, because the Section from its whole tenour has reference only to vessels arriving in the waters of the United States from foreign adjacent territory for the purpose of unloading or taking in cargo, in which case notice of entry and permit are required.

According to the deposition of A. N. Brown the case really relied upon is that under Sections 2867 and 2868, but as to these we are clearly of opinion there has been no offence committed, because both Sections apply only to vessels bound to the United States.

It is certainly arguable that an offence under Section 3109 has been committed

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for not reporting the "Coquitlan" having arrived in the waters of the United States, but we agree with Mr. Carlisle that this would involve a narrow and unjust construction of the Act, and that the facts of this case are not within the mischief against which it is directed. It is to be noted, also, that Section 3109 specifies no time within which report is to be made, and the seizure of the "Coquitlan" was effected, apparently, within some three hours after dropping anchor in Port Etches. But in fact the not reporting does not seem to have been put forward as the ground of arrest.

In so far as the case is rested upon Sections 2806 and 3109, which deal with matters within the jurisdiction of the United States, we see no ground for a protest if the matter stopped there.

If we are right, the Court having jurisdiction or a Court of Appeal ought to dismiss the suit, and presumably would do so. But as regards Sections 2867 and 2868 (which would seem to be the Sections mainly relied upon), we think the right apparently claimed on the part of the United States to bring foreign vessels within the jurisdiction of the municipal law of the United States of America by reason of anything done outside the 3-miles limit so important, we are of opinion that there is sufficient ground for a protest.

We think it desirable that the protest should set out the facts, as reliably ascertained, and should claim release of the vessel and compensation, and should also specially protest against the assumption of jurisdiction in respect of foreign vessels for anything done outside the 3-mile limit.

(Signed) C. RUSSELL.
JOHN RIGBY.

Lincoln's Inn, September 9, 1892.

No. 47.

The Law Officers of the Crown to the Earl of Rosebery.—(Received September 19.)

[In reply to the following reference, the Law Officers reported on the 17th September as below:—]

Foreign Office to the Law Officers of the Crown.

Seizure of British steamer "Coquitlan" by United States' revenue-cruizer "Corwin."

Gentlemen, *Foreign Office, September* 13, 1892.

I HAVE the honour to acknowledge, by direction of the Earl of Rosebery, your letter of the 9th instant respecting the seizure of the British steamer "Coquitlan" by the United States' revenue-cruizer "Corwin," in which it is stated that you are of opinion that there is sufficient ground for a protest against the action of the United States' authorities in this matter.

You add that you consider it desirable that the protest should set out the facts, as reliably ascertained, and should claim the release of the "Coquitlan," and compensation, and should also especially protest against the assumption of jurisdiction by the United States in respect of foreign vessels for anything done outside the 3-mile limit.

I have now the honour to forward the draft of a note which has been drawn up in accordance with your suggestions, and which Lord Rosebery proposes to instruct Her Majesty's Chargé d'Affaires at Washington to address to the United States' Government.

I am to request that you will be good enough to take this note into your consideration, and favour Lord Rosebery with your opinion as to whether its terms are right and proper.

A copy of your opinion and the papers which were submitted to you are inclosed herewith for reference if required.

I have, &c.
(Signed) T. H. SANDERSON.

The "Coquitlan."

Approve proposed protest as altered.

1. I have made the alterations in the proposed protest which I think desirable.* The Solicitor-General approves.

2. *Note.*—The opinion of the Law Officers in this matter has not been quite accurately printed.

(Signed) C. RUSSELL.

Lincoln's Inn, September 17, 1892.

Annex.

Draft Note.

Foreign Office, 1893.

THE Undersigned, Her Britannic Majesty's Chargé d'Affaires, has the honour, by instructions from his Government, to call the attention of Mr. Foster, Secretary of State of the United States, to the following facts in regard to the seizure of the British steamer "Coquitlan" by the United States' revenue-cruizer "Corwin."

According to information furnished to the Canadian Government by the Sealers' Association of Victoria, British Columbia, in a letter dated the 4th July, it appears that on the 9th June last they dispatched the British steamer "Coquitlan," under the command of Captain McLellan, laden with provisions and stores for the sealing fleet in northern waters. She had on board ~~five~~ *three* passengers, two of them being master mariners representing the Association, another Mr. Brown, a reporter for the "Victoria Daily News," and *afterwards she took on board* two sailors homeward bound from one of the sealing-schooners *met by her.*

The purposes of the voyage were threefold: firstly, and principally, to convey mails to the fleet, containing positive instructions to every vessel not to enter Behring Sea; secondly, to supply the vessels with provisions and stores for the further prosecution of their voyages in Russian and Japanese waters; thirdly, to bring back all seal-skins already taken.

No trading or other communication with the shores was contemplated; neither did the vessel carry any liquor or goods for trading purposes, and she received positive instructions from her owners and from the Association not to transgress the law in any manner.

The steamer proceeded first to Cape Tonki, at the north-east end of K~~o~~*a*diak Island, Alaska Territory, ~~which had at first been selected as the place of rendezvous, though, in consequence of the dangerous character of the harbourage, Port Etches was subsequently chosen~~.

On arrival off Tonki, as a gale was blowing, the vessel was forced to seek shelter in Tonki Harbour, where she found several of the sealing-schooners which she was instructed to meet lying at anchor. The next day, the weather having moderated, the steamer, owing to the dangerous *character of the* entrance ~~of~~ *to* the harbour, towed ~~the~~ *six of the* schooners out to sea, where ~~the~~ transfers of stores and skins were made, outside of the 3-mile limit.

The "Coquitlan" then sailed ~~for~~ *in the direction of* Port Etches, about 200 miles north-eastward, longitude 146° 27′ west, latitude 60° 15′ north. She was obliged to enter the port on the 22nd June, having (*in consequence of leakage of her tanks*) been without fresh water for over twenty-four hours, ~~and met there.~~ *There were then in Port Etches* twenty-five of the sealing-schooners. After delivering their mails and directing them to meet her outside the 3-mile limit next day, she immediately commenced to fill her water-tanks.

About ~~three~~ *three to five* hours after she had dropped anchor, the United States' revenue-cutter "Corwin" entered the harbour, and sent an officer on board the "Coquitlan," ~~to seize~~ *who seized* her on a charge of transferring stores and skins within 12 miles, or 4 marine leagues, of the Alaskan shore. The "Coquitlan" was then sent to Sitka in charge of Lieutenant Linnar, of the United States' navy, where she has been *since* held with her cargo, ~~and~~ the captain *and four* passengers and crew *being* detained as prisoners, ~~with the exception of~~ Mr. Brown, ~~who being~~ a United States' citizen, was ~~released~~ *allowed to go free.*

The sworn deposition made before the Customs Collector at Victoria by Mr. Brown, of which a copy is inclosed herewith, testifies to the accuracy of the above statement, and gives evidence of the intention of the master of the "Coquitlan" scrupulously to avoid any acts to the detriment of the United States' revenue.

The Undersigned, having addressed himself to Mr. Foster for an explanation of the seizure, has been informed that the vessel had been seized for violating Sections 2867, 2868, 2806, and 3109 of the Revised Statutes of the United States, which are follows:—

"Section 2806. No merchandize shall be brought into the United States from any foreign port in any vessel unless the master has on boerd manifests in writing of the cargo signed by such master.

"Sec. 2867. If, after the arrival of any vessel laden with merchandize, and bound to the United

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* See despatch No. 219 to Mr. Herbert.

States within the limits of any collection district, or within 4 leagues of the coast, any part of the cargo of such vessel shall be unladen for any purpose whatever before such vessel has come to the proper place for the discharge of her cargo, or some part thereof, and has been there duly authorized by the proper officer of the Customs to unlade the same, the master of such vessel, and the mate or other person next in command, shall respectively be liable to a penalty of 1,000 dollars for each such offence, and the merchandize so unladen shall be forfeited, except in case of ~~same~~ *some* unavoidable accident, necessity, or distress of weather. In case of such unavoidable accident, necessity, or distress the master of such vessel shall give notice to, and together with two or more of the officers or mariners on board such vessel, of whom the mate or other person next in command shall be one, shall make proof upon oath before the Collector or other chief officer of the Customs of the district within the limits of which such accident, necessity, or distress happened, or before the Collector or other chief officer of the collection district within the limits of which such vessel shall first afterwards arrive, if the accident, necessity, or distress happened not within the limits of any district, but within 4 leagues of the coast of the United States, the Collector or other chief officer is hereby authorized and required to administer such oath.

"Sec. 2868. If any merchandize so unladen from on board any such vessel shall be put or received into any other vessel, except in the case of such accident, necessity, or distress, to be so notified and proved, the master of any such vessel into which the merchandize shall be so put and received, and every other person aiding and assisting therein, shall be liable to a penalty of treble the value of the merchandize, and the vessel in which they shall be so put shall be forfeited.

"Sec. 3109. The master of any foreign vessel, laden or in ballast, arriving in the waters of the United States from any foreign territory adjacent to the northern, north-eastern, or north-western frontiers of the United States, shall report at the office of any Collector or Deputy Collector of the Customs which shall be nearest to the point at which such vessel may enter such waters; and such vessel shall not proceed further inland, either to unlade or take in cargo, without a special permit from such Collector or Deputy Collector, issued under and in accordance with such general or special regulations as the Secretary of the Treasury may, in his discretion, from time to time prescribe. For any violation of this Section such vessel shall be seized or forfeited."

Her Majesty's Government having carefully considered the facts as set forth above, in consultation with the legal advisers of the Crown, are led to the conclusion that no breach of any of the Sections of the United States' Revised Statutes quoted above was committed by the "Coquitlan," and that, consequently, no right to seize the ship or her cargo, or to arrest her crew or her passengers, arose under those Sections. *It appears to them* that Section 2806 applies only to merchandize brought into the United States *in the ordinary course of a trading adventure, and* for the purpose of landing there, *and has no application in the circumstances of this case.*

It further appears to them that Section 3109 ~~from its whole tenour has reference~~ *is intended to refer* only to vessels arriving in the waters of the United States from foreign adjacent territory for the purpose of unloading ~~or~~ *and* taking in cargo, in which case notice of entry and permit are required.

These points, ~~however,~~ dealing with matters within the jurisdiction of the United States, ~~may properly form~~ *are such as might properly have been* the subject of a decision by a Court of competent jurisdiction, *but they do not appear to have been relied upon as justifying the arrest.*

But in so far, ~~however,~~ as the case against the vessel is rested on Sections 2867 and 2868, Her Majesty's Government ~~feel it to be their duty to protest against~~ *desire to point out that those Sections apply only to vessels bound to the United States, and further, they feel it their duty to protest against* any claim on the part of the United States to bring foreign vessels within the jurisdiction of their municipal laws by reason of anything done outside the limit of 3 miles from the coast.

The Undersigned is therefore instructed to protest against any assumption of such jurisdiction, and to claim the release of the vessel, cargo, passengers, and crew, and the payment of suitable compensation for their arrest and detention.

The Undersigned avails himself, &c.

No. 48.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received October* 29.)

Behring Sea Arbitration.

Proposed Bye-law of Scottish Fishery Board.

My Lord, *Royal Courts of Justice, October* 28, 1892.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 24th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to a Bye-law which the Fishery Board of Scotland proposed to make under the powers conferred upon them by section 7 of the Herring Fisheries (Scotland) Act of 1889 (52 and 53 Vict., cap. 23), prohibiting beam-trawling over the waters inside a line drawn from Duncansby Head in Caithness to Rattray point in Aberdeenshire.

That the Bye-law in question would be found set out in terms in the letter from the Scottish Office of the 8th instant.

That it would be seen that it was proposed to revoke a former Bye-law (No. 8 of 1890) made under the above-mentioned Act, by which beam-trawling was prohibited over a limited area of the waters prescribed in the Act, namely, within a line drawn from the Ord of Caithness to Craighead, near Buckie.

That the position of that line and of the full area prescribed by the Act would be found marked on the accompanying Map.

That the Bye-law now suggested would have the effect of extending the prohibition to the extreme limit allowed, thus inclosing an area of water bounded by a line from shore to shore of 85 miles in length.

That a correspondence with the Scottish Office was inclosed, which took place previous to the passing of the Act when the question was raised, whether the Fishery Board of Scotland were justified by international law in making Bye-laws purporting in general terms, and in respect of persons other than British subjects, to control waters outside the territorial limits usually recognized by international law, and that it would be seen that it was eventually decided as matter of policy to introduce a Bill into Parliament giving the Fishery Board the required jurisdiction, in so far as Municipal legislation could confer it, while abstaining from any direct allusion to the limitations which considerations of international law might dictate as to its attempted enforcement or application in the case of the subjects and vessels of foreign Powers.

That we were aware that the Act of 1889, which was passed subsequently to that correspondence, had been quoted and appealed to by the United States' Government in the written Statement of Case presented by them in the Behring Sea Arbitration as an instance of legislation by this country controlling waters outside the 3-mile limit, and that its operation was assumed by the United States not to be restricted to offending British vessels, because it was applicable to "any person" without an exception being made in favour of foreigners.

That your Lordship assumed that in the Counter-Case of Her Majesty's Government it would be found expedient to state distinctly that, in the absence of special International Agreements, that or similar Acts authorized the issue of Municipal Regulations applicable to British subjects only, and that such Regulations were not intended to be enforced against foreign vessels outside the 3-mile limit; and that in that connection your Lordship was desirous of bringing to our special attention the observations made by the Legal Adviser to the Foreign Office in his Memorandum of the 22nd August, 1888.

That a correspondence with the Scottish Office on that subject was inclosed; and that it would be seen that, although no attempt had ever been made to enforce the Act of 1889 against foreign vessels, no opinion had ever been obtained from the Law Officers on the point, nor was any special allusion made to it in the instructions to the Commanders of Her Majesty's cruizers engaged in the superintendence of the Scottish fisheries.

That, under those circumstances, Sir Philip Currie was to request us to be so good as to favour your Lordship with our opinion—

1. Whether the proposed Bye-law in its present or any, and if so what, modified form could be allowed without injury to the interests of Great Britain in relation to foreign Powers.

2. Whether, in view of the contention, which it would probably be necessary to maintain in the Counter-Case of Her Majesty's Government in the Behring Sea Arbitration, it would not be advisable to issue confidential instructions to the Commanders of Her Majesty's cruizers engaged in the superintendence of the Scottish fisheries, that they must carefully abstain from attempting to enforce the provisions of the Act against foreign vessels outside territorial waters.

3. Whether, having regard to the present state of international doctrine and usage upon the subject, Her Majesty's Government might safely claim as territorial waters not only such as were included within the 3-mile limit measured from low-water mark, but might also contend on their own behalf, and be prepared similarly to admit in the case of foreign countries, that [adopting the language of the North Sea Fisheries Convention of 1882, Article II(2)], "as regards bays the distance of 3 miles shall be measured from a straight line across the bay in the part nearest the entrance at the first point where the width does not exceed 10 miles."

That a volume of correspondence on the subject of maritime jurisdiction was inclosed for reference, if necessary, and also a copy of the North Sea Fisheries Convention of 1882.

We were also honoured with a note from Sir Philip Currie, dated the 28th instant, inclosing a further letter from the Scottish Office on the subject of the proposed Bye-law.*

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* Scottish Office, October 26, 1892.

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We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

No objection to proposed Bye-law if binding—outside the "3-mile limit"—on British subjects only. "10-mile limit" not part of international law.

That, in our opinion—

1. There is no objection to the proposed Bye-law so long as it is treated as binding—outside the "3-mile limit"—on British subjects only.

2. It would be advisable to issue such instructions as are mentioned in the second question, applicable to all cases happening outside the "3-mile limit."

3. It would be reasonable to ask for, and reasonable to concede, the "10-mile limit," but that limit cannot be said to have received such general assent as to make it part of the international law.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Scottish Office	October 8, 1892.
(B.) Bye-law No. 8, 1890.	
(C.) Correspondence with Scottish Office, &c., leading up to passing of Scottish Herring Fishery Act of 1889.	
(D.) Map.	
(E.) To Scottish Office	September 10, 1892.
(F.) Scottish Office	September 24, „
(G.) Maritime Jurisdiction, volume of correspondence.	
(H.) North Sea Fisheries Convention of 1882. Treaty No. 727.	

Annex (A).

[Inclosure in letter from Scottish Office, August 7, 1888.]

Case for the Opinion of the Law Officers of the Crown in Scotland.

A QUESTION has arisen as to the confirmation of a Bye-law passed by the Fishery Board for Scotland in regard to which the Secretary for Scotland desires the opinion of the Law Officers of the Crown.

On the 26th May, 1888, the Fishery Board for Scotland submitted to Her Majesty's Secretary for Scotland a proposed Bye-law to regulate beam-trawling in the estuary of the Clyde in the following terms:—

"*Bye-law* (*No.* 4) *made by the Fishery Board for Scotland under the Powers conferred on the Board by 'The Sea Fisheries* (*Scotland*) *Amendment Act*, 1885.'

"1. This Bye-law shall extend and apply to the Firth of Clyde and those parts of the sea connected with it within or to the north and east of a line drawn from Dava Lighthouse to Pladda Lighthouse, thence to the lighthouse on Ailsa Craig, and thence to Corsewall Lighthouse.

"2. Within the aforesaid limits no person, unless in the service, or by the orders of, the Fishery Board for Scotland, shall, at any time from the date when this Bye-law comes into force, use any beam-trawl for taking sea-fish; and the master or the person actually in command of any vessel acting in contravention of this Bye-law shall, on conviction, be liable to a fine not exceeding 100*l.*; and, failing immediate payment of the fine, to imprisonment for a period not exceeding sixty days, without prejudice to diligence by poinding or imprisonment, if no imprisonment has followed on the conviction—all in terms of the said Act.

"3. This Bye-law shall come into force on the 7th August, 1888, and shall remain in force until the 7th August, 1891.

"By order,
(Signed) "DUGALD GRAHAM, *Secretary.*

"Dated at Edinburgh, this 22nd day of May, 1888."

By the Sea Fisheries (Scotland) Amendment Act of 1885 (48 & 49 Vict., cap. 70, sec. 4), it is provided that no Bye-law shall be valid until it is confirmed by the Secretary for Scotland. And a Bye-law shall not be confirmed by the Secretary for Scotland until after one month from the time when notice of intention to apply for its confirmation has been given by the Fishery Board by advertisement

in one or more papers circulating in the counties adjoining the part of the sea to which such Bye-law is proposed to apply. It is further provided that the Secretary for Scotland shall allow any person to make a representation for his interest against the confirmation of any Bye-law, and a notice of objection being given by such person to the Fishery Board within the said period of one month, and may, if he see fit, allow parties to be heard thereon.

Objections to the aforesaid proposed Bye-law have been made to the Fishery Board on these grounds:—

(*a.*) That it is *ultra vires* of the Fishery Board by public international law;
(*b.*) That it is *ultra vires* of the Fishery Board by Statute; and
(*c.*) That it is not advisable in the public interest.

The first of these objections has been referred to and decided by the Foreign Office; the third is a matter for the Fishery Board to decide on evidence, and for which the Board must be responsible; but on the second Her Majesty's Secretary for Scotland desires to have the opinion of the Scotch Law Officers of the Crown.

The Fishery Board for Scotland was constituted in its present form by the Fishery Board (Scotland) Act of 1882 (45 & 46 Vict., cap. 78). By section 5 (1) of that Act the Board is to have all the powers and duties conferred upon the then Board of British White Herring Fishery by the Herring Fishery Acts and the Sea Fishery Acts, 1868 and 1875, and any Order in Council following thereon.

By section 2 of the same Act the expression "Herring Fishery Acts" is defined to mean the Acts mentioned in the first Schedule to the Act.

By the Fishery Board Act of 1882 the Board is particularly required (section 5) to take cognizance of everything relating to the coast and deep-sea fisheries of Scotland, and to take such measures for their improvement as the funds under their administration, and not otherwise appropriated, may admit of.

Under the Herring Fisheries Acts the Fishery Board has a general power of regulating the fisheries on the "coasts of Scotland."

In the Herring Fisheries Act of 1860 (23 & 24 Vict., cap. 92), section 2, and again in the British White Herring Fishery Act of 1867 (30 & 31 Vict., cap. 52), the expression "coasts of Scotland" is defined to mean and include all (*a*) bays; (*b*) estuaries; (*c*) arms of the sea; and (*d*) all tidal waters within the distance of 3 miles from the mainland or adjacent islands.

But the Sea Fisheries Amendment Act of 1885 seems to some extent to supersede the definition of the above expression, "coasts of Scotland;" section 4 of that Act confines the power of the Fishery Board to make Bye-laws "within the exclusive fishery limits of the British Islands." The Sea Fisheries Act of 1883 defines the meaning of the expression, "within the exclusive fishery limits of the British Islands," as "that portion of the seas surrounding the British Islands within which Her Majesty's subjects have by international law the exclusive right of fishing, and where such portion is defined by the terms of any Convention, Treaty, or Arrangement for the time being in force between Her Majesty and any foreign State, includes, as regards the sea-fishing boats and officers and subjects of that State, the portion so defined."

The first Schedule attached to that Act is the Convention which, under the Act, was confirmed, and the "Articles thereof shall be of the same force as if they were enacted in the body of this Act."

Article II of the Convention states that "the fishermen of each country shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of their respective countries, as well as of the dependent islands and banks.

"As regards bays, the distance of 3 miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed 10 miles."

The questions to which the Secretary for Scotland would wish to have the answers of the Law Officers are:—

1. Is the Fishery Board acting within the statutory powers in proposing a Bye-law to regulate fishing in the estuary of the Clyde, within a line drawn from Campbeltown to Pladda, and thence by Ailsa to the point of Corsewall?

If the Law Officers should answer the above question in the affirmative, then—

2. Seeing that the principal fishing-ground on the Ballantrae banks is not protected by the proposed line, would the Fishery Board be within their statutory powers in drawing a line from the Mull of Kintyre to the point of Corsewall?

Crown Office, Edinburgh, July 20, 1888.

Opinion.

We are of opinion that the Bye-law in question is *ultra vires* of the Fishery Board.

The Sea Fisheries (Scotland) Amendment Act of 1885 is to be read along with the Sea Fisheries Act of 1883. Accordingly, the words, "within the exclusive fishery limits of the British Islands' (occurring in section 4 of the Act of 1885), which prescribe the area of jurisdiction of the Fishery Board, are to be construed in accordance with the interpretation clause (section 28) of the Act of 1883.

Now the definition of "exclusive fishery limits of the British Islands" in that interpretation clause consists of two parts. The first is general, that portion of the sea surrounding the British Islands within which Her Majesty's subjects have by international law the exclusive right of fishing.

The second part of the definition applies only to such portions of the seas as are defined by any Convention, Treaty, or Arrangement with a foreign State; and it is sufficient for the present case to

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say that, as there is no Convention, Treaty, or Arrangement applicable to the seas now in question, this latter part of the statutory definition has no bearing on the matter before us.

The question, therefore, is whether, in the part of the sea specified in the Bye-law, Her Majesty's subjects have by international law the exclusive right of fishing.

We are unable to affirm this proposition. The information before us does not disclose the theory of international law upon which the authors of this Bye-law proceeded. It is clear, however, that where by Municipal law a new jurisdiction is conferred to limit a particular industry within an area defined by reference to international law, the bounds of that jurisdiction are to be closely scrutinized. Now, it is, we think, impossible to assert that it is matter of international law that the Queen's subjects have exclusive right of fishing over the waters comprised in this Bye-law. The general international law on the subject cannot be said, in the absence of Convention, to be determined by any arithmetical formula specifically applicable to this case. But having regard to the geographical facts of the present question, the exclusive right of fishing, which is the hypothesis of the Bye-law, does not seem to us to be established by international law.

The opinion of
(Signed) J. H. A. MACDONALD.
J. P. B. ROBERTSON.

Edinburgh, July 30, 1888.

Annex (B).

[Inclosure in letter from Dublin Castle, October 22, 1892.]

Memorandum.

A CASE having been submitted to the Law Officers as to the powers possessed by Her Majesty to make an Order in Council prohibiting herring-fishing before the 1st June within 30 miles of the south coast of Ireland, the following opinion was given:—

Law Opinion.

We are of opinion that Her Majesty in Council has no power to make such an Order or Bye-law as is suggested; nor do we know of any authority possessing such a power. Parliament might make such a law so as to bind the subjects of the Crown, although there would probably be no precedent for such a Statute; but such an enactment would not affect the subjects of foreign States.

(Signed) HUGH HOLMES.
J. G. GIBSON.

November 13, 1886.

No. 49.

The Law Officers of the Crown to the Earl of Rosebery.—(Received December 14.)

Royal Courts of Justice, December 13, 1892.

My Lord,

Seizure of the British steamer "Coquitlan" at Port Etches by the U. S. revenue-cruizer "Corwin."

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the seizure of the British steamer "Coquitlan" at Port Etches by the United States' revenue-cruizer "Corwin."

That it would be in our recollection that that question had already been referred to us on two previous occasions (25th August and 13th September) for our opinion, in the first place, as to whether any ground of protest existed on the part of Her Majesty's Government, and, subsequently, that question having been settled in the affirmative, as to the terms in which the protest should be made.

That our two Reports upon the references above alluded to were dated respectively the 9th September and 17th September, and were inclosed, for our convenience, with the other papers.

That Sir Thomas Sanderson was now to transmit a despatch from Her Majesty's Chargé d'Affaires at Washington, inclosing the reply of the United States' Government to the note of protest which was, in accordance with our opinion, addressed to them.

That they stated that, as the case of the "Coquitlan" was before the judicial authorities, it would have to take its course without intervention on the part of the Executive beyond such proper steps as might be taken to expedite the proceedings.

That that despatch was referred to the Colonial Office for observations, and that the reply received from that Department was inclosed.

That the Marquis of Ripon pointed out that the note of the United States' Minister made no allusion to the last two paragraphs of Mr. Herbert's note, in which it was maintained that the offence originally charged against the vessel was an act which was admitted to have been committed outside the 3-mile limit, and that the officers of the United States had therefore no right to seize the vessel and bring her before the Court.

That, in view of the decision recently given by the United States' Courts in the case of the "W. P. Sayward" (see Sir J. Pauncefote's No. 66, March 11, 1892), Lord Ripon considered it desirable to renew the protest entered on behalf of Her Majesty's Government against the assumption that the United States' Courts could have jurisdiction over a foreign vessel in respect of an act committed on the high seas, which contention, in Lord Ripon's opinion, underlaid the plea of the United States' Government that, the case being in the hands of the Court, the Executive could not interfere.

That his Lordship also pointed out that Her Majesty's Government had not asked for any interference with the proceedings of the Court, but had only demanded that the prosecution of the vessel, which was the act of the Executive, should be withdrawn, on the ground that the municipal law of the United States did not extend to British vessels on the high sea.

That a despatch from the Governor-General of Canada, inclosing a Minute of Council on the subject, was inclosed in the letter from the Colonial Office dated the 21st November last.

That Sir Thomas Sanderson was to request that we would be good enough to take the papers into our consideration, and favour your Lordship with our opinion as to whether it was desirable to address a reply to the United States' Government in the sense of Lord Ripon's observations, and also with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to

Report—

Protest ought to be maintained, and a reply in the sense of Lord Ripon's observations should be addressed to the U. S. Govt.

That, in our opinion, the protest made in this case ought to be maintained, and a reply in the sense of Lord Ripon's observations should be addressed to the United States' Government.

We would observe that the real ground for proceeding against the vessel appears to be the transfer of cargo outside the "3-mile limit," and it might be plausibly argued that as Great Britain, when legislating for the protection of her own Revenue Laws (10 Geo. II, cap. 36, secs. 22 and 23), has assumed jurisdiction over vessels within 4 leagues of the shore, the United States are justified in following her example.

The answer to this is, as previously indicated, that the United States' legislation, contained in the Articles 2867 and 2868, founded on by them relates only to vessels *bound to the United States*, and is intended to prevent any fraud on the Revenue Laws. If, and so far as, the Government of Great Britain might be disposed to waive any objection to jurisdiction being exercised under these Articles outside the "3-mile limit," it could only be on the ground that it would not interfere in favour of its nationals, not acting in good faith, to prevent the United States from protecting itself against infraction of its Revenue Laws. No such waiver could be treated as assent to jurisdiction outside the "3-mile limit," or allow of its being exercised, as here, against a ship not bound for the United States, and therefore not within either the letter or spirit of the Articles referred to.

Objection is taken to the action of the U. S. Executive in seizing a British ship for an act done outside territorial waters.

The objection is taken, not to the exercise by the United States' Tribunals of a jurisdiction within their competence, but to the action of the Executive in seizing a British ship for an act done outside territorial waters, and not even within the terms of the United States' law.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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List of Papers.

(A.)	Law Officers		September 9, 1892.
(B.)	Ditto		September 17, „
(C.)	Mr. Herbert	(No. 297)	October 8, „
(D.)	Colonial Office		November 21, „
(E.)	Sir J. Pauncefote	(No. 66)	March 11, „

(F.) Papers previously sent to Law Officers, August 25 and 31, 1892.

ZANZIBAR.

No. 50.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 26.)

My Lord, *Royal Courts of Justice, February* 24, 1892.

The Zanzibar draft Order in Council, 1892.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us a draft Order in Council, to be known as "The Zanzibar Order in Council, 1892," authorizing persons not holding Her Majesty's commission as Consul or Vice-Consul for Zanzibar to exercise under certain conditions, and subject to certain limitations set forth in the draft Order, judicial functions in the dominions of the Sultan of Zanzibar.

That Sir Thomas Sanderson was also to inclose a copy of "The Zanzibar Order in Council, 1884," referred to in the draft Order as the principal Order.

That he was to request that we would take the draft Order in Council into our consideration, and that we would favour your Lordship with our opinion whether its terms were right and proper, and whether it might be submitted in its then shape to the Queen in Council for Her Majesty's approval.

In obedience to your Lordship's commands we have the honour to

Report—

Approve it.

That, in our opinion, the draft Order, in its present shape, may properly be submitted to Her Majesty.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Draft Order in Council.

Whereas by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within the dominions of His Highness the Sultan of Zanzibar:

Now, therefore, Her Majesty, by virtue and in exercise of the powers by "The Foreign Jurisdiction Act, 1890," or otherwise, in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Zanzibar Order in Council, 1892."

2. In case Her Majesty is pleased to direct the appointment of a person, not holding Her Majesty's commission as a Consul or Vice-Consul for Zanzibar or any part thereof, nor acting or appointed temporarily as such under the provisions of "The Zanzibar Order in Council, 1884" (hereinafter referred to as the principal Order), to perform, as a Judge or judicial officer or Commissioner in or for Zanzibar or any part thereof, all or any of the judicial powers or jurisdiction by the principal Order vested in or exercisable by a Consular Court, a person so appointed by the authority of a Secretary of State, in such form as a Secretary of State may direct, shall in like manner hold and form a Court, and for the purposes of, and subject to any limitations contained in, his appointment, shall have and exercise all the same powers and jurisdiction which under the principal Order can be exercised by a

Consular Court, and shall be removable by authority of a Secretary of State; and it shall be lawful for a Secretary of State, by any such appointment or otherwise, to make provision for assigning to such Judge or judicial officer or Commissioner such of the powers or so much of the jurisdiction exercisable under the principal Order and this Order, to be exercised by them, either separately or concurrently, as the Secretary of State from time to time directs, and under such description or designation as he directs.

In this Order expressions have the same meaning as in the principal Order.

And the Right Honourable the Marquis of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

No. 51.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 24.)

My Lord, *Royal Courts of Justice, June* 22, 1892.

Proclamation of Administrator of Imperial East Africa Company at Mombasa as to registration of individuals and property, and institution of trade licences.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list* relative to a Proclamation issued on the 1st January last by Mr. Ernest Berkeley, the Administrator of the Imperial East Africa Company at Mombasa.

That the Proclamation in question insisted on the registration of individuals and property within the Company's territories, and imposed a fee for such registration. That it also ordered all merchants, traders, and shopkeepers to obtain a licence authorizing them to carry on their business, and imposed fees for such licences.

That it further notified that non-compliance with the Regulations would be punished by a fine which might amount to 100 rupees, and that further neglect after the first offence would be "more severely dealt with."

That the subjects of certain foreign Powers and the agents of some British firms paid the licence fees under protest, but that certain Indian traders refused to comply with the requirements of the Proclamation, and were fined by the Company's Administrator. That they declined to pay the fines.

That upon that the question arose whether the registration fees and licence duties imposed by the Proclamation were legally leviable by Mr. Berkeley, or whether they were inconsistent with the terms of the Treaties of Zanzibar with this country and Germany, of which copies were inclosed, viz., those of the 31st May, 1839, and the 30th April, 1886.

That it would be observed (Article VII) that the Treaties in question prescribed that no taxes, customs, or duties beyond an import duty of 5 per cent. *ad valorem* on all foreign goods should be levied or claimed by or on behalf of the Sultan of Zanzibar within His Highness' dominions.

That the position and powers of the Company within the territories conceded to them by the Sultan of Zanzibar would be gathered from the terms of their Concession from His Highness, dated the 25th May, 1887, from which it would be seen that it was stipulated that nothing therein contained "shall in any way infringe on or lessen the rights accorded by His Highness to the subjects or citizens of Great Britain, the United States of America, France, Germany, or other foreign Power having Treaty relations with His Highness."

That the position, therefore, was that the Company administered in the place of the Sultan, having neither more nor less powers or rights than His Highness, and that the question at issue was whether the Sultan would or would not have the right to exact fees and impose licences, such as those exacted and imposed by Mr. Berkeley on (1) British and (2) German subjects, in view of the above-mentioned Treaty stipulations.

That the papers also raised the question, how far the Sultan or those exercising his powers were entitled to charge German or British subjects for work specially done for their benefit; or to refuse such special benefits, such as registration, or the like, if the consideration were not paid. That equally the question might be raised whether a licence to do anything which it was at the discretion of the Sultan to forbid could be treated as a benefit or service done, which might be withheld except upon consideration given.

* Treaty, Great Britain and Zanzibar	May 31, 1839.	State Papers, vol. v, p. 611.
„ „ „ „	April 30, 1886.	Treaty No. 782.
„ Germany and Zanzibar	.. 1885.	State Papers, vol. lxxvi, p. 247.
Sultan's Concession to Imperial East Africa Company	May 24, 1887.	Confidential No. 5497, p. 87.
Proclamation	January 1, 1892.	

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That Sir Philip Currie was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion on the questions raised in his letter, and with any general observations which we might have to offer on the matter.

The Attorney-General's Opinion.

I have taken the papers into my consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Clause 5 of Proclamation is *ultra vires*.

That, in my opinion, clause 5 of the Proclamation of the 1st January, 1892, is *ultra vires*, as imposing indirectly taxation contrary to Article IX of the Treaty of the 30th April, 1886.

Registration cannot be looked upon as a service rendered or benefit conferred; it is required equally from foreigners and natives as part of the administrative system of the country.

I have, &c.
(Signed) RICHARD E. WEBSTER.

The Solicitor-General's Opinion.

I have also taken the matter into consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That I agree with the Attorney-General, that registration cannot be looked upon as a service rendered or benefit conferred; and that it is required equally from foreigners and natives as part of the administrative system of the country.

No valid objection to the Proclamation.

I am of opinion that no valid objection can be raised to the Proclamation of the 1st January, 1892.

I have, &c.
(Signed) EDWARD CLARKE.

No. 52.

The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 1.)

My Lord, *Royal Courts of Justice, June 30, 1892.*

Extent of jurisdiction and administrative powers of a European State holding Protectorates in Africa.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the question of the extent of the jurisdiction and administrative powers of a European State holding Protectorates in Africa, a subject on which we reported to the Secretary of State for the Colonies on the 17th and 30th April, 1891.

German claim to exterritoriality and to exemption from Penal Regulations respecting liquor traffic issued by any but German authorities.

That the particular question now at issue arose in consequence of the action of Her Majesty's Agent and Consul-General in Zanzibar in attempting to give effect to those Articles of the Brussels Act of 1890 which referred to the importation of spirituous liquors into Africa.

That the Act of Brussels was signed on the 2nd July, 1890, and that the Sultan of Zanzibar was a party to it. That on the 4th November, 1890, the Protectorate of Great Britain over the dominions of the Sultan of Zanzibar was publicly notified. That the Act of Brussels, owing to delays in ratification by some of the Signatory Powers, first came into operation on the 2nd April, 1892, and that, on the 7th of that month, Her Majesty's Agent and Consul-General in Zanzibar, who had previously issued a warning on the subject, notified the fact to his colleagues, and asked their co-operation in carrying out the Regulations under which he proposed to administer the spirit clauses of the Act.

That the German Consul raised an objection to those Regulations so far as they applied to persons under his jurisdiction, pending instructions from his Government. That, meantime, due notice was given by Her Majesty's Government on the 6th April, under section 2 of Article XCI of the Brussels Act, that the dominions of the Sultan of Zanzibar had been placed within the zone of prohibition of alcoholic liquors. That it was to be observed that the notification to the Powers was not made by Zanzibar, as a Sovereign Power signatory of the Act, but by Great Britain as the Signatory Power exercising Protectorate over Zanzibar. That the matter was reported by telegraph, and formed the subject of a representation to the German Government, which met with the reply recorded in Mr. Trench's No. 30, Africa, of the 28th April. That it would be seen therefrom that the German Government raised no question of the right of the British Representative to issue a notice dealing with the matter, but claimed that, in consequence of the exterritorial rights possessed by Germany in Zanzibar under Article XVI of the Treaty of the 20th December, 1885, any penal Regulations against infringement of the notice, as affecting German subjects, must be issued by the German Government. That your Lordship had some doubts as to the validity of that contention, and the consequent propriety of making any such admission on the part of Her Majesty's Government.

That the general views of Her Majesty's Government as to the jurisdiction and administrative powers of a European State holding Protectorates in Africa were in harmony with those put forward in the Memorandum by Mr. Bramston of February 1891, on which we reported to Lord Knutsford on the 17th April, 1891, that "the views expressed in the Memorandum are in substance correct."

That the cardinal position therein taken was that, by the signature of the Berlin Act of 1885, the Powers represented admitted that a Protectorate in Africa included the right of administering justice over the subjects of other civilized Powers within its limits.

That no objection had been made by any foreign Power to the exercise of British jurisdiction over its subjects in British Protectorates generally; that the objection raised by Germany in Zanzibar was based, as had been above stated, on the existence of the Treaty with Zanzibar, conferring exterritoriality on German subjects. That exterritorial rights were similarly claimed by many other Powers. That the question at issue was whether, and, if so, to what extent, those exterritorial rights had been extinguished in favour of Great Britain by the Act of Brussels for the purpose of the execution of the obligations contracted by her under the Act.

That Article XC stated that the Signatory Powers had agreed to apply the provisions of Articles XCI, XCII, and XCIII within a certain zone; that Article XCI laid down that, in certain regions of that zone, the Powers should prohibit the importation and manufacture of distilled liquors; that each Power should determine the limits of the zone of prohibition in its possessions or Protectorates, and should notify those limits within the space of six months, and that such prohibition could only be suspended in the case of limited quantities destined for the consumption of the non-native population, and imported under the system and conditions determined by each Government. That it was evident that the Powers which voluntarily assumed and imposed upon one another such obligations must have contemplated the possession by each Power of the means of enforcing the Regulations which it might be necessary to issue in fulfilment of those obligations. That the position would otherwise be intolerable, and the Articles of the Act would become a dead letter, and its administration a farce.

That if every other Power were to reserve the right to itself of imposing penalties for the infringement by its own subjects of the Rules made by the protecting Power for general observance by all persons within the limits of its Protectorate, any of them might, by the imposition of a merely nominal penalty, confer practical immunity upon its own subjects, and throw into their hands the monopoly of the spirit trade, while the protecting Power would be unable to interfere. That if this country could not exercise jurisdiction over foreigners, the differential treatment to which British subjects would be thus exposed would practically prevent any control at all being exercised.

That there was another contention also by which your Lordship was disposed to think that the German argument might possibly be met.

That the Treaties under which exterritoriality was claimed were between foreign Powers and Zanzibar; but that the Brussels Act imposed obligations upon Powers having possessions and Protectorates within which the limits of the prohibition were to be notified.

That it was Great Britain who notified the prohibition in the Zanzibar dominions as being within her Protectorate, and not the Sultan of Zanzibar, who notified it as being within his possessions.

That it was on Great Britain therefore that the obligation of enforcing its observance fell, and not on Zanzibar; and that it was in the British Courts within

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that Protectorate, and not in the native Courts, that the necessary jurisdiction for that purpose would be exercised and the Regulations enforced. That it was therefore questionable whether a Power, having by Treaty with Zanzibar the privilege of exemption of its subjects from Zanzibar jurisdiction, could appeal to such Treaty as exempting its subjects from the jurisdiction of the Courts of Great Britain in her Protectorate with respect to matters arising from obligations imposed on her by the Act of Brussels.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

German contention inadmissible. Protecting Power has right to enforce prohibition of liquor traffic under Brussels General Act.

That, in our opinion, the contention of the German Government should not be admitted.

The effect of Articles XC, XCI, and XCII of the Brussels General Act is, in our judgment, that the protecting Power has the right and duty of determining the limits of the zone of prohibition, and the system and conditions under which that prohibition shall be suspended, and has, by necessary consequence, the right of enforcing such prohibition, and the observance of such system and conditions.

Had these Articles stood alone, we should have been of opinion that they amounted to a waiver by the Signatory Powers of any privileges enjoyed by their subjects under Treaty or otherwise, which would exempt them from the enforcement, by the protecting Power and its Tribunals, of such penalties as it might impose upon breach of the prohibition, or of the conditions. But we think the matter is rendered quite clear by Article XCVI, as a claim of extra-territoriality in respect of the enforcement of such prohibition and conditions would be contrary to the clear purport, and fatal to the effective execution, of the Brussels General Act.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

(A.) Brussels Act. Parliamentary No. 3357.			
(B.) Mr. Portal's No. 78.			
(C.) To Sir E. Malet, No. 43, § 425.			
(D.) Mr. Trench's No. 30 of April 28, 1892.			
(E.) Treaty between Germany and Zanzibar ..	..	December 20, 1885.	Parliamentary No. 3123.
(F.) Mr. Bramston's Memorandum ..	..	February 1891.	Confidential No. 6207, pp. 11–15.
(G.) Berlin Act. Confidential No. 5181.			

No. 53.

The Law Officers of the Crown to the Earl of Rosebery.—(Received October 25.)

(B.)

My Lord, *Royal Courts of Justice, October* 22, 1892.

Question of right of Zanzibar Government to levy duties under the Free Zone system of the Berlin Act as modified by the Brussels Act and Declaration of Zanzibar as a free port.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to the question of the right of the Zanzibar Government to levy duties under the Free Zone system of the Berlin Act as modified by the Brussels Act and annexed Declaration, which formed the subject of the reference to us of the 19th ultimo.

That the case in the despatch No. 202 turned on an apparent evasion of the provisions of Chapter VI of the Brussels Act, which related to the use of distilled liquors, by the sale of such liquors under the title of "Eau de Cologne;" and that

That in despatch No. 203 affected the application of Articles VIII to XIII of the Act which dealt with the importation of arms, and depended on the interpretation of Article XCVI of the Act, which "repeals all contrary stipulations of Conventions previously concluded."

That Sir Philip Currie was to request that we would take the papers into our consideration, and favour your Lordship with our opinion on the questions raised therein.

In obedience to your Lordship's commands, we have the honour to

Report—

Duties on so-called "Eau de Cologne," safe custody of arms, &c.

That in our opinion—

1. The duties levied in respect of the so-called "Eau de Cologne" are properly chargeable.

Whether the goods can be properly described as "articles de parfumerie" or not, they are certainly alcoholic liquors, and taxable as such both under the Brussels General Act and the Declaration of Zanzibar as a free port.

Licences to carry fire-arms.

2. Inasmuch as the Brussels General Act provides for the deposit and safe custody of arms and ammunition, and for the granting of licences to carry fire-arms, reasonable charges for these purposes may properly be made.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

No. 54.

The Law Officers of the Crown to the Earl of Rosebery.—(Received October 25.)

My Lord, *Royal Courts of Justice, October* 22, 1892.

Position of British Protectorate of Zanzibar under the Free Zone provisions of Article I of the Act of Berlin of 1885.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the position of the British Protectorate of Zanzibar under the Free Zone provisions of Article I of the Act of Berlin of 1885.

That the question was closely related to that of the position of the Protectorate in regard to liquor licences, on which our predecessors reported to the Marquis of Salisbury on the 30th June last, a copy of which Report was inclosed to us for convenience of reference.

That the point now in question was whether the Sultan of Zanzibar, as a Power which had adhered to the Berlin Act, and had possessions in the conventional basin of the Congo at the date of the signature of the Declaration of the 2nd July, 1890, attached to the Act of Brussels of the same date, or Great Britain, as exercising a Protectorate over Zanzibar on his behalf, was free to exercise the privilege, reserved to Powers having possessions within the conventional basin when the Berlin Act was signed, of placing those possessions within the Free Zone, and whether by so doing the Protectorate became entitled to employ the system framed for the Free Zone by the assembled Powers in 1885 as modified by the Declaration annexed to the Brussels Act.

That the arguments of the French Government against the position of Her Majesty's Government in the question were given in M. Ribot's note of the 29th August last, inclosed in Lord Dufferin's No. 232, Africa, of the same date. That those advanced in reply by Her Majesty's Government were more fully developed in the draft to his Excellency, marked 1; and that Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the proposed draft correctly and properly explained the position, and with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve generally draft of despatch to Lord Dufferin.

That in our opinion Great Britain, as exercising a Protectorate over Zanzibar, is, on behalf of the Sultan of Zanzibar, who had possessions in the conventional basin of the Congo at the date of the Declaration of the 2nd July, 1890, free to exercise the privilege, reserved to Powers having possessions within the conventional basin when

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* Sir G. Portal, Nos. 202 and 203; Notice declaring Zanzibar a free port (Inclosure in Sir G. Portal's No. 207 of 1891).

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the Berlin Act was signed, of placing those possessions within the Free Zone, and that by so doing the Protecting Power becomes entitled to employ the system framed for the Free Zone by the assembled Powers in 1885, as modified by the Declaration annexed to the Brussels Act.

The draft of the despatch proposed to be addressed to his Excellency Lord Dufferin does, in our opinion, correctly and properly explain the position; but we feel the difficulty of relying upon the so-called adhesion in November 1886 of the Sultan of Zanzibar, seeing that that adhesion is not absolute but qualified; and we would suggest a modification of the paragraph of the despatch referring to it.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Article I of Act of Berlin. Confidential No. 5181.		
(B.)	Brussels Act. Treaty No 889.		
(C.)	Declaration	July 2, 1890.	Treaty No. 889.
(D.)	Agreement respecting Eastern Tariff ..	December 22, „	
(E.)	Anglo-French Declaration	August 5, „	Treaty No. 856.
(F.)	Article X of Treaty between France and Muscat ..	1844.	State Papers, vol. xxxv, p. 1011.
(G.)	Circular (Free Zone)	June 22, 1892.	
(H.)	The Marquis of Dufferin .. (No. 232. Africa).		
(I.)	Draft to the Marquis of Dufferin for approval.		
	Law Officers' Report	June 30, „	p. 96.

Annex.

Despatch from the Earl of Rosebery to the Marquis of Dufferin.

(No. 265 Africa.)

Foreign Office, October 31, 1892.

My Lord

Her Majesty's Government have learnt with regret from your Excellency's despatch No. 232 of the 29th August that the French Government have thought it to be incumbent on them to make formal reserves in regard to the notification made to them on the 28th June, that the British Protectorate of Zanzibar would, from the 1st July, adopt the fiscal system of the Free Zone of the Act of Berlin, as modified by the Declaration appended to the Act of Brussels.

M. Ribot states that he is of opinion that this step is opposed to all the Acts and Treaties at present, as regards Tariffs, governing the international position of the Sultan's States. In support of this view he makes a series of observations based on the suggestions of the Legal Advisers of his Department.

These observations have been attentively considered. They take the form of objections, some relating to principle, others to detail, to some extent disconnected, the object being, apparently, to accumulate all considerations, direct or indirect, which may tend to invalidate the notification. I have endeavoured in the following remarks to meet each of these objections, while, at the same time, justifying the notification by showing that it is in every respect consistent with the powers and obligations of the British Protectorate.

M. Ribot holds that the step is not in accordance with the provisions of the Acts of Berlin and Brussels, nor with the Treaties of Zanzibar with various Powers. In replying, I will deal separately with the two branches of opposition.

The Ist Article of the Act of Berlin which M. Ribot quotes recorded that, as regards the Eastern Zone, the Signatory Powers engaged only for themselves, and did not apply the principle of commercial freedom to territories belonging to an independent State without the consent of such State; that, in fact, they respected existing interests, and did not assume the right of imposing the system upon States who might be reluctant to accept it. M. Ribot does not quote the words of the Article which engage the Powers to use their good offices to obtain the assent of a reluctant State, and which thus prove the anxiety of the Powers to obtain the universal acceptance of the new system. But these words are of the highest importance as proving that it was the object of the Conference to include Zanzibar, if her assent could be procured, within the area of commercial liberty as defined in the Act.

The Ist Article, taken by itself, comprises an engagement on the part of the Signatory Powers only. Zanzibar was not a Signatory Power.

But the XXXVIIth Article provided for the subsequent adhesion to the Act of other Powers who would be placed by adhesion on a precisely similar footing with those who had signed. Zanzibar did not long delay taking advantage of this privilege. The Act was signed on the 26th February, 1885; she adhered on the 8th November, 1886, and showed an intention of becoming, practically, a Signatory of the Act. M. Ribot's note appears to argue that the adhesion was incomplete, as, in giving it, the Sultan reserved the question of commercial liberty, and that it was not completed until this reservation was withdrawn through the acceptance by Great Britain, on his behalf, of the Free Zone system, notified to the Powers by Great Britain on the 22nd June last: it urges that, consequently, on the 2nd July, 1890, when the Act of Brussels, with the annexed Declaration, was signed, Zanzibar was not one of the Powers qualified to sign as "having ratified the General Act of Berlin, or having adhered thereto." I cannot but consider that the Legal Advisers of the Department, in making this suggestion, were not fully acquainted with the facts.

Zanzibar cannot, in the consideration of this point, be separated from the other Powers interested in the Eastern Zone. At the date of the signature of the Act of Berlin there was only one Power besides herself whose right of assent was reserved by the Ist Article, that Power being Portugal. But, subsequently, Germany having notified first a Protectorate in Usagara, and having afterwards obtained the cession of a large portion of the Zanzibar mainland, was added. Great Britain also, as Protector of Witu, and Italy, as claiming a sphere to the north of the Juba, took their places among the States connected with the Eastern Zone. The argument contained in the note must therefore be examined as regards its application to all these Powers.

Before dealing with the alleged incompleteness of adhesion of Powers who had not accepted the system of commercial liberty, I will meet an argument which seems to imply that the Act and Declaration (the latter, which was signed simultaneously with the former, cannot be separated from it) apply only to territories in the possession, or under the Protectorate or influence, of certain Powers specified at the date of signature, to the exclusion of those coming subsequently into the possession, or under the Protectorate or influence, of such Powers, and of those in the possession, or under the Protectorate or influence, of Powers not specially mentioned. This contention, if sound, would apply equally to the Act of Berlin, and it would in practice render nugatory, in a great measure, the provisions of both Acts, the manifest intention of which was to lay down a code of Rules governing States engaged in the gradual development of Africa, and to prevent them from dealing with the territories affected thereby except under the terms of the Acts.

M. Ribot applies the argument by saying that the Brussels Conference was really concerned about the revenues of the Congo State alone, and that the reference to certain other Powers, such as Great Britain and Germany, was incidental and limited, though unavoidable. It is undoubtedly true that the position of the Congo State may have primarily led to the discussion of the Declaration, but it is nevertheless the case that the Declaration itself, which is a most carefully-worded document, is by its terms extended explicitly to the whole of the conventional basin of the Congo, and is in no way limited or restricted. It applies to all possessions, Protectorates, or spheres situated within that basin, and makes no reference to the contingency of their conditions being from time to time altered.

It would create inextricable confusion if the Powers were to go behind the wording and appeal from it to the alleged intention of its framers. At the time of its signature Germany had not taken possession of the coast from the Rovuma to the Umbe, Great Britain had not assumed the Protectorate of Witu, Italy had not placed the northern coast under her influence. If, then, the argument of the note were admitted and pressed to its logical conclusion, it would follow that as none of these changes were effected when the Declaration was signed, neither of the three Powers could, any more than Zanzibar, take advantage of its provisions. If this objection had been valid it should have been put forward when, in December 1890, the three Powers concluded an Agreement in response to what they held to be the invitation of the Declaration, which was duly communicated to, and accepted by, the Conference. No such objection was made or even indicated, and it appears certain that the result of the signature of the Declaration is that the whole of the Powers in the Eastern Zone, Great Britain, Germany, Italy, Portugal, and Zanzibar, are entitled to its benefits, though the majority of them are in a position different from that which they held at the date of its signature.

M. Ribot takes further objections, which I think are correctly interpreted in the following manner: first, that supposing Zanzibar were qualified to sign the Brussels Act and Declaration, she could not afterwards adhere to the system of commercial liberty of the Berlin Act, as that system, owing to its modification by the Declaration, had ceased to exist; secondly, that if it were admitted that she were still able to adhere to the system, she could not obtain the benefits of the Declaration by adhering after the 2nd July, 1890.

To the first objection, I reply by observing that the system of commercial liberty established by the Act of Berlin is unquestionably still in existence; it has only been modified in respect of the power to levy import duties. As regards the second argument, I would ask whether it has been considered that it would apply with equal force to Germany and Portugal. The former has not placed her coast-line, the latter has not placed any portion of her possessions, within the system of commercial liberty. If Zanzibar, therefore, were excluded from the benefit of the Declaration by her tardiness in accepting the invitation tendered by the Ist Article of the Act of Berlin, *à fortiori* the Powers which have not yet accepted would be excluded. Zanzibar, as I have before said, cannot in this respect be treated exceptionally.

The correct view appears to be that delay in accepting the Berlin invitation, to which no limit was attached, neither creates a qualified adherence to the Act nor deprives reluctant States of any benefits which may be conferred by the Brussels Declaration whenever they may decide to signify their acceptance. The reserve for the benefit of the States in the Eastern Zone was not made by those States, but by the parties to the Act. Full adherence, consequently, is compatible with such reserve, and Zanzibar, in common with the other Powers which took advantage of it, is fully entitled to the privileges and bound by the obligations of Signatories of, or adherents to, the Act of Berlin, all of whom have participated in the Act of Brussels, with which the Declaration is inseparably connected.

I have thus far considered principally the position of Zanzibar as an independent State, but her position is doubly fortified by the fact that the country is under the Protectorate of Great Britain. If there were a doubt as to the completeness of the adhesion of Zanzibar to the Act of Berlin, and, inferentially, of her right to benefit by the Brussels Declaration, there can be no doubt whatever as to the position of Great Britain. The preamble of the Declaration confers its benefits upon Powers having possessions or Protectorates in the conventional basin of the Congo; she has, therefore, the right to claim its application to her Protectorate of Zanzibar, unless, indeed, Germany, Portugal, and herself should be prepared to acquiesce in the view that all their possessions and Protectorates not placed within the Free Zone system on the 2nd July, 1890, were excluded from its operation.

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Having, in the above observations, dealt with the application of the two Acts, I proceed to the consideration of the effect of the Treaties on the situation.

M. Ribot remarks that when, on the 5th August, 1890, France recognized the British Protectorate, a reservation was made as regards the maintenance of the rights and immunities of French citizens, and he appears to draw the conclusion that this reservation would make it unjust now to apply to French citizens the provisions of the Declaration, which were not applied to them on the 5th August. I cannot accept this deduction. France had, in the previous month, become a party to the Declaration, with its attendant results. Her Majesty's Government fully admit that they are bound to respect all rights and immunities to which French citizens are entitled in Zanzibar; but it is clear that the definition of those rights and immunities depends upon the interpretation of International Acts affecting the territory in which they reside. If, therefore, as Her Majesty's Government contend, the Act of Brussels, with its Declaration, and the Act of Berlin, including its Ist Article, govern the situation in Zanzibar, French citizens cannot enjoy any rights or immunities inconsistent with those Acts. The interpretation, therefore, of the reservation of the 5th August depends on the decision as to the general question of principle.

M. Ribot appeals to the Zanzibar Treaties, and urges that the Sultan cannot, of his own initiative, annul Treaties.

This proposition is self-evident, but I would observe that it does not seem to touch the point at issue. The Powers assembled at Berlin established a fiscal system, and expressed their anxiety that Zanzibar should adopt it. This system was altogether inconsistent with that hitherto prevailing under separate Commercial Treaties with certain Powers, and its adoption of necessity implied the abrogation of clauses in such Treaties conflicting with it. It is manifestly erroneous to state that the Sultan, in accepting the invitation, abandoned the Treaty system in favour of that of the Act of his own initiative. The initiative was taken by the Powers who gave the invitation, and who, in recommending him to make the alteration, of necessity surrendered any obligations binding him to them which would have prevented his acceding to their wishes. They, in fact, assented to the substitution by the Sultan of a new system for the old one; and they could not have intended to stipulate that His Highness should be debarred from accepting their invitation, unless he should obtain the separate assent of each Power with whom he might have concluded a Treaty. The collective assent implied in the invitation rendered individual assent superfluous. This inference would seem conclusive without evidence in support of it; but, in point of fact, positive evidence as to the intention of the Powers exists. The XCVIth Article of the Act of Brussels explicitly stipulates that the General Act repeals all contrary stipulations of Conventions previously concluded between the Signatory Powers. The question, therefore, of the Treaties also depends on the general principle of the application of the Acts to Zanzibar. If those Acts are applicable, Zanzibar and Great Britain, as exercising a Protectorate over her, are expressly released from any Treaty stipulations conflicting with them. All such stipulations not conflicting with them are, it is well understood, still operative.

An interesting point is raised in the note as to whether a perpetual Treaty would be extinguished by an Act whose duration would possibly be limited; but the question as to the possible revival of a Treaty would not affect that of its suspension while the Act is in force. This point, therefore, does not seem to have at present practical importance.

It remains for me to notice the reference in the preamble of the Arrangement of December 1890 to the Zanzibar Tariff, which I would explain by pointing out that it implied only that the then existing Tariff was, for the sake of convenience, taken as the basis for the Conventional Tariff, and to the quoted remarks of M. Goering, as to which I would observe that he correctly defined the position of the Sultan under the Treaty system which was in force at the time when he was speaking.

In conclusion, I have to express the hope that the Government of the Republic, to whom your Excellency will submit these observations and explanations, will not maintain their reservation. Her Majesty's Government have no object in view but to carry out the intentions of the two International Acts by bringing the country of which Great Britain has assumed the Protectorate under the system elaborated by the Powers as that best suited for the civilization and development of Africa. They are aware that there are difficulties, but they hope for the assistance in removing them of all Powers interested in the progress of the country, and especially of the Government of the Republic. I hope that the considerations which I have advanced will be examined impartially, and that it will be recognized that Her Majesty's Government have been careful to act within the limit of their international engagements, while respecting all existing rights not conflicting with those engagements.

I am, &c.
(Signed) ROSEBERY.

No. 55.

The Law Officers of the Crown to the Earl of Rosebery.—(Received October 25.)

My Lord,
Royal Courts of Justice, October 24, 1892.

Import duties leviable by Imperial British East Africa Company in territory of Sultan of Zanzibar.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the question of the import duties leviable by the Imperial British East Africa Company in that portion of the territory of the Sultan of Zanzibar which was under their administration now that the whole of His Highness' dominions had been placed under the Free Zone provisions of the Berlin Act.

That it would be seen that on receipt of the notification in Paper (D) to the effect that, in the territory under their administration, the Import Tariff would be 5 per cent., the Company wrote stating that they understood that the change did not modify the conditions of the Sultan's Concession, or affect the import dues leviable under the new system on the mainland territory of His Highness administered by them; and that they stated that the point was raised by them in view of the provisions of the Declaration annexed to the Brussels Act as interpreted by Protocol No. XXXII.

That the answer given was contained in Paper (F), and was to the effect that the Company were free to levy the 5 per cent. so long as they scrupulously fulfilled the obligations imposed by the Brussels Act.

That they replied that their acceptance of that condition must in no way be interpreted to effect their right to appropriate the proceeds of the 5 per cent. import duty to the purposes contemplated by the provisions of the Concession of prior date based upon the Commercial Treaties then in force, as otherwise they feared that it might be held that the Brussels Act required all sums collected under the Declaration thereto annexed to be expended in carrying out the objects of the Act.

That the proposed reply to that letter was contained in Paper marked (I).

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the proposed reply was right and proper, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands, we have taken the papers into our consideration, and have the honour to

Report—

Approve proposed reply to the Company.

That in our opinion the proposed reply is (in the terms of the reference to us) right and proper.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Circular to Powers	June 22, 1892.
(B.)	Brussels Act, and Declaration attached to it. Treaty No. 889.	
(C.)	Lord Vivian's speech, extracted from Protocol No. 32 of Brussels Act. Treaty No. 889.	
(D.)	To Imperial British East Africa Company	June 25, ,,
(E.)	Imperial British East Africa Company	August 5, ,,
(F.)	To Imperial British East Africa Company	August 23, ,,
(G.)	Imperial British East Africa Company	September 9, ,,
(H.)	Article I of Berlin Act. Confidential No 5181.	
(I.)	Draft answer to Imperial British East Africa Company.	
(J.)	Sultan's Concession to Company. Confidential No. 5497, p. 86.	
(K.)	Tariff Agreement	December 22, 1890.

Annex.

Foreign Office to Imperial British East Africa Company.

Foreign Office, November 1, 1892.

Sir

I AM directed by the Earl of Rosebery to acknowledge receipt of your letter of the 9th ultimo, relative to the right of the Imperial British East Africa Company to appropriate the proceeds of the 5 per cent. import duty, leviable under the Declaration attached to the Brussels Act, in the dominions of the Sultan of Zanzibar under their administration, to the purposes contemplated by the provisions of the Concession of prior date granted to them by the Sultan.

I am to state, in reply, that the terms of the Brussels Declaration are clear, and that they govern the situation.

The Company, being bound by the obligations of the Brussels Act, is permitted to increase its general revenue by the imposition of an import duty. There is no stipulation in the Declaration that the proceeds of the duty are to be kept separate, and accounted for separately as applied in a particular manner. Consequently the Company must pay the Sultan's rent out of its general revenue, supplied, among other sources, by the import duty authorized by the Declaration and the subsequent Agreement of the 22nd December, 1890.

I am, &c.
(Signed) P. CURRIE.

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No. 56.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received November* 16.)

Royal Courts of Justice, November 15, 1892.

My Lord,

Proposal of Government of Sultan of Zanzibar to issue a Stamp Act to enforce the use of stamps on Petitions, &c.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 26th September last, stating that he was directed by your Lordship to transmit to us the papers noted in the margin relative to a proposal of the Government of the Sultan of Zanzibar to issue a Stamp Act to enforce the use of stamps on Petitions, transfers, registrations, receipts, and so forth.

That we were already aware, from the terms of the reference made to us by your Lordship's directions on the 16th September, of the general position claimed by Her Majesty's Government as the Protecting Power in Zanzibar for the Government of the Sultan in regard to the taxation of foreigners.

That it appeared that, in the case in question, Her Majesty's Agent and Consul-General had notified to the foreign Representatives the issue of a Decree by the Government of the Sultan providing for the imposition of a Zanzibar Government stamp to the value of 1 per cent. of the property affected on all documents relating to the transfer, sale, or mortgage of property, whether movable or immovable; and that the Court had notified that the Order would be observed by it in all cases to which it was applicable.

That the French and German Consuls had formally protested against the measure, and had informed Sir Gerald Portal that they declined to recognize it in their Consular Courts. That the other foreign Consuls had not objected.

French Treaty of 1844. State Papers, vol. xxxv, p. 1011. British and German Treaties of 1886 and 1885. Treaty No. 782, and (1885) State Papers, vol. lxxvi, p. 247.

That it would appear that a Stamp Act such as that proposed would not be inconsistent with the terms of the French Treaty of 1844 (still in force in Zanzibar), Article X of which merely provided that no duty beyond 5 per cent. should be levied on ships and their cargoes, and that the latter might be sold, without additional duty, wholesale or retail. Nor did it seem to be contrary to the letter or spirit of the British and German Treaties of 1886 and 1885.

That it would be seen that Article IX of those Treaties forbade other duties, customs, or taxes, whether for their persons, houses, or goods. That, indeed, if the contrary were maintained, it would appear possible for a British subject to appeal to the Treaty of 1886 to protect him even against the payment of Consular fees by stamps in Zanzibar dominions.

L.O. Report, 17th Feb., 1874.

That the view of Her Majesty's Government, that such a Stamp Act as was then contemplated was within the competency of the Zanzibar Government, was fortified by the opinion expressed by the Law Officers of the day on the 17th February, 1874, when a Stamp Law was passed by Turkey, to the effect that it did not infringe the Capitulations, provided that it applied equally to natives and to all foreigners.

That Sir Philip Currie was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion on the points raised, and with any other observations which might occur to us in regard to them.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Not competent to Sultan of Zanzibar to raise such a revenue.

That, in our opinion, it is *not* competent to the Sultan of Zanzibar to raise a revenue by *ad valorem* stamp duties on the transfer, sale, or mortgage of property, movable or immovable, of subjects of the Treaty Powers entitled to the benefit of the provisions contained in the German Treaty of 1885 or the British Treaty of 1886.

By the last sub-section (*b*) of Article IX of the German Treaty, it is provided that German subjects are liable to be taxed by, or on behalf of, His Highness the Sultan, or his authorities, with only such duties, customs, or taxes, be it for their person or their property, as is provided in the foregoing Articles VII and VIII.

By the last clause of Article IX of the British Treaty, it is agreed that British subjects are not liable to be taxed with any other duties, customs, or taxes than those before specified in Articles VII and VIII, whether for their persons, houses, lands, or goods.

These provisions are not inconsistent with the Berlin Act of 1885, and appear to be still binding, and they could not have their full effect if, under the name of stamp duties, the owners could be made to pay *ad valorem* duties (without limit) in respect of transfers, sales, or mortgages of property. Subjects of nations entitled to the benefit of the most-favoured-nation clause are entitled to rely upon these provisions.

We do not think that the Report of the Law Officers of the 17th February, 1874, affords any ground for a contrary opinion. Neither the Treaty of 1861 nor the Capitulations with Turkey contained clauses so extensive in operation as those above referred to.

It does not follow that reasonable charges might not be made for services rendered, whether in the form of Consular fees or stamps on Petitions or registrations, but the Order of the 31st August, 1892, does not deal with these.

We think, also, that the imposition of a moderate stamp duty on receipts, such as that imposed by the Order of the 31st August, 1892, would not be contrary to the meaning of the Treaties, though perhaps it would hardly be worth while to press the duty in face of opposition.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Mr. Portal ..	(No. 170. Telegraphic)	1891.	
To Mr. Portal..	(No. 102. Telegraphic)	"	
Sir G. Portal ..	.. (No. 194)	1892.	
Law Officers' Report	.. .. ..	February 17, 1874.	Confidential No. 4331, p. 156.
Treaty, 1861: Great Britain and Zanzibar.	Treaty No. 453.		

No. 57.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received December* 2.)

Royal Courts of Justice, December 2, 1892.

My Lord,

Zanzibar stamp duties.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 26th ultimo, stating that, with reference to our Report of the 15th November last, in which we expressed the opinion that it was not competent to the Sultan of Zanzibar to raise a revenue by *ad valorem* stamp duties on the transfer, sale, or mortgage of property—movable or immovable—of subjects of the Treaty Powers entitled to the benefit of the provisions contained in the German Treaty of 1885 or the British Treaty of 1886, he had the honour, by direction of your Lordship, to request to be favoured with our views on the following point, viz., whether the duties in question would be legal if they were imposed under the Free Zone fiscal system of the Berlin Act, and not under the Treaty fiscal system which it had superseded?

Law Officers' Reports, 22nd October, 1892, and 15th November, 1892, pp. 99–104.

Declaration 2nd July, 1890. Treaty No. 889.

That with reference to the position of Zanzibar under the Free Zone system of the Berlin Act, Sir Philip Currie was specially to refer us to our Report of the 22nd October last, wherein it was stated that, in our opinion, "Great Britain, as exercising a Protectorate over Zanzibar, is, on behalf of the Sultan of Zanzibar, who had possessions in the conventional basin of the Congo at the date of the Declaration of the 2nd July, 1890, free to exercise the privilege reserved to Powers having possessions within the Free Zone, and that by so doing the Protecting Power becomes entitled to employ the system framed for the Free Zone by the assembled Powers in 1885, as modified by the Declaration annexed to the Brussels Act."

Berlin Genera Act of 1885. Treaty No. 757.

That it was clearly understood that the stamp duties contemplated were, in our opinion, inconsistent with the Treaty fiscal system, but that it was not understood that we had pronounced that they would be inconsistent with the Free Zone fiscal system.

That as the question was of considerable practical importance, Sir Philip Currie was therefore to request that we would be good enough further to advise your Lordship as to their legality, or otherwise, considered from the latter point of view.

We have taken this further question into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Objections to proposed stamp duties

That, in our opinion, the so-called "Free Zone system" cannot be treated as existing independently of the "Treaty system."

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are applicable under the "Free Zone system" to the case of Zanzibar.

The Berlin General Act of 1885, as modified by the Declaration of the 2nd July, 1890, does not abrogate the Treaties entered into by Zanzibar with France, Germany, and Great Britain, except so far as it is inconsistent with them. There is no inconsistency between the scheme of the "Free Zone system" and the provisions of the Treaties for the protection of the subjects of the several Treaty Powers, and we think that the objections pointed out by us to the proposed stamp duties are applicable to the case of Zanzibar under the "Free Zone system."

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Treaty between Germany and Zanzibar, 1885	Parliamentary No. 3123.
" " Great Britain and Zanzibar, 1886	" "
Brussels Act. Treaty No. 889.	
Berlin Act, 1885. Treaty No. 757.	

No. 58.

The Law Officers of the Crown to the Earl of Rosebery.—(Received December 2.)

My Lord, *Royal Courts of Justice, December 2, 1892.*

Right of British East Africa Company to appropriate proceeds of 5 per cent. import duty levied under Sultan of Zanzibar's Concession.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 25th ultimo, stating that he was directed by your Lordship to submit to us a letter from the Imperial British East Africa Company, and the draft of a reply which it was proposed to return to it.

That the letter, which was dated on the 4th November, referred to a letter addressed to the Company by the Secretary of State on the 1st of that month. That the letter was the communication submitted to us in draft on the 1st October, and approved by us on the 24th of that month.

That in the letter of the 4th instant the Company, while apparently accepting the explanation given to it on the 1st instant to the effect that it was permitted to apply, for the purposes of its general revenue, the proceeds of the import duty of 5 per cent. *ad valorem* which it was empowered to levy under the terms of the Agreement consequent on the Declaration annexed to the Brussels Act, stated that, "should the course notified in the inclosure contained in the letter from the Foreign Office of the 25th June last in any way derogate from, or prejudicially affect, the rights conferred on the Company by the Agreement of Concession from the Sultan of Zanzibar, and by Her Majesty's Charter, the Directors will seek to recover compensation from those responsible for any damage the Company may thereby sustain."

That the letter of the 25th June, which was among the papers submitted to us on the 1st October, inclosed the notification sent to the Signatories of the Act of Berlin informing them that the Sultan of Zanzibar would, from the 1st July, adopt the fiscal system of the Free Zone defined by that Act, and modified by the Declaration annexed to the Act of Brussels. That the reservation, therefore, by the Company of the right to claim compensation rested on the possible injury which it might suffer from the Sultan's adhesion to the Free Zone system, as notified to it on the 25th June.

That the reference to the Charter was based on a misapprehension, as the provisions of the Charter were not applicable to any portion of the territories of the Sultan of Zanzibar.

That Sir Philip Currie was to observe that the Company's position relative to the levy of import duties was not altered by the Sultan's act.

That under Article VII of the Treaty between Great Britain and Zanzibar of the 30th April, 1886, the Sultan had the power of levying an import duty not exceeding 5 per cent. *ad valorem*. That the Sultan in his Concessions to the Company authorized it to levy and collect dues, subject in all cases to his Treaties. That he, therefore, empowered it to levy and collect the duty authorized by Treaty, viz., an import duty not exceeding 5 per cent. *ad valorem*.

That the Declaration annexed to the Brussels Act empowered the States which had adopted the Free Zone fiscal system of the Berlin Act to levy import dues which should not exceed 10 per cent. *ad valorem*.

That by an Agreement subsequently made certain of the States affected by that Declaration as regarded territories on the East Coast of Africa resolved that they would not levy more than 5 per cent.

That the amount which the Sultan (and consequently the Company, as concessionnaire) was authorized to levy under the Free Zone system was, therefore, identical with that which he was previously authorized to levy in accordance with his Treaties.

That it was our opinion, as given in our Report of the 24th October, that the Company might apply the dues levied under the existing system in the same manner as those levied under the former system, namely, that it might utilize them for the general purpose of its revenue.

That it was conceived, therefore, that the Company, not being damnified, was not justified in reserving a claim for compensation against "those responsible" for the entry of the Sultan into the Free Zone.

That it was worthy of note, moreover, that under the above description Her Majesty's Government, upon whose advice the Sultan gave his adhesion to the Free Zone system, would be, and were most probably specially intended by the Company to be, included.

That Sir Philip Currie was further to observe that the Company, in its letter of the 4th November, implied that it had a ground for complaint in the fact that, before the Sultan placed himself, by his adhesion to the Free Zone system, within the fiscal system of the Berlin Act, as modified by the Declaration annexed to the Brussels Act, "the consent of all the parties to such existing contract had not been obtained to the intimated changes;" the suggestion being that the Company had not previously assented to the change.

That with regard to that contention Sir Philip Currie was to observe that the Company had actually anticipated the Sultan's action by announcing its wish to effect the change of system. That in proof of that he was to forward the inclosed correspondence.

That the Declaration annexed to the Brussels Act came into operation on the 2nd April last. That on the 29th of the same month the Company sent to the Marquis of Salisbury a draft of a Decree which it proposed to publish, announcing that, in the territories under its administration, import duties would thenceforth be levied in accordance with the provisions of the Declaration. That on the 11th May it was cautioned by his Lordship that, as Zanzibar had not yet entered into the Free Zone, the conditions could not, until she did so, be applied to her territory. That on the 12th May the Company, in reply to an inquiry from the German Government as to the manner in which the fiscal system of the territory under its administration would be affected by the adoption of the Free Zone system, explained in detail how the new system would operate. That that letter was annexed. That it was conceived that that correspondence abundantly proved the previous consent of the Company to the Sultan's adhesion, which took effect from the 1st July following.

That the papers which accompanied the reference of the 1st October were again transmitted.

That Sir Philip Currie was to request that we would be good enough to inform your Lordship whether, in consideration of the facts above stated, we were of opinion that the letter, the draft of which was inclosed, was a proper one to be addressed to the Company, or whether its terms might advantageously be altered or modified, and, if so, in what respects.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

Approve draft reply to Imperial British East Africa Company.

That we approve the reply proposed to be sent to the Imperial British East Africa Company as initialled by us.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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Annex.

Draft of Letter to Imperial British East Africa Company.

Sir, *Foreign Office, December* 8, 1892.

I AM directed by the Earl of Rosebery to acknowledge the receipt of your letter of the 4th instant, in which you state that your letter of the 9th September did not relate to the Company's right to appropriate the proceeds of any duty leviable under the Declaration attached to the Brussels Act, but *solely* to the preservation of the Company's rights to appropriate the proceeds of the existing 5 per cent. import duty levied under the powers conceded to the Company by the Sultan's Concession, and confirmed by their Charter.

I am to observe that this contention is entirely inconsistent with the terms of the letter. The Company asked for an explanation as to whether the 5 per cent. import duty, now leviable under the Free Zone system, was more limited than the duty of similar amount which they were previously empowered to levy, that is, to quote the words of the inquiry, whether the Declaration could be "interpreted to affect the Company's right to appropriate the proceeds of the 5 per cent. import duty to the purposes contemplated by the provisions of the Concession of prior date." Nothing could be clearer than this. It was asked whether the 5 per cent. duty leviable under the new arrangement could be used for the same purposes as the 5 per cent. duty leviable under the old arrangement.

In my reply of the 1st instant your Directors were assured that there was no difference as to the appropriation of the duty.

As regards the substitution of the Free Zone system for the previous fiscal system existing by Treaty agreements, I am to point out that there is, in his Lordship's opinion, no ground for the claim for compensation to which you refer in the last paragraph of your letter.

You speak of derogation from, or prejudicial effects to, the rights conferred on the Company by the Agreements of Concession from the Sultan of Zanzibar, and by Her Majesty's Charter, arising from the course notified in the inclosure contained in my letter of the 25th June. That inclosure was the notification of the intention of the Sultan of Zanzibar to adopt the Free Zone fiscal system from the 1st July.

I am to observe that the reference to this Charter is difficult to comprehend, as all the territories affected by the Charter, except Witu so long as it was a German Protectorate, were included in the Free Zone from the date of the signature of the Act of Berlin, and none of them were touched by the Sultan's act.

As regards the Sultan's territories, the explanation of the supposed claim appears to be given by a preceding paragraph, in which it is stated that the consent of all the parties to the existing contract had not been obtained to the intimated change. I am to point out that, if it is intended to convey that the Company's concurrence had not been shown in the entry of Zanzibar into the Free Zone, the statement is entirely erroneous. The Act, and the annexed Declaration, came into force on the 2nd April last. On the 29th of the same month the Directors, of their own initiative, forwarded, for the approval of the Marquis of Salisbury, the draft of a Decree which they proposed to issue, authorizing the levy of import dues in accordance with the Declaration. On the 11th May they were cautioned by his Lordship that the Decree was premature, as the Sultan had not yet placed his territories under the Free Zone system. On the following day a letter was written by the Directors giving, in reply to an inquiry from the German Government, a clear explanation of the operation of the new fiscal system in the Sultan's territories under their administration. In this correspondence there is abundant proof that the Directors not only were aware of the Sultan's intention, but that they approved it, wished to anticipate its operation, and thoroughly understood its effect.

Under these circumstances they cannot expect that Her Majesty's Government will admit that the change effected by the Sultan can form the basis in any way for a claim to compensation on behalf of the Company.

I am, &c.

1893

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Printed for the use of the Foreign Office. August 1894.

CONFIDENTIAL.

(6508.)

REPORTS

BY THE

LAW OFFICERS OF THE CROWN, &c.

1893.

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CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.: 1893.

AFRICA.

No. 1.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received July* 13.)

My Lord, *Royal Courts of Justice, July* 12, 1893.

O's. in C. amending Zanzibar O's. in C. of 1884 and 1889, and Africa O. in C. of 1889.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 27th ultimo stating that he was directed to transmit to us the papers, noted in the accompanying list, relating to the drafts of two Orders which it was proposed to submit to Her Majesty in Council for her approval, amending in certain respects (1) "The Zanzibar Orders in Council, 1884 and 1888;" and (2) "The Africa Order in Council, 1889."

That the drafts had been prepared in consultation with the Foreign Office by Mr. Albert Gray, who had also drawn up the inclosed Memorandum explaining the various matters requiring legislation, and the mode in which they were proposed to be dealt with in the draft Orders.

That as the draft Orders were, *mutatis mutandis*, practically identical in their provisions, it had been thought that it would be convenient to forward them both together for our observations.

That Sir Philip Currie was to request us to take the papers into our consideration, and to favour your Lordship with our opinion as to whether these draft Orders might properly be submitted for Her Majesty's approval, and if not, in what respects they, or either of them, might advantageously be modified or amended.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, Orders in Council in the terms of the drafts initialled by us may properly be submitted to Her Majesty for approval.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Minutes between Mr. Davidson and Sir P. Anderson.			
Drafts to Mr. Portal, Nos. 40 and 41.			
Instructions respecting "Africa Order in Council (1889)."	(Confidential No. 5955*.)		
Extract from "London Gazette."	(Confidential No. 6004*)	November	25, 1890.
Parliamentary Paper "Africa No. 6 (1890)."	(Parliamentary No. 3337.)		
Sir G. Portal	(No. 244)	November	5, 1892.
Mr. A. Gray		December	19, "
Ditto		December	22, "
Smith-Mackenzie Agreement.			
Mr. Rodd	(No. 37. Telegraphic)	March	24, "
Mr. Gray	(A)	March	28, "

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Annexes.

ZANZIBAR AND AFRICA ORDERS IN COUNCIL.

Memorandum.

THE following notes may serve to explain the matters requiring legislation, and the mode in which they are proposed to be dealt with in these draft Orders:—

I.—*Zanzibar Order.*

Article 1. Short title and construction.

Article 2. Since the establishment of Protectorates in Africa questions have arisen:—

(1.) Whether natives of a Protectorate while temporarily resident in another country, to which the Foreign Jurisdiction Orders in Council apply, are "British-protected persons" there; and

(2.) Whether natives of a Protectorate are, in virtue of the Protectorate or otherwise, "British-protected persons" in the Protectorate.

(1.) The term "British-protected person" as used in the Orders (apart from section 15 of the Act of 1890) is a personal distinction, applicable to individuals who are either in fact or nominally attached to the Embassy, Legation, or Consulate. They may be either natives or foreigners, and their protection lasts only so long as they continue to be so attached.

The term "Protectorate," it is conceived, implies that the Government of a country is protected, but that the country is not directly governed by the Protecting Power.

A protected Government has, however, no independent foreign relations, and therefore cannot safeguard its own subjects when they are outside the territory. It follows that subjects of the Protectorate must, when abroad, enjoy the protection of the Protecting Power.

On this principle section 15 of "The Foreign Jurisdiction Act, 1890," makes the subjects of the Native States of India (who at home are justiciable in Native Courts) protected persons in territories under Foreign Jurisdiction Orders in Council.

The Article thus adds to the category of British-protected persons certain nationalities whose protection rests upon quite different foundations from those of the Consulate servants, &c.

Section 15 was a mere consolidation of section 4 of 39 & 40 Vict., cap. 46, which was passed in consequence of the Bombay High Court having decided that the subject of an Indian Native State was not amenable to the British Slave Trade Acts. After providing for the trial and punishment of such persons in British India, the Act "declared and enacted" that they were and were to be deemed to be persons enjoying Her Majesty's protection in territories to which the Foreign Jurisdiction Orders apply.

That an enactment was deemed necessary argues a previous doubt as to the law which was declared.

The same doubt must exist as to subjects of African Protectorates; it is therefore proposed in Article 2 to remove this doubt, and to provide that natives of other Protectorates coming to Zanzibar shall be British-protected persons there.

I think the provision may be made by Order in Council, notwithstanding the precedent of 1876. From Lord Salisbury's speech (as reported in Hansard) on the introduction of the Bill, I assume that section 4 was inserted owing to the fitness of the opportunity, not that statutory enactment was necessary.

(2.) If the construction of "British-protected persons" and "Protectorate" given above is substantially correct, it follows that ordinary subjects of a Protectorate are not "British-protected persons" while within the Protectorate.

This view is supported by the Africa Order, 1889, and the Brunei Order, 1890, both of which deal with Protectorates. In these Orders a clear line is drawn between "British protected persons" who are classed with British subjects and "natives" who are classed with "foreigners."

Some provision is, however, required to authorize jurisdiction over natives at Zanzibar. The only provisions in the Order of 1884 (Part VII) relate to jurisdiction by consent of the party.

The Africa Order (Article 10) and Brunei Order (Article 4) both provide for jurisdiction over natives with the consent of their own Ruler. Under these and similar powers, nearly the entire internal sovereignty has, in the South African and Gold Coast Protectorates, been transferred to Her Majesty, and a similar condition is rapidly developing in the Niger Coast Protectorate.

At Zanzibar, so far as I am aware, there has been as yet but one exercise of legislation affecting to bind natives. The Consul-General has, in pursuance of the Brussels Act, made Regulations for the registration of native vessels flying the British flag, and for the conduct of persons on board such vessels.

This and any future legislation of the kind ought to be duly grounded upon authority of an Order in Council; and this it is proposed to supply by Article 2 (2).

It is desirable, I submit, that the Law Officers should be requested to advise whether the views here expressed with respect to the two questions above stated are correct.

Article 3. In the application of the Code of Criminal Procedure to Zanzibar, the Judicial Assistant is by Article 9 of the Order of 1884 to be deemed the Magistrate of the district, and the Consul-General the Sessions Judge. By Chapter XXXIII of the Code, the punitive powers of the former officer are limited to imprisonment for six months, or fine of 2,000 rupees, or both (section 446); those of the latter to imprisonment for a year or fine, or both (section 449).

Thus all cases of serious crime by European British subjects have to be remitted to the High Court of Bombay. Great delay is occasioned, and, there being no power to compel witnesses who are Zanzibar subjects to go to Bombay, serious miscarriage of justice has resulted.

This Article would have the effect of rendering European British subjects triable at Zanzibar under the same conditions as Indian and other British subjects.

It may be added that no such distinction between European and other British subjects appears in the Order in Council relating to Siam, nor, except in an unimportant particular, in that relating to Persia.

Article 4. The Order of 1884 (Article 4) provides for the appointment by the Secretary of State of a "Judicial Assistant." Before and until that Order came into force Mr. Cracknall was "Second Assistant to the Political Agent at Zanzibar," to which office he was appointed in 1881 by the Government of India. Since the Order of 1884 came into force he has acted as "Judicial Assistant," but it now transpires that he has never been so appointed by any Secretary of State. He could, of course, be now appointed, but as such an appointment would of itself suggest that he had been *non judex* for more than eight years, his past acts would require validation.

By this Article it is proposed to substitute the office of "Consular Judge" for that of "Judicial Assistant," and thus to provide for a new appointment of Mr. Cracknall. The change of title, with the abandonment of the word "Assistant," is also, perhaps, advisable on other grounds, viz., that the tendency of legislation is towards confining the Agent and Consul-General to political and administrative duty, and towards making the Judicial Department more independent of the Executive (see Article 6 of this draft Order).

Article 5. Recently a "Second Judicial Assistant" has been appointed to Zanzibar, but no provision has been made for the temporary appointment of a substitute in case of emergency.

The Article makes similar provision as is made in the case of the Judicial Assistant by Article 4 of the Order of 1884.

Article 6. This Article gives to the Consular Judge (Mr. Cracknall) the same criminal jurisdiction as the Consul-General has under the Order and the Code, and to the Assistant Judge (hitherto the Second Judicial Assistant) the criminal jurisdiction hitherto exclusively exercised by the Judicial Assistant.

Article 7. It has been questioned whether, on the construction of Article 2 of the Order of 1888, the expression "Treaty or Convention to which Her Majesty may be a party," may not, having regard to the context, mean a Treaty or Convention made with the Sultan of Zanzibar, or at least one to which he also is a party.

This Article is intended to set this doubt at rest, and to make it clear that the provision applies equally to International Conventions such as the Berlin and Brussels Acts.

The power to make Regulations in pursuance of a Treaty or Convention will necessarily be exercised subject to the limitations of Her Majesty's jurisdiction in Zanzibar.

II.—*Africa Order.*

Article 1. Short title and construction.

Article 2. See note to Article 2 of the draft Zanzibar Order. The small differences of language in the drafts are due to the different wording of the Principal Orders.

Having regard to Article 10 of the Principal Order, it does not seem necessary to apply the provision made in Article 2 (2) of the draft Order as to Zanzibar.

Article 3. See note to Article 7 of the draft Zanzibar Order.

(Signed) A. GRAY.

Temple, *June* 9, 1893.

ZANZIBAR.

Draft Order in Council.

Whereas by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction in Zanzibar:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise, in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Zanzibar (Jurisdiction) Order in Council, 1893," and shall be construed as one with "The Zanzibar Order in Council, 1884," and "The Zanzibar Order in Council, 1888" (herein respectively referred to as the Order of 1884 and the Order of 1888).

2.—(1.) Natives of any Protectorate of Her Majesty *which is* outside Zanzibar *shall* ~~be~~, *when within Zanzibar, be* deemed to be British-protected persons within the meaning of the Orders in Council relating to Zanzibar.

(2.) Such of the provisions of those Orders as refer to British subjects shall extend also to Zanzibar subjects, but in so far only as by Treaty, Convention, grant, usage, or other lawful means Her Majesty has jurisdiction in Zanzibar in relation to Zanzibar subjects.

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3. Article 8 of the Order of 1884 is hereby amended, and from and after the commencement of this Order, Chapter XXXIII of the Act therein referred to as the Code of Criminal Procedure (Act X of 1882), which relates to criminal proceedings against Europeans and Americans, shall not he applicable to Zanzibar.

4. The Order of 1884, and the Orders amending the same, shall be read and construed as if the expression "Consular Judge" had been substituted for "Judicial Assistant" wherever that expression occurs—provided that if the Consular officer heretofore acting as Judicial Assistant is appointed to be Consular Judge, all past acts of that officer as Judicial Assistant shall have the same validity as if on the commencement of the Order of 1884 he had been appointed to be Consular Judge.

5.—(1.) The Secretary of State may appoint one of Her Majesty's Consular officers in and for Zanzibar to be Assistant Consular Judge, and the Consul-General may in case of emergency appoint one of such officers to act temporarily as and for such Assistant Consular Judge

(2.) Subject to the provisions of this Order, and to any directions of the Secretary of State, the Assistant Consular Judge shall have and exercise all the same powers and jurisdiction which under this Order, and the Order of 1884, can be exercised by the Consular Judge.

6. So much of Article 9 of the Order of 1884 as relates to the Judicial Assistant is hereby repealed, and in the application of the Code of Criminal Procedure and other enactments in that Article referred to, the Assistant Consular Judge shall be deemed to be the Magistrate of the district, and the Consular Judge shall be deemed to be a Joint or Additional Sessions Judge.

7. The powers conferred upon the Consul-General by Article 2 of the Order of 1888 shall extend, and be deemed to have extended, to regulations for enforcing the observance of any Treaty, Convention, or International Agreement to which Her Majesty is, or may hereafter be, a party, whether the Sultan of Zanzibar is or is not a party thereto.

8. A copy of this Order shall forthwith be affixed and exhibited in the Public Office of the Consulate at Zanzibar, and the day on which it is so exhibited is herein referred to as the commencement of this Order, provided that any appointment authorized by this Order may be made at any time after its passing.

9. Save as by this Order provided, expressions used in this Order and in the Order of 1884 have the same meaning as in that Order.

And the Right Honourable the Earl of Rosebery, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

C. R.
J. R.

AFRICA.

Draft Order in Council.

Whereas by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction in the parts of Africa mentioned in "The Africa Order in Council, 1889":

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise, in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Africa Order in Council, 1893," and shall be construed as one with "The Africa Order in Council, 1889" (herein referred to as the principal Order).

2. Natives of any Protectorate of Her Majesty *which is* outside any local jurisdiction constituted under the principal Order shall, *when* within that local jurisdiction, be deemed to be British-protected persons within the meaning of that Order.

3. The expression "Treaty," which is defined in Article 3 of the principal Order, shall be deemed to extend to any Treaty, Convention, or International Agreement to which Her Majesty is, or may hereafter be, a party, whether any State, Government, King, Chief, people, or tribe having power or authority in any local jurisdiction constituted under the principal Order is or is not a party thereto.

C. R.
J. R.

[Colonial Office.]

No. 2.

The Law Officers of the Crown to the Marquis of Ripon.

[In Colonial Office letter of January 3, 1894.]

Royal Courts of Justice, November 21, 1893.

My Lord,

British South Africa Co.'s desire for extradition arrangements with adjacent States.

WE were honoured with your Lordship's commands signified in Mr. E. Fairfield's letter of the 31st August last, stating that he was directed by your Lordship to inform us that the British South Africa Company had expressed a wish, through the High Commissioner for South Africa, that extradition arrangements with the Orange Free State and the South African Republic, and with the adjacent Portuguese territories, might be made in respect of the territory within the Company's field of operations.

That that territory was within the limits of the Order in Council of the 9th May, 1891, and was under the protection of Her Majesty, though not part of Her Majesty's dominions.

That the British South Africa Company, at the same time, asked that the reciprocal surrender of criminals might be arranged for with the British Colonies in South Africa, but that no action appeared to be required in that respect, for, by the Order in Council of the 12th December, 1891, "The Fugitive Offenders Act, 1881," had already been applied to the territory in question.

That Her Majesty's Government were willing that extradition arrangements should be made in respect to the territory in question with the foreign countries above mentioned if there was legal power to do so.

That the Foreign Office has pointed out that the Law Officers of the Crown had expressed the opinion that extradition arrangements applicable to British Protectorates, which were not British territory, could not properly be made without further legislation, and that they stated that that opinion of the Law Officers applied with at least equal force to British spheres of influence so far as regards the question of extradition.

L. O. R. 1888 (Conf. 5785), pp. 28 and 30.

That the Foreign Office called your Lordship's attention to the accompanying Reports of the late Law Officers, dated the 3rd and 14th March, 1888; and that Mr. Fairfield was to transmit copies of two letters, dated the 24th June and the 2nd August, 1893, which had since passed between the Departments.

That copies of the Law Officers' Reports mentioned in the Colonial Office letter of the 24th June were inclosed, together with a copy of the Order in Council of the 28th June, 1892, referred to in the Colonial Office letter, and a copy of the Commission, dated the 20th August, 1889, under which the High Commissioner for South Africa was empowered to transact in the Queen's name, and on her behalf, all business which might lawfully be transacted by him with the President or Representatives of the Republic of the Orange Free State, or of the South African Republic, or with the Representatives of any foreign Power, subject to such instructions as he might receive.

That Mr. Fairfield was, therefore, to request us to be good enough to consider those papers, and to advise your Lordship—

1. Whether we agreed with the opinions expressed by our predecessors in 1888 respecting extradition from Protectorates? If not, to what extent did we differ from those opinions, and for what reasons?

2. If we agreed with those opinions, whether it was possible, without a fresh Act of Parliament, to make extradition arrangements between the territory within the field of operation of the British South Africa Company and the foreign countries above named? Could the desired object be attained by Order in Council under "The Foreign Jurisdiction Act, 1890"?

3. If a fresh Act of Parliament was not required, whether the High Commissioner, if instructed so to do, had power under his Commission to enter into such arrangements, and to give legal effect to them by Proclamation under the Order in Council of the 9th May, 1891?

4. If not, what course should be pursued?

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

1. That we agree, in substance, with the Reports of our predecessors of the 3rd and 14th March, 1888; but, as regards the suggestion that facilities should be given for the arrest of foreigners within the Protectorate, we would observe that this course would, in effect, involve an assumption of territorial sovereignty.

2. We think any effective extradition arrangement would require the concurrence of all the Powers whose subjects are to be affected by it. In our opinion the desired object cannot be attained by Order in Council under "The Foreign Jurisdiction Act, 1890."

3. We think the High Commissioner has not the power suggested.

In our opinion the only effective course to pursue is that indicated in the second paragraph of this Report.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

BORNEO.

Colonial Office.]

No. 3.

The Law Officers of the Crown to the Marquess of Ripon.

My Lord, *Royal Courts of Justice, March* 18, 1893.

Labuan Ordinance. Sentences of imprisonment awarded in North Borneo.

WE were honoured with your Lordship's commands signified in Mr. Wingfield's letter of the 6th January last, stating that he was directed by your Lordship to request us to favour you with our opinion upon the inclosed Ordinance which had been passed by the Governor of Labuan, who was also Governor of British North Borneo, "to enable sentences of imprisonment awarded in North Borneo to be carried into effect in the Colony."

That that Ordinance had been adapted from the Straits Settlements Ordinance No. 7 of 1885, which enabled sentences of imprisonment awarded to British subjects in the protected Malay States to be carried into effect in the Colony, but that it differed from the Straits Ordinance in not being confined in its application to British subjects.

That the draft of the Straits Ordinance was referred to the Law Officers of the Crown, and that Mr. Wingfield was to inclose a copy of their Report upon it. That in the draft so submitted the application of the Ordinance was not confined to British subjects, that limitation having been subsequently inserted by the direction of the Secretary of State.

That in the Charter of the British North Borneo Company reference was made to the contingency of Her Majesty, by Order in Council, making provision for the exercise of jurisdiction in North Borneo under the Foreign Jurisdiction Act, but that no such Order had been made.

That copies of the Letters Patent constituting the office of Governor of Labuan and of the Charter of the British North Borneo Company were inclosed for reference.

That your Lordship would be glad to be advised whether, North Borneo being an independent State, though governed and administered by a British Company and under the protection of Great Britain, a law could be enacted by the Governor of Labuan, authorizing the imprisonment in that Colony of persons who had been sentenced by the Courts of North Borneo.

That Mr. Wingfield was to add that if such a law was within the competence of the Governor, your Lordship considered that there was no practical objection to it, North Borneo and Labuan being closely connected and being under the same Governor.

Having taken the matter into our consideration, we have the honour to

Report—

That the Law Officers in 1885, in the strictly analogous case of the Straits Settlements, advised that it was within the powers of the Legislature of the Straits Settlements to provide for the reception within their territory and the detention there of prisoners sentenced in native States.

The ground of the opinion seems to have been the presence within the jurisdiction of the persons to be affected by the legislation. We see no reason to differ, and are of opinion that a law may properly be enacted by the Governor of Labuan authorizing the imprisonment in that Colony of persons sentenced by the Courts of North Borneo who are delivered within the territory of Labuan to the authorities of the Colony; but we must add that no law enacted by the Governor of Labuan can justify the conveyance of prisoners from North Borneo to Labuan.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

Annex.

By his Excellency Charles Vandeleur Creagh, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief of the Colony of Labuan and its Dependencies.

[LABUAN, 1ST OCTOBER, 1892.]

No. 1 of 1892.

An Ordinance to enable Sentences of Imprisonment awarded in North Borneo to be carried into effect in the Colony.

WHEREAS it is expedient to make provision for enabling sentences of imprisonment awarded in the State of North Borneo to be carried into effect in the Colony:

It is hereby enacted by the Governor of Labuan as follows:—

I. This Ordinance may be cited as "The North Borneo Prisoners Ordinance, 1892." Short Title.

II. In this Ordinance, unless the context otherwise requires, the following expressions have the following meanings, that is to say, "Governor," means the Governor of the Colony or any Acting or Deputy Governor. "Sentence of imprisonment," means any sentence involving confinement in a prison whether combined or not with labour, and includes a sentence awarded by way of commutation as well as an original sentence passed by the Court. "Criminal lunatic," means any person detained in custody by reason of his having been charged with an offence, and either found to have been insane at the time of such offence, or found, or certified, or otherwise lawfully proved to be unfit, on the ground of his insanity, to be tried for the same; and includes a person convicted of an offence and afterwards certified or otherwise lawfully proved to be insane. Interpretation.

III. Whenever, as regards a prisoner undergoing a sentence of imprisonment in North Borneo for any offence, the Government of North Borneo makes a representation in writing to the Governor that it is expedient that such prisoner should be removed to the Colony, there to undergo his sentence, or the residue thereof, and makes provision to the satisfaction of the Governor for the payment of all expenses which may be incurred by the Colony in the maintenance of or otherwise in relation to such prisoner, the Governor may by warrant under his hand direct such prisoner, when delivered up in the Colony by such Government as aforesaid, to be received into the custody of the persons named or described in such warrant, or some one or more of them, and to be held in custody and conveyed to the prison in such warrant mentioned, there to undergo his sentence, or the residue thereof, until discharged, and such warrant shall be forthwith executed according to the tenour thereof. Reception of prisoners.

IV. Every prisoner received in pursuance of this Ordinance shall, until he is discharged, be dealt with in the Colony in like manner as if his sentence had been duly awarded in the Colony, and shall be subject accordingly to all laws and regulations in force in the Colony; provided always that the Governor may at any time, with the consent of the Government of North Borneo, order such prisoner to be discharged, although the term of imprisonment to which he was sentenced has not expired. Dealing with received prisoner.

V. (i.) If a prisoner while in custody in pursuance of this Ordinance, or under a warrant issued in pursuance of this Ordinance, escapes by breach of prison or otherwise out of custody, he may be re-taken in the same manner as a person convicted of crime against the law of the Colony may be re-taken on an escape. Escape of prisoner from custody.

(ii.) A person guilty of the offence of so escaping, or of attempting so to escape, or of aiding, or attempting to aid, any such prisoner so to escape, shall be deemed to have committed an offence against the law of the Colony, and may be tried and punished accordingly.

VI. The Governor may order any prisoner, who under this Ordinance is undergoing his sentence in the Colony, to be returned for the purpose of undergoing the residue of his sentence to North Borneo, and may for that purpose by warrant under his hand direct such prisoner to be delivered into the custody of such person or persons as may in the opinion of the Governor be duly authorized by the Government of that State to receive him (which person or persons shall be named or described in the warrant) to be conveyed to such State, and such warrant shall be forthwith executed according to the tenour thereof. Return of prisoners.

VII. (i.) The provisions of this Ordinance shall apply to a criminal lunatic in like manner, so far as consistent with the tenour thereof, as they apply to a prisoner undergoing sentence of imprisonment. Application of Ordinance to criminal lunatics.

(ii.) Whenever a person, who being a criminal lunatic by reason of being unfit to be tried for an offence, is confined in the Colony under this Ordinance, has become sufficiently sane to be tried for such offence, the Governor may, for the purpose of his being returned to North Borneo by warrant under his hand, direct such person to be delivered into the custody of such person or persons as may, in the opinion of the Governor, be duly authorized by the Government of that State to receive him (which person or persons shall be named or described in the warrant), and such warrant shall be forthwith executed according to the tenour thereof.

VIII. Every warrant purporting to be issued in pursuance of this Ordinance and to be under the hand of the Governor shall be received in evidence in every Court of the Colony without further proof, and shall be evidence of the facts therein stated, and all acts done in pursuance of such warrant shall be deemed to have been authorized by law. Evidence of Act of Governor.

IX. The Governor may from time to time make, and when made revoke and vary, regulations for the purpose of carrying this Ordinance into effect. Power to make regulations.

Passed the Public Seal of the island, this 1st day of October, 1892.

Government Secretary.

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No. 4.

The Law Officers of the Crown to the Earl of Rosebery.—(Received June 9.)

My Lord, *Royal Courts of Justice, June* 8, 1893.

Protection of Natives and Ships of British Protectorates and Spheres of Influence by H.M. Diplomatic and Consular R.R. abroad.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 21st March, stating that he was directed to transmit to us a letter of Mr. Richard B. Martin, M.P., in which he inquired whether a citizen of a British-protected state, *e.g.*, British North Borneo, had a right to claim the services and protection of a British Consular officer, exactly as if he were a British subject, for himself and for a ship sailing under the British North Borneo flag.

That in connection with Mr. Martin's inquiry Sir Thomas Sanderson was also to transmit to us the papers noted in the accompanying list.

That on the 7th November, 1881, a Royal Charter was granted to the British North Borneo Company.

That in 1888 separate Agreements were concluded by Her Majesty's Government with the British North Borneo Company, the Rajah of Sarawak, and the Sultan of Brunei, placing those States respectively under British protection.

That Sir Thomas Sanderson was to direct our especial attention to Articles 3 and 5 of the Agreement with the British North Borneo Company, the former of which provided for the conduct by Her Majesty's Government of the relations between the State of North Borneo and all foreign States, and the latter of which referred especially to commerce and shipping.

That on the 22nd November, 1890, an Order in Council was passed, but was not yet actually in operation, providing for the exercise of Her Majesty's extra-territorial jurisdiction within the dominions and territories of the Sultan of Brunei, but not in British North Borneo or Sarawak.

That Sir Thomas Sanderson was to call our especial attention to the definitions therein of the words "British subject," "foreigner," and "native."

That similar definitions of these words occurred in other recent Jurisdictional Orders in Council, such as "The Africa Order in Council, 1889."

That Sir Thomas Sanderson was also to inclose a Memorandum by the Legal Adviser to the Foreign Office, Mr. W. E. Davidson, Q.C., in which various points connected with the subject were discussed.

That the questions raised by Mr. Martin specifically in regard to British North Borneo were to be considered, also in relation to other foreign States under British protection, and were therefore to be decided upon general grounds of policy, as well as in regard to their particular application to British North Borneo; and our opinion was requested upon the following points:—

1. Whether a native of a foreign State under British protection is entitled—

(*a.*) To the general protection and assistance of Her Majesty's Diplomatic and Consular officers in foreign countries, excepting in his native country?

(*b.*) To be considered a British-protected person for the purposes of civil and criminal jurisdiction in countries other than his native country, where Her Majesty has extra-territorial jurisdiction?

That it was presumed that for all purposes such native was not to be deemed, or to be treated as, a British-protected person in his native country, but as a native thereof.

That a further aspect of the matter had moreover to be considered in relation to the position of "British spheres of influence" such as those recently constituted in Africa, which, although being neither British territory nor British Protectorates, properly so called, were still under the exclusive control of Great Britain, their foreign relations being moreover entirely conducted by Her Majesty's Government.

Upon this head our opinion was requested upon the following points:—

2. Is a native of a British sphere of influence, over which a British Protectorate has not been established, entitled—

(*a.*) To the general protection and assistance of Her Majesty's Diplomatic and Consular officers in foreign countries, excepting in his native country?

(*b.*) To be considered a British-protected person for the purposes of civil and criminal jurisdiction in countries, other than his native country, where Her Majesty has extra-territorial jurisdiction?

That in this case also it was presumed that for all purposes such native was not to be deemed to be, or treated as, a British-protected person in his native country, but as a native thereof.

In regard to the question of the protection to be afforded to ships owned by a native of, or flying the recognized merchant flag, if any, of such British-protected States, or British sphere of influence, our opinion was requested on the following point:—

3. Are such ships entitled to the assistance and protection, and if so, to what extent, of Her Majesty's Diplomatic and Consular officers abroad.

A Memorandum was inclosed dealing with the history of the flags which the various vessels belonging to the British North Borneo Company are entitled to fly under the Admiralty Warrant.

Sir Thomas Sanderson further stated that it would be observed that the privileges conferred by this Warrant were entirely confined to vessels owned by the Company, and did not purport to be extended to vessels owned by natives of the State of North Borneo in their private capacities.

That the case of such vessels had not until now presented itself for practical consideration, and was, as appeared to your Lordship, entirely untouched in the correspondence.

That the Foreign Office had, moreover, no other information or precedents at its disposal which appeared to bear even indirectly upon the general point submitted in Question 3, which it therefore seemed necessary to treat by reference to first principles alone.

In obedience to your Lordship's commands we have taken the matter into our consideration, and have the honour to

Report—

That, in our opinion,—

1. A native of a foreign State under British protection, where the conduct of the foreign relations of the protected State is (as in the case of North Borneo) under the control of Her Majesty's Government, may reasonably claim to be entitled, and Her Majesty's Government may extend to him, the right,—

(*a.*) To the general assistance and protection of Her Majesty's Diplomatic and Consular officers in foreign countries, excepting in his own native country, so far, and so far only, as the action of such officers is not founded either on British Statutes or Treaties between Her Majesty and the State in which the officers act, which refer only to British subjects. A native of a State under British protection cannot, so far as the application of such Statutes or Treaties is concerned, be considered to be a British subject. The Statutes and Treaties referred to cover so great a portion of the functions of the Consular officers in particular that their possible action in favour of a native of a British-protected State will almost be confined to a friendly and unauthoritative interference, and will hardly amount to jurisdiction.

(*b.*) To be considered a British-protected person for the purposes of civil and criminal jurisdiction in countries other than his native country where Her Majesty has, and exercises, extra-territorial jurisdiction, except so far as such jurisdiction depends upon Treaty or Capitulation referring only to British subjects.

2. The distinction for the present purpose between a British sphere of influence and a Protectorate consists mainly in the fact that the sphere of influence rests entirely upon Treaty arrangements between Great Britain and some foreign Power or Powers outside the sphere of influence.

(*a.*) and (*b.*). The answers already given with reference to a native of a State under British protection apply equally to the case of natives of a British sphere of influence, with the modification that Her Majesty's Government cannot, as of right, claim to represent such a native at all in the case of a question arising with any Power which has not by Treaty recognized the sphere of influence.

3. Ships flying the flag of a British-protected State whose foreign relations are intrusted to Her Majesty's Government may reasonably claim, and Her Majesty's Diplomatic and Consular Agents may extend to them, general assistance and protection, but where the right of interference of the agent is founded upon Statute

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or Treaty referring only to British ships, it cannot be extended to the ships of a protected State.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Mr. Martin		February 27, 1893.
(B.) Royal Charter of British North Borneo Company	(Confidential 4528)	November 7, 1881.
(C.) Papers relating to North Borneo, 1888. (Confidential 6041*).		
(D.) "Brunei Order in Council, 1890." (Confidential 6003*).		
(E.) "Africa Order in Council, 1889." (Confidential 5846**).		
(F.) Memorandum by Mr. Davidson, Q.C., on Mr. Martin's letter.		
(G.) Memorandum by Mr. Streatfeild respecting flags of vessels of the British North Borneo Company		March 18, 1893.

BRAZIL.

No. 5.

The Law Officers of the Crown to the Earl of Rosebery.—(Received July 27.)

[After reciting the following reference, the Law Officers report as on p 11:—]

Foreign Office to the Attorney-General.

(Confidential.)
My dear Sir Charles, *Foreign Office, July 26, 1893.*

Blockade of Rio. Non-recognition of by H.M. Govt. Prevention by H.M. Naval Forces of efficiency of against Brit. vessels.

LORD ROSEBERY desires me to send you the inclosed papers,* on which he is anxious to have the opinion of the Law Officers as quickly as possible.

The state of affairs at Rio de Janeiro is very unstable, and recently when the Admirals there were called upon by the Government to proceed to Rio Grande for the purpose of quelling an insurrection they are stated to have flatly declined.

On the 21st instant we suddenly received a very secret telegram from our Minister, Mr. Wyndham, stating that he had received intimation of an intention on the part of the superior officers of the navy to blockade the port of Rio de Janeiro, cut off all railway communication at the same time, and so force the population by starvation to rise against the present Government.

Lord Rosebery replied that we could not recognize a blockade instituted by persons not recognized as belligerents, that Mr. Wyndham should confer with his German colleague, who had received the same information, and communicate with the Senior British Naval Officer.

He at the same time consulted the German Government as to the course to be taken, but has, as yet, received no reply.

The Senior British Naval Officer now telegraphs from Rio that if an attempt is made to blockade the port he proposes to prevent the blockade becoming effective against British merchant-vessels, by force if necessary.

You will see by a note of Davidson's, annexed to these papers, that he considers that this action would be justified. But he suggests, and Lord Rosebery quite agrees, that we ought to be fortified by your opinion and that of the Solicitor-General.

I ought to add that, as far as we know, the insurrection does not at present exist at Rio de Janeiro. There is only one at Rio Grande, a great distance off. I presume it is intended that the insurrection and blockade should be simultaneous.

I am, &c.
(Signed) T. H. SANDERSON.

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* Mr. Wyndham, No. 8, Telegraphic, Very Secret, July 21; to ditto, No. 8, July 21; telegram from Senior Officer, South-east Coast of America, July 26; Mr. Davidson, July 26, 1893.

Report.

Until there are two recognized belligerent forces, and a state of war between them, no blockade intended to interfere with neutral vessels can legally be enforced.

We therefore think Lord Rosebery's telegram of the 21st July 1893, is correct, namely, that in the existing circumstances Her Majesty's Government cannot recognize the so-called blockade; and, further, we think the Senior British Naval Officer would be justified in resorting to force if necessary to prevent such blockade becoming effective against British merchant-vessels.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

Royal Courts of Justice, July 27, 1893.

No. 6.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, September 22, 1893.*

Revolution at Rio. Protection of goods in Brit. vessels by H.M. naval forces. Right of search of insurgent vessels.

I HAVE the honour to transmit to you, by direction of the Earl of Rosebery, the papers noted in the accompanying list, which relate to questions arising out of the hostilities now being carried on at Rio de Janeiro between the Brazilian Government and the insurgent naval forces.

Mr. Wyndham, Her Majesty's Minister at Rio, inquires, in his telegram No. 21 of the 21st instant (Paper A), whether, as the legal Government of Brazil are powerless off the shore, Her Majesty's naval forces are entitled to protect merchandize and cattle brought into port in British vessels from ship to shore when discharged into Brazilian lighters.

In a later telegram, No. 23 (Paper B), he reports that the insurgent Admiral, having announced to the French Admiral that he would search all foreign merchandize placed in cargo-boats, was informed by a collective note from the Naval Commanders in Rio Harbour that they considered that he, not being a belligerent, had no right of search.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Rosebery with your opinion—

1. As to whether Her Majesty's vessels would be entitled to protect merchandize brought into port under the circumstances set forth in Paper (A); and

2. Whether the answer which the Naval Commanders returned to the insurgent Admiral (Paper B) was correct and justified by the circumstances of the case.

His Lordship would also be glad to receive any general observations which you may have to offer on this question.

I am, &c.
(Signed) P. CURRIE.

List of Papers.

(A.) Mr. Wyndham	(No. 21. Telegraphic)	September 21, 1893
(B.) Ditto	(No. 23. Telegraphic)	September 21, „

The Attorney-General to the Earl of Rosebery.—(Received September 29.)

AS the matter presses, I answer the questions put, in the absence of the Solicitor-General. A formal Report will follow.

I answer both questions in the affirmative. I assume that the insurgents have not, *de facto*, established a Government. If so, they have no legal authority to enforce, and it becomes a question of the prudent exercise of might against might.

I suggest that all action should be the result of concert between the foreign Naval Commanders as far as possible.

(Signed) C. RUSSELL.

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The further telegram No. 24, just to hand, calls for no further observation. The insurgents have, no doubt, an interest in preventing the landing of munitions of war; but they have no status entitling them to prevent it.

The Naval Commanders must do what they judge prudent in the circumstances as they arise.

C. R.

Attorney-General's Chambers, 10, New Court, Lincoln's Inn,
September 28, 1893.

No. 7.

The Law Officers of the Crown to the Earl of Rosebery.—(Received October 14.)

My Lord, *Royal Courts of Justice, October* 13, 1893.

Revolution at Rio. Protection of goods in Brit. vessels by H. M. naval forces. Right of search of insurgent vessels.

WE were favoured with your Lordship's commands signified in Sir Villiers Lister's letter of the 22nd ultimo, stating that he was directed to transmit to us the accompanying papers relating to questions arising out of the hostilities now being carried on at Rio de Janeiro between the Brazilian Government and the insurgent naval forces.

That Mr. Wyndham, Her Majesty's Minister at Rio, had inquired in his telegram No. 21 of the 21st September whether, as the legal Government of Brazil were powerless off the shore, Her Majesty's naval forces were entitled to protect merchandize and cattle brought into port in British vessels from ship to shore when discharged into Brazilian lighters.

That in a later telegram, No. 23, he had reported that the insurgent Admiral, having announced to the French Admiral that he would search all foreign merchandize placed in cargo-boats, had been informed by a collective note from the Naval Commanders in Rio Harbour that they considered that he, not being a belligerent, had no right of search.

That we were to take the papers into our consideration, and favour your Lordship with our opinion—

1. As to whether Her Majesty's vessels would be entitled to protect merchandize brought into port under the circumstances above set forth.

2. Whether the answer which the Naval Commanders returned to the insurgent Admiral was correct and justified by the circumstances of the case. That your Lordship would also be glad to receive any general observations which we might have to offer on this question.

We have also been favoured with a copy of a further telegram (No. 24) from Her Majesty's Minister at Rio de Janeiro respecting the right of searching lighters containing foreign merchandize which is claimed by the insurgent Admiral.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That we answer both questions in the affirmative. We assume that the insurgents have not *de facto* established a Government. If so, they have no legal authority to enforce, and it becomes a question of the prudent exercise of might against might.

We suggest that all action should be the result of concert between the foreign Naval Commanders as far as possible.

The telegram No. 24 calls for no further observation. The insurgents have no doubt an interest in preventing the landing of munitions of war, but they have no status to prevent it. The Naval Commanders must do what they judge prudent in the circumstances as they arise.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Mr. Wyndham	.. ..	(No. 21.	Telegraphic)	September 21, 1893.
(B.) „	.. ..	(No. 23.	Telegraphic)	„ 21, „
„	.. ..	(No. 24.	Telegraphic)	„ 27, „

No. 8.

The Law Officers of the Crown to the Earl of Rosebery.—(Received November 24.)

My Lord, *Royal Courts of Justice, November* 23, 1893.

Steps to prevent bombardment of Rio and to protect lives and property of British subjects.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a printed copy of a despatch (No. 122 of the 18th September, 1893) from Mr. Wyndham, Her Majesty's Minister at Rio de Janeiro, relating to the present crisis in Brazil.

That such despatch recorded the steps taken by the British, French, Italian, and Portuguese Representatives and Naval Officers respectively to prevent the bombardment of the above-mentioned city, set forth their communications with the Brazilian Government on the subject, and inclosed correspondence which had passed with Admiral de Mello, the Commander of the insurgent fleet.

That your Lordship, as at present advised, was disposed to consider the action taken by Mr. Wyndham in order to protect the lives and property of British subjects as judicious, but, before formally expressing approval of it, your Lordship desired to be informed whether we agreed with this view, and also to be favoured with such general observations as we might have to offer from a legal standpoint upon the various matters dealt with in the despatch.

There was also transmitted to us a copy of the telegraphic correspondence which had recently passed with Her Majesty's Minister; copies of the original decyphers of these telegrams were also inclosed in a separate bundle.

We were also favoured with Sir Thomas Sanderson's letter of the 6th instant, inclosing copies of two letters from the Admiralty, dated respectively the 25th and 26th October, covering Reports from Captain Lang, dated respectively the 2nd October and the 22nd September, 1893.

We were further favoured with Sir Thomas Sanderson's letter of the 15th instant, inclosing a further letter from the Admiralty of the 8th instant, covering Captain Lang's Report of the 8th October.

We have also been further favoured with Sir Thomas Sanderson's letter of the 21st instant, inclosing copies of further despatches from Mr. Wyndham regarding the action taken by himself and Captain Lang to prevent the city of Rio de Janeiro being fired upon by the insurgents.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the action taken by Mr. Wyndham in order to protect the lives and property of British subjects has been judicious, and in accordance with international law.

We understand that the principles which have been acted upon are as follows:—

That foreign ships of war would not be justified, under the circumstances stated, in preventing the insurgents from firing on batteries or other posts such as the Arsenal established in Rio for the purposes of attack on the insurgent fleet.

That British Naval Commanders should protect British goods, whether in Brazilian lighters or not, from interference by insurgent forces.

That the insurgents have no right to interfere with British vessels which have on board arms and ammunition consigned to an English firm for the use of the Government of Brazil.

That British ships in Brazilian territorial waters are not exempt from Brazilian jurisdiction, and that persons on board may be arrested for offences committed on shore, in respect of which they might have been arrested on shore.

We concur in the principles so laid down, but would observe that offences committed on British ships within territorial waters would, strictly speaking, subject the offender to arrest as if the offence had been committed on shore.

With reference to the despatches from Captain Lang and Mr. Wyndham, and their inclosures, we have only to observe that the communication of the 1st October made by the Commanding Officers to Admiral de Mello, though a departure from the

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strict policy of non-interference, seems to have been accompanied by an equal amount of pressure on the Brazilian Government to abstain from treating Rio as a basis of attack on the insurgents, and has been justified by its success.

We note that (in accordance with your Lordship's instructions) Mr. Wyndham in the steps taken acted in concert with the Representatives of the other Powers principally concerned.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Mr. Wyndham ..	..(No. 122)	September 18, 1893.
Ditto ..	(No. 32. Telegraphic)	October 4, "
To ditto	(No. 19. Telegraphic)	October 6, "
Ditto ..	(No. 21. Telegraphic)	October 12, "
Mr. Wyndham ..	(No. 39 Telegraphic)	October 13, "
To ditto	(No. 22 Telegraphic)	October 16, "
Mr. Wyndham ..	(No. 43 Telegraphic)	October 17, "
To ditto	(No. 23 Telegraphic)	October 17, "
Mr. Wyndham ..	(No. 46 Telegraphic)	October 21, "
To ditto	(No. 25 Telegraphic)	October 24, "
Mr. Wyndham ..	(No. 47 Telegraphic)	October 23, "
To ditto	(No. 26 Telegraphic)	October 24, "
Mr. Wyndham ..	(No. 49 Telegraphic)	October 25, "
To ditto	(No. 27 Telegraphic)	October 27, "
Admiralty		October 25, "
Ditto ..		October 26, "
Ditto ..		November 8, "
Mr. Wyndham ..	..(No. 143)	October 9, "
Ditto ..	..(No. 145)	October 10, "
Ditto ..	..(No. 146)	October 11, "
Ditto ..	..(No. 148)	October 12, "

BURMAH.

[India Office.]

No. 9.

Case for the Opinion of the Law Officers of the Crown.

Jurisdiction of Burmah Govt. over waters between mainland and Mergui Archipelago.

THE facts on which the opinion of the Law Officers is requested appear from the accompanying papers, but they may perhaps be usefully summarized as follows:—

The Mergui Archipelago consists of a large number of islands lying for many miles along the coast of Burmah. Their distances from the shore and from one another are in many cases considerable, far over 3 or 6 miles. In the belt lying between the outermost islands and the mainland of Burmah lie pearl oyster banks.

The Government of Burmah in 1891 granted a concession of the exclusive right of fishing on these banks. The validity of this grant was disputed by Messrs. Moylan and Eddis, acting as the legal advisers of a gentleman from Australia who desired to fish on the banks, and claimed the right to do so, alleging them to be in the high seas outside the territorial waters.

It is claimed, and it may for the present purpose be assumed, that the islands themselves are British territory, and subject to the Government of Burmah. That Government contends that its jurisdiction extends to a distance of 3 miles beyond the outer edge of the archipelago, and includes all waters lying between that line and the mainland, and on this ground they seek to support their concession of an exclusive right of fishing.

The Government of India has been advised that territorial waters extend only to a distance of 3 miles from the mainland, and to a distance of 3 miles round each of the islands, together with any waters lying *inter fauces terræ*, and that such a concession as that granted could only be valid within those waters.

The Secretary of State is desirous of obtaining the opinion of the Law Officers upon the question—

Whether the jurisdiction of the Government of Burmah and its power to grant exclusive fishing right extends over all waters lying between the mainland of Burmah and a distance of 3 miles beyond the outer edge of the Mergui Archipelago, or whether it is limited in the manner stated by the legal advisers of the Government of India, or otherwise.

Opinion of the Law Officers.

The extent of territorial jurisdiction is correctly stated in paragraph (*a*) in the opinion of the Advocate-General and Standing Counsel of the 26th January, 1893. It follows that the Government have no power to grant exclusive fishery rights except in waters within the extent of jurisdiction so described.

It would be possible to legislate so as to bind British subjects beyond those limits, but it would not be possible to bind foreigners, or to exclude them.

The Australian Pearl Fishery Acts are limited in their operation to British subjects, and we assume that, in the case of the pearl fisheries in the Mergui Archipelago, there has not been, as in the case of the Ceylon fisheries, an immemorial claim to the pearl oyster fishery beyond the usual territorial waters asserted by successive Rulers, and acquiesced in.

(Signed) C. RUSSELL.
JOHN RIGBY.

Royal Courts of Justice, December 19, 1893.

Annex.

The Solicitor to the Government of India to the Government of India, Revenue and Agricultural Department.

Fort William, January 31, 1893.

I HAVE the honour to forward herewith a copy of the case submitted to the Honourable the Advocate-General and the Standing Counsel to Government, and their joint opinion thereon.

Case submitted to the Honourable the Advocate-General and the Standing Counsel, for Opinion.

The Solicitor to the Government of India forwards herewith a letter from the Government of India, Revenue and Agricultural Department, of the 4th instant, and its annexures, and requests that the Honourable the Advocate-General and the Standing Counsel will favour that Government with an expression of their joint opinion on the question raised regarding the power of Government to regulate or control the pearl fisheries of Mergui.

The specific issues upon which the Government desire to be advised are as follows:—

(*a.*) Whether, assuming the islands of the Mergui Archipelago to be British territory, the British Government possesses territorial jurisdiction over the sea within the limits described in the last sentence of paragraph 2 of the Chief Commissioner's letter, dated the 28th October last, to Messrs. Moylan and Eddis, or any and what part thereof.

(*b.*) Whether, assuming an affirmative answer is given to the first question, the islands in question can, on the facts stated in the papers, be held to form part of British India, and, if so, whether they are or are not part of the territories under the administration of the Chief Commissioner of Burmah.

(*c.*) Whether, assuming an affirmative answer to be given to both the above questions, Government is entitled, consistently with the general principles of international law, to any exclusive right of fishing within the limits above described, and, if so, whether they are empowered to grant to any other person any such exclusive right either under "The Burmah Fisheries Act, 1875," or under any other enactment now in force, or otherwise.

(*d.*) Whether, assuming a negative answer to either of the first two questions, the Government is entitled to regulate or control in any and what manner the right of fishing within the limits above described, or any part thereof, and more particularly whether it is empowered to act in the way suggested in Messrs. Moylan and Eddis' letter, dated the 1st September last, to the Chief Commissioner, either under any enactment now in force, or otherwise.

(*e.*) If the Local Government is not at present empowered to regulate or control such right of fishing as aforesaid, whether the Governor-General in Council is competent, consistently with the principles of international law, to confer on it by legislation the requisite powers; if so, what would be the character of the legislation required for the purpose.

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(*f.*) Counsel will also please advise the Government as to the propriety of the action taken by the Chief Commissioner in warning Mr. Loveridge that, if he proceeds to fish in the areas which have been leased by the Local Administration, he will be liable to be dealt with under section 7 of "The Burmah Fisheries Act, 1875."

Lastly, Government will also be glad to receive an expression of opinion on any other points which upon examination of the case may appear to the Law Officer to be of importance, and more especially as to the difference between territorial jurisdiction as against foreigners and rights of monopoly within that jurisdiction as against British subjects.

Printed correspondence bearing to some extent upon the case regarding the claim of the Government of Ceylon to regulate the pearl fisheries in the Gulf of Manaar is herewith sent.

Opinion of the Honourable the Advocate-General and the Standing Counsel to Government.

(*a.*) We are of opinion that the British Government possesses territorial jurisdiction over the sea within a belt or zone of 3 miles from the shores of the mainland of the Provinces of Yeh, Tavoy, Mergui, and Tenasserim, and of the islands appertaining thereto, including the Mergui Archipelago; as also over all bays, gulfs, and estuaries, *inter fauces terræ*, whether of such mainland or islands, but no further. Whatever may be the precise nature of the territorial jurisdiction exercised by a nation over such belt or zone, it is clear that it comprises the right to control or grant exclusive right of fishing therein, and that such right is one which is not only sanctioned by the positive law of nations, as laid down by the jurists and writers on international law (see Vattel's "Law of Nations," book i, chapter xxiii, sections 287 and 289; Wharton's "International Law," second English edition, sections 180 and 189; Kent's "Commentaries," vol. i, 29, and Manning's "Law of Nations," p. 119), but by Conventions and Treaties (per Cockburn, C.J., at p. 204 of the Queen *v.* Keyn, L. R., 2 Ex. Div., 63), and also by usage (per Cockburn, C.J., at p. 206 of the same case).

The origin and nature of this territorial jurisdiction have been fully discussed, not only by the publicists, but in the "Franconia" case (the Queen *v.* Keyn, L. R., 2 Ex. Div., 63) by all the greatest authorities amongst the English Judges. Cockburn, C.J., thus expresses himself:—

"It is true that from an early period the Kings of England, possessing more ships than their opposite neighbours, and being thence able to sweep the Channel, asserted the right of sovereignty over the narrow seas. . . . . Venice in like manner laid claim to the Adriatic, Genoa to the Ligurian Sea, Denmark to a portion of the North Sea. The Portuguese claimed to bar the ocean route to India and the Indian seas to the rest of the world, while Spain made the like assertion with respect to the West. All these vain and extravagant pretensions have long since given way to the influence of reason and common sense. If, indeed, the sovereignty thus asserted had a real existence, and could now be maintained, it would be, of course, independently of any question as to the 3-mile zone, conclusive of the present case. But the claim to such sovereignty, at all times unfounded, has long since been abandoned."

(*b.*) Answering the preceding question with such limitations as are above expressed, we are of opinion that the islands in question do form a part of British India. In paragraph 3 of the letter referred to in the previous question, it is stated that the Provinces of Yeh, Tavoy, Mergui, and Tenasserim, with the islands and dependencies thereunto appertaining, were by Treaty of the 11th April, 1826, ceded by His Majesty the King of Ava to the East India Company. Such being the case, these provinces, islands, and dependencies became, by section 1 of 21 & 22 Vict., cap. 106, vested in Her Majesty the Queen, and formed part of India within the meaning of that Act. In the absence of any materials, other than the statements contained in paragraph 3 of the letter already referred to, we are unable to go further than to express our opinion that the Province of Tenasserim, and it may be the islands adjacent and appertaining thereto, are part of the territories under the administration of the Chief Commissioner of Burmah. The fact that the Local Government has exercised some degree of authority over the islands does not, in our opinion, suffice, *per se*, to show that such islands form part of Burmah.

(*c.*) We are of opinion that according to the principles of international law, the subjects of a State are entitled to the exclusive right of fishing within the limited belt or zone above mentioned. This being so, and it having been held by the Courts in India that the sea and its subjacent soil within the ordinary territorial limits around British India are vested in the Sovereign, but that the use of it for the purposes of navigation and fishing belongs to her subjects *communis juris*, subject to the right of the Crown to appropriate the same (see Reg. *v.* Kestya Raum, 8 Bom., H. C. Rep., 63, and Baban Mayacha *v.* Naga Shravacha and others, I. L. R., 2, Bombay, 19), we are of opinion that the Government is entitled to grant exclusive right of fishing under "The Burmah Fishery Act, 1875," within the territories for the time being under the administration of the Chief Commissioner of British Burmah, and under the general law in any part of British India beyond such territories, but in both cases without prejudice to or in derogation of any express grant of right to fish heretofore made by the British Government.

(*d.*) We are of opinion that the Government is entitled to regulate or control the right of fishing within such limited belt or zone in respect of territories to which the provisions of Act VII of 1875 apply; but that the Government is not empowered under any existing enactment to act in the way suggested in Messrs. Moylan and Eddis' letter, dated the 1st September, 1892, to the Chief Commissioner with respect to territorial waters not affected by that Act.

(*e.*) We are of opinion that the Governor-General in Council is competent, under 24 and 25 Vict., cap. 67, section 22, consistently with the principles of international law, to legislate with

respect to rights of fishing within such territorial waters as are above indicated—not only as regards British subjects, but also as regards foreigners. In this respect the Governor-General in Council appears to us to have with respect to British India, under the Statute lastly above referred to, the powers which the Parliament of Great Britain and Ireland possesses with respect to the dominions of Her Majesty. Dealing with the extent and limit of those powers last mentioned, Dr. Lushington observes in the case of the Zollveren, Swabey's Admiralty Reports, p. 90: "The power of this country is to legislate for its subjects all the world over, and as to foreigners within its jurisdiction, but no further," cited by Cockburn, C.J., at p. 160 of L. R., 2 Ex. Div.), and in the case of the "Annapolis," 1 Lushington, p. 306: "The Parliament of Great Britain, it is true, has not, according to the principles of public law, any authority to legislate for foreign vessels on the high seas or for foreigners out of the limits of British jurisdiction, though, if Parliament though fit so to do, this Court, in its instance jurisdiction at least, would be bound to obey. In cases admitting of doubt, the presumption would be that Parliament intended to legislate without violating any rule of international law, and the construction has been accordingly. Within, however, British jurisdiction, namely, within British territory, and at sea within 3 miles from the coast, and within all British rivers *inter fauces*, and over foreigners in British ships, I apprehend that the British Parliament has an undoubted right to legislate. I am further of opinion that Parliament has a perfect right to say to foreign ships that they shall not, without complying with British law, enter into British ports, and that if they enter they shall be subject to penalties, unless they have previously complied with the requisitions ordained by the British Parliament; whether those requirements be, as in former times, certificates of origin or clearances of any description from a foreign port, or clean bills of health, or the taking on board a pilot at any place in or out of British jurisdiction before entering British waters." As regards the character of the legislation required, the above-quoted observations of Dr. Lushington in the case of the "Annapolis" indicate in several most important particulars the nature and extent of the power which the Legislature may assume in this matter. These powers it will be observed extend not only to the regulating and controlling of fishing by British subjects or foreigners within territorial waters, but also to the securing compliance by British or foreign ships entering such waters or British Indian ports, even when engaged in fishing beyond such waters, with all such rules and regulations as may be laid down to be observed by persons on board such ships.

(*f.*) We are of opinion that no proceedings should be taken under section 7 of "The Burmah Fisheries Act, 1875," against Mr. Loveridge, seeing that, even if he were liable to a conviction, it would be undesirable to raise questions of such importance and difficulty in a Criminal Court. Moreover, it appears from the letter written by Messrs. Moylan and Eddis to the Chief Commissioner of British Burmah, dated the 30th August, 1892, that Mr. Loveridge is not disposed to question the right of the Government within the 3-mile limit, but challenges their right outside the 3-mile limit, and for the reasons above expressed we are of opinion that this contention on his part is sound.

Lastly, we have already dealt with the questions as to territorial jurisdiction over foreigners and exclusive rights of fishing within that jurisdiction in our answers to questions (*e*) and (*c*).

(Signed) J. T. WOODROFFE.
A. PHILLIPS.

January 26, 1893.

CHILE.

[Transmitted in Colonial Office letter of February 25, 1893.]

No. 10. **[Colonial Office.]**

The Law Officers of the Crown to the Marquis of Ripon.

My Lord, *Royal Courts of Justice, January* 13, 1893.

Civil war in Chile. Prohibition of exportation of arms, &c., from the Colonies.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 11th November last, stating that in the year 1891 the Governor of Queensland, by the advice of his Ministers, and at the request of the Consul-General for Chile, issued a Proclamation prohibiting, during the civil war in Chile, the export of arms and ammunition to Chilean ports from Queensland except for the Government of Chile.

That it was unnecessary to trouble us with a copy of the Proclamation or with the Queensland Act: that the section under which the Proclamation was issued was, however, practically identical with section 138 of "The Imperial Customs Consolidation Act, 1876." But that a doubt having been raised by the Foreign Office as to the

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legality of the Proclamation, our predecessors were consulted on the point, and that Mr. Bramston was to inclose a copy of their Report, dated the 19th August, 1891, advising that the Proclamation was not valid in law.

L.O.R., 1891 (Conf. 6207), pp. 37 and 40 A.

That the purport of that Report was telegraphed to the Colony, and that the accompanying letter, dated the 14th September, 1891, from the Chief Secretary to the Governor was subsequently received and referred to the Law Officers who reported thereon on the 18th December, 1891.

That correspondence then followed between the Colonial and Foreign Offices, of which copies were inclosed. That your Lordship thought that the matter would be sufficiently explained without encumbering the case with the inclosures to the Colonial Office letter of the 23rd June, 1892. That the other letters of the correspondence were:—

Foreign Office, 3rd September, 1892 (inclosure); Colonial Office, 16th September, 1892; Foreign Office, 28th September, 1892.

That the Law Officers' Reports, mentioned in the inclosure to the Foreign Office letter of the 3rd September, were also inclosed, viz.:—

L. O. R., 1870 (Conf. 3660), p. 130. L. O. R., 1874 (Conf. 4331), p. 111. L. O. R., 1885 (Conf. 5246), pp. 86 and 89.

14th October, 1870; 7th January, 1874; 18th February, 1885; 2nd April, 1885; 16th April, 1885; as well as a Law Officers' Report of 20th May, 1873, which was not mentioned in that letter, as it was made to the Colonial Office.

That your Lordship would be obliged if we would be good enough to consider the papers, and favour Her Majesty's Government with our advice as to what general rules might, having regard to the legal considerations involved, safely and properly be laid down for the Colonies respecting the prohibition of the exportation of arms.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That in our opinion the following general rules may, having regard to the legal considerations involved, be safely and properly laid down for the Colonies respecting the prohibition of the exportation of arms and similar goods:—

1. It is not one of the duties of neutrality to prohibit the export of arms or other contraband of war, and nothing is to be done on the ground, or as a recognition, of any supposed duty to that effect.

2. In the absence of any Treaty obligations, prohibition should be considered as a question of domestic policy, and founded on reasons concerning the safety and well-being of the Colony.

3. Under special circumstances, such as the geographical position and relations of a Colony, or Treaty obligations binding upon the Colony, it may be right to take into consideration the probable effect of exportation outside the Colony, such as the risk of creating, or aggravating, disturbances in neighbouring countries, or of involving the Colony in disputes with other countries. Such considerations must, however, be founded on the interests of the Colony and any Treaty obligation binding upon it, and not on any supposed rule of international law.

4. Prohibition must be general, and without discrimination as to persons or places, except in so far as partial prohibition may be authorized by the express language of the enactment relied upon.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

FRANCE.

No. 11.

The Law Officers of the Crown to the Earl of Rosebery.—(Received April 26.)

Royal Courts of Justice, April 25, 1893.

My Lord,

O. in C. applying to India "Mail Ships Act, 1891."

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 30th March, stating that he was directed to transmit to us the papers relating to a proposed Order in Council applying to India "The Mail Ships Act, 1891," and requesting that we would take the draft Order in Council into our consideration, and favour your Lordship with our opinion whether it might be laid before the Queen in Council, for Her Majesty's approval.

In obedience to your Lordship's commands, we have the honour to

Report—

That we have taken into consideration the draft Order in Council initialled by us, and, in our opinion, it may be laid before Her Majesty in its present shape for Her Majesty's approval.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	India Office	May 25, 1892
(B.)	Ditto	November 16, „
(C.)	Ditto	February 28, 1893
(D.)	Ditto	March 27, „
(E.)	Mr. Gray	March 11, „
(F.)	"Mail Ships Act, 1891" (54 & 55 Vict., cap. 31).	
(G.)	Convention with France. (Treaty No. 869.)	August 30, 1890
(H.)	"Mail Ships (France) Order in Council, 1892." (Confidential No. 6208*.)	
(I.)	"Mail Ships (France) Order in Council, 1892." (South Australia and Western Australia.) (Confidential No. 6234*.)	
(J.)	Draft Order in Council, applying "Mail Ships Act, 1891," to India.	

Annex.

MAIL SHIPS ACT, 1891.

Application to India.

DRAFT ORDER IN COUNCIL.

WHEREAS on the 30th day of August, 1890, a Convention was made at London between Her Majesty and the President of the French Republic respecting the postal service between France and the French possessions and the United Kingdom and British possessions;

And whereas the ratifications of the said Convention were exchanged on the 23rd March, 1891;

And whereas by "The Mail Ships (France) Order in Council, 1892," "The Mail Ships Act, 1891," is applied during the continuance of that Order as regards the said Convention, and as regards the French Republic and the postal service and mail-ships described in that Convention;

And whereas by section 8 of the said Act it is provided that an Order in Council may, for the purpose of a Convention with a foreign State, apply the said Act, subject to any exceptions or modifications not inconsistent with the provisions of the said Act, to any British possession, and that the said Act, when so applied, should, subject to those exceptions and modifications, and subject as thereinafter mentioned, have effect as if it were re-enacted, with the substitution of such British possession for the United Kingdom, provided that, before it should be applied to any British possession named in the Schedule to the said Act, the Government of such possession should have adhered to the Convention;

And whereas the Government of India, one of the possessions named in the Schedule to the said Act, has adhered to the said Convention, and it is expedient that the said Act should, for the purposes of the said Convention, apply to India, subject to the exceptions and modifications in this Order contained:

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Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Mail Ships Act, 1891," or otherwise in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. "The Mail Ships Act, 1891," shall for the purpose of the said Convention apply to India, subject to the provisions of section 8 of the said Act, and also to the exceptions and modifications following, that is to say:

(1.) The expression "officer of Customs" means an officer of Customs authorized under "The Sea Customs Act, 1878," or other Law for the time being regulating sea customs in India.

(2.) The provisions of the said Act as to the amount of fines shall be read as if the amounts were stated in rupees at the rate of 10 rupees to the pound sterling.

(3.) In lieu of sub-sections 1 and 2 of section 7 of the said Act, the following provisions shall be substituted, that is to say:

Every fine under the said Act, if exceeding 500 rupees, may be recovered by suit in the principal Civil Court having original jurisdiction in the place in which the person liable to the fine may be found.

A fine under the said Act not exceeding 500 rupees may be recovered by criminal proceedings before a Presidency Magistrate, or Magistrate of the First Class, having jurisdiction in the place in which the person liable to the fine may be found, provided that (*a*) every offence for which a fine exceeding 500 rupees can be imposed under the said Act may be prosecuted before such Magistrate, but the fine imposed on such conviction shall not exceed 500 rupees; and (*b*) in every case of conviction and fine by a Magistrate there shall be an appeal to the same Court as in other cases of fine of such amount as, under the Law for the time being in force in India, to give a right of appeal.

Every Court, whether of original or appellate jurisdiction, may reduce the amount of any fine.

(4.) The regulations required to be made under sub-section 4 of section 7 of the said Act by the Commissioners of Customs, with the consent of the Treasury, shall in India be made by the Governor-General in Council.

(5.) Section 5 of the said Act, so far as relates to the Commissioners of Customs, shall not apply to India.

2. The said Act shall apply as regards any public ship of the French Republic when employed as a mail-ship in the cases authorized by Article V of the said Convention.

3. This Order may be cited as "The Mail Ships (France) Order in Council (India), 1893."

And the Right Honourable the Earl of Rosebery, K.G., and the Right Honourable the Earl of Kimberley, K.G., two of Her Majesty's Principal Secretaries of State, are to give the necessary directions herein as to them may respectively appertain.

(Initialled) C. R.
J. R.

No. 12.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received July* 14.)

My Lord, *Royal Courts of Justice, July* 14, 1893.

Newfoundland. Customs duties on goods imported for French fishermen in Brit. ships.

WE were favoured with your Lordship's commands signified in Sir Philip Currie's letter of the 29th June, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the action taken by the Customs authorities of Newfoundland in levying customs duties on certain goods consigned from Nova Scotia to French citizens engaged in the fishery on the Treaty Shore of that island. That the circumstances would be found fully stated in the despatch from the Governor of Newfoundland dated the 3rd ultimo.

That it would be seen that the French Admiral commanding in Newfoundland waters had protested against the exaction of these duties as involving a violation of Treaty rights, on the ground that a tax upon fishing materials and provisions constituted an "interruption" by competition with the fishery of the French.

That, according to the practice which had hitherto obtained on the Treaty Shore, French fishermen had been allowed to land free of duty articles imported in French vessels and necessary to the exercise of their fishery.

That it appeared, however, in the present instance, that the goods were imported in a British vessel from a British Colony, and that the persons to whom they were consigned had arrived in the Colony fully equipped for the fishing season. That there was therefore reason to suppose that the articles in question were not imported to supply the *bonâ fide* needs of the fishermen in connection with their fishery, but were rather intended for sale or barter to the inhabitants generally, to the detriment of the Colonial revenue; and that, under these circumstances, the Colonial authorities had asked for the support of Her Majesty's Government in order to put a stop to the contraband trade which was springing up in the Colony, and of which the French fishing-rooms had become the centre.

That a summary of the previous correspondence on the extension of the Colonial Customs system to the Treaty Shore was inclosed for our fuller information, and that Sir Philip Currie was to request us to take it into our consideration, together with the other papers, and favour your Lordship with our opinion as to whether the action of the Government of Newfoundland in this matter might properly be supported.

We were also honoured with a letter from Sir Thomas Sanderson, of the 1st instant, transmitting to us further papers in the matter.

We were further honoured with Sir Thomas Sanderson's note, dated the 8th instant, inclosing the documents noted in the margin, and calling our special attention to the protests of the French Admiral.

We were also honoured with Sir Thomas Sanderson's further letter, dated the 12th instant, stating that he was directed to transmit to us a letter from the Admiralty, inclosing a telegram from the Commodore at St. John's, in which he reported that the French Admiral had formally demanded the return of the goods laid under embargo, or of their estimated value; that this application had been refused by the Governor of Newfoundland, and that the French Admiral had suddenly left St. John's for St. Pierre in order to communicate with his Government on the subject.

That it would be seen from the Reports of the British Commodore that he appeared to consider that the stores seized were, at all events for the most part, really intended for the use of the vessels.

We have also the honour to acknowledge the receipt of Sir Thomas Sanderson's further letter of the 13th instant, transmitting a translation of a note from the French Chargé d'Affaires formally protesting on behalf of his Government against the proceedings of the Colonial authorities in this matter.

Sir Thomas Sanderson requested that we would take his communication into our immediate consideration, and that, in replying to the questions already submitted to us, we would favour your Lordship with our opinion as to the answer which should be returned to this protest of the French Government.

In obedience to your Lordship's commands, we have taken the matter into our consideration, and have the honour to

Report—

1. That, in our opinion, in the existing circumstances the action of the Government of Newfoundland ought not to be supported.

It appears on the whole pretty clear that the goods in question were necessaries for the French fishing industry, and, looking to the fact that no exaction of duty has apparently ever previously been enforced in respect of such necessaries, and to the (unratified) Arrangement of the 14th November, 1885, which, in Article 16, contains provisions exempting such necessaries, we do not think the Government would be wise, without previous warning and negotiation, in insisting on the payment of the duties in question.

2. As to the protest of the French Government, we respectfully suggest that Her Majesty's Government should, in the first place, determine whether they intend to support the Newfoundland Government in the future, if they should depart from the previously pursued course of exemption, and, if so, they should so notify the French Chargé d'Affaires, but as to the recent action of the Newfoundland authorities, taken without notice, we do not think (as already stated) that it should be persisted in.

3. As to the right to exact duty on necessaries brought within Newfoundland or its territorial waters, we can only say that, apart from the unratified Agreement, and the course hitherto adopted (both facts of great importance, especially as affecting the policy to be pursued), we find nothing in the papers before us to warrant the French Government in the exemption they apparently claim as a right; but the matter is one which requires fuller consideration than we have yet been able to give to it.

We think, therefore, the right of exemption claimed should be denied, but it would, we think, be desirable if some method could be devised for definitely settling by arbitration this, amongst other disputed questions, which have arisen between Her Majesty's Government and that of France in reference to the Newfoundland coast.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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List of Papers.

1 Article XIII of Treaty of Utrecht, and Declaration.	
2. Admiralty	June 2, 1893
3. Colonial Office	June 20, „
4. Colonial Office	June 23, „
5. Ditto	June 30, „
6. Admiralty (Report by Commodore Curzon-Howe, with inclosures.)	July 3, „
7. Ditto	July 11, „

No. 13.

The Law Officers of the Crown to the Earl of Rosebery.—(Received September 5.)

Royal Courts of Justice, September 4, 1893.

My Lord,

Newfoundland. Customs duties on goods for French fishermen on Treaty Shore.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 1st ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the recent action of the Newfoundland Government in exacting customs duties from French citizens on the Treaty Shore, and to the right of exemption claimed by the French Government.

That Sir Thomas Sanderson was to request that we would take the matter again into our consideration, and inform your Lordship whether the arguments advanced in the Colonial Office letter of the 22nd July last, and the fresh information forwarded in that of the 27th of that month, induced us to modify in any way the views which we expressed in our Report of the 14th July last, and, if so, to what extent, and in what respects.

That, as regards our suggestion that the claim to exemption might be submitted to arbitration, Sir Thomas Sanderson was to observe that your Lordship, as then advised, would deprecate that course, since such a reference would appear to involve the sovereign rights of the British Crown in Newfoundland—a matter which could not properly be made a subject of arbitration; but that your Lordship would be glad to have the advantage of considering any further observations which we might offer upon that point.

We were also honoured with Sir Thomas Sanderson's further letter of the 10th ultimo, stating that he was directed by your Lordship to inform us that the recent correspondence respecting the claim for customs duties made by the Newfoundland Government upon French subjects on the Treaty Shore had been communicated to Mr. W. E. Hall, who, as we were aware, had been selected as the Representative of Her Majesty's Government upon the proposed Tribunal of Arbitration on the questions connected with the lobster fishery.

That that gentleman had now furnished your Lordship with a Memorandum, a copy of which was inclosed for our information.

That it would be observed that Mr. Hall, *inter alia*, called attention to the correspondence which took place in 1888-89, when an attempt to levy customs duties was met by the French Government with a distinct claim to exemption as of right.

That that correspondence had been marked for convenience of reference in the accompanying volumes of Confidential Print, and that Sir Thomas Sanderson was to request that we should take those papers into our consideration in connection with the papers submitted to us in his letter of the 1st ultimo.

We were further honoured with a note, dated the 11th ultimo, from Sir Thomas Sanderson, transmitting two further communications which had been received at the Foreign Office respecting the matter in question.

In obedience to your Lordship's commands we have again taken the matter into our consideration, and have the honour to

Report—

That we find nothing in the further papers submitted to us to induce us to modify in any way the views expressed by us in our Report of the 14th July last. We concur in the opinions set forth in Mr. Hall's Memorandum of the 3rd August, 1893.

With reference to the suggestion that arbitration of the question of exemption would involve the sovereign rights of the British Crown in Newfoundland, and would not, therefore, be a fit subject for arbitration, we would observe that sovereign rights are equally brought into question in the arbitration already agreed upon, and, indeed, must be involved in every claim of French subjects to exercise, as of right, special privileges in Newfoundland.

We have, &c.
(Signed) C. RUSSELL
JOHN RIGBY.

List of Papers.

1. Colonial Office	July 22, 1893.
2. Ditto	July 27, „
3. To Colonial Office	August 1, „

1. Colonial Office	September 22, 1888.
2. M. Waddington	November 2, „
3. To Colonial Office (A)	November 17, „
4. Ditto (B)	November 17, „
5. Colonial Office	December 1, „
6. To Colonial Office	December 14, „
7. Colonial Office	January 31, 1889.
8. Ditto	April 17, „
9. To M. Waddington	April 22, „
10. Memorandum	August 3, 1893.

1. Colonial Office	August 10, 1893.
2. Baron d'Estournelles	August 10, „

Annex.

Memorandum by Mr. W. E. Hall on the Claim for Customs Duties made by the Newfoundland Government upon French Subjects on the Treaty Shore.

1. LOOKING at the difficulty which has lately arisen in Newfoundland from the point of view of Treaty rights, there is, I venture to think, no question that French fishermen cannot claim to import goods for any purpose without paying such duties as may be imposed upon them in common with British subjects in the Colony.

There is no language in the Treaty of Utrecht or in any subsequent Agreement which imports exemption from Customs—or any other—Laws.

Whatever the extent of French fishing rights may be, exemption from customs duties is not necessary for their reasonable enjoyment, provided that no discrimination is exercised as against French citizens. A right of exemption cannot therefore be deduced from the Treaties by way of necessary implication.

There is not even anything in the general position accorded by the Treaties to French fishermen which suggests that it was intended to exempt them from the operation of any ordinary Laws of general application. They are simply entitled to carry on their fishing without being interrupted by competition. Assuming that they have an exclusive right to catch and preserve fish and other marine animals upon a certain portion of the coast of Newfoundland, they are exactly in the situation which British subjects would occupy if a monopoly of a particular trade had been granted to them. They are individuals with no more and no fewer rights than any other individuals in like circumstances. That their privileges are secured to them by Treaty between the local Sovereign and the State to which they belong, instead of by direct grants to them as individuals, does not appear to me to affect the scope of those privileges, or the position of the individual relatively to the local Sovereign.

It is unnecessary to comment upon the extravagant assertions made by Admiral Sallandrouze de Lamornaix (Inclosure 4 in No. 1, 27th July), that the imposition of customs duties is in itself a "concurrence" within the meaning of the Treaties, since it does not appear in his protest (Inclosure 4 in No. 1, 8th July), to which Baron d'Estournelles refers in his communication of the 12th July (No. 1, 13th July). At the same time it may be observed that the latter professes to rely upon the Treaties, and it would be hard to find any language in them which more directly bears upon the case.

2. Although, as it appears to me, there can be no room for doubt upon the question of Treaty right, I am very sensible of the difficulty which is caused by tacit permission having been accorded for so long a time to import, free of duty, the various articles consumed or used by French fishermen and French lobster factory owners. The difficulty is the greater that permission has been continued, notwithstanding that an ineffectual attempt to levy duties, made in 1888, was followed by a distinct claim to exemption as of right being put forward in the broadest manner by the French Government (Inclosure in No. 290, Colonial Office, North America, No. 130). I am not aware whether the proposed reply to M. Waddington's note (Inclosure in No. 304, Colonial

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Office, North America, No. 130) was ever sent. If it was communicated to the French Government, the latter might reasonably expect that exemption should be continued as an interim measure until an agreement were come to on the basis of Article 16 of the Arrangement of 1885. Even apart from this note, it does not seem to me possible to support the recent action of the Newfoundland Government, taken as it was without notice. The goods imported seem to have been such as must have been frequently imported before—some of them every year—and the quantity was hardly so great as to suggest that they were imported for sale.

3. With regard to the future, I feel that I tread on very delicate ground. So far as I can appreciate existing circumstances, few courses seem to be open, and none are free from difficulty. But I notice the Colonial Office propose to urge the Government of Newfoundland to send home a Delegate authorized to discuss and arrange with Her Majesty's Government terms and conditions upon which the privilege hitherto accorded to the French may be continued. I assume that the Colonial Office have some reason to believe that the Newfoundland Government will not be disinclined to accede to this proposal. If this be the case, I venture to submit the following suggestions:—

During the greater part of the period which has elapsed since the Treaty of Utrecht no duties have of course been levied from any one, British or foreign, upon the Treaty Coast. From this long-continued practice French Governments may have come to believe honestly that free entry of materials and provisions for their fishermen forms part of the fishery customs. The French Government is at least certain to argue that it does; and had the old habits of fishery been retained, under which each ship brought out with it whatever was needed for the season, their position would be a very strong one. Since the Customs Laws have been extended to the Treaty Coast tacit exemption has been accorded. Possibly even French officers may at some time or other have been led to suppose (in the tenour of Sir T. O'Brien's despatch of the 19th March, 1889, No. 78 of Colonial Office, North America, No. 132) that the Newfoundland Government have had "no intention of claiming any duties" on "goods imported by the French for use in the *bonâ fide* prosecution of their rights of fishery." In such circumstances to insist upon the strict right of the Colony to levy duties upon all imported articles would be, I fear, to add another subject of contention to the sufficient number which already exist between Great Britain and France with respect to Newfoundland. Might it not be possible to concede, as a matter of grace or courtesy, that goods brought by, or imported to, French cod fishermen for their subsistence or for their own use in the fishery, shall not be chargeable with duty?

Articles introduced for the use of the lobster factories should, I submit, be differently treated. Any admission that the two industries of cod fishing and drying, and lobster catching and canning stand on the same footing not merely is an indirect admission of French lobster claims, but (what is far more serious) weakens the British position with reference to all the French inferential claims, and departs from that strict construction of the Treaties by which alone French encroachment can be restrained. The French Government might be reminded that lobster catching and preserving is not, in the view of Her Majesty's Government, a fishery within the meaning of the Treaty of Utrecht, and that therefore lobster catchers and preservers have not the moral claim to exceptional consideration that may be urged in favour of the cod fishermen. In the absence of notice on the part of the Newfoundland Government of intention to levy duties, it is reasonable that duties should not be claimed during the present season, and that the claim already made should not be persisted in; but the French lobster catchers and preservers should understand that next year they must be prepared to pay whatever duties the law imposes indifferently upon British subjects and foreigners. It might at the same time be intimated that the Newfoundland Government would be prepared to extend the same indulgence to the lobster industry as that granted to the cod fishery, if it be decided in arbitration that lobster catching and preserving are included in the French fishing privileges, and that in this case any duties levied before the arbitral decision is given would be refunded.

I do not flatter myself that the French Government would accept this solution as adequate; but I presume that it would confine itself to reiterating its claim to exemption as of right, and that the dangers of an acute form of controversy, and the risks of collision, might be avoided.

The above mode of dealing with the question is undoubtedly open to the objection that it provides no means for checking the contraband trade of which the French fishing stations have become the centre. I do not, however, see in what way contraband trade can be struck at the root; unless, on the one hand, the French Government and the French authorities co-operate honestly in its destruction, or, on the other, the Customs Laws are rigorously enforced. It is, I should suppose, utterly useless to hope for the former; the latter involves a danger of international complications disproportioned to the magnitude of the evil to be repressed. But I am inclined to think, upon the local conditions that persons practically acquainted with those conditions would be able without much difficulty to devise measures, without interfering with the principle of free entry, which would very greatly lessen, though they might not wholly extinguish, the contraband traffic.

(Signed) W. E. HALL.

August 3, 1893.

N.B.—I have written without reference to the suggestion in No. 1 of the 20th June, that the Newfoundland Government does not intend to withdraw the exemption hitherto accorded to goods *bonâ fide* introduced for the purposes of the fisheries. Obviously the presence or absence of *bona fides* is a matter with respect to which the French and Colonial Governments would never find themselves in agreement.

GENERAL.

[Home Office.

No. 13 A.

The Law Officers of the Crown to Mr. Asquith.—(Received from Home Office February 27, 1893.)

[In reply to the following Home Office Memorandum, the Law Officers gave, on the 8th February, their opinion as on p. 24 C:—]

Memorandum by Mr. Pemberton.

Mr. Asquith,

Nationality of C. F. Priest.

THIS is an application for a certificate that C. F. Priest is of English nationality, and raises a question which I do not think has yet been fully considered.

The applicant's father was an Englishman, who cohabited in Paris (where he was for years, and still is domiciled) with a Swiss woman, of whom the applicant was born in Paris before wedlock. The parents have since married, and the applicant is, and always has been, a domiciled Frenchman. The Home Office is informed that, by the law of France, the applicant has been made legitimate by such subsequent marriage.

The question is whether he is entitled to a certificate of English (or perhaps more correctly British) nationality.

I believe that by the common law, nobody is a British subject unless born in the British dominions. The Act of Geo. III, cap. 21, conferred on children born out of the domain of the Crown, whose fathers were natural-born subjects of the Crown, the rights and privileges of natural-born subjects, and the Act of 13 Geo. III, cap. 21, extended those rights to grandchildren. Must these children and grandchildren be legitimate for the purposes of the Acts according to the law of England? The Acts containing no provisions as to residence in British dominions, and the rights being granted irrespective of the domicile of the grantees.

It has been the practice of the Home Office to hold that they must.

On the application made in 1883[*] (*tempore* Sir W. Harcourt) for a certificate of British origin under precisely similar circumstances to the present, it was decided that the English law must govern the question, and the application was refused. In the Minute deciding the question this passage occurs: "How can the Secretary of State, who is guided solely by English law, give to a bastard born out of Great Britain a certificate that his nationality by origin is that of a natural-born British subject by reason of his paternal grandfather having been a natural-born British subject. A bastard is *nullius filius*."

Sir Wm. Harcourt's Minute in this case also contains the following:—

"I am clearly of opinion that no certificate can be given in this case. If this man came to England, he would not be in law a British subject. How, then, can we certify him to be such?"

It may be remarked that though the questions appear to depend on the same considerations, the application was not for a certificate that the man was a British subject, but for a certificate of British origin.

In the letter of refusal the applicant was informed that having been born out of wedlock and on foreign soil, he was not by British law a British subject.

In 1885 the following question was submitted to the Law Officers[†] (Sir H. James and the present Lord Herschell) at the request of the Italian Government through the Foreign Office:—

"Is the illegitimate son of a British subject, such son being born out of Her Majesty's dominions, a British subject? If not, can British nationality be imparted to such son by the subsequent marriage of his parents, or the formal recognition or adoption of such son by his father?"

[*] Paper A 34072.

[†] Opinion No. 758.

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The answer was as follows:—

"The illegitimate son born out of Her Majesty's dominions of a British subject is not a British subject, and cannot acquire British nationality either by subsequent marriage of his parents, or by being formally recognized or adopted by his father."

This question as put could, perhaps, hardly have been answered in any other way; but though the answer may in terms cover the present case, it seems doubtful if it could have been intended so to be applied. The absolute illegitimacy of the applicant is assumed in the question which does not even state (nor does the case which gave rise to it) whether, by the law of the place where the applicant was domiciled, the subsequent marriage of the parents would have rendered the offspring legitimate.

If the father of the applicant in the question put had been Scotch by origin, and if, by the law of the place of his domicile, the subsequent marriage of his parents would have rendered him legitimate (as Scotch law would have done), could he have been said to have been illegitimate? No doubt he could not have inherited real estate in England; but does the question of nationality (not English only, but British) depend upon the same principle as the devolution of real estate in *England* only, even although the question is to be decided by the English Secretary of State. It would be very inconvenient, even if it were possible, for the Secretary of State to go into the question whether the origin of the father of an applicant born abroad was English or Scotch, and it would be desirable, if consistent with legal decisions, that in deciding claims to certificates of nationality some general principle should be laid down, and it is submitted that the question really depends on the law of the place of domicile of the claimant, or, in other words, on the status of the claimant in that place.

The case of Brook *v.* Brook (9 House of Lords Cases 193, and Jurist 1861, 423) seems to have much bearing on this point. It was a case of marriage with a deceased wife's sister, celebrated in Denmark (where such a marriage is legal) between British subjects not domiciled in Denmark, who had gone there for the express and sole purpose of marriage. The case was originally heard by Vice-Chancellor Stuart, with Judge Cresswell as Assessor. They decided against the validity of the marriage, and seemed to ground their decision on the fact that Lord Lyndhurst's Act was binding on all British subjects, and prevented the relation of husband and wife from subsisting between such subjects. In the House of Lords, where the Judgment was affirmed, Lord Campbell expressly repudiated this view of the case, pointing out that Lord Lyndhurst's Act would not affect the law of marriage in a Colony where such a marriage was legal. The note of the case, as reported in the Jurist, contains the following passage: "Although the *lex loci contractûs quoad solemnitates* determines the validity of the contract of marriage, the question whether the parties may enter into such a contract must depend upon the *lex domicilii*. The 5 & 6 Wm. IV, cap. 54, would not affect the law of marriage in any conquered Colony in which a different law prevailed. The Act is limited in its operation to the inhabitants of Great Britain and Ireland." It is submitted that on this principle the applicant in the present case, being domiciled in France, would be legitimate, and that in Brook *v.* Brook the marriage would have been held good by the House of Lords if the parties had been *bonâ fide* domiciled in Denmark.

But the case appears to be settled by "In *re* Goodman's trusts" (Law Journal Reports, 1881, 425). That was decided in the Court of Appeal, where Lords Justices Cotton and James (*dissentiente* Lush, Lord Justice) overruled a decision of Sir George Jessel, and held "that a child born in Holland before wedlock, but legitimized by subsequent marriage of her parents, domiciled in Holland at the time of her birth, was entitled to share, as one of the next-of-kin, in the personal estate of an intestate domiciled in England," and said: "The question of a person's legitimacy is a question of status to be determined by the law of the country where his parents are at his birth domiciled, and English law, except as to succession to real estate in England, recognizes and acts on the status as declared by the law of domicile."

All the previous cases on the subject are quoted and commented on in this last case, which would seem to settle the question, unless the nationality, created by the Acts of Geo. II & III, is subject to the same law of devolution as real estate in England, for which there is, so far as I know, no authority.

But as the practice of the Home Office has not been in accordance with this, I would suggest that the opinion of the Law Officers should be requested on the following points:—

1. Assuming the present applicant to have been rendered legitimate by the law of his own and his parents' domicile, is he entitled to a certificate of British nationality?

2. May the Home Office, in granting such certificates, treat for that purpose as legitimate all persons who are legitimate according to the law of the place of their domicile at the date of the application?

E. L. P.

Home Office, January 3, 1893.

Opinion.

1. We are of opinion that the applicant (on the assumption mentioned in the Minute to the Home Secretary that he has been legitimated by the subsequent marriage of the parents) *is* a British subject, and, therefore, a person to whom a certificate of nationality may be given.

The Statutes 4 Geo. II, cap. 21, and 13 Geo. III, cap. 21, confer British nationality on persons described as "children" of certain British subjects residing abroad. "Children" must be legitimate children according to English law, but English law recognizes the legitimacy for all purposes except succession to real estate in England of persons legitimated by the law of the father's domicile at the birth of the children and the marriage of the parents.

2. According to English authorities, the domicile of the applicant at the date of the application is unimportant. The domicile of the father, both at the applicant's birth and at the date of his marriage, must be in a country whose law permits the legitimation. The *place* of the birth or marriage is unimportant.

(Signed) C. RUSSELL.
JOHN RIGBY.

Royal Courts of Justice,
February 8, 1893.

[The foregoing Memorandum by Mr. Pemberton and opinion of the Law Officers having been communicated to the Foreign Office for their information, and the Legal Adviser to that Department having written a Memorandum thereon, in which he dissented from the conclusions arrived at, the Home Office resubmitted the matter to the Law Officers upon Mr. Davidson's Memorandum, when the Law Officers reported as on p. 24 E.]

Memorandum by Mr. Davidson.

I am bound to say that I conceive this opinion not only to be opposed to the views of previous Law Officers, and to the doctrine which has hitherto been held here (and as, I believe, at the Home Office too), but also in conflict with an absolute decision of the House of Lords, to which, however, the attention of the present Law Officers was not directed in the case which was submitted to them by the Home Office.

I do not think we can accept the opinion as it stands, at any rate until we are clear that the Law Officers have considered various points, to which I will shortly proceed to advert, and have also had their attention specially called to the case of "Shedden *v.* Patrick and others," which is reported in 1 Macqueen's (House of Lords) Reports, p 535.

That case, as I understand it, lays down clearly that the subsequent marriage of Priest's parents, whatever its other consequences may have been, could not convert him into a British subject, a conclusion which, quite apart from the absolute authority of this decision of the highest legal Tribunal, can, as I venture to think, be satisfactorily established by *à priori* reasoning.

I venture to think that the case which was submitted to the Law Officers does not sufficiently clearly distinguish between legitimation and nationality of origin in this important respect, viz., that legitimation is determinable by relation back, while the latter is determinable absolutely at the moment of birth.

Subsequent marriage may confer legitimacy upon the issue, but it does not follow that it confers paternity upon the parent.

In the case of Shedden *v.* Patrick, in dealing with this question, Lord Brougham delivered himself as follows upon the matter:—

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"I can hardly call them by so slight a name as anomalies, the gross inconsistencies, the self-contradictions, the glaring absurdities, which must follow from holding that the retrospective doctrine imports paternity as well as legitimacy.

"It is sufficient to remind your Lordships of one of these, to which my noble and learned friend (Lord Cranworth) has adverted; that it would be giving the parent of the child—the putative father of the child—the power, by marrying his mother, of converting him from an alien or foreigner into a natural-born subject.

"If the child had done that which he had a perfect right to do at the time, namely, taken up arms against the English Crown before the marriage of his parents, it would follow from the doctrine in question that the marriage converted him from an alien enemy into a traitor to the Crown of this country, thereby making him guilty of high treason!"

This case of Shedden *v.* Patrick was decided by a very strong Court, who were unanimous. (The Law Lords who took part in the decision were Lord Cranworth (Lord Chancellor), Lord Brougham, and Lord St. Leonards.)

It originally came before the Scottish Courts and the House of Lords in 1803-08, but came before the latter Tribunal again in 1854 (the date of the Judgments which establish the principle mentioned), when it was sought to treat the original decision as a nullity on the ground that it had been obtained by fraud and collusion.

Therefore, although the actual decision was given in 1854, the facts upon which it proceeded, and by which the status and rights of Shedden were determinable, arose during the latter half of the last century (1764–1800 *circa*).

In those days an alien could not inherit real property either in England *or Scotland* (where the estate of "Roughwood" claimed by Shedden was situate), and it therefore then became material, although it would not be so now, to inquire whether he was a natural-born subject or not. If he had been a natural-born British subject he could, although illegitimate at birth, have inherited real property in Scotland *ab intestato*, provided that he had, by the subsequent marriage of his parents, become legitimated according to the then (and present) law of Scotland.

This of course both was and is otherwise in England, where the *lex loci rei sitæ*, which governs the devolution of real property, does not recognize the doctrine of *legitimatio per subsequens matrimonium*, and where consequently a natural-born British subject equally with an alien would, under the circumstances above mentioned, be excluded from the succession to realty *ab intestato*.

I have subjoined these explanations, some of which I have already made on a previous occasion, with regard to some correspondence in a case which occurred in 1891–92 (that of Mr. King Kiku Kingdon), as we have no report of the case of Shedden *v.* Patrick in the Office, and its bearing is not at once apparent without a statement of the material facts on which the decision depended.

It is stated in the "Home Office case" that "the applicant is, *and always has been*, a domiciled Frenchman."

If this be so, his mother must of course have been a domiciled Frenchwoman at the time of his birth, for at this moment of his life he was undisputedly illegitimate, and must therefore have followed the domicil of his mother. It is not *primâ facie probable* that a Swiss woman who had an illegitimate child in Paris would have elected to change her Swiss domicil of origin for a French domicil of choice; but I take it this must have been so in the present case.

There is one exception to the principle, that nobody is a British subject by the common law except he be born in the British dominions.

The exception is made in the case of the King's (or Queen's) sons, who are British subjects at common law even if born outside the Realm.

I have no doubt that the opinion of Sir H. James and Lord Herschell, which was given in 1885, not only covers in terms the present case, but was intended so to be applied.

I do not think it was material to state in the case which was submitted to them (and which was drafted by Sir Julian Pauncefote), "whether by the law of the place where the applicant was domiciled, the subsequent marriage of the parents would have rendered the offspring legitimate."

I have already indicated my reasons for this view, and think that they were probably shared by Sir Julian Pauncefote.

A reference, however, to the present Lord Chancellor would readily clear this point up. All I personally remember about the opinion is that I was present when it was written, and I believe wrote it at Sir H. James' dictation in his room at the House of Commons. The Solicitor-General was of course also there.

On the whole, I think it is pretty clear that this case ought to be recommitted to the Law Officers. I have written the above observations somewhat hurriedly from scraps I had prepared for the purpose of a more elaborate Memorandum.

But finding that Memorandum unwritten on this my last day of attendance at the Foreign Office before going on leave for some time, I have thought it better to submit my observations in a somewhat crude and ill-considered form rather than to postpone doing so until a couple of months hence.

The case of Shedden *v.* Patrick is quoted by the late Law Officers in their opinion on the case of Mr. King Kiku Kingdon, as being decisive of a somewhat analogous point which arose (with others) in that correspondence.

Their Report, which is dated the 18th February, 1892, is annexed.

I drew this reference, but had overlooked the case of Shedden *v.* Patrick in its bearing on this matter, but it will be seen from Minutes which I wrote (and, indeed, from the body of the reference indirectly), that I had arrived at the same conclusion by *à priori* reasoning.

W. E. D.

Foreign Office, July 29, 1893.

Opinion.

We were clearly in error in our opinion of the 8th February, 1893. Having regard to the decision of the House of Lords in the case of Shedden *v.* Patrick (1 Macq. 535), which we regret to say we overlooked, we have no doubt that the law is as stated in the opinion of our predecessors.

(Signed) C. RUSSELL.
JOHN RIGBY.

Royal Courts of Justice,
September 1, 1893.

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GENERAL.

No. 14.

The Law Officers of the Crown to the Earl of Rosebery.—(Received February 22.)

My Lord,

Royal Courts of Justice, February 21, 1893.

Brit. Treaty engagements as to duties on colonial and foreign wines.

WE were honoured with your Lorship's commands signified in Sir Edward Grey's letter of the 27th December last, stating that he was directed by your Lordship to say that you will be glad to be favoured with our opinion as to the precise obligations of this country under Treaty engagements now in force with respect to the duty to be levied on colonial wines in relation to that which is levied on foreign wines."

That the Law Officers of the Crown reported on the 14th January, 1882:—

"We concur in the view that the most-favoured-nation clause does not affect the right of this country to extend to the produce of its Colonies more favourable treatment than it accords to the produce of foreign or third countries; and that the question of admitting colonial produce on more favourable terms than similar produce of foreign countries with which Great Britain has entered into most-favoured-nation stipulations is entirely a question of policy."

That accordingly, in that view of the case, the ordinary most-favoured-nation treatment clause in Commercial Treaties would not preclude Her Majesty's Government (if they thought fit) from granting preferential treatment as to import duties in favour of wines the product of British Colonies. That two Commercial Treaties now in force, however, contained engagements bearing upon British Colonies which went beyond the usual most-favoured-nation stipulations, namely, the Treaty with Belgium of the 23rd July, 1862, and the Treaty with the Zollverein of the 30th May, 1865. That the former—the Treaty with Belgium—seemed in its specific engagements (as far as the Colonies were concerned) simply to place Belgian products imported into the British Colonies on the same footing as British products. That if such was the case, that Treaty had no bearing on the point now submitted to us for our opinion.

That the obligations arising out of the Treaty of 1865 with the Zollverein might, however, be different, inasmuch as by Article VII the stipulations of the preceding Articles I to VI (which contained the whole provisions of the Treaty) were made applicable to the "Colonies and foreign possessions of Her Britannic Majesty," and that under that engagement the German Government might contend that German wines imported into the United Kingdom ought not to be charged higher or other duties than wines of similar strength or value imported into this country from British Colonies and foreign possessions.

That should that be the case, all countries, such for example as the wine-producing countries Austria-Hungary, Greece, Italy, and the United States, whose Commercial Treaties with Great Britain contained a most-favoured-nation Article in regard to customs duties, would be entitled to claim that their wines must be admitted into the United Kingdom on the same terms as German wines, and, therefore (while the existing Treaty with Germany remained in force), on the same terms as British colonial wines.

That Sir Edward Grey had accordingly the honour to request that we would take into our consideration the points placed before us in his letter, namely, whether the Treaties with Belgium of the 23rd July, 1862, and with the Zollverein of the 30th May, 1865, precluded this country from granting, while either, or both those Treaties remained in force, preferential treatment in regard to customs duties in favour of British colonial wines; and, if so, whether other nations would be entitled to claim, under the most-favoured-nation Article in Commercial Treaties, for their wines the same customs duties as might be levied on Belgian or German wines.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the Colonies cannot be treated as "other nations" or "third Powers" within the meaning either of the Belgian Treaty of 1862, or of the Zollverein Treaty of 1865.

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Article VII of the Zollverein Treaty of 1865, when carefully examined, has no operation as regards imports into the United Kingdom from the Colonies, though it *does* extend to imports into Colonies from the United Kingdom as well as to exports from the Colonies.

It follows that neither of the Treaties precludes this country, whilst it remains in force, from granting preferential treatment in regard to customs duties on importation into this country of British colonial wines.

The most-favoured-nation clause in other Treaties only places the Contracting Power in the same position (so far as the Belgian and Zollverein Treaties are concerned) as Belgium and the States of the Zollverein respectively, and cannot, therefore, give any right to the preferential treatment accorded with reference to imports of colonial wines into the United Kingdom, if, as a matter of policy, it is thought proper to concede such preferential treatment to the Colonies.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

GERMANY.

No. 15.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received March* 3.)

Royal Courts of Justice, March 1, 1893.

My Lord,

Emigration Bill before German Legislature. Complaints of British Shipping Companies.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 5th January, stating that he was directed by your Lordship to inform us that representations had been addressed to the Foreign Office by British Shipping Companies complaining of the provisions of a Bill which was before the German Legislature relative to German emigration.

That the correspondence on the subject had been referred to the Board of Trade; and that that Department considered that the stipulations of Article 2 of the Bill in question were contrary to the spirit, if not to the letter, of the Navigation Treaty of 1865 between this country and Prussia; and that they suggested that a communication on the subject should be made to the German Government.

That the clauses of the Bill which seemed more particularly to require consideration were the 3rd, 4th, 5th, and 6th, which related to the persons and associations to whom permission to undertake the conveyance of German emigrants might be granted. That the text of those clauses, in translation, was as follows:—

"Clause 3. The permission may only be granted—

"(*a*.) To German subjects who are domiciled and have their trading establishment within the Empire, and in the case of proposed emigration to extra-European countries (trans-oceanic conveyance) are established at a German seaport.

"(*b*.) To Corporations, registered Associations, and Joint-Stock Companies which have their seat (*sitz*) within the territory of the Empire, as also to such Share Companies as have their seat (*sitz*) within the Empire, and whose responsible Directors are all German subjects. In the case of proposed trans-oceanic conveyance of emigrants the permission will only be granted to such Corporations or Companies if they have their seat at a German seaport.

"Before the permission can be granted the applicant must deposit as caution-money a sum of not less than 30,000 marks (1,500*l*.), and in the case of trans-oceanic emigration must prove that he owns suitable vessels for the purpose.

"Clause 4. The permission shall only be granted for particular foreign countries, or parts of such, which must be declared in the licence, and in the case of trans-oceanic emigration for particular ports of embarcation, which must also be stated in the licence.

"Clause 5. The licences shall not be granted for trans-oceanic emigration which starts from a foreign port. The entrepreneur may, however, obtain permission to embark emigrants at foreign ports of call, if the vessels employed have started on their voyage from a German port.

"Clause 6. The licence shall not be granted for trans-oceanic conveyance which involves transshipment at a foreign port."

That a subsequent clause (13) provided that only German subjects could act as agents in emigration business in Germany.

That the Treaties between this country and Germany which should be considered in connection with those clauses of the German Bill were the Treaty of Navigation of the 16th August, 1865, and the Commercial Treaty of the 30th May, 1865.

L. O. R. 1891 (Conf. 6113) p. 44.

That the explanatory Memorandum presented to the German Parliament with the Bill set forth that the business of undertaking the conveyance of emigrants did not come within the Ordinances on trade and industry. That that position would appear to be in harmony with the opinion expressed in a Report by our predecessors in office of the 9th October, 1890, to the effect that the business of an "emigration agent" as defined by Italian law was not "commerce" within the meaning of the Commercial Treaty between this country and Italy of the 15th June, 1883. That it was thought, therefore, that the restriction to persons of German nationality of the right to undertake the conveyance of emigrants might not be at variance with the Commercial Treaty between this country and Germany in so far as the business in question was that of an emigration agent.

That the provision, however, of clause 3 of the Bill that permission to undertake to convey emigrants shall only be granted to persons, German subjects, who owned ships suited to that purpose (although under certain circumstances they appeared to be allowed to engage foreign vessels for that service) would seem to preclude British ship-owners from participating in the emigration traffic from German ports.

That the Ist Article of the Treaty of Navigation of the 16th August, 1865, placed, in Prussia, British vessels and their cargoes on the same footing as national vessels and their cargoes.

That a question therefore arose whether the conveyance of passengers was so far a matter of navigation as to enable a claim to be preferred that British vessels should be placed in that respect on the footing of German vessels.

L. O. R. 1891 (Conf. 6207), p. 51.

That it was to be borne in mind that our prececessors in office, in their Report of the 20th July, 1891, appeared to have held that the French Government could not properly restrict to French vessels the carrying of Mahommedan pilgrims from French ports; that the French Government had, however, declined to accept that view of the case.

That Sir T. V. Lister was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion (1) whether Her Majesty's Government would be justified in addressing a representation to the German Government on any (and, if so, which) of the provisions of the Bill in question; and (2) should our answer to the first question be in the affirmative, on what grounds such a representation might, from a legal point of view, most advantageously be based?

That your Lordship would be glad, at the same time, to be favoured with any general observations on the subject which we thought might be of use to Her Majesty's Government in its discussion with the Government of Germany.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the effect of the legislation referred to will be to exclude British vessels from the business of carrying emigrants from German ports. We do *not* think that this is contrary to the provisions of the Treaty of Commerce of 1865 with the Zollverein, but that it *is* contrary to the provisions of the Treaty of Navigation with Prussia of the same year.

We are of opinion, therefore:—

1. That Her Majesty's Government would be justified in addressing a representation to the German Government on that clause of the Bill in question which provides that "in the case of trans-oceanic emigration" the applicant for a licence "must prove that he owns suitable vessels for the purpose."

2. That such representation may, from a legal point of view, most advantageously be placed on the ground that the clause referred to would have the effect of excluding

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British vessels, since they cannot be owned by German subjects, from all participation in the important business of trans-oceanic emigration, though German vessels touching at English ports are not so excluded.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Treaty of Commerce with Prussia (Treaty No. 796)		May 30, 1865.
Treaty of Navigation with Prussia (Treaty No. 491)		August 16, „
Memorandum (Mr. Farnall)		May 28, 1890.
Law Officers (Confidential No. 6113, p. 44)		October 9, „
Ditto (Confidential No. 6207, p. 51)		July 20, 1891.
T. Wilson, Sons, and Co.		February 26, „
Memorandum		March 5, „
To Mr. Trench	(No. 18. Commercial)	March 9, „
To Messrs. Wilson, Sons, and Co.		March 9, „
Sir E. Malet	(No. 46. Commercial)	March 24, „
To Messrs. Wilson, Sons, and Co.		March 31, „
Messrs. Wilson, Sons, and Co.		May 16, „
To Sir E. Malet	(No. 56. Commercial)	May 23, „
To Messrs. Wilson, Sons, and Co.		May 23, „
Humber, &c., S.S.O. Conference		May 26, „
To ditto		May 29, „
To Sir E. Malet	(No. 59. Commercial)	May 29, „
Sir E. Malet	(No. 75. Commercial)	June 5, „
To Humber, &c., S.S.O. Conference, and Messrs. Wilson, Sons, and Co.		June 11, „
Mr. C. Wilson, M.P.		March 1, 1892.
Messrs. Wilson, Sons, and Co.		March 3, „
To Sir E. Malet	(No. 27. Commercial)	March 7, „
To Messrs. Wilson, Sons, and Co.		March 7, „
Sir E. Malet	(No. 36. Commercial)	March 19, „
To ditto	(No. 32 Commercial)	March 24, „
Humber, &c., S.S.O. Conference		November 23, „
Mr. Trench	(No. 131. Commercial)	November 24, „
To ditto	(No. 87. Commercial)	November 26, „
To Board of Trade		December 1, „
Mr. Trench	(No. 134. Commercial)	December 3, „
To Humber, &c., S.S.O. Conference		December 6, „
Humber, &c., S.S.O. Conference		December 10, „
Board of Trade		December 13, „
Humber, &c., S.S.O. Conference		December 19, „
To ditto		December 22, „

No. 16.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received April 26.*)

My Lord, *Royal Courts of Justice, April 25, 1893.*

Proposed Convention to extend Extradition Treaty with Germany of May 14, 1872, to German Protectorates and spheres of influence.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 18th March last, inclosing papers relating to the conclusion of a Convention between Great Britain and Germany for the purpose of extending the provisions of the Extradition Treaty of the 14th May, 1872, between the two High Contracting Parties so as to include the surrender from Her Majesty's dominions of persons accused of crimes committed in the German Protectorates and spheres of influence, and stating:—

That the draft Convention marked (A) had been communicated unofficially in 1891 to the German Ambassador for submission to his Government.

L. O. R. 1891. (Conf. 6207), p. 80.

That it had previously been amended by the Foreign Office in regard to certain particulars with the view to meet objections which had been taken to the draft by the then Law Officers (Sir R. Webster and Sir E. Clarke) in their Report of the 31st August, 1891.

That the German Ambassador in his note of the 13th February, 1893, had now submitted a counter-draft, to the terms whereof your Lordship did not perceive any objection, except in so far as the amendment indicated in red ink in the last Article appeared to be requisite.

That the Colonial, Home, and India Offices, in their respective letters of the 2nd, 8th, and 10th March, concurred in the terms of the counter-draft, with the above-mentioned amendment.

That with regard to the observations contained at the end of the Home Office letter of the 8th March Sir Thomas Sanderson was to state that it had been well understood already between the British and German Governments that the Convention was not intended to apply to British Protectorates or spheres of influence, but that that point would again be brought to the notice of the German Government if the counter-draft should be accepted by Her Majesty's Government.

That your Lordship requested our opinion as to whether the German counter-draft as amended in red ink might properly be accepted by Her Majesty's Government.

In obedience to your Lordship's commands, we have taken the papers into our consideration, and have the honour to

Report—

That in our opinion there is no reason in law why the German counter-draft, of which paper (D) contains a translation, as amended in red ink,* may not properly be accepted by Her Majesty's Government.

It is for Her Majesty to determine for reasons of State what constitutes a dependency of any foreign State, and as the counter-draft is now drawn there will be in it a recognition that the places to which it is intended to apply are dependencies of Germany. This recognition appears to us to obviate the legal difficulty referred to in the Report of the Law Officers dated the 31st August, 1891.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Draft Convention as proposed by Her Majesty's Government in 1891.		
(B.) Law Officers' opinion. (Confidential No. 6207, p. 80)		August 31, 1891
(C.) Count Hatzfeldt		February 13, 1893
(D.) German counter-draft (translation) amended in red ink.		
(E.) Colonial Office		March 2, 1893
(F.) Home Office		March 8, „
(G.) India Office		March 10, „

Annex.

(D.)

Extradition (*German Protectorates*).

GERMAN COUNTER-DRAFT.

(Translation.)

HIS Majesty the Emperor of Germany, King of Prussia, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, considering it advisable to regulate by a Treaty the extradition of criminals between certain Dependencies of Germany and the territories of Her Britannic Majesty, have appointed as their Plenipotentiaries for this purpose:

His Majesty the Emperor of Germany, King of Prussia,

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India,

Who, after having communicated to each other their respective Full Powers, which were found to be in good and due form, have agreed to and concluded the following Articles:—

ARTICLE I.

The provisions of the Extradition Treaty, signed between Germany and Great Britain on the 14th May, 1872, shall be applicable to the Dependencies of Germany specified in the following Article,

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* Printed in italics.

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in such manner that persons in any of these Dependencies, and within the sphere of the authorities established there, who are accused, or who have been found guilty, of having committed a criminal act in the territories of Her Britannic Majesty, and persons in any of the aforesaid territories of Her Britannic Majesty who are accused, or who have been found guilty, of having committed a criminal act in any of the Dependencies of Germany, shall be mutually extradited in accordance with the provisions of the aforesaid Treaty, in so far as they are not modified by the present Treaty.

ARTICLE II.

For the purposes of the present Treaty, the following are the Dependencies of Germany referred to in Article I:—

The territories in Africa, in New Guinea, and in the Pacific Ocean which, by agreement between Germany and Great Britain, have been, or shall in future be, reserved to Germany as spheres of influence, Protectorates, or possessions.

ARTICLE III.

In place of Article III of the Extradition Treaty of the 14th May, 1872, it is hereby provided, with regard to the Dependencies of Germany, that there shall be no obligation to grant the extradition from those Dependencies of natives or of subjects of the Empire, and that the British authorities shall be under no obligation to grant the extradition of British subjects who have been accused or found guilty of a criminal act in those Dependencies.

ARTICLE IV.

There shall be no obligation to grant extradition from the Dependencies of Germany in cases where, before the extradition has taken place, such an application has been received for the extradition of the person in question to the territory of the German Empire as must, according to law, be complied with. The granting of extradition from a Dependency of Germany must always be considered as being on the condition that no such application shall have been received before the extradition is carried out. In case the extradition to Germany takes place, it shall, however, be open to the British Government to apply for the extradition of the person concerned from Germany, in accordance with the terms of the Treaty of the 14th May, 1872.

ARTICLE V.

Applications for extradition from Dependencies of Germany shall be made through the British Ambassador at Berlin, in accordance with paragraph 1 of Article VIII of the Treaty of the 14th May, 1872, but in the case of persons who are accused, or who have been found guilty, of criminal acts in the Colonies or foreign possessions of Her Britannic Majesty, the application for extradition may be made to the supreme authority of the Dependency of Germany from which the extradition of the persons in question is desired, by the senior Consular officer of Her Britannic Majesty in the Dependency in question, if there be a Consular officer therein, or, if there be none, then by the Governor or other supreme authority of the Colony or foreign possession of Her Britannic Majesty concerned. It shall, however, be open to the supreme authority of the Dependency of Germany to refer to the German Government in case of doubt whether the application for extradition should be complied with.

Applications for the extradition of criminals to one of the Dependencies of Germany shall be made in the manner provided in Article VIII, paragraph 1, and Article XV of the Treaty of the 14th May, 1872: in case, however, there should be no German Consular officer in the Colony or foreign possession of Her Britannic Majesty from which the extradition is desired, the application may be made by the Governor or other supreme authority of the Dependency of Germany which is concerned to the Governor or other supreme authority of the Colony or possession concerned.

ARTICLE VI.

The present Treaty shall be ratified, and the ratifications shall be exchanged, as soon as possible.

The Treaty shall come into operation *ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties*, and shall remain in force as long as the Treaty of the 14th May, 1872, remains in force; that is, it shall terminate with the termination of that Treaty.

In witness whereof, &c.

(Initialled) C. R.
J. R.

No. 17.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received September 19.*)

Extradition German Protectorates. Authentication of documents by

My Lord, *Royal Courts of Justice, September* 19, 1893.

WE were favoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 25th ultimo, stating that, with reference to our letter of the 25th April last, he was directed to transmit to us a translation of a note from the German Ambassador, submitting certain modifications desired by the German Government in the counter-draft of the proposed Convention for the extension of the Extradition Treaty of the 14th May, 1872, to German Protectorates.

That Count Hatzfeldt's note had been referred to the Colonial Office, Home Office, and India Office, and that Sir Thomas Sanderson was to inclose the replies received from those Departments.

That the amendments suggested by the German Government under the headings marked 1, 2, and 3 in Count Hatzfeldt's note appeared to be improvements in the wording of the Convention, and that your Lordship proposed to inform his Excellency that they were accepted by Her Majesty's Government.

That a difficulty had, however, arisen with regard to the suggestion as to the authentication of documents in cases where the extradition was arranged directly between the authorities of a German Dependency and a British Colony—section 15 of "The Extradition Act, 1870" requiring the papers to be "authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State."

That in the case now under consideration the most convenient arrangement would be to make the seal of the Governor of the Colony or Dependency a sufficient authentication, but that your Lordship had some doubt whether the words "Minister of State" in section 15 of the Extradition Act were wide enough to include the Governor of a Colony.

That your Lordship requested to be favoured with our opinion on this point, and at the same time to be furnished with any general observations which we might wish to offer on the subject.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, it cannot with safety be assumed that the words "Minister of State" in section 15 of the Extradition Act, or the corresponding words in Article XI of the Treaty of 1872, would include the Governor of a British Colony. Germany can, however, treat as valid any documents authenticated by the Governor of any British Colony or Dependency if there is no law in Germany making that illegal, and although, having regard to the terms of the Extradition Act, it would not be safe for Her Majesty by Treaty to undertake to accept any authentication not prescribed by section 12, yet the words "Minister of State" are to be interpreted with regard to the position of things not in Her Majesty's dominions, but in the foreign State referred to, and we think it would be proper to receive any authentication by a high officer having an official seal. We observe, however, that the documents may be authenticated by the oath of a witness, and we think this would include an affidavit, and if such an affidavit were made according to German law, and authenticated by the Governor or other chief officer of the German Dependency, we think that it might safely be accepted.

We think that no attempt should be made to alter the Treaty in this respect.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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List of Papers

(A.) Count Hatzfeldt	June	19, 1893
(B.) Draft to Home, Colonial, and India Offices	June	29, „
(C.) Home Office	July	8, „
(D.) Colonial Office	July	22, „
(E.) India Office	August	12, ,
(F.) Extradition Act, 1870 (33 & 34 Vict., cap. 52).		
(G.) Treaty between Great Britain and Germany, May 14, 1872 (Treaty No. 536).		

ITALY.

No. 18.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received March* 23.)

My Lord, *Royal Courts of Justice, March* 18, 1893.

Proposed Naturalization Convention with Italy.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us papers relating to the conclusion of a Convention relative to naturalization between Great Britain and Italy.

That in October of last year the Italian Ambassador at this Court had mentioned verbally the wish of his Government to conclude a Convention with Great Britain upon this subject on the lines of the existing Convention of 1870 between Great Britain and the United States.

That your Lordship, after having obtained the concurrence of Her Majesty's Secretary of State for the Home Department, expressed in a letter of the 27th October last, had informed the Italian Ambassador that Her Majesty's Government would be prepared to negotiate a Convention on the lines of the existing Convention between Great Britain and the United States of America, and that your Lordship, with this view, had caused a draft Convention to be prepared, which was on the 9th November referred to the Home, India, and Colonial Departments for consideration, previous to its submission to the Italian Government, as a basis of negotiation.

That Her Majesty's Secretary of State for the Home Department had made certain suggestions for the amendment of the draft Convention, the nature of which suggestions would be gathered from the inclosed correspondence.

That the draft Convention contained the amendments agreed upon in the correspondence between the Home and Foreign Offices.

That Her Majesty's Secretary of State for India concurred in the draft Convention without observations.

That Her Majesty's Secretary of State for the Colonies, however, in the letter of the 23rd November last, raised the question, with reference to Article I of the draft Convention, whether, in the present state of the law, Her Majesty could properly enter into an undertaking that an Italian subject naturalized in one part of the British dominions, should be held to be a British subject for all purposes in all other parts of the Empire.

That it was pointed out in the Colonial Office letter that the Law Officers, in 1874, had reported that a certificate of naturalization granted in the United Kingdom had no effect in the Colonies, and that it was further observed that naturalization granted in a British Colony was (in view of section 16 of "The Naturalization Act, 1870") only applicable to that Colony.

That your Lordship had replied by pointing out that there were other Law Officers' Reports bearing on the same point, of which a list was given in the letter from the Foreign Office of the 19th January last, and had inquired whether, in view of these Reports, the Marquis of Ripon had any further observations to make.

That the letter from the Colonial Office of the 3rd March last contained the further observations requested.

That it would be noted that the question which was raised in this correspondence was one of great importance, and appeared to involve the consideration of the following points, upon which Sir T. V. Lister was especially to request our opinion:—

1. Was an alien naturalized in the United Kingdom under "The Naturalization Act, 1870," entitled to the status of a British subject

(*a.*) In Her Majesty's Colonies and foreign possessions?

(*b.*) In foreign countries, excepting in his own country of origin, under the circumstances contemplated in the last part of the 3rd paragraph of section 7 of the said Act of 1870?

2. What was the proper construction to be placed in that respect upon the existing Convention between Great Britain and the United States of 1870?

3. Might the draft Convention, as concurred in by the Home Department, be properly submitted to the Italian Government, as a basis of negotiation in its present shape; or should any, and if so what, amendments or limitations be made in it?

That Sir T. V. Lister was also to request that we would favour your Lordship with any general observations we might wish to offer in connection with the papers.

In obedience to your Lordship's commands we have taken the matter into our consideration, and have the honour to—

Report—

We are unable to suggest any construction of section 7 of "The Naturalization Act, 1870," which will reconcile the earlier operative part of the Section with the qualification at the end.

It is to be observed that the first part of the Section deals affirmatively with the right of a naturalized alien within the United Kingdom, not *denying* him rights out of the United Kingdom, which appear to be conferred by necessary implication in the qualifying Clause. On the whole, then, while recognizing the great difficulty of the question, we are of opinion that the better construction is that:—

1. An alien naturalized in the United Kingdom under the Act of 1870, is entitled to the *status* of a British subject

(*a.*) In Her Majesty's Colonies and foreign possessions.

(*b.*) In foreign countries, except that in the country of which he was a subject before naturalization, he must satisfy the terms of the qualification.

2. We are further of opinion that this construction is involved in the terms of the Convention with the United States.

3. That the Convention concurred in by the Home Office cannot, without full explanation, properly be submitted to the Italian Government in its present shape as the basis of negotiation, but that it is not desirable that any substantial limitation should be made. The draft should be submitted with a full explanation of the difficulty, pointing out that, in practice, no difficulty has hitherto arisen with regard to the United States' Convention.

That having regard to the extreme difficulty of construing the existing Act, and our obligations to the United States, it is highly desirable that an attempt should be made by further legislation to set the matter on a clear basis, though there may be great difficulty in bringing about a complete remedy for the existing state of things which would require that naturalization in any Colony should be naturalization throughout Her Majesty's dominions.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Convention between Great Britain and the United States. (Treaty No. 251)	May	13, 1870.
(B.) Home Office	October	27, 1892.
(C.) Ditto	November	17, „
(D.) To ditto	November	19, „
(E.) Home Office	November	21, „
(F.) Draft Convention with Italy.		
(G.) India Office	December	5, „
(H.) Colonial Office	November	23, „
(I.) To ditto	January	19, 1893.
(J.) Colonial Office	March	3, „

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Annex.

Draft Convention.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Majesty the King of Italy, being desirous to regulate certain questions connected with the naturalization of subjects of either High Contracting Party within the dominions of the other, have resolved to conclude a Convention for that purpose, and have named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India,

And His Majesty the King of Italy,

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

British subjects who have become, or shall become, and are naturalized voluntarily according to law within the dominions of His Majesty the King of Italy as Italian subjects, shall be held by Great Britain to be in all respects and for all purposes Italian subjects, and shall be treated as such by Great Britain, and shall cease to be British subjects.

Reciprocally, Italian subjects who have become, or shall become, and are naturalized voluntarily according to law within the dominions of Her Britannic Majesty, shall be held by Italy to be in all respects and for all purposes British subjects, and shall be treated as such by Italy, and shall cease to be Italian subjects.

ARTICLE II.

If any such British subject as aforesaid, naturalized within the dominions of His Majesty the King of Italy, should renew his residence within the dominions of Her Britannic Majesty, Her Majesty's Government may, on his own application, and on such conditions as that Government may think fit to impose, readmit him to the character and privileges of a British subject, and Italy shall not in that case claim him as an Italian subject on account of his former naturalization.

In the same manner, if any such Italian subject as aforesaid, naturalized within the dominions of Her Britannic Majesty, should renew his residence within the dominions of His Majesty the King of Italy, the Italian Government may, on his own application, and on such conditions as that Government may think fit to impose, readmit him to the character and privileges of an Italian subject, and Great Britain shall not in that case claim him as a British subject on account of his former naturalization.

ARTICLE III.

The present Convention shall be ratified, and the ratifications shall be exchanged at as soon as possible. It shall come into operation upon the exchange of ratifications, and shall remain in force for a period of ten years, and thereafter until terminated by either party on twelve months' notice.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at

No. 19.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received August* 21.)

Proposed Nationality Convention with Italy. Difficulties connected with English law.

My Lord, *Royal Courts of Justice, August* 18, 1893.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 26th ultimo, with reference to our Report of the 18th March last, relative to the proposed Nationality Convention between Great Britain and Italy, and transmitting to us the accompanying papers as to the course which should now be pursued in regard to the said Convention.

Sir Thomas Sanderson in his letter stated that, in view of the opinions expressed in our Report of the 18th March last, and in the letters from the Colonial, Home, and India Offices of the 24th and 26th April and the 13th July respectively, your Lordship considered that the proposed Convention should now be submitted to the Italian Government, with a clear explanation of the difficulties connected with the English law, and our opinion was requested whether the draft note to Count Tornielli, the Italian Ambassador at this Court, contained a suitable exposition of the circumstances, or whether its terms might be advantageously modified or amended, and, if so, in what respects.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, as initialled by us, we approve the draft note to Count Tornielli.

We have, &c.
(Signed) C. RUSSELL
JOHN RIGBY.

List of Papers.

(A.) To Colonial, Home, and India Offices	April 10, 1893.
(B.) Colonial Office	April 24, "
(C.) Home Office	April 26, "
(D.) India Office	July 13, "
(E.) Draft note to Count Tornielli.	

Annex.

Draft of Letter to Count Tornielli.

M. l'Ambassadeur, *Foreign Office, August* , 1893.

WITH reference to my note of the 9th November last, I have the honour to submit, for the consideration of the Italian Government, a draft Convention for regulating certain questions connected with naturalization in Great Britain and Italy.

The delay which has arisen in submitting the draft has been occasioned by difficulties respecting the proper interpretation of the English law in regard to some particular points, which, whilst they have not actually given rise to questions in connection with the analogous Convention of the 13th May, 1870, now in force between Great Britain and the United States of America, did still require to be thoroughly considered before negotiations were commenced for a new Convention.

I take this opportunity to explain to your Excellency the nature of the difficulties in question, so far as they affect the draft Convention now proposed.

In Section 7, paragraph 3, of "The Naturalization Act, 1870," of which I beg leave to inclose a copy, it is provided as follows (with regard to naturalization effected in the United Kingdom of Great Britain and Ireland): "An alien to whom a certificate of naturalization is granted shall *in the United Kingdom* be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a Treaty to that effect."

It will be observed that the provisions of this section, coupled with Article I of the proposed Convention, would undoubtedly have the effect of imparting British nationality in the United Kingdom and in Italy to an Italian who had become naturalized in the United Kingdom; but the further question arises: Would the terms of the English Act also impart to an Italian so naturalized in the United Kingdom the status of a British subject elsewhere than in the United Kingdom and in Italy, viz., in foreign countries other than Italy, and in the Colonies and foreign possessions of Her Majesty?

It must be noted that Section 7, paragraph 3, of the Act only expressly confers the status of a British subject *in the United Kingdom*. It neither affirms nor denies that status elsewhere, except under certain circumstances in the country of origin.

No decisions have been given by the English Courts on this point, so that the law in respect to it may be regarded as uncertain; but I am advised that, whilst the difficulty of true interpretation is recognized, the probable construction of the Act is that an alien naturalized in the United Kingdom under the Act of 1870* is entitled to the status of a British subject in Her Majesty's Colonies and foreign possessions, and in foreign countries other than his country of origin, under the circumstances contemplated in the Act; and, of course, under the proposed Convention, there would be no doubt that an Italian naturalized in the United Kingdom would be a British subject in Italy.

A further difficulty arises in regard to persons naturalized, not in the United Kingdom of Great Britain and Ireland, but in Her Majesty's Colonies and foreign possessions.

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* See Law Officers' Report, March 18, 1893, p. 32.

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In Section 16 of the Act of 1870 it is provided as follows:—

"All Laws, Statutes, and Ordinances which may be duly made by the Legislature of any British possession for imparting to any person the privileges or any of the privileges of naturalization, *to be enjoyed by such person within the limits of such possession*, shall *within such limits* have the authority of law. . . . ."

Under the powers conferred by this section, the laws respecting naturalization in Her Majesty's Colonies and foreign possessions can and do confer upon aliens the status of British subjects only within the limits of the particular Colony or foreign possession in which they become naturalized; but such persons remain aliens in other parts of Her Majesty's dominions and in all foreign countries.

It follows from the preceding observations that, under the existing English law and the proposed Convention, an Italian naturalized in the United Kingdom of Great Britain and Ireland would be a British subject in the United Kingdom and in Italy, whilst his status in other parts of Her Majesty's dominions, and in foreign countries other than Italy, would be a matter of some uncertainty in the eye of the English law. But an Italian naturalized in a British Colony or foreign possession of Her Majesty would not be a British subject anywhere save within the limits of the particular Colony in which he was naturalized. Her Majesty's Representatives abroad are, however, empowered to afford to persons so naturalized in British Colonies and foreign possessions official countenance and assistance (short of recognizing them as naturalized British subjects) elsewhere than in the particular Colony in question.

I have thought it well, M. l'Ambassadeur, to draw your attention in some detail to the difficulties connected with the English law, in order to avoid any future misconception or ambiguity as to the position which would be created by the proposed Convention; but I may observe that, although these difficulties do undoubtedly exist, questions connected with them would probably be of rare occurrence, since none have arisen during the twenty-three years that the similar Convention between Great Britain and the United States has been in operation.

On the other hand, any attempted alteration of the English law in these respects would be attended by considerable difficulty, and it is not probable that it can be undertaken at present.

I trust that these explanations will enable the Italian Government to consider the draft Convention with a full comprehension of its effects so far as regards Her Majesty's dominions, and I beg leave to say that if it should meet with their concurrence, I shall be prepared to make arrangements for the signature to take place at an early date.

I have, &c.

(Initialled) C. R.
J. R.

No. 20.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received November* 23.)

Royal Courts of Justice, November 22, 1893.

My Lord,

Quarantine restrictions wrongfully imposed on three Italian vessels in Cyprus. Claim for compensation.

WE were honoured with your Lordship's commands signified in Sir Edward Grey's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to a claim preferred by the Italian Government for compensation in respect of certain quarantine restrictions alleged to have been wrongfully imposed on three Italian vessels in Cyprus in October 1892.

That we should observe from the papers that, upon receipt of the Colonial Office letter of the 28th September last, a draft of a note to the Italian Ambassador was prepared in the Foreign Office, and submitted to the Colonial Office in a letter, dated the 12th ultimo, to the terms of which it was desirable that Sir Edward Grey should also direct our particular attention. That the aim of that draft was, while endeavouring to embody the opinion expressed by us in our Report to the Colonial Office of the 18th September last, to make it clear to the Italian Government—in the event of their being dissatisfied with the decision of Her Majesty's Government—that the Courts of Cyprus were alone competent to declare the actual law upon the matter.

That the Colonial Office, in their letter of the 1st November, submitted an alternative draft note to Count Tornielli, in which it would be seen that the latter part of the draft prepared in the Foreign Office was omitted on the grounds stated in the covering letter from the Colonial Office.

That Sir Edward Grey was to ask us, in the first instance, provisionally to adopt whichever of the two drafts most correctly embodied the views of the case expressed in our Report to the Colonial Office above mentioned, and then to be good enough to make such alterations in, or additions (if any) to, its terms as we might still consider requisite, in order to bring it into more complete harmony with our views of the situation from a legal point of view

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, with the alterations which we have made therein, the draft despatch of the Colonial Office embodies our views, and we suggest that, as altered, it may properly be addressed to the Representative of the Italian Government.

We have, &c.

(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Count Tornielli	.. ..	March 22, 1893.
To Colonial Office	.. ..	March 29, "
Colonial Office	.. ..	July 5, "
To ditto	.. ..	July 21, "
Colonial Office	.. ..	September 28, "
To ditto	.. ..	October 12, "
Colonial Office	.. ..	November 1, "

Annex.

Draft of Despatch from the Earl of Rosebery to Count Tornielli.

M. l'Ambassadeur,

Foreign Office, , 1893.

I HAVE the honour to acquaint your Excellency that the claims preferred in your note of the 22nd March last for compensation for the three vessels, "Girolamo," "Falco," and "Italiano," on the alleged ground of their having been improperly subjected to quarantine in Cyprus, have been carefully considered by the Secretary of State for the Colonies, in communication with the High Commissioner in Cyprus and the Law Officers of the Crown.

The case may be briefly stated as follows.

The Government of Cyprus is obliged, for its own protection, to regulate its action in quarantine matters on the lines adopted by the Board of Health at Constantinople, and, following their lead, it was found necessary to impose quarantine on arrivals from the Italian Littoral in September last year.

The Notice putting this requirement into effect was dated the 9th September, 1892. Clause 3 of that Notice enacted that—

"Vessels arriving from Italian Mediterranean ports shall, unless they have undergone quarantine at an intermediate port, and are provided with a clean bill of health, be subjected to a quarantine of five clear days, to be undergone at Larnaca."

A subsequent Notice, to practically the same effect, was issued on the 1st October, 1892, though on that occasion the words, "they have undergone quarantine at an intermediate port," were omitted, but a fresh clause, No. 6, was inserted, to the following effect:—

"Nothing in the foregoing Regulations shall be held to prevent the Chief Superintendent of Quarantine, should he think it advisable, from refusing to admit any vessel to pratique."

The three vessels in respect of which compensation is sought, according to your Excellency's note of the 22nd March last, arrived in Cyprus subsequently to the promulgation of this Notice, viz., on the 5th, 7th, and 14th of October.

It is considered that the ~~practical~~ effect of the Notice dated the 9th September was to schedule Italy and other countries specified as "infected;" and the Ottoman Code, which is the Law in Cyprus, defines a foul bill of health as one which is carried by a vessel coming from an infected country.

That being the effect of the Notice, the bills of health borne by the vessels alluded to in your Excellency's note could not properly be regarded as "clean," whatever might be stated on the face of them. It is a common practice in Spain and elsewhere to declare a particular port "infected," and, when this is done, all other considerations are ipso facto over-ridden, and the bills of health cease to have any value in themselves.

But apart from this view, Her Majesty's Government would draw attention to the fact that *by the General Quarantine Regulations, published in the "Cyprus Gazette" of the 30th October*, 1891, *the Health Officer, upon the arrival of any vessel, is required to ascertain whether she has called at or communicated with a country scheduled as infected, and, if she has done so, to direct her to proceed to the quarantine ground, there to undergo such quarantine as may have been directed to be imposed upon such vessel* ~~the notice of the 1st October, 1892, already cited, after giving certain particular directions, concludes by stating that nothing in those directions "shall be held to prevent the Chief Superintendent of Quarantine, should he think it advisable, from refusing to admit any vessel to pratique."~~ This provision gave a general power to the Sanitary Authority, the exercise of which cannot be complained of.

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The Health Officer is also required by the Cyprus Quarantine Ordinance of 1879 to refuse to admit a vessel to pratique if he believes that danger to the public health may reasonably be apprehended by admitting it.

Your Excellency will therefore see that, apart from any questions of the construction of the particular Notices issued last year, the Cyprus Government officials possessed, and were bound to exercise, their discretion as to acting upon general powers of refusing pratique. This might have been made clearer in the explanations given to the representations of the Italian Consul at Larnaca, whose observations referred only to the two Notices.

Her Majesty's Government are unable, therefore, to admit that the Government of Cyprus is liable for damages in the matter.

I have, &c.

(Initialled) C. R.
J. R.

JAPAN.

No. 21.

The Law Officers of the Crown to the Earl of Rosebery.—(Received May 9.)

My Lord, *Royal Courts of Justice, May 9, 1893.*

Claim of Messrs. Mourilyan, Heimann, and Co. on Japanese Govt. through wrongful delivery of oil stored in Govt. warehouse.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 19th ultimo, stating that he was directed to transmit to us a despatch* which had lately been received from Mr. de Bunsen, Her Majesty's Chargé d'Affaires at Tôkiô, relating to a claim put forward by Messrs. Mourilyan, Heimann, and Co., a firm of British merchants in Yokohama, to redress from the Japanese Government for losses, amounting to over 11,000*l.*, which they assert they had incurred through the wrongful delivery of some 40,000 cases of kerosene oil stored by them in the Japanese Government warehouses near Yokohama.

That the facts of the case appeared to be fully explained in Mr. de Bunsen's despatch, and the papers inclosed therewith, which consisted of a letter addressed to him by Mr. Duncan McNeill, counsel for the claimants; report of the proceedings in the Yokohama Court of Appeal at Tôkiô, when the appeal was dismissed with costs against the appellant, viz., Mr. Arthur H. Gooch, the manager of Messrs. Mourilyan and Co.; Regulations of the warehouses for inflammable substances of the 16th March, 1877; Bonded Warehouse Regulations of the 1st March, 1869; the confession of the comprador in Yokohama of Messrs. Mourilyan, Heimann, and Co.; and a legal opinion on the merits of the case by Mr. Leach, the Acting Attorney-General of Hong Kong.

That your Lordship was disposed to think that a *primâ facie* case of miscarriage of justice appeared on the papers, although it was no doubt a question for consideration whether there had been such contributory negligence on the part of Messrs. Mourilyan, Heimann, and Co. as disentitled them, on the ground that they had been parties to their own wrong, from claiming damages against the Japanese Government in respect of the losses which they had incurred.

That we were take the papers into our consideration, and favour your Lordship with our opinion (1) whether there had been such a failure of justice as made it incumbent on Her Majesty's Government to make representation on behalf of Messrs. Mourilyan, Heimann, and Co. to the Japanese Government; and (2), if so, on what special grounds, having regard to all the circumstances, such representations could most advantageously be based.

That your Lordship would also be glad to be furnished with any general observations that we might have to offer on the case.

In obedience to your Lordship's commands, we have taken the matter into our consideration, and have the honour to

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* Mr de Bunsen, No. 1, Treaty, January 14, 1893.

Report—

That, in our opinion, there has not been such a failure of justice in this case as to make it incumbent on Her Majesty's Government to make representations on behalf of Messrs. Mourilyan, Heimann, and Co. to the Japanese Government.

Whether or not the decision arrived at is one which could be supported on principles of English law, there appears to be no ground for suggesting that the Courts have not acted in good faith and with every intention to administer justice, and the result arrived at is not so plainly contrary to principles of natural justice as to call for diplomatic interference.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

No. 22.

The Law Officers of the Crown to the Earl of Rosebery.—(Received December 13.)

My Lord, *Royal Courts of Justice, December 12, 1893.*

Jurisdiction of Brit. Courts in Japan under O.'s in C. and existing Treaty rights.

WE were honoured with your Lordship's commands signified in Sir Villiers Lister's letter of the 22nd September, stating that he was directed to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Tôkiô, reporting that the Japanese Government maintained that Article 47 of "The China and Japan Order in Council, 1881," as amended by "The China, Japan, and Corea Order in Council, 1886," if applied to Japanese as well as to other foreigners in the British Courts, implied the exercise of a jurisdiction wider than that allowed to Great Britain under the existing Treaty stipulations between this country and Japan.

That the exercise of Her Majesty's jurisdiction in Japan was provided for by Articles IV, V, and VI of the Treaty between Great Britain and Japan of the 26th August, 1858, and that it was further stipulated in Article XXIII of that Treaty that the British Government and its subjects would be allowed full and equal participation in all privileges, immunities, and advantages that might have been or might be thereafter granted by His Majesty the Tycoon of Japan to the Government or subjects of any other nation.

That extracts from the Treaties between Japan and foreign Powers, so far as they related to the question of jurisdiction, were inclosed, together with a Memorandum by Mr. Streatfeild, supplemental to that by Mr. Spring-Rice inclosed in Mr. de Bunsen's despatch of the 13th July last.

Sir Villiers Lister was pleased to request that we would take these papers into our consideration, and that we would favour your Lordship with our opinion whether there was any force in the argument advanced by the Japanese Government, and that we would furnish your Lordship with any general observations which we might wish to offer on the subject.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the Orders in Council of 1881 and 1886 *do* extend the jurisdiction of Her Majesty's Courts in Japan beyond what is justified by existing Treaty rights.

The combined effect of the most-favoured-nation clause in the Treaty of 1858 and the Anglo-Austrian Treaty of 1869 is to make it necessary for Japanese subjects to sue British subjects in the British Courts, whilst no jurisdiction is given to those Courts to adjudicate upon any claims by a British subject against a Japanese. Such last-mentioned claims must be prosecuted in the Japanese Courts.

The provisions made in the Order in Council of 1881 to the effect that a Japanese subject must not only submit to the jurisdiction, but obtain an authority to do so from the proper authority of his own country, appear to us to be restrictions on the right to sue in all British Courts not warranted by any existing Treaty.

The change in the Order of 1881, introduced by the Order in Council of 1886,

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still leaves it to the discretion of the Court to impose upon foreigners the conditions required in 1881 as to the consent of his own nation.

The submission to the jurisdiction would not, in our opinion, be necessary to enable the Court to require security for costs from the plaintiff. Its only importance as regards Japanese subjects seems to rest upon its supposed effect in authorizing a counter-claim against the plaintiff, and enabling the Court to exact security for satisfying any judgment made against the plaintiff.

For the reasons above indicated we do not think that a counter-claim (which is in substance an action against the plaintiff) can properly be heard in the British Courts, and the right to exact security for damages falls with the right to decree damages.

As regards foreigners other than Japanese subjects, who have no Treaty right to sue in the British Courts, we do not think that any valid objection exists to the Orders in Council as they now stand.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Mr. de Bunsen .. .. (No. 79) July 4, 1893.
(B.) Ditto .. .. (No. 82) July 13, „
(With inclosed Memorandum by Mr. Spring-Rice.)
(C.) Memorandum by Mr. Streatfeild .. .. August 31, „
(D.) Treaty between Great Britain and Japan, 1858. (Treaty No. 433.)
(E.) "China and Japan Order in Council, 1881." (Confidential No. 4520*.)
(F.) "China, Japan, and Corea Order in Council, 1886." (Confidential No. 5305**.)
(G.) Extracts from Treaties, Japan and foreign Powers.

NETHERLANDS.

No. 23.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received March* 13.)

My Lord, *Royal Courts of Justice, March* 10, 1893.

Extradition Treaty with Netherlands.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 8th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the conclusion of a new Extradition Treaty between Great Britain and the Netherlands.

That on the 22nd November, 1892, a note was received from the Netherlands Minister at this Court, proposing the conclusion of a new Extradition Treaty between Great Britain and the Netherlands, with the view, amongst other things, to include the Dutch Colonies within the scope of the extradition arrangements between the two countries. That upon examination, it appeared that the existing Extradition Treaty between Great Britain and the Netherlands was incomplete, especially in regard to the list of extradition crimes; and that it might with advantage be replaced by one of a more comprehensive character. That in view, however, of the difficulty which appeared to arise in bringing the Dutch draft into harmony with the provisions of English law, it was considered preferable to frame a counter-draft based upon the provisions of the latest English Extradition Treaties.

That the counter-draft so framed was transmitted for the opinion of the Home, Colonial, and India Offices in the Foreign Office letter of the 21st December, 1892.

That the Colonial and India Departments concurred therein without comment.

That Her Majesty's Secretary of State for the Home Department, however, made the five suggestions for the amendment of the British counter-draft which would be found numbered (6) in the Home Office letter of the 18th January, 1893.

That your Lordship, in the letter from the Foreign Office of the 25th January, 1893, concurred in Nos. 1, 3, and 4 of those suggestions, by the insertion in the British draft of stipulations for provisional arrest, by adopting in Article X the words "depositions or statements on oath," and by suggesting that the attention of the Netherlands Government should be called to Article XVI, with the view to the insertion therein of any amendments required by Dutch law.

That in regard to suggestion No. 2 respecting the proposed insertion in the Treaty of stipulations for optional surrender for offences not named in the Treaty, but for which extradition could be granted by the laws of both States, your Lordship felt some hesitation, and pointed out that, in the Law Officers' Report of the 21st January, 1892, the then Solicitor-General, Sir Edward Clarke, differed in opinion from Sir Richard Webster, and took strong objection to provisions of the kind now suggested.

That it was further pointed out that the stipulations of that kind, which had been inserted in some Treaties now in operation, had never in practice been resorted to.

That in regard to suggestion No. 5 relative to the surrender of nationals, your Lordship considered that some objection might be held to exist to an unilateral stipulation for the surrender of British subjects.

That the observations in reply of Mr. Secretary Asquith upon those two points were contained in the Home Office letter of the 30th January, 1893.

That in regard to the question of the surrender of nationals, Sir Thomas Sanderson was to observe that four modes of treating that matter had hitherto been adopted in Treaties between Great Britain and foreign Powers:—

(*a.*) *Both parties agree to surrender unconditionally.*

That for European countries, that was the form usually preferred by Her Majesty's Government, but that it was generally declined by foreign States on account of the provisions of their own laws respectively.

(*b.*) *Facultative surrender, i.e.*, either party has the option, but is not bound, to surrender nationals.

That even in cases where that form was accepted by foreign Governments it was not wholly satisfactory, since, in cases of refusal to surrender, it might possibly involve diplomatic incidents; and that it might further, in some degree, be held to transfer from the judicial to the executive authority the duty of deciding in certain cases whether a person should or should not be surrendered.

That that form had been usually adopted in recent English Treaties when foreign States had been willing to agree to it.

(*c.*) *Both parties agree not to surrender nationals.*

That that principle was defective, since, as pointed out by the Home Office, British subjects could not, except in a very few cases, be tried and punished by British Courts for offences committed abroad.

(*d.*) *Unilateral surrender, i.e.*, Great Britain engages unconditionally to surrender, whilst the foreign State engages not to surrender, nationals.

That that principle seemed open to some objection on the score of want of reciprocity, but that on that point also Sir Thomas Sanderson was to call our especial attention to the views expressed in the Home Office letter of the 30th January, 1893.

That the annexed British draft contained the Home Office suggestions which had been agreed to by the Foreign Office; and that stipulations to meet the suggestions of the Home Office in regard to "optional surrender" (Article II) and to "surrender of nationals" (Article III) had been inserted in red ink.

That it would be observed that the words inserted in red ink in Article III, as to the surrender of nationals, were not precisely the same as those hitherto adopted in any English Treaty; since instead of an unconditional unilateral stipulation on the part of this country to surrender nationals, such as had been adopted in the Treaties with Switzerland, Spain, and Luxembourg, the unilateral stipulation on that head had now been inserted in a facultative form, which might perhaps be considered preferable.

That Sir Thomas Sanderson was to request that we would favour your Lordship with our opinion whether the amended British counter-draft might properly be submitted to the Netherlands Government for negotiation; and particularly whether we were of opinion that the words inserted in Articles II and III, to meet the suggestions of Her Majesty's Secretary of State for the Home Department, should be adopted.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the amended British counter-draft (paper 9) may properly be submitted to the Netherlands Government for negotiation.

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In particular, we think the words added to Article II to meet the suggestions of the Home Secretary may properly be added. We think the objections urged by Sir Edward Clarke in his Report of the 21st January, 1892, are answered in the letter of Sir Godfrey Lushington of the 30th January, 1893.

As to Article III, we prefer it in the form in which it is printed; but if the Netherlands Government object to it in that form, there is no objection to the proposed substitution written in red ink.

We notice that the proposed Article XVI as to the expenses of extradition differs from Article XIV of the Treaty of 1874 with the Netherlands relating to the same subject.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

1.	Count Bylandt	November 21, 1892.
2.	To Home Office	December 21, „
3.	To Colonial Office and India Office	December 21, „
4.	Colonial Office	December 31, „
5.	India Office	January 14, 1893.
6.	Home Office	January 18, „
7.	To ditto	January 25, „
8.	Home Office	January 30, „
9.	British Counter-draft as now amended.	
10.	Extradition Treaty between Great Britain and the Netherlands. (Treaty No. 572)	June 19, 1874.

Annex.

Articles II, III, IX (a), and X of Treaty between Great Britain and The Netherlands for the Mutual Surrender of Fugitive Criminals.

* * * * * *

ARTICLE II.

The crimes or offences for which the extradition is to be granted are the following:—

1. Murder, or attempt, or conspiracy to murder.
2. Manslaughter.
3. Assault occasioning actual bodily harm.
4. Maliciously wounding or inflicting grievous bodily harm.
5. Counterfeiting or altering money, or uttering counterfeit or altered money.
6. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.
7. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited or altered.
8. Embezzlement or larceny.
9. Malicious injury to property if the offence be indictable.
10. Obtaining money, goods, or valuable securities by false pretences.
11. Receiving money, valuable security, or other property, knowing the same to have been stolen, embezzled, or unlawfully obtained.
12. Crimes against bankruptcy law.
13. Fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any Company, made criminal by any law for the time being in force.
14. Perjury, or subornation of perjury.
15. Rape.
16. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.
17. Indecent assault.
18. Administering drugs, or using instruments with intent to procure the miscarriage of a woman.
19. Abduction.
20. Child stealing.
21. Abandoning children, exposing or unlawfully detaining them.
22. Kidnapping and false imprisonment.
23. Burglary or housebreaking.
24. Arson.

25. Robbery with violence.
26. Any malicious act done with intent to endanger the safety of any person in a railway train.
27. Threats by letter or otherwise, with intent to extort.
28. Piracy by law of nations.
29. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
30. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm.
31. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.
32. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III.

Either Government may, in its absolute discretion, refuse to surrender its own subjects to the other Government.

(Or, if the Netherland Government cannot accept this form.)

~~Neither Government will surrender its own subjects to the other Government.~~

The Netherlands Government will not surrender its own subjects to Great Britain; and Her Britannic Majesty's Government, may, in its own absolute discretion, refuse to surrender its own subjects to the Netherlands.

* * * * * *

ARTICLE IX (*a*).

A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which the Magistrate exercises jurisdiction:

Provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall be discharged, as well in the United Kingdom as in the Netherlands, if within fourteen days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country in the manner directed by Articles II and IV of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE X.

If the fugitive has been arrested in the British dominions he shall forthwith be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence ~~the sworn~~ depositions, *or statements on oath*, or the affirmations of witnesses, taken in the Netherlands, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:—

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the Netherlands.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the Netherlands, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.
3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the Netherlands.
4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the Netherlands; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken may be substituted for the foregoing.

(Initialled) C. R.
J. R.

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No. 24.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received April* 20.)

My Lord, *Royal Courts of Justice, April* 19, 1893.

Arrest and detention of J. B. Carpenter, master of "Costa Rica Packet," by Netherlands authorities at Ternate. Claim for compensation.

WE were honoured with your Lordship's commands signified in Sir Edward Grey's letter of the 6th February, transmitting to us the papers relating to the claim of Mr. J. B. Carpenter, the master of the barque "Costa Rica Packet," on his own behalf, and on behalf of the owners and the crew of that ship, for compensation from the Netherlands Government in respect of his arrest on a charge of theft by the authorities of the Netherlands East Indies at Ternate in November 1891, and his subsequent conveyance to and detention at Macassar from the 16th until the 28th of the same month, when he was released by order of the Court.

That the facts of the case were so clearly and fully set out in Mr. Carpenter's statements and declarations, inclosed in the letter of the 17th January from the Colonial Office, and in the Report from the "Procureur-Général" of Netherlands India inclosed in Sir G. Bonham's despatch No. 72, Commercial, of the 20th August last, that it was thought unnecessary to trouble us with any further statements of the case in his letter.

That it would be seen from the Report of the "Procureur-Général" of Netherlands India that the proceedings of the Netherlands authorities were sought to be vindicated on the ground that they were entirely in accordance with Netherlands law and procedure, and that the "Procureur-Général" particularly insisted in justification of their action upon the facts—

1. That the offence alleged against Mr. Carpenter was a criminal offence, both according to English and to Dutch law; and
2. That a valid and sufficient *primâ facie* case was made out against him.

That with reference to this latter point the "Procureur-Général" argued with some force that the sufficiency or insufficiency of the evidence for the purpose mentioned must be regarded and determined by a consideration of the doctrines of Dutch jurisprudence and of the requirements and usages of Dutch Tribunals, which it was suggested were of a less strict and exacting nature than those by which English Courts govern themselves in the like circumstances.

That as to the exact position of the prauw when she was found floating apparently derelict "at a short distance from the coast of Boeroe" and taken possession of by Mr. Carpenter some conflict of opinion appeared to exist; but that your Lordship was, on the whole, disposed to agree with the view expressed by the Government of New South Wales and by the Secretary of State for the Colonies upon this point (see Colonial Office to Foreign Office of 3rd February, 1893, with inclosures); that the balance of evidence was in favour of Mr. Carpenter's contention that the prauw was boarded, and portions of her cargo removed when she was adrift upon the high seas outside of Netherlands territorial waters.

That it would be seen, however, that the "mise en accusation" (Appendix (B) to Mr. Carpenter's statement) asserted that he was suspected on plausible grounds of having in the beginning of the year 1888, at a distance of not more than 3 miles from the Islands of Boeroe, seized a prauw adrift, and maliciously appropriated the goods therein, and that it appeared, under the circumstances, open to the "Procureur-Général" to argue, as he was understood to do, that there was a *primâ facie* case against Mr. Carpenter on this head, justifying his arrest and detention, although on further investigation the judicial authorities did not consider the charge satisfactorily and indubitably established.

That those portions of the "Procureur-Général's" Report which dealt with considerations of English law, and with supposed offences (such as dishonestly selling a part of the cargo of the prauw on Netherlands territory) not apparently alleged against Mr. Carpenter in the actual "mise en accusation," were, as was submitted, scarcely relevant or material to the present inquiry.

That Sir Edward Grey was to observe, although it was thought that that circumstance would probably not, in our opinion, affect the right of Her Majesty's Government to press Mr. Carpenter's claim should we consider it to be a good one on the merits, that the claimant was by origin an American citizen, and that he was subsequently (*i.e.*, in 1872) naturalized not in the United Kingdom, but merely in a British Colony, viz., the Straits Settlements.

But that although colonial naturalization did not for other purposes operate beyond the limits of the particular Colony in which it had been conferred, it had, nevertheless, been the practice of Her Majesty's Government, inasmuch as persons thus naturalized were subjects of the Queen in one of Her Majesty's Colonies, to grant to them British protection in all foreign countries other than their country of origin, and to place them in that respect on the same footing as aliens naturalized in the United Kingdom under "The Naturalization Act, 1870."

A Circular on this subject, which was addressed to Her Majesty's Consuls in 1882, was inclosed by Sir Edward Grey, and he was to add that the principles therein laid down had also been embodied in section 8 of Chapter XVIII of the General Consular Instructions, 1893, which had just been issued.

That Sir Edward Grey was further to request us to take the papers into our consideration, and to favour your Lordship with our opinion as to whether Her Majesty's Government could properly press on the Netherlands Government the claim put forward by Mr. Carpenter on behalf of himself and others, and, if so, on what grounds and to what extent it could reasonably be supported.

And in the event of our being of opinion that the claim itself should be pressed, but that the amount (25,000*l.*) actually claimed was excessive, he was to request us, if possible, either to indicate a round sum, which, having regard to all the circumstances, might properly be demanded, or to indicate the data upon a consideration of which the sum to be claimed might properly be calculated.

In obedience to your Lordship's commands, we have the honour to

Report—

That in this case there is considerable difference in the statement on one side and the other of material facts, but that on the whole we think that there is ground on the case, as represented by the Netherlands India Government, for a claim for reasonable compensation on the part of J. B. Carpenter.

The charge upon which Mr. Carpenter was arrested was that of having appropriated a derelict prauw and its cargo at a distance not exceeding 3 miles from the Island of Boeroe, and to justify the arrest there ought to have been some reasonable ground for it. The Report of the "Procureur-Général" refers only to the evidence of two witnesses, one of whom speaks to the finding of the prauw floating at a short distance from the coast of Boeroe, but does not appear to have been asked for any explanation of what he meant by a short distance. The importance of this appears from the statement of the other witness Palmer mentioned in the same Report, who, though not sworn, is represented as saying that the prauw was found floating near Boeroe close to a place called Kajoli. He then explains this by saying that he calculated the distance from shore at 16 to 20 English geographical miles, and there would seem to be little or no doubt that the other witness, if asked, would have fixed the distance at considerably more than 3 miles.

With all respect to the procedure of the Netherlands India Courts, we think that such evidence was not sufficient to make out even such a case of reasonable suspicion as could be treated as a sufficient cause for the arrest of the complainant, and that on the ground of the entire want of reasonable evidence the claim for compensation for personal damage by J. B. Carpenter may be founded. We do not, however, think that the alleged loss to the crew and owners of the "Costa Rica Packet" can properly be included in the claim. That loss is not so necessarily the result of the arrest of the master as to make it a fit subject for a claim.

We think also that the claim for personal damage put forward by J. B. Carpenter himself is greatly exaggerated. It is difficult to estimate, even approximately, the amount which might be fairly demanded, but the claim should be based upon the actual personal loss inflicted upon the claimant, and we do not see how this could reasonably be placed at a higher sum than, say, 2,500*l.*

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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List of Papers.

Colonial Office		April 9, 1892.
To Sir H. Rumbold	(No. 16. Commercial)	April 19, ,,
To Colonial Office		April 19, ,,
Sir H. Rumbold	(No. 36. Commercial)	April 22, ,,
To ditto	(No. 17. Commercial)	April 28, ,,
To Colonial Office		April 28, ,,
Sir H. Rumbold	(No. 40. Commercial)	May 7, ,,
Colonial Office		August 9, ,,
To Sir H. Rumbold	(No. 25. Commercial)	August 12, ,,
Sir H. Rumbold	(No. 68. Commercial)	August 15, ,,
Sir G. Bonham	(No. 71. Commercial)	August 19, ,,
Ditto	(No. 72. Commercial)	August 20, ,,
To Colonial Office		August 24, ,,
Colonial Office		January 17, 1893.
Ditto		February 3, ,,
Ditto		April 15, ,,
Circular to Her Majesty's Consuls.	(Library No. 1624*)	April 20, 1882.

No. 25.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received September 30.*)

Arrest and detention of J. B. Carpenter, master of "Costa Rica Packet," by Netherland authorities at Ternate. Claim for compensation.

My Lord, *Royal Courts of Justice, September 29, 1893.*

WE were honoured with your Lordship's commands signified in Sir Edward Grey's letter of the 31st July last, stating that he was directed by your Lordship to transmit to us certain further papers respecting the case of the barque "Costa Rica Packet," in respect whereof we gave an opinion to your Lordship on the 19th April last.

That that Report was inclosed for convenience of reference, together with the papers submitted to us in the first instance. That these papers would place us in possession of the action of Her Majesty's Government and of that of the Netherlands since we advised on the case.

That, in pursuance of our advice, we should observe that the Netherlands Government had been informed that Her Majesty's Government would not put forward any claim on account of the alleged loss suffered by the crew and the owners of the barque.

That we should, however, note that in the Memorandum communicated by Sir Saul Samuel to the Foreign Office on the 19th instant a distinction was sought to be established between an ordinary merchant-vessel and a "whaler," a point on which Sir Saul had laid particular stress in a recent interview at the Foreign Office.

That Sir E. Grey was to request us to take these further papers into our consideration, and to inform your Lordship whether we saw any grounds for modifying the opinion expressed in our Report of the 19th April last.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to

Report—

That in the papers which were originally before us prominence was *not* given to the contention now raised by the further papers, that the arrest of Mr. Carpenter put an end to the whole adventure in which the "Costa Rica Packet" was engaged; but even if that contention had been more explicitly placed before us, though we might have suggested that the claim of the owners and crew should be put forward, we should still have had great hesitation in saying that, as a matter of law, in accordance with the principles which would be applied by a Court of Justice, the loss of the voyage was a necessary or natural consequence of the arrest of Mr. Carpenter. We do not, however, mean to convey that international claims are in all cases to be restricted by the rules of municipal law.

It appears, however, that the Netherlands Government have been distinctly informed that no claim will be put forward on account of the alleged loss suffered by the crew and the owners, and upon the whole, therefore, we do not find in the further papers now laid before us sufficient grounds for modifying the opinion expressed in our Report of the 19th April last.

We cannot avoid adding that there is a considerable tone of exaggeration in the manner in which this claim has been advanced.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

We have read the further papers forwarded on the 28th instant.

C. R.
J. R.

We have considered the Memorandum of Lord Rosebery of the 6th instant, and we have to say that, putting aside the communication to the Netherlands Government, we see no sufficient ground for modifying our Report of the 19th April last. In our opinion, the further claim suggested cannot in law be supported.

October 23, 1893.

C. R.
J. R.

List of Papers.

To Sir H. Rumbold	May 17, 1893.
Sir H. Rumbold	May 20, ,,
Memorandum communicated by Sir S. Samuel	July 19, ,,
Colonial Office (2)	July 18, ,,
Sir H. Rumbold	July 22, ,,
Law Officers' Report (Papers sent therewith as per List on p. 46.)	April 19, 1893.

No. 26.

[Colonial Office.]

The Law Officers of the Crown to the Marquis of Ripon.

Proposed military extradition between Straits Settlements and Netherlands Indies.

My Lord, *Royal Courts of Justice, November* 23, 1893.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 2nd instant,* stating that the late Governor of the Straits Settlements, in a despatch, a copy of which was inclosed, had suggested that a reciprocal arrangement should be come to between the Colonial Government and the Government of Netherlands India for the arrest and surrender of military and naval deserters within the respective territories of the two Colonies, pointing out that such an arrangement would be beneficial to both parties, and that the Dutch authorities would assent to it.

That your Lordship was advised, on reference to the Foreign Office, that "The Foreign Deserters Act of 1852," which is in force throughout Her Majesty's dominions, was confined in its operation to the surrender of deserters from merchant-vessels; and that, although the question of extending its provisions to deserters from ships of war had been more than once under consideration, there had been difficulties in the way of taking any definite action in that direction.

That, in these circumstances, your Lordship would be glad of our opinion as to whether or not any such arrangement as that now proposed could be made without fresh legislation.

We have considered the matter, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, no reciprocal arrangement for the arrest and surrender of military and naval deserters can be entered into on behalf of Her Majesty without further legislation. Neither "The Foreign Deserters Act, 1852," nor "The Extradition Act of 1870," applies to the case suggested, and statutory authority to enter into the proposed arrangement would be necessary.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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* See Colonial Office to Foreign Office, December 2, 1893.

NICARAGUA.

No. 27.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received July* 12.)

[After reciting the following reference, the Law Officers report as on p. 50 :—]

Foreign Office to the Law Officers of the Crown.

Right of Government of Mosquito Reservation to levy port dues at Bluefields.

Gentlemen, *Foreign Office, April* 24, 1893.

I HAVE the honour to transmit to you, by direction of the Earl of Rosebery, the papers noted in the accompanying list, which relate to the question of the right of the Government of the Mosquito Reservation to levy port dues at Bluefields.

This question was brought to his Lordship's notice, in the first instance, in a note dated the 13th September, 1892, addressed to Her Majesty's Minister in Central America by Señor Bravo, the Nicaraguan Minister for Foreign Affairs, in which he stated that inquiries had been made of his Government by that of the United States as to certain increased port charges levied on steamers of the Southern Pacific Company, running between New Orleans and Bluefields, by the Government of the Mosquito Reservation (Paper A).

Subsequently a despatch, dated the 8th February, 1893, from the United States' Secretary of State to the American Minister in London, on the same subject, was communicated by the latter to Her Majesty's Government, in which exception is taken to the right of Great Britain to intervene as the protector or advocate of the alleged rights of the Mosquito Indians, and it is asserted that impediments are thereby caused to the exercise by Nicaragua of responsible acts of sovereignty in that quarter (Paper C).

You will observe that in neither of these documents are any particulars furnished as to the nature of the dues levied at Bluefields which are complained of, and Her Majesty's Government are therefore unable to form an opinion whether they are legitimate as matters of internal taxation, or whether they are of a nature to interfere with the free navigation of the River Escondido, at the mouth of which Bluefields is situated.

Your attention is invited to the two Memoranda which are annexed, dealing with the question of the right of this country to intervene in disputes between Nicaragua and the Mosquito Indians (Papers B and D), and a further Memorandum in regard to the right of the Mosquito Indians to levy port dues at Bluefields (Paper E).

In the month of February 1889 a draft of a Convention was submitted to Her Majesty's Government by that of Nicaragua, which was intended to abrogate the Treaty of Managua (Paper G), concluded between Great Britain and Nicaragua on the 28th January, 1860, with the object of terminating the British Protectorate that had previously been extended over the Mosquito Indians, and of defining the relations of the Indians towards the Sovereign State of Nicaragua (Paper I).

The Nicaraguan Minister for Foreign Affairs, Señor Cardenas, was informed, in reply, that Her Majesty's Government were anxious to be relieved of further responsibility in regard to the affairs of the Mosquito Indians, and they suggested that Nicaragua should, in the first instance, depute a Commissioner to negotiate an arrangement with the Indians, such as was contemplated by Article IV of the Treaty of Managua, under which power was reserved to the Mosquito Indians to become incorporated with the Republic of Nicaragua, and to be governed by its laws instead of by their own customs and regulations (Paper J). This suggestion does not appear to have been acted on by Nicaragua.

In these circumstances, it is presumed that the position of Great Britain in relation to the Mosquito Indians on the one hand, and to the Nicaraguan Government on the other, remains, pending the conclusion of some definite arrangement between the British and Nicaraguan Governments respectively, precisely that which obtained at the commencement of the negotiations which have hitherto proved abortive.

A Report furnished by your predecessors to Lord Salisbury on the 5th March, 1889, as to the interpretation to be given to certain provisions of the Treaty of Managua, together with the papers on which it was founded, is annexed for convenience of reference (Papers L, M, N, and O).

L. O. R. 1889 (Conf. 5956), p. 72.

I am also to inclose a letter, dated the 23rd November, 1892, from the Chief of the Mosquito Reserve, which contains various complaints against the Nicaraguan Government.

These complaints—with one exception—appear to Lord Rosebery to relate to boundary questions, the only satisfactory way of dealing with which would seem to be by a Joint Delimitation Commission, and with which, therefore, his Lordship does not wish unnecessarily to trouble you at this juncture.

It will, however, be observed that there is one specific complaint to the effect that the Nicaraguan Commissioner prevents the Mosquito people from fishing and taking cocoa-nuts on the Pearl Cays without licences, and this appears to raise a simple question of legal right upon which his Lordship would be glad to have the advantage of your opinion and advice (Paper P).

With special reference to this latter point, a copy is also annexed of a Memorandum drawn up in this Department which enters into the question as to how far the Treaty of Managua affected the rights of the Mosquito Indians to the Corn Islands and other islands and cays off the Mosquito Coast, together with a map showing their positions (Papers Q and R).

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Rosebery with your opinion on the following questions :—

1. Whether under present circumstances any general exception can fairly be taken by the United States' Government to the right of Great Britain to intervene on behalf of the Mosquito Indians for the protection of their alleged rights, should these be infringed by the Government of Nicaragua.

2. Whether, assuming that the dues levied at Bluefields which have been made the subject of complaint are legitimate as matter of internal taxation, and are not of a nature to interfere with the free navigation of the River Escondido, they are in any way open to objection or unjustifiable.

3. Whether the Mosquito Indians are entitled to fish off, and to take cocoa-nuts from, the Pearl Cays, without having previously furnished themselves with licences from the Nicaraguan Government.

His Lordship will at the same time be glad to be favoured with any observations which you may have to offer with regard to the case generally, and more especially with reference to the terms of the reply to be returned to the representations of the United States' Government contained in Mr. Foster's despatch to Mr. Lincoln of the 8th February, 1893 (Paper C).

I have, &c.
(Signed) T. V. LISTER.

List of Papers.

(A.)	Mr. Gosling	(No. 95)	October	14, 1892.
(B.)	Memorandum by Mr. Oakes		November	21, 1892.
(C.)	Mr. Foster to Mr. Lincoln		February	8, 1893.
(D.)	Memorandum by Sir E. Hertslet		January	5, 1889.
(E.)	Ditto		March	21, 1893.
(F.)	Clayton-Bulwer Treaty		April	19, 1850.
(G.)	Treaty between Great Britain and Nicaragua signed at Managua "Nicaragua No. 1 (1881)," Parliamentary No. 2461, pp. 2–8.		January	20, 1860.
(H.)	Arbitration Award of Emperor of Austria, and Report annexed thereto. "Nicaragua No. 1 (1881)," Parliamentary No. 2461, pp. 11–29.		July	2, 1881.
(I.)	Señor Cardenas Confidential Print No. 5929, pp. 18–19.		February	28, 1889.
(J.)	To Señor Cardenas Confidential Print No. 5929, p. 25.		March	9, 1889.
(K.)	To Mr. Harriss Gastrell Confidential Print No. 5929, p. 1.	(No. 37)	August	4, 1888.
(L.)	Mr. Harriss Gastrell Confidential Print No. 5929, p. 2.	(No. 110)	September	11, 1888.
(M.)	Mr. Phelps Confidential Print No. 5929, p 4.		December	4, 1888.
(N.)	Law Officers Confidential Print No. 5929, p. 20.		March	5, 1889

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(O.) To Mr. Edwardes	(No. 42)	March	7, 1889
Confidential Print No. 5929, p. 20.			
(P.) Chief of Mosquito Reserve		November	23, 1892
(Q.) Mr. Oakes' Memorandum		August	4, 1890.
(R.) Extract from Map of Central America by Mr. John Baily, of Guatemala.			

We have taken the matter into our consideration, and, in obedience to your Lordship's commands signified to us in Sir T. V. Lister's letter of the 24th April last, have the honour to

Report—

1. That, in our opinion, under present circumstances, there is no ground on which any general exception, founded either on Treaty or any received doctrine of international law, can fairly be taken by the United States' Government to the right of Great Britain to intervene on behalf of the Mosquito Indians for the protection of their alleged rights so far as they are founded on the Treaty of Managua, in case of infringement of those rights by the Government of Nicaragua.

In our opinion, the Clayton-Bulwer Treaty not only did not forbid, but, on the contrary, contemplated the possibility of the existence of a Protectorate in the district in question. Article I of that Treaty provides that neither Government will make use of any protection which either affords, or may afford, for the purposes therein mentioned—the purpose material for the present consideration—being "*assuming or exercising dominion.*" Nothing has been done on the part of Her Majesty's Government which can fairly be said to contravene this provision.

We are, however, of opinion that the Treaty of Managua *did* put an absolute end to the British Protectorate of the Mosquito Indians, and that the only ground on which Her Majesty's Government can claim to interfere on behalf of the Mosquitos is that which has been put forward, viz., the right to require Nicaragua to fulfil its Treaty obligations with Great Britain.

If this were construed so as to involve a perpetual right of interference whenever a question arises between Nicaragua and the Mosquitos as to matters provided for by the Treaty, it would be difficult to distinguish the state of things after the Treaty from that Protectorate which was abandoned by the Treaty, and, in our opinion, Her Majesty's Government undertook no such obligation towards the Mosquitos.

We think that there is great force in the arguments that the obligations of Nicaragua under the Treaty are in favour of the Mosquitos, and not of Great Britain, that the Mosquitos must be taken to have accepted the undertaking of the Nicaraguan Government, and to have surrendered their right to look to Her Majesty's Government for protection, and that Her Majesty's Government are not bound, and ought not, to claim a right to interfere on every occasion where the conduct of the Nicaraguan Government is called in question by the Mosquitos.

Although, as matter of law, any interference for the purpose of procuring an adherence to the terms of the Managua Treaty would not, in our opinion, give a just cause for complaint to the United States, we would point out that they might fairly enough say that Her Majesty's Government ought not to insist upon a Protectorate in substance without undertaking the obligations of a Protectorate, and that if they did say so it would be difficult for Her Majesty's Government to make a complete answer.

2. On the assumption that the dues levied at Bluefields, which have been made the subject of complaint, are legitimate as matter of internal taxation, and are not of a nature to interfere with the free navigation of the Escondido, we are of opinion that they are not in any way open to objection or unjustifiable.

We do not think that the contention of the United States that the rights of the Mosquitos under the Treaty of Managua are "tribal" only, as distinguished from "territorial," can, on the due construction of the Treaty, be maintained.

3. There is not before us sufficient information to enable us to give a precise answer to this question. We would observe, however, that, in our opinion, the subject-matter in no way falls within the provisions of the Treaty of Managua, and that Her Majesty's Government have no right to interfere with regard to it.

The foregoing answers sufficiently indicate the tenour of the reply which, we submit, should be made to Mr. Foster's despatch of the 8th February, 1893. Her Majesty's Government *may* properly intervene to secure the observance of the Treaty stipulations by Nicaragua, but they are *not bound* to do so, and the extent to which, as a matter of policy, such intervention ought to be resorted to, must be determined by Her Majesty's Government as the circumstances arise.

We may, however, point out, as additional reasons why Her Majesty's Government should be slow to interfere—

(*a*.) That it appears to be very doubtful whether the interference would enure for the benefit of the Mosquitos themselves as distinguished from those who carry on the Government in their name.

(*b*.) That, with reference to such questions as the reasonableness of port dues, or the establishment of a Post Office of Nicaragua within the Mosquito Reserve, the United States' Government, if any question arises, can only apply to the Government of Nicaragua, and that any claim of Her Majesty's Government to interfere might, and probably would, be looked upon with the greatest jealousy, and give rise to difficulties out of all proportion to the intrinsic importance of the subjects themselves.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

Law Officers' Department, Royal Courts of Justice,
July 11, 1893.

PACIFIC ISLANDS.

No. 28.

The Law Officers of the Crown to the Earl of Rosebery.—(Received January 21.)

My Lord,

Royal Courts of Justice, January 20, 1893.

Rights of United States over Pago Pago Harbour.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the rights claimed by the United States over the harbour of Pago Pago, in Samoa, under their Treaty with the Navigators' Islands of the 17th January, 1878.

That it would be seen that the United States' Government, while disclaiming any desire to exclusively occupy that harbour to the inconvenience of other than American shipping, maintained that the Treaty gave them an exclusive right to use the port and shores for the purposes of a naval and coaling station.

That in support of that contention they appealed not only to the terms of the Treaty in question, but to those of the Treaty between Germany and Samoa of the 24th January, 1879, which they read as "distinctly respecting the cession of Pago Pago Harbour for the use of the United States by conveying to Germany like exclusive rights in another harbour, that of Saluafata, in the Island of Upolu."

That the Treaty of the 28th August, 1879, between this country and Samoa, contained the following clause:—

"Article VIII. Her Majesty the Queen of Great Britain may, if she think fit, establish on the shores of a Samoan harbour, to be hereafter designated by Her Majesty, a naval station and coaling depôt, but this Article shall not apply to the harbours of Apia or Saluafata, or to that part of the harbour of Pago Pago which may be hereafter selected by the Government of the United States of America as a station under the provisions of the Treaty concluded between the United States of America and the German Government on the 17th January, 1878."

That the United States' Government took exception to any claim that might be put forward by Her Majesty's Government, under that provision, to a part of the harbour of Pago Pago, and declared that any attempt to occupy any portion of that harbour as a coaling or naval station "could not fail to be regarded by them as an unfriendly act, because tending to impair their vested rights therein."

That we should observe, on the other hand, that the Lords of the Admiralty, to whom inquiries on some of the points at issue had been addressed, stated that, as a matter of fact, the depôt actually established by the United States' Government

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at Pago Pago consisted of a moderate-sized plot of ground with a heap of coal on it, and urged that, whether in time of peace or war, it would be prejudicial to British interests to forego the possibility of using that harbour in the future.

That, before making any reply to the representation of the United States in the matter, your Lordship would be glad if we would take the papers transmitted with Sir Thomas Sanderson's letter into our consideration, and favour you with our opinion as to whether the claim to an exclusive right over the harbour of Pago Pago, as put forward by the United States' Government, was a well-founded one.

That your Lordship would also be obliged by any observations of a more general nature with which we might, at the same time, be good enough to furnish you in connection with the matter.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That the rights of the United States must be determined by the terms of the Treaty of the 17th January, 1878, and the rights of Great Britain under the later Treaty of the 28th August, 1879, must be subject to those granted by the former.

The question, then, is, what rights were granted by the Treaty of the 17th January, 1878? To this we answer that, although no exclusive right in Pago Pago Harbour is, in express terms, given to the United States by that Treaty, the latter portion of Article II secures the United States against any exercise or authorization of jurisdiction within the port adverse to, or restrictive of, the rights granted therein to the United States.

If, therefore (and we gather from the papers that of this there is no doubt), the establishment by Great Britain in Pago Pago Harbour of a naval station and coaling depôt would be adverse to, or restrictive of, the Treaty rights of the United States, we are of opinion that Her Majesty's Government must be advised they are *not* entitled to insist on such establishment.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Mr. Foster to Mr. White.. (Communicated November 30.)	November 21, 1892.
Memorandum by Sir E. Hertslet, with extracts from Treaties attached	December 7, ,,
To Admiralty	December 10, ,,
Admiralty, and inclosed Chart	January 6, 1893.

No. 29.

The Law Officers of the Crown to the Earl of Rosebery.—(Received February 1.)

My Lord,
Royal Courts of Justice, January 30, 1893.

Enactment of "The Real Property Ordinance, 1891," by Chief Justice of Samoa. Imposition of registration fee.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the enactment by the Chief Justice of Samoa of "The Real Property Ordinance, 1891," and to the imposition under it of a fee for the registration of land titles, which formed the subject of our Report of the 3rd September last.

That we should perceive from the Chief Justice's letter of the 29th November last, to which Sir Thomas Sanderson was to call our special attention, that he demurred to the opinion that his action in the matter had been *ultra vires*, and alleged various considerations in support of his proceedings, as well as in defence of the fee which had been impugned, but which he affirmed to be of a reasonable character.

That negotiations were in progress under which it was probable that the present Chief Justice would vacate his post at an early date.

That your Lordship was nevertheless desirous, out of consideration for M. Cedercrantz, to be in a position to return such a reply to his communication as, from a legal point of view, would command our approval.

That Sir Thomas Sanderson was according to request that we would take the papers into our consideration, and that we would inform your Lordship whether we saw anything in the arguments and considerations put forward by the Chief Justice which induced us to modify, in any way, our opinion of the 3rd September, 1892.

L. O. R., 1892 (Conf. 6347), p. 46.

That your Lordship would also be glad to receive any general observations which we might have to offer on the case.

In obedience to your Lordship's commands, we have the honour to

Report—

1. That we have carefully considered the letter of the Chief Justice of Samoa of the 29th November, 1892. That letter contains matter worthy of notice by the Treaty Powers. It also shows that the Chief Justice has applied himself with great ability and industry, and in a position of much difficulty, to meet the emergencies with which he found himself confronted.

There is no doubt the difficulty of his position was caused mainly by the incomplete character of the Final Act of the 14th June, 1889. At the same time we cannot withdraw the expression of our opinion contained in the first clause of our Report of the 3rd September, 1892.

We think the Final Act did *not* confer upon the Chief Justice legislative authority. We think the Chief Justice is in error in thinking that "practice and procedure" include "substantive law;" and we think he is also in error in the view that Article III, section 8, only provides for legislation of a criminal kind. We think it ought to be construed as applying also to laws affecting property and civil rights.

2. As to the imposition of the registration fee fixed by the Ordinance of the Chief Justice, we regarded that as a subsidiary part of a scheme which we were, and are, of opinion is in many important provisions, and taken as a whole, *ultra vires*; and we would observe that the value of the reference by the Chief Justice to the fees charged in other places cannot be estimated without a knowledge of the Statutes giving authority in those cases. Our opinion had reference in this connection to the Final Act.

It may be that the provision which, we understand from his letter, has since been issued by the Chief Justice has a material bearing upon the question of the reasonableness of the fee in question.

3. We desire to remind your Lordship that in the third paragraph of our Report of the 3rd September, 1892, we took the liberty of suggesting that a direct communication should be made to the Chief Justice of the views of the Treaty Powers. We thought that this was due to the distinguished position he occupied, and that the zeal, ability, and industry he had shown entitled him to every consideration, a view in which we feel little doubt your Lordship will concur.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

To Law Officers (with same inclosures)		August 29, 1892.
Law Officers. (Confidential No. 6347, p. 42)		September 3, ,,
To Consul Cusack-Smith	(No. 15)	September 13, ,,
To Count Hatzfeldt (A)		September 13, ,,
Consul Cusack-Smith	(No. 36)	October 19, ,,
M. Cedercrantz (and inclosures)		November 29, ,,

PERSIA.

No. 30.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received June* 17.)

[After reciting the following reference, the Law Officers report as on p. 56:—]

Gentlemen, *Foreign Office, June* 5, 1893.

Cancelling of Persian Lottery Loan Concession.

BY direction of the Earl of Rosebery, I have the honour to request your attention to a fresh question which has arisen with regard to the Concession granted by the Shah of Persia, dated the 20th July, 1889, conferring for a period of seventy-five years the exclusive privilege of conducting all operations in connection with lottery loans and other similar issues in Persia.

The Concession in question was on the 5th December cancelled by the Shah on the ground that he had signed it under a misapprehension, and that he found that its conditions were contrary to the religious law of Persia.*

Out of this act of the Shah there arose various claims against the Persian Government.

The Persian Government allege that they officially informed the Persian Minister in this country of the withdrawal of the Concession by a telegram, dated the 5th December, 1889. The fact of its being cancelled was notified in writing to Her Majesty's Minister at Tehran by the Persian Foreign Office on the 8th December, and Sir H. Wolff on the same day telegraphed the information to the Secretary of State for Foreign Affairs.† On the 10th December, the official Notification of that date, of which the original is inclosed in Sir F. Lascelles' despatch No. 25 of the 8th February, 1892, was substituted for the one of the 8th December, which was thereupon cancelled.

On the 25th November, 1889, a telegram was received from Her Majesty's Minister at Tehran,‡ stating that he had just been informed by the Amin-es-Sultan (Grand Vizier) that Malcom Khan, the Persian Minister, who was interested in the Lottery Concession, had been recalled.

On the 3rd December Malcom Khan himself, in conversation with the Permanent Under-Secretary of State at the Foreign Office, formally announced his recall as definitive. His letters of recall were dated December 1889, but no particular day is mentioned in them, and he did not have audience of Her Majesty the Queen to deliver them till the 10th March, 1890.

The Concession was originally granted to the nominee of Malcom Khan, a certain Buzie de Caerdoel. This person, by agreement of the 3rd October, 1889, undertook to sell his rights to the Anglo-Asiatic Syndicate (Limited), who, in order to pay part of the purchase-money, borrowed 20,000*l*. from the New Oriental Bank Corporation, on the collateral security of the Concession, and on the 12th October paid this 20,000*l*. to General Mikayl Khan (brother of Malcom Khan, and also a member of the Persian Legation), who, by assignment of M. Buzie de Caerdoel, dated the 12th October, had become the holder of the Concession.

On the 15th November the Anglo-Asiatic Syndicate entered into a preliminary contract for the sale of the Concession to the Persian Investment Corporation, and on the 18th of the same month they further contracted with General Mikayl Khan for a reduction of the price to be paid to him on account of the Concession.

The contract of sale of the 15th November was, with some modifications, accepted by the Persian Investment Corporation, and under the terms of the contract of adoption, the Persian Investment Corporation paid certain sums, out of which General Mikayl Khan, as assignee of the original concessionnaire, received, on the 14th December, a cheque for 20,000*l*., which was handed to him by the Anglo-Asiatic Syndicate, and paid into Malcom Khan's private account at the Western Branch of the Bank of England, such further payment having been made on the faith of a written assurance from Malcom Khan, dated the 20th November, 1889, and addressed to the Solicitors of the Persian Investment Corporation, who were also acting for the Anglo-Asiatic Syndicate, that "la dite Concession, signée et ratifiée par le Schah, est parfaitement correcte et inattaquable."

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* See Sir H. Wolff's Nos. 243 and 245, Telegraphic, of September 29 and October 2, 1890; and Nos. 239 and 251 of December 20 and 25, 1889.

† See Sir H. Wolff's No. 239 of December 20, 1889.

‡ No. 164.

The British claimants who applied for the support of Her Majesty's Government in urging upon the Persian Government their demands for compensation on account of the withdrawal of the Concession were the Anglo-Asiatic Syndicate, the New Oriental Bank Corporation, and the Persian Investment Corporation. The Marquis of Salisbury, after consultation with the Law Officers of the Crown,* informed the first two-named Companies that the matter was not one in which Her Majesty's Government could interfere diplomatically, and that the proper remedy appeared to lie in bringing an action against General Mikayl Khan for the recovery of the sums paid to him on account of the Concession, the Persian Minister having given an assurance that, in the event of such legal proceedings being instituted, the Shah would not claim diplomatic privilege on behalf either of Prince Malcom Khan or of his brother, General Mikayl Khan. A communication of a similar nature was made to the Persian Investment Corporation, excepting that, as they had already instituted proceedings against General Mikayl Khan, they were told that their proper remedy appeared to lie in prosecuting the action which they had begun.

The Law Officers had, in their Report of the 12th March, 1891, stated that the claims of the New Oriental Bank Corporation and the Persian Investment Corporation were against the Anglo-Asiatic Syndicate, and in the absence of any reason for believing that the Syndicate would fail to repay the money which it borrowed or received on a consideration which had wholly failed, the Law Officers considered that Her Majesty's Government should decline to recognize or put forward any claim on behalf of the Bank Corporation or the Persian Investment Corporation, but they advised that Her Majesty's Government should press upon the Persian Government the payment to the Anglo-Asiatic Syndicate of the 40,000*l*. which it was clear that they had paid to General Mikayl Khan, and the second half of which sum would not have been paid but for the assurance given by the Persian Minister on the 20th November, 1889, above mentioned.

This recommendation that a claim should be made on the Persian Government seems to have been founded on the assumption that legal proceedings would fail owing to the diplomatic status of Malcom Khan and his brother, Mikayl, but Lord Salisbury did not see his way in any case to using pressure on the Persian Government, and on a further reference to the Law Officers (25th March), stating that the Persian Minister in London had given an assurance that the Shah would not claim diplomatic privilege on behalf of his late Minister, Malcom Khan, or his brother, Mikayl Khan, the Law Officers concurred (12th May, 1891) in an intimation to the Anglo-Asiatic Syndicate to the effect of that which was made to them on the 26th May, 1891.

The action which was brought by the liquidators of the Persian Investment Corporation against Malcom Khan to recover the sum of 20,000*l*. received by him came before Mr. Justice Chitty in November (see "Times'" Law Reports "Times," 24th and 25th November), and, having taken time to consider, he eventually gave his decision on the case on the 14th March. A copy of the Judgment is inclosed herein.

You will observe that Mr. Justice Chitty held that Malcom Khan was substantially the concessionnaire, that either on the 5th or 8th December, 1889, in the interval between the purchase by the Anglo-Asiatic Syndicate and the sale by the Syndicate to the Persian Investment Corporation the Concession was revoked by the Shah, as he had power to do by the law of Persia; that though Malcom Khan was aware of the revocation, the Persian Investment Corporation were not so until the month of August in the following year; that the contract of sale by the concessionnaire to the Syndicate was a valid contract; and that the subsequent revocation of the Concession did not void that contract; further, that Malcom Khan obtained the sum of 20,000*l*. after he knew that the Concession had been revoked, but that, in law, the Syndicate did owe that money to the concessionnaire.

The Persian Investment Corporation having failed in their action, now appeal to Her Majesty's Government to use their influence with the Shah to compensate them for the loss they have sustained through the conduct of Malcom Khan. They rest their claim on the following facts, viz., that Malcom Khan was Persian Minister when he sold the Concession, that he was privy to the formation of the Persian Investment Corporation for the purpose of selling the Concession to such Company when formed,

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* May 26, 1891.

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and that, having received a direct official communication from his Government notifying that the Concession was cancelled, he suppressed the fact in order to obtain payment for the Concession, and, moreover, repeatedly stated that the Concession was valid; that the Corporation relied on his statements owing to his official character; and, further, that Mikayl Khan, a Director of the Company, who, being himself a member of the Persian Legation, was doubtless aware of the revocation of the Concession, joined with his brother in suppressing the fact of the revocation, and made every effort to induce the Corporation to complete the purchase, and pay the balance of the purchase-money.

The Anglo-Asiatic Syndicate, on the plea that the result of the action brought by the Persian Investment Corporation against Malcom Khan shows that nothing can be obtained in that quarter, have likewise appealed to Her Majesty's Government not only to cause their claim to be submitted to the Persian Government, but to support it with an intimation that the case is one in which common justice calls for compensation.

L. O. R., 1889 (Conf. 5956), p. 84.
L. O. R., 1890 (Conf. 6113), p. 55.
L. O. R., 1891 (Conf. 6207), p. 92.
L. O. R., 1891 (Conf. 6207), p. 95.
L. O. R., 1891 (Conf. 6207), p. 97.
L. O. R., 1891 (Conf. 6207), p. 98.
L. O. R., 1892 (Conf. 6347), p. 48.
L. O. R., 1892 (Conf. 6347), p. 50.

The letters which Lord Rosebery has received from the two Companies are inclosed herein, as well as the Law Officers' Reports relating to the Concession of the 5th December, 1889; 28th October, 1890; 12th March, 12th May, 3rd July, 6th August, 1891; 4th January and 4th November, 1892.

I am to request that you will take these papers into your consideration, and favour Lord Rosebery with your opinion as to whether, having regard to the previous correspondence, to the circumstances of the case generally, and more particularly to the result of the legal proceedings lately concluded, any case has been established on behalf of the applicants which calls for the intervention of Her Majesty's Government, and, if so, on what grounds a representation to the Persian Government might most advantageously be based.

On the other hand, should you be of opinion that no case calling for such intervention has been established, Lord Rosebery (who, having regard to the nature of the Concession, shares Lord Salisbury's reluctance to bring diplomatic pressure to bear upon the Persian Government in the matter) will be glad if you would be kind enough to indicate, for his guidance in framing the terms of his reply to the applicants, such considerations of law as can most appropriately be adduced to them in justification of the refusal to press their claims upon the Persian Government.

His Lordship will, at the same time, be glad to be favoured with any general observations upon the present position and aspect of the case which you may have to offer for his assistance.

I have, &c.
(Signed) P. CURRIE.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, signified to us in Sir Philip Currie's letter of the 5th instant, have the honour to

Report—

That, having regard to all the circumstances, we are of opinion that no case has been established which calls for diplomatic intervention.

The grounds on which Her Majesty's Government should justify their refusal to intervene are, we submit—

1. That the action of Malcom Khan was not in his character of Persian Minister;
2. That his Government were not interested in the payment made to him;
3. And that that Government has done nothing to shield him or his brother from the legal consequences of their action.

It is to be noted that the revocation of the Concession was urged upon the Persian Government by the Minister at Tehran of Great Britain. This fact may or may not be known to the applicants, and it may not be desirable to refer to it.

What may be the effect on Persian credit in this country of the withdrawal of the Concession without compensation is a matter which concerns the Persian Government only.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

Royal Courts of Justice, June 17, 1893.

No. 31.

The Law Officers of the Crown to the Earl of Rosebery.—(Received July 18.)

My Lord, *Royal Courts of Justice, July* 17, 1893.

Persian Lottery Concession: further appeal of Anglo-Asiatic Syndicate.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 11th instant, stating that, after considering our Report of the 17th ultimo respecting the claims of the Anglo-Asiatic Syndicate and the Persian Investment Corporation in the matter of the Persian Lottery Concession, your Lordship had caused them to be informed that you had decided that no case had been established calling for diplomatic intervention on the part of Her Majesty's Government. That the reasons given by your Lordship were, as we had advised, that the action of Malcom Khan was not in his character of Persian Minister, and that his Government were not interested in the payment made to him, and did nothing to shield him or his brother from the legal consequences of their action.

That the Anglo-Asiatic Syndicate had addressed a letter to the Foreign Office stating their reasons for dissenting from your Lordship's decision, and that Sir Philip Currie was to request that we would inform your Lordship whether there was anything in the letter from the Syndicate which induced us to alter, and, if so, to what extent and in what respects, the opinion given in our Report of the 17th ultimo.

In obedience to your Lordship's commands we have the honour to

Report—

That we have considered the letter of the Syndicate of the 3rd July, but we see no reason to alter the views expressed in our Report of the 17th June. At the same time we see no objection, should your Lordship see fit so to do, to the complaint of the Syndicate being forwarded to the Government of the Shah through the Foreign Office. But we must add that, in our opinion, the case is clearly *not* one in which any pressure upon the Government of the Shah by Her Majesty's Government should be exercised.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

PORTUGAL.

No. 32.

The Law Officers of the Crown to the Earl of Rosebery.—(Received March 24.)

My Lord, *Royal Courts of Justice, March* 23, 1893.

Right of Portugal to cede customs dues in Delagoa Bay to South African Repub.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the extent of the rights over Delagoa Bay which Portugal had power to concede.

That on the 25th September, 1872, a Protocol was signed between the British and Portuguese Governments by which they agreed to refer to the Arbitration and Award of the President of the French Republic their respective claims to certain territories formerly belonging to the Kings of Tembe and Mapoota, on the Eastern Coast of Africa, including the Islands of Imyack and Elephant, and now known as the Province of Delagoa Bay.

That the Award of the President (Marshal MacMahon) was pronounced on the 24th July, 1875, when he declared the Portuguese claims to be duly proved and established.

But that before the Award was declared a proposal was made by the British to

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the Portuguese Government that a mutual agreement should be entered into, to the effect that, whichever way the Award of the Arbitrator might be given, as regarded the right of sovereignty over the territories in dispute, the Power in whose favour the Award was made should not entertain any proposal for the acquisition of the said territory by any other Power until the defeated claimant should have an opportunity of making to the successful claimant a reasonable offer for the acquisition of that territory, either by purchase or for some other consideration.

That the Portuguese Government readily agreed to that, and, in a note of the 17th June, 1875, it gave the fullest assurance as to its determination of "not ceding to any third Power the territory, the possession of which might be secured for it in virtue of the Arbitration of Marshal MacMahon."

That since that time the Portuguese Government had granted numerous Concessions to Companies and individuals of lands, minerals, and privileges and immunities for the construction of railways and canals in the Province of Delagoa Bay. That though the granting of those Concessions had undoubtedly diminished the value of the property of which, according to the terms of the above-mentioned Agreement, Great Britain had in certain eventualities, as regarded other Powers, the right of preemption, your Lordship was disposed to think that, so long as such Concessions did not alienate sovereign rights, they did not contravene the provisions of that Agreement.

But that your Lordship was doubtful whether the alienation of any sovereign right, such, for instance, as the right of taxation, without previous notice and opportunity of acquirement of such right having been given to Her Majesty's Government, would not of itself amount to a contravention of the substance of the Agreement, as well as of its spirit and intention.

That it was clear that the alienation of sovereign attributes of that description, though falling short of that actual cession of territory which was specifically mentioned in the Agreement might most seriously prejudice the value of the preferential reversionary interests in the territory which it was the undoubted object of that Agreement to preserve to Great Britain, and might, if carried to any considerable extent, render the right of pre-emption of such territory, if and when it arose, a comparatively worthless privilege.

That the question was of practical importance, as it was possible that negotiations might be commenced between the Governments of Portugal and the South African Republic for the concession to the latter of the right to levy customs dues in the Province of Delagoa Bay.

That the concession of that right to the Transvaal would be highly injurious to the interests of the Cape Colony; and that it might be advisable to warn Portugal, if the right of objection existed, that Her Majesty's Government would consider it a contravention of the Agreement.

That Sir Philip Currie was, therefore, to request that we would take the matter into our consideration, and favour your Lordship with our view upon it at an early date.

In obedience to your Lordship's commands we have the honour to

Report—

That the Agreement between the Powers is contained in the letters of the 14th and 17th June, 1875, and its effect is, that the Power successful in the Arbitration shall not entertain any proposal for the acquisition of the territory in question by any other Power until the unsuccessful Power has had the opportunity of making a reasonable offer for its acquisition.

The Portuguese Government, on its part, undertook to observe in the matter "a perfect loyalty to the British Government."

We are of opinion that, while it cannot be said that a concession to the South African Republic of the right to levy customs dues in the territory is a cession of the territory, it is clearly the concession of a sovereign right in relation to the territory, and goes to lessen the value of the territory. We think, therefore, that it is against the spirit of the Agreement, and may properly be made the subject of remonstrance. It is obvious that, in this way, the sovereign rights might be parted with one by one until the sovereignty of the territory ceased to be of any real value.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Sir H. Loch	November 20, 1892.
	To ditto	December 21, "
	Sir H. Loch	January 16, 1893.
(B.)	Nos. 7, 8, 9, and 10 of the Blue Book "Africa No. 1 (1875)," Parliamentary No. 1818.	
(C.)	Agreement between Great Britain and Portugal, June 1875.	

RUSSIA.

No. 33.

The Law Officers of the Crown to the Earl of Rosebery.—(Received June 30.)

My Lord,

Royal Courts of Justice, June 30, 1893.

Seal Fishery (North Pacific) O. in C. and Admiralty instructions.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 29th June stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relating to the prohibition of sealing in certain zones in the North Pacific Ocean, as agreed upon between the British and Russian Governments.

That the correspondence laid before Parliament contained the terms of the Agreement with Russia, and that Sir Thomas Sanderson was to request our opinion whether the draft Order in Council which it was proposed to issue under the Act was such as might properly be submitted to Her Majesty in Council, and whether we concurred in the draft Admiralty instructions thereunder.

In obedience to your Lordship's commands we have taken the matter into our consideration and have the honour to

Report—

That in our opinion the draft Order in Council, which we have initialled, may properly be submitted for the approval of Her Majesty in Council.

We concur in the draft Admiralty instructions initialled by us.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Correspondence, "Russia No. 1 (1893)," Parliamentary No. 3527
(B.) Seal Fishery (North Pacific) Bill.
(C.) Draft Order in Council.
(D.) Draft Admiralty Instructions.

Annex 1.

"Seal Fishery (North Pacific) Act, 1893."

DRAFT ORDER IN COUNCIL.

WHEREAS by "The Seal Fishery (North Pacific) Act, 1893," it is enacted that Her Majesty the Queen may by Order in Council prohibit during the period specified by the Order the catching of seals by British ships in such parts of the seas to which that Act applies as are specified by the Order; and that for carrying into effect an arrangement with any foreign State an Order in Council may provide that such officers

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of that State as are specified in the Order may exercise the like powers under the Act as may be exercised by a commissioned officer on full pay in the naval service of Her Majesty in relation to a British ship and the equipment and crew and certificate thereof; and that any such Order may contain any limitations, conditions, qualifications, and exceptions which appear to Her Majesty in Council expedient for carrying into effect the object of the said Act:

And whereas the said Act applies to the seas within that part of the Pacific Ocean known as Behring's Sea, and within such other parts of the North Pacific Ocean as are north of the forty-second parallel of north latitude:

And whereas an arrangement has been made between Her Majesty the Queen and His Imperial Majesty the Emperor of Russia, whereby British ships engaged in hunting seals within such parts of the said seas as are hereinafter specified may be seized by Russian cruizers:

Now, therefore, Her Majesty, in virtue of the powers vested in her by the said recited Act, and of all other powers enabling her in that behalf, is hereby pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. From and after the day of July, one thousand eight hundred and ninety-three, until the first day of January, one thousand eight hundred and ninety-four, the catching of seals by British ships is hereby prohibited within such parts of the seas to which the recited Act applies as are comprised within the following zones, that is to say (i) a zone of 10 marine miles on all the Russian coasts of Behring Sea and the North Pacific Ocean, and (ii) a zone of 30 marine miles round the Komandorsky Islands and Tulénew (Robben Islands).

2. The powers which under the recited Act may be exercised by any commissioned officer on full pay in the naval service of Her Majesty may be exercised by the captain or other officer in command of any war vessel of His Imperial Majesty the Emperor of Russia in relation to a British ship, and the equipment and crew and certificate thereof.

3. This Order may be cited as "The Seal Fishery (North Pacific) Order in Council, 1893."

(Initialled) C. R.
J. R.

Annex 2.

"*Seal Fishery* (*North Pacific*) *Act*, 1893."

DRAFT ADMIRALTY INSTRUCTIONS.

IN accordance with an arrangement concluded between Great Britain and Russia on the 30th May, 1893, and in conformity with the powers vested in Her Majesty's Government by "The Seal Fishery (North Pacific) Act, 1893," and the Order in Council, dated (copies of which are attached), the following Regulations have been made:—

1. British cruizers are to co-operate with vessels of the Russian Imperial Navy or Government in preventing persons belonging to British ships from killing or hunting seals during the period and within the zones specified in the said Order in Council.

2. British ships likely to be affected should be warned that they will be liable to capture if found killing or hunting seals within those zones.

3. If any person belonging to a British ship kills, takes, hunts, or attempts to kill or take, any seal during the said period or within the said zones, or if any British ship, or the equipment or crew thereof, is or are used or employed in such killing, taking, hunting or attempt, a British or a Russian cruizer may stop and examine the ship.

4. Where the Commander of a British cruizer stops and examines a ship, he should draw up and sign a statement in writing of the circumstances under which and the grounds on which he stopped and examined the ship. If evidence contained in the statement be taken on oath in the presence of the person charged in the evidence, and the person so charged has an opportunity of cross-examining the person giving the evidence, and of making his reply to the evidence, the commander should certify that the evidence was so taken, and that there was such opportunity of cross-examining and of making a reply.

5. If the Commander of a British cruizer decides to seize the ship, he is to take her for adjudication to one of the specified ports, that is to say, either Yokohama or Shanghae, or a British colonial port at which there is a competent Court. In ordinary cases, the most convenient port will be Yokohama.

6. Instead of seizing the ship, the Commander of the British cruizer may, if he thinks fit, either retain the certificate and give a provisional certificate in lieu thereof, or return the certificate with an indorsement of the grounds on which it was seized, and in either case may direct the ship by an addition to the provisional certificate, or to the indorsement, to proceed forthwith to one of the specified ports to be named in the certificate or indorsement. Forms of provisional certificate and of indorsement are sent herewith.

7. Where the Commander of a British cruizer seizes or indorses a ship's certificate, he should on the first opportunity send the certificate or copy of the indorsement, and also the above-mentioned statement and the witnesses, to the specified port, addressing the documents to the proper officer there. The proper officer will be the British Consul if the specified port is Yokohama or Shanghae, and the Collector of Customs if it is a colonial port.

8. The Commander of a Russian cruizer authorized by the Order in Council to stop and examine a British ship will be instructed at the first opportunity (where feasible) to hand over the ship and documents, or the documents, as the case may be, to a British cruizer or other British authority.

9. Where the Commander of a British cruizer receives such ship and documents, or such documents from a Russian cruizer, he is to proceed in like manner as if he had himself stopped and examined the ship.

10. Where the Commander of a British ship either seizes a ship or deals with her certificate as above directed, or receives a British ship from a Russian cruizer, all the equipment for sealing is to be removed from the ship, and taken or sent to the proper officer at the port to which the ship is taken or sent for adjudication.

11. In any case, the Commander of a British cruizer is to record the name of every ship in respect of which he performs any act hereinbefore directed or authorized, and of her master, and he is at the first opportunity to inform the Commander-in-chief of the action taken by him.

12. In the event of a British Agent visiting the Komandorsky Islands and Robben Island to confer with the authorities there, and to inquire into the working of the arrangement, British cruizers are to co-operate with the said Agent, and to give him any assistance in their power.

13. It is to be understood that these Regulations do not apply to those parts of the zones which consist of Russian territorial waters, and that within those waters the Government of Russia will alone exercise jurisdiction.

(A.) *Form of Provisional Certificate of Registry.*

1.

No.			Date of Registry.
Name of Ship.	British or Foreign built.	Port of Registry.	How propelled.

2. The original certificate of the said ship containing the above particulars is dated at , the day of 18 , and purports to be signed by as Registrar.

3. The said original certificate has been seized, and this provisional certificate has

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been granted by the Undersigned, in accordance with the provisions of "The Seal Fishery (North Pacific) Act, 1893."

4. The said ship is hereby directed to proceed forthwith to the port of for adjudication, and the master is directed to report himself forthwith on arrival there to the British Consul [*or* Collector of Customs, *as the case may be*.]

Dated at [give ship's position] , the day of , 189 .

(Signed)

Commanding Officer, H.M.S.

(B.) *Form of Indorsement on Certificate of Registry.*

In accordance with the provisions of "The Seal Fishery (North Pacific) Act, 1893," the said ship has been stopped and examined, and this certificate has been seized by the Undersigned on the following grounds:—[*shortly state grounds*].

This certificate is with this indorsement returned to the master.

The said ship is hereby directed to proceed forthwith to the port of for adjudication under the said Act, and the master is hereby directed to report himself forthwith on arrival there to the British Consul [*or* Collector of Customs, *as the case may be*].

Dated at [give ship's position] , the day of , 189 .

(Signed)

Commanding Officer, H.M.S.

(Initialled) C. R.
J. R.

No. 34.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received November* 3.)

[After reciting the following reference, the Law Officers report as on p. 64:—]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 16, 1893.

Gentlemen,

Seizure of Brit. sealers by Russians in Behring Sea.

WITH reference to your letter of the 23rd November last relative to the seizure by Russian Government vessels in Behring Sea of certain British sealing-vessels, I have the honour to transmit to you, by direction of the Earl of Rosebery, further correspondence on this subject noted in the accompanying list.

The first paper, marked (A), is a despatch from Sir R. Morier, Her Majesty's Ambassador at St. Petersburgh, inclosing a copy of the note which, in accordance with your advice, his Excellency addressed to the Russian Government on this subject on the 29th November last.

The Russian reply to this note (inclosure in Paper B) is accompanied by two Reports of the Special Commission appointed by the Emperor of Russia to examine the question. The first of these Reports has reference to the complaints made by the crews of some of the sealers of ill-treatment while on their way to Petropaulovski and during their detention at that place. The Report states that these complaints are not justified by the facts, and that if the aggrieved parties are not satisfied they can, in the ordinary course of law, seek redress either from the superior naval authorities or through the competent Tribunals.

The second Report contains a detailed examination of the circumstances under which the vessels and their boats were seized, and examines the legality of the captures. In regard to this latter question, the Acting Minister for Foreign Affairs observes:—

"In considering the legality of the captures effected by the Commanders of the Russian cruisers, and by the District Governor of the Commander Islands, the Commission was guided by a principle the justice and equity of which cannot be disputed. It recognized as lawful seizures all vessels whose boats were seen or captured in our territorial waters. It cannot, indeed, be denied that the boats constitute, juridically, an appendage of the schooner to which they belong; consequently, their seizure in territorial waters renders the capture of the vessels, of which they in some respects form part, perfectly legal. If it were otherwise, a schooner could with impunity pursue seals on the coasts by sending her boats there, and thus infringe the inviolability of territorial waters, although herself remaining outside the said waters."

Applying this principle to the case of the six captured schooners, the Commission, whose view is adopted by the Russian Government, consider that the seizure of four of them, the "Marie," "Rosie Olsen," "Carmolite," and "Vancouver Belle," must be recognized as legal, inasmuch as the evidence that their respective canoes captured seals, either actually in the rookeries or within the 3-mile limit, was conclusive. On the other hand, though they maintain that the circumstantial evidence was equally conclusive against the "Willie McGowan" and "Ariel," yet, as the canoes of these vessels had not been actually seen within the territorial waters, the Russian Government state that they are ready to entertain the question of indemnifying their owners and crews.

Sir R. Morier's despatch was referred to Her Majesty's Secretary of State for the Colonies, and it will be seen from his Lordship's reply, which is herewith inclosed (Paper C), that he entertains serious doubts whether the procedure of the Russian Government, or the conclusions they have arrived at with regard to these seizures, are in accordance with established rules of international law.

Lord Ripon further observes that there is much uncertainty as to the facts connected with the seizure of these schooners, and points out that the evidence upon which the Russian Commissioners rely, and which in every case they take as conclusive, is simply the *ex parte* and apparently unsworn statements of the captors of the vessels, whose own conduct is being investigated; that that evidence has not been furnished to Her Majesty's Government, and was given in the absence of all persons in any way connected with the vessel seized, and apparently without any cross-examination whatever, but with the full knowledge of the evidence of Her Majesty's Government, so that it is not testimony to which *primâ facie* much weight can be attached. To bear out this view, his Lordship incloses copy of a Memorandum (Inclosure 2 in Paper C) which has been prepared in the Colonial Office on the Report of the Commission, and from which it will be seen that not only does the account given of the various seizures differ wholly from that contained in the affidavits submitted by Her Majesty's Government, but that it is inconsistent with itself and with the earlier official accounts given by the Russian Government. A further Memorandum on the position of the vessels when seized is inclosed in a later letter from the Colonial Office (Paper F).

Under these circumstances, Lord Ripon was of opinion that the claims for compensation should be again pressed upon the Russian Government, but suggested that, before this was done, the papers should be referred to the Canadian Minister of Marine and Fisheries for an expression of his views as to the course to be followed.

Mr. Tupper, in his reply to this reference (Paper D), observes that the Report of the Russian Commission upon the seizure of these vessels certainly reveals strong contradiction between the affidavits the British subjects forwarded to Her Majesty's Government and the statement of facts supplied to and accepted by the Commission, and that there are many circumstances detailed in that document which render the account given by it untrustworthy and unsatisfactory.

The facts in dispute could not, however, in his opinion, be settled by an appeal, either to the affidavits on one side or to the *ex parte* evidence on the other.

He therefore suggests that the Russian Government should be requested:—

1. To supply the Protocols containing the circumstance of the seizure of the "Olsen," "Marie," "Carmolite," "Vancouver Belle," and of the boats of the "W. P. Sayward."

2. To give permission to inspect and take copies of the logs and charts of the foregoing vessels.

3. To furnish Reports on the courses of the "Zabiaka," "Vitiaz," and "Kotik," together with copies of the evidence given by the Commanders of those vessels before the Commission.

He thinks that, so soon as this information has been obtained, a proposition should

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be made to the Russian Government for the constitution of a Joint Commission to take evidence, both in Canada and Russia, touching the facts in dispute, so that in the event of the Governments not being able to agree after consideration of the evidence so taken, the evidence might be referred to arbitration, and the various points in difference so settled.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Rosebery with your opinion—

1. As to the correctness of the principles of international law on which the Russian Government based their assertion that the seizure of four of these vessels was legal;

2. Whether there are sufficient *primâ facie* grounds for continuing to press on the Russian Government the claims for compensation for these four vessels; and

3. Whether as a first step, and with a view to subsequent examination by a Joint Commission, the documents enumerated by Mr. C. Tupper should be obtained from the Russian Government.

Lord Rosebery would also be glad to receive any general observations which you may have to offer on the case.

Your former Report on this subject and the papers which were originally submitted to you are inclosed for convenience of reference.

I am, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Sir R. Morier	(No. 298)	November 29, 1892.
(B.)	Ditto	(No. 161)	June 12, 1893.
(C.)	Colonial Office		July 24, „
(D.)	Mr. Tupper	(No. 105)	August 7, „
(E.)	Mr. Howard	(No. 195)	July 26, „
(F.)	Colonial Office		September 13, „

We have taken the papers transmitted to us with Sir Thomas Sanderson's letter of the 16th September last into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That the facts as represented by the Russian Government on the one side and by the Canadian sealers on the other are contradictory in some material points, as appears from the criticism of the facts made by Mr. Anderson in his Memorandum of the 30th June, 1893, and we agree with his conclusion that the Russian Government should at once be asked for the Protocols containing the circumstances of the seizure of the "Rosie Olsen," "Marie," "Carmolite," and "Vancouver Belle," and for an inspection of the logs and charts of these vessels upon which the cases against them are built up, and for the reports on the courses of the "Zabiaka," "Vitiaz," and "Kotik." As to the Canadian Government, they ought also to be asked for further information, and particularly as to the boats of the "Rosie Olsen" and "Marie."

We suggest that Mr. Anderson be asked to prepare in relation to each seizure, and in the form of a schedule with three columns, a concise statement of the facts as represented (first column) by the Russian Government, (second column) by the Canadian sealers, and a third column for further observations.

There appear to be three main questions of principle involved, namely:—

(1) In what cases may a vessel which has committed an offence within territorial waters be captured outside such waters;

(2) May the boats of a vessel be regarded as forming part of the vessel; and

(3) Is a seizure in non-territorial waters made on suspicion of an offence within such waters justifiable if the subsequent search affords evidence of the offence having been committed.

With reference to the first question, we think such an offending vessel can only be arrested if there has been a hot and continuous pursuit from the time of the offence to the time of the arrest, and that the pursuit cannot properly be described as hot and continuous unless it has been carried on, so that (apart from any evidence found upon arrest) there can be no reasonable doubt that the vessel arrested was the one that committed the offence.

It appears at least doubtful whether the Russian Government clearly recognize this principle.

With respect to the second question, we think, for the purposes of the present case, the boats of a vessel which commit an offence render the vessel herself liable to seizure for such offence whenever it appears that the boats were acting with the consent, express or implied, of the master of the vessel, and provided that the pursuit of such vessel be hot and continuous.

It does not seem to us that the Russian Government substantially take a different view, but M. Chichkine's reference to this principle is perhaps rather loose.

With reference to the third question, we think Her Majesty's Government cannot be advised to admit the principle that vessels may be searched on suspicion, and that seizures may be justified by the result of the search.

No doubt by Convention such rights of search are in special cases allowed, as, for instance, in the Conventions relating to the Slave Trade, and the results of such search may justify the seizure, but this principle cannot, apart from Convention, be admitted.

If, however, the Government of Her Majesty is satisfied that the offending vessel had committed offences against a friendly Power, it would be a matter of policy for the Government to determine how far it ought to throw its shield to protect offenders. This is a principle of policy which largely affects, for example, international dealing in relation to the Hovering Acts.

We think that in the further communications to the Russian Government the points we have referred to should be taken.

The practical result is that until fuller information is had the claims in respect of none of the seizures should at present be abandoned.

When further information is obtained it will probably be necessary to discriminate between the cases, but as the evidence at present stands the seizures of the "Carmolite" and the "Vancouver Belle" were not, in our opinion, justifiable.

When the desired fuller information is obtained, it must then be determined whether a Commission of Inquiry should be demanded, and, if so, in relation to what cases.

We have, &c.
(Signed) CHARLES RUSSELL.
JOHN RIGBY.

Royal Courts of Justice, November 3, 1893.

SIAM.

No. 35.

The Law Officers of the Crown to the Earl of Rosebery.—(Received July 28.)

My Lord, *Royal Courts of Justice, July 28, 1893.*

French Blockade of coast of Siam. Course H.M.'s Govt. should pursue.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 28th instant, stating that he was directed by your Lordship to request our opinion on the course proper to be followed in regard to the blockade of the coast of Siam by the French naval forces, which had just been proclaimed.

That the circumstances were as follows:—

That the ultimatum presented by the French Government to that of Siam on the 20th instant stated that, in the event of its terms not being accepted within forty-eight hours, the French Minister would leave, and the coast of Siam would forthwith be blockaded.

That the answer of the Siamese Government not being deemed satisfactory, the French Minister announced his intention of leaving on the 26th instant.

That late on the evening of the 24th instant the French Minister at this Court

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made a verbal notification to your Lordship of the intention of the French Government to institute a blockade of the Siamese coast.

That, in reply to inquiries made by Her Majesty's Embassy at Paris as to the intended extent and conditions of the blockade, the answer was given, as recorded in the inclosed despatch from Lord Dufferin, that the earliest information would be conveyed to Her Majesty's Government as soon as those points were settled.

That in the course of the 27th instant a telegram was received from Her Majesty's Ambassador at Paris stating that the blockade would be put into force on the 31st July. That the authority for such statement was not given, but that it was conceived that the intimation was received from the French Government. That on that subject further explanations had been requested.

That late yesterday evening telegrams, of which copies were annexed, were received from Her Majesty's Minister at Bangkok and from the Senior Naval Officer at Singapore, the first reporting that a blockade had been notified by the French Naval Commander, beginning at 5 P.M. on the 26th instant; the second stating that an effective blockade had been declared from 5 P.M. of the 28th instant.

That in both telegrams it was added that the blockade comprised the Siamese coast between Chulai and Lemprabang (? Lem Krabang), and that three days were allowed for neutral vessels to leave the coast.

That the telegram which appeared in the "Times" of the 28th instant stated that the blockade was proclaimed as beginning from 5 o'clock on the 26th instant.

That it was presumed from the several announcements above referred to that the blockade was a regular blockade *jure gentium*, that, as such, it implied a state of war between France and Siam, and could only be accepted by Her Majesty's Government on those conditions.

That it was further believed that the authoritative document for the institution of such a blockade was, according to international practice, the proclamation of the Commander of the blockading force.

That Sir Thomas Sanderson was to request that we would favour your Lordship with our opinion whether Her Majesty's Government could properly, under the circumstances, recognize the blockade as effective, and, if so, from what date, and what notification should be made for the information of British subjects.

We have considered the matter, and, in obedience to your Lordship's commands, have the honour to

Report—

1. That if under a so-called pacific blockade it is proposed by France to treat neutral vessels as liable to capture and condemnation, Her Majesty's Government are justified in intimating to the Government of France that they regard such blockade formally notified as constituting a state of belligerency.

We therefore think the proposed telegram to Lord Dufferin, as settled in conference with the Attorney-General, and initialled by us, is one proper to be communicated to the French Government. It will be well to refer Lord Dufferin to the correspondence in 1884-85 *re* Formosa, and we have done so in the draft herewith.

2. The question of the effectiveness of the blockade, which is one of fact, does not at present arise.

3. If the French Government persist in asserting the right to treat neutral vessels as liable to capture and condemnation, notification of the blockade, and that it must be respected by British nationals, should be made by the Representatives of Her Majesty's Government in Siam, and, if necessary, Lord Dufferin should ask for an extension of time to allow British vessels loading in the blockaded area to clear.

4. The blockade operates from the date fixed by the notification; but it is usual—and neutrals have a right to expect—that a reasonable time shall be afforded after notification in order to clear, and in like manner vessels *bonâ fide* proceeding without notice to the blockaded port ought to be exempt from seizure.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Marquis of Dufferin, No. 316.
" (Telegraphic), No. 72
Captain Jones (Telegraphic), No. 53.
Inclosure in Admiralty, July 27, 1893.
To Marquis of Dufferin (Telegraphic), Nos. 51 and 53.
Marquis of Dufferin (Telegraphic), No. 74.

Annex.

Draft of Telegram to the Marquis of Dufferin.

Foreign Office, July , 1893.

GOVERNOR of Singapore telegraphs that French Consul announces to him expected arrival of French cruizer "Papin." Governor asks for instructions in view of announcement of blockade.

If under so-called pacific blockade it is proposed to treat neutral vessels as liable to capture and condemnation, we cannot fail to consider such blockade with formal notification as constituting a state of belligerency.

In such circumstances it would seem that our duty as neutrals would impose upon us the necessity of placing the customary restrictions on the hospitality to be afforded to French vessels of war visiting British ports, especially those in proximity to the blockaded coast.

See Blue Book, "France No. 1 (1885)."

(Initialled) C. R.
J. R.

No. 36.

The Law Officers of the Crown to the Earl of Rosebery.—(Received December 6.)

My Lord, *Royal Courts of Justice, London, December* 4, 1893.

French blockade of Siam. Validity of Pacific blockades against neutrals.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 12th September last, stating that, with reference to our Report of the 28th July, 1893, relative to the blockade of the Siamese coast which the French Government had decided on instituting, but which was subsequently abandoned on the acceptance by Siam of the French ultimatum, he was directed by your Lordship to transmit to us copies of further correspondence on the subject, ending with a note from the French Minister for Foreign Affairs to Her Majesty's Ambassador at Paris (see Lord Dufferin's despatch No. 342 of the 4th August), in which his Excellency explained and defended the course taken by the French Government, and cited various instances of alleged pacific blockades as supporting the doctrine that such blockades were valid as against neutrals.

That Sir Thomas Sanderson was to inclose a Memorandum on those precedents, drawn up by the Librarian of the Foreign Office, together with several previous Memoranda by the same gentleman on the subject, and a copy of a Blue Book containing the correspondence between Earl Granville and M. Waddington in 1885 on the subject of the French blockade of Formosa.

That Sir Thomas Sanderson was further to inclose a draft of a despatch which your Lordship proposed to address to the Marquis of Dufferin criticizing the precedents quoted by M. Develle, setting forth the views of Her Majesty's Government on the question of pacific blockades, adducing the opinions of various writers in support of that view, and pointing out more especially the objections that would have attached to the blockade of the Siamese coast which had been contemplated by the French Government.

That the question was somewhat complicated by the course taken jointly by the French and English Governments in regard to the blockade of La Plata in 1846, respecting which Sir Thomas Sanderson was to refer us to Mr. W. E. Hall's "Treatise

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on International Law" (p. 371, 5th edition), and to Calvo's "Droit International" (vol. iii, p. 555, § 1859).

That the decisions of the French Courts had been in accordance with the views of their Executive (see Fauchille, "Du Blocus Maritime," p. 43; Calvo, "Droit International," 4th edition, 1888, vol. iii, p. 538, § 1840).

That the statement made in Bluntschli's "Droit International Codifié" (p. 297, § 507), that on the 1st March, 1848, the French Conseil d'État had pronounced against the confiscation of neutral vessels in time of peace, appeared to be erroneous. That the decision given by the Conseil d'État was dated the 25th March, 1848, and was to be found in Pistoye and Duverdy's "Traité des Prises," vol. i, p. 390. That it related to the case of the vessel "Comte-de-Thomar," and that it was to the effect that, as the vessel was not liable to confiscation for breach of blockade, no sufficient notice having been given, the contraband of war on board of her was not liable to seizure, since war had not been declared.

That it was doubtful, therefore, whether the assertion in Earl Granville's note to M. Waddington of the 11th November, 1884, that the contention of the French Government was opposed to the decisions of its Tribunals, was accurate; and that it seemed necessary to base the arguments against the admissibility of a pacific blockade directed against neutral commerce mainly on general considerations, and on the opinions of text writers.

That Sir Thomas Sanderson was to request that we would take the papers into our consideration, and would favour your Lordship with our opinion whether the draft to Lord Dufferin and the collection of quotations from various authorities, which formed an inclosure to it, were correct in point of law, and formed a proper and sufficient reply to M. Develle's note; and whether they could with advantage be modified or supplemented in any, and if so, in what, particulars.

That your Lordship would also be glad to be favoured with any general observations which might occur to us in regard to the question.

We were also honoured with Sir Thomas Sanderson's note of the 21st September inclosing a further despatch from Captain Jones (No. 33 of the 15th August, 1893).

In obedience to your Lordship's commands, we have the honour to

Report—

That we have carefully considered the various papers and the authorities referred to in Paper 1, together with the proposed draft despatch to the Marquis of Dufferin. On p. 2 of the latter we suggest the alterations which there appear in red ink.*

The substitution of the general words "interfere with" for the words "capture and condemn" seems to us desirable because the British position is that British ships cannot in any way be affected by a so-called pacific blockade, and there are other methods (for example, provisional and temporary detention) by which the ships and commerce of third nations might be injured.

The substitution further of "may properly be regarded" for "can only be recognized" also seems to us desirable, as cases may arise in which the third nation may not find it desirable to insist on the existence of a state of belligerency. With these alterations we think the proposed draft despatch is correct in law, and is a proper and sufficient reply to the note of M. Develle.

As to the collection of authorities, we suggest (if it is thought proper to send them) that the citation from Pistoye et Duverdy and from Perels may with advantage be omitted; but we suggest for your Lordship's consideration whether they should be sent at all. In our opinion it is better they should not.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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* *Italic* in print.

List of Papers.

(A.)	Correspondence previously sent. (See list in letter to Law Officers of July 28, 1893.)		
(B.)	Law Officers		July 28, 1893.
(C.)	Colonial Office		July 28, "
	To the Marquis of Dufferin ..	(No. 54. Telegraphic)	July 28, "
	The Marquis of Dufferin	(No. 321)	July 28, "
	Captain Jones	(No. 55. Telegraphic)	July 29, "
	To the Marquis of Dufferin ..	(No. 58. Telegraphic)	July 29, "
	The Marquis of Dufferin	(No. 80. Telegraphic)	July 29, "
	Captain Jones	(No. 56. Telegraphic)	July 30, "
	Colonial Office		July 31, "
	The Marquis of Dufferin	(No. 326)	July 30, "
	Ditto	(No. 86. Telegraphic)	August 1, "
	Ditto	(No. 87. Telegraphic)	August 3, "
	Baron d'Estournelles		August 3, "
	Captain Jones	(No. 62. Telegraphic)	August 4, "
(D.)	The Marquis of Dufferin	(No. 342)	August 4, "
(E.)	Memorandum		August 9, "
(F.)	Memorandum		May 20, 1869.
	Ditto (2)		July 26, 1893.
	Ditto		July 27, "
(G.)	Blue Book "France, No. 1 (1885)." (Parliamentary No. 2947.)		
(H.)	Draft to the Marquis of Dufferin.		
(I.)	List of authorities.		

And (sent subsequently, to supplement above)—

Captain Jones	(No. 33)	August 15, "

Annex 1.

*Draft of Despatch from the Earl of Rosebery to the Marquis of Dufferin.**

(No. .)

My Lord,

Foreign Office, , 1893.

HER Majesty's Government have had under their careful consideration the note from M. Develle, inclosed in your Excellency's despatch No. 342 of the 4th ultimo, with regard to the blockade of the Siamese coast which the French Government had intended to enforce in order to obtain compliance with their demands on Siam.

Your Excellency was informed by the French Government that this blockade would commence on the 31st July. M. Develle states that the notification by the French Admiral that the blockade had begun on the 26th of that month could only be the result of a misapprehension of the orders sent by the Ministry of Marine. I presume that the same observation applies to the subsequent notification issued by the Admiral that the blockade commenced from the 29th; and that any interference with neutral shipping that may have taken place previous to the 31st instant was unauthorized.

M. Develle then goes on to reply to the observation made by your Excellency that the establishment of such a blockade without any declaration of war raises an important question of international law. His Excellency states that although in view of the immediate raising of the blockade the question has no longer any practical interest, yet that such a measure constitutes a method of coercion to which a State has the right to have recourse, without rupture of peace, in order to recall another Power to the observance of its international duties, and he proceeds to cite various instances which, in his opinion, support that doctrine.

The views of Her Majesty's Government on this subject were stated in the correspondence which took place between Earl Granville and M. Waddington in 1884 respecting the French blockade of the Island of Formosa, and they have undergone no modification. Her Majesty's Government do not ~~of course~~ deny the right of a State to resort to a blockade as a means of coercion while refraining from other hostile measures. *This is a measure of reprisal.* But they maintain that if the blockading Power claims ~~to capture and condemn~~ *to interfere with* the ships of third nations ~~for breach of such a blockade,~~ the measure ~~can only be recognized~~ *may properly be regarded* by such third nations as an act of belligerency implying the existence of a state of war.

On examination of the several instances referred to by M. Develle, it will be found that they do not in reality make against this view, but, on the contrary, tend to support it.

The measure to which England, France, and Russia had recourse against Turkey in 1827 was not a blockade, nor was any Proclamation of blockade issued. Instructions were sent to the Admirals of the three Powers to place their squadron in such positions as would intercept all ships having on board troops, arms, ammunition, &c., for the use of the Turkish forces employed against the Greeks. But the Admirals were specially directed to abstain from causing any interruption to the regular commerce of neutrals with any of the ports of Turkey or of Greece, though occupied by the Turks.

Neither, as far as Her Majesty's Government are aware, was any formal blockade of the Tagus notified or instituted by France in 1831. Certain demands of reparation made by France on Portugal having been refused, a French squadron was sent to the Tagus with a more formal renewal of the

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* Not sent.

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demands; the answer being still unsatisfactory, the French squadron resorted to reprisals by the detention of all Portuguese merchant-vessels entering the Tagus, and by seizing two Portuguese ships of war encountered at sea. These vessels were subsequently released, and neutral commerce was not interfered with.

The blockades of the coast of New Granada by England in 1836, of the ports of Mexico by France in 1838, and of Buenos Ayres in 1838, 1840, 1845, and 1848, were undoubtedly blockades without a formal declaration of war. This fact, however, does not in any way prove that those blockades could properly and legally have been enforced against the vessels of other Powers otherwise than as belligerent measures, placing such Powers in the position of neutrals. And it must be borne in mind that a formal declaration of war is by no means necessary to constitute a state of belligerency, which is a question of fact, and must be decided on the evidence of facts. For example, the British blockade of Dahomey in 1876 was instituted after nearly four months' notice had been given, in order to interfere as little as possible with neutral commerce. But it appears to have been a regular belligerent blockade.

That the opinion of a majority of the best writers on international law, including several eminent French authorities, is adverse to the view maintained by the French Government will be shown by the series of quotations which forms an inclosure to this despatch.

As regards the recent practice of Great Britain and other Powers in this matter, I may instance the course taken in 1850 by the British Government to enforce the demands made by it on Greece.

A blockade of the Greek ports was instituted, applying only to Greek vessels, which were prohibited from leaving Greek ports. Many Greek vessels were seized, but the prohibition did not extend to vessels of other Powers.

Similarly, in 1886 certain Greek ports were blockaded by the naval forces of Great Britain, Austria, Germany, and Italy, but only against the ingress and egress of Greek vessels. Moreover, special instructions were sent to the Naval Commanders that even vessels under the Greek flag were not to be detained if any part of the cargo should belong to a subject or citizen of a foreign Power other than Greece or one of the blockading Powers, and should have been shipped before notification of the blockade or under a charter signed before that notification.

These two cases afford instances of what Her Majesty's Government consider to be really "pacific blockades," being in the nature of reprisals directed solely against the commerce and shipping of the offending Power.

But it is scarcely necessary to point out how absolutely the blockade which was contemplated by the French Government, but has happily been unnecessary, would have differed from such a measure.

The Returns of the shipping which entered and cleared from the port of Bangkok in 1892 show a total tonnage of 420,890 tons, of which Siamese shipping counted for only 1,968 tons, or less than one-half per cent., while the British shipping amounted to no less that 356,909 tons, or about 87 per cent. of the whole. The value of the imports and exports carried in British vessels formed respectively 93 and 85 per cent. of the total traffic of the port.

The blockade, therefore, while adopted as a measure for the coercion of Siam, would, in the first instance, have principally affected British commerce.

It is noteworthy that Bangkok and the valley of the Menam are in no way dependent on foreign trade for their supply of food or actual necessaries of life. The staple of the imports consists in cotton goods, hardware, and oil, while there is a yearly export of rice to the value of nearly 1,000,000*l.*, a large portion of which goes to supply the British Colonies of Hong Kong and the Straits Settlements. The sudden interruption of all this trade would no doubt have produced considerable financial disturbance, and it would naturally and necessarily have caused much irritation and resentment in this country and in the Colonies affected by it. But the blockade might have been persisted in for a long time without reducing the Siamese to any such condition of distress as would necessitate the acceptance of conditions to which they were determinedly opposed.

Her Majesty's Government know of no similar instance of a measure instituted under the name of a pacific blockade, but depending for its whole effect on the injury caused to the trade of a third and neutral country. It would have been impossible for them to have recognized it as valid against British shipping except as a belligerent measure implying a state of war, or to have allowed the hospitality of neighbouring British ports to be extended to French vessels of war while it lasted, except in cases of urgency and distress. Any other course would have been tantamount to allowing these ports to be used as a base for hostile operations, directed mainly against British commerce, for the purpose of exercising compulsion on a friendly State. In the interests of the friendly relations between the two countries, which both Governments have at heart, it appears to them to be most fortunate that circumstances allowed of the blockade being abandoned almost at the moment that it was instituted.

Your Excellency will read this despatch to M. Develle, and hand him a copy of it.

I am, &c.

Annex 2.

Pistoye et Duverdy: " Traité des Prises Maritimes," vol. I, p. 377.

Or, pour nous, qui considérons la réalité des choses, qui ne reconnaissons les blocus que lorsqu'ils sont réels et effectifs, la guerre existe lorsqu'un blocus réel et effectif est établi contre une nation. En effet, l'établissement d'un blocus, étant l'emploi de la force par une Puissance contre une autre Puissance, est un acte d'hostilité qui constitue un état de guerre, l'une contre l'autre, la nation bloquante et la nation bloquée. Il arrive souvent qu'une Puissance de premier ordre, lorsqu'elle a à demander une satisfaction d'une Puissance secondaire, se borne à bloquer ses ports sans lui déclarer positivement la guerre. On n'a pas déclaré la guerre, mais on la fait réellement; seulement, comme on est le plus fort on n'emploie pas tous les moyens d'attaque dont on pourrait disposer; on ne fait la guerre que dans la mesure de ses convenances.

Testa: " Droit Public International," pp. 228, 229.

. . . . Nous voulons parler des *blocus pacifiques* établis sans déclaration de guerre préalable et tandis que les relations de paix continuent ostensiblement.

En 1827 l'Angleterre, la France, et la Russie bloquaient les côtes de la Grèce et déterminaient la bataille de Navarin sans déclaration de guerre.

Plus tard, en 1838, les forces navales Françaises et Anglaises établissaient un blocus pacifique qui se prolongea pendant plus de dix années consécutives devant les ports de la République Argentine en se déclarant toujours en paix avec cet État. La même année la France agissait de même à l'égard des ports du Mexique.

Ce genre de blocus, établi à titre de représailles ou dans le but d'obtenir l'acquiescement à des exigences formulées, ne peut être regardé comme légal; il renferme une anomalie, il constitue un véritable acte de guerre incompatible avec l'état de paix. Il est un véritable attentat contre l'indépendance des nations. . . . . Il n'y a donc qu'une seule espèce de blocus. . . . .

Hautefeuille: " Droits et Devoirs des Nations Neutres," vol. II, pp. 276, 277.

Si, considéré sous cet aspect, le blocus ne peut exister sans la guerre, il le peut encore moins si on l'envisage sous le point de vue des droits et devoirs des peuples pacifiques. La navigation et le commerce sont absolument libres pour tous les peuples du monde. Tous ont le droit de faire, en temps de paix, tel trafic qui leur convient avec tous les peuples de l'univers; la seule condition est d'obtenir le consentement de celui avec lequel l'échange doit avoir lieu. Une tierce nation ne peut jamais, sans se rendre coupable d'un grave attentat, mettre obstacle au commerce de deux peuples. Dans le système de *blocus pacifique*, le bloquant est en paix avec le bloqué et avec le navigateur qui se présente pour entrer dans le port; ce dernier veut faire le commerce, le second y consent; comment le troisième peut-il s'y opposer? De quel droit peut-il imposer sa volonté aux deux autres? Son devoir impérieux est de respecter d'une manière absolue l'indépendance de tous les peuples avec lesquels il est en paix; il n'a pas, il ne peut avoir le droit de dicter des lois aux étrangers qui ne sont pas soumis à sa juridiction. D'un autre côté, le droit des deux autres est d'agir avec une pleine indépendance, sans s'inquiéter des volontés du troisième.

Cette opposition au commerce que deux nations libres veulent faire entre elles est donc une violation des devoirs de celui qui l'élève, une violation des droits de celles contre lesquelles elle est élevée. Cette conclusion est incontestable; elle dérive de tous les principes du droit international, soit primitif, soit secondaire.

Et ce que je viens de dire est vrai d'une simple opposition, d'un obstacle mis à la liberté commerciale des peuples, en temps de paix; il sera bien plus vrai encore, lorsque, comme en matière de blocus, il s'agit d'une opposition avec sanction pénale, avec saisie, arrestation et condamnation comme bonne prise, des navires qui traversent pacifiquement le territoire maritime d'un peuple avec lequel leur Souverain est en paix, et qui consent à les recevoir. En temps de paix il ne peut y avoir lieu à saisie, à arrestation, à condamnation de navires étrangers, si ce n'est pour fait de contrebande commerciale.

Negrin: " Tratado Elemental de Derecho Internacional," Cap. XII, p. 209.

. . . . Los bloqueos llamados *pacificos* son absolutamente inadmisibles. En efecto, en tésis general, el comercio y la navegacion son libres. Esta libertad absoluta en tiempo de paz no puede ser coartada sino al surgir la guerra, cuyo nuevo estado divide á las naciones en neutrales y beligerantes, concediendo á unas y otras ciertos derechos y deberes correlativos: á las Potencias en guerra el derecho de bloqueo, á las naciones neutras el deber de respetarlo. Se no lo hacen, se convierten en enemigas, y pueden ser tratadas como tales; pero es indispensable para esto que exista préviamente la causa que les impose la obligacion, en una palabra, la guerra solemnemente declarada y notificada por la via diplomática.

F. de Martens: " Traité de Droit International," vol. III, p. 165.

Les navires ne doivent être en aucun cas séquestrés, ni encore moins confisqués, pour avoir violé un blocus établi en temps de paix. Seuls les navires de l'Etat bloqué sont susceptibles d'être capturés. . . . .

Le blocus pacifique n'est admissible qu'autant que ses effets n'atteignent que les navires de l'État bloqué.

Geffcken: " Le Blocus Pacifique" (" Revue de Droit International," vol. 19, 1887, *pp.* 378, 380).

Maintenant, le blocus pacifique, peut-il être considéré comme un acte de représailles? . . . . D'abord il semble évident que fermer un port d'un État à tout commerce est un acte hostile d'une tout autre portée que de mettre un embargo sur quelques bâtiments ou un séquestre sur des terres ou des capitaux. . . . .

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L'état de guerre ne donne pas seulement des droits, mais impose aussi des devoirs et des responsabilités. Le droit des gens accorde certains droits aux belligérants, auxquels les neutres doivent se soumettre. . . . . Mais pour se prévaloir de ces avantages il faut accepter les devoirs, les charges, la responsabilité qu'entraîne l'état de guerre; on ne peut pas séparer l'un de l'autre, et exercer les droits sans accepter les charges. . . . .

Si l'on a des raisons de ne pas déclarer la guerre à un État dont on se croit lésé, il n'y a pas de neutres, et si on veut simplement user de représailles on n'a aucun droit d'imposer à des États tiers une loi que le belligérant seul a le droit d'appliquer. La distinction que l'on a établie et généralement observée, qu'avec le blocus pacifique on ne saisit pas les bâtiments étrangers, mais qu'on les empêche seulement d'entrer ou de sortir, n'y fait rien; le seul acte d'interdiction est un préjudice pour leur commerce auquel ils ne sont nullement tenus de se soumettre.

Calvo: "Le Droit International, &c.," vol. III, pp. 554, 555, 557.

Tout d'abord, le blocus pacifique nous semble un acte incontestablement agressif, hostile, et portant gravement atteinte aux droits imprescriptibles de tout État indépendant; en un mot, un acte de guerre. . . . .

Au reste, conformément à la pratique de 1886, le blocus ne s'exercerait que sur les navires de la nation bloquée, pleine liberté étant laissée aux navires des neutres. Une autre pratique qu'a établi ce même blocus et que nous admettons comme règle, c'est que les navires de la nation bloquée ne sont plus confisqués ou saisis, mais simplement détenus jusqu'à la solution du conflit.

Bluntschli: "Le Droit International Codifié," § 507, *p.* 296.

Les États neutres ne reconnaissent pas la validité des prises, lorsque le blocus maritime n'est pas en même temps blocus de guerre; ils ont dans ce cas le droit d'exiger pour les navires neutres la libre entrée et la libre sortie.

1. Le blocus maritime qui n'est pas en même temps blocus de guerre apporterait, si on lui accordait une portée universelle, de nombreuses entraves au commerce des neutres avec la côte bloquée. Les États neutres ont donc pleinement le droit d'exiger que ces blocus pacifiques aient une portée aussi restreinte que possible. Les blocus sont un moyen coercitif employé contre l'État qui s'est rendu coupable d'un acte injuste; mais on n'a pas le droit d'user de contrainte envers les neutres. Les principes plus sévères admis en droit international envers les neutres, sur les blocus et les prises maritimes, ne se justifient qu'en temps de guerre; en temps de paix ils ne sauraient être admis Les villes Hanséatiques réclamèrent en 1838 contre le blocus du Mexique par les Français, et le 1er Mars, 1848, le Conseil d'État Français se prononça contre la confiscation des navires neutres en temps de paix.

Fiore: "Trattado di Diritto Internazionale," II, 499.

Laonde le conseguenze del blocco pacifico dovrebbero essere limitate tra i due Stati in conflitto e non dovrebbero riflettere gli Stati neutrali, i quali potranno godere tutti i diritti che si esercitano durante la pace senza alcuna limitazione.

W. E. Hall: "A Treatise on International Law," 3rd Edition, pp. 370-272.

Between blockades so different in their incidents there is little in common. With regard to those under which vessels of third Powers are condemned, or even sequestrated, the question arises whether a State in time of peace can endeavour to obtain redress from a second State for actual or supposed injuries by means which inflict loss and inconvenience upon other countries. In England, at any rate, it was soon thought not. In 1846 Lord Palmerston said, in writing to Lord Normanby, the Ambassador at Paris, with reference to the blockade of La Plata:—

"The real truth is, though we had better keep the fact to ourselves, that the French and English blockade of the Plata has been from first to last illegal. Peel and Aberdeen have always declared that we have not been at war with Rosas: but blockade is a belligerent right, and, unless you are at war with a State, you have no right to prevent ships of other States from communicating with the ports of that State; nay, you cannot prevent your own merchant-ships from doing so. I think it important, therefore, in order to legalize retrospectively the operations of the blockade, to close the matter by a formal Convention of Peace with the two Powers and Rosas."

To this language there is nothing to add, except an expression of surprise that the subject could ever have presented itself to any mind in a different light. No State can expect another to submit to annoyance, still less to loss, for its mere convenience.

It is only under the supreme necessities of war, when the gain or loss of belligerent States is wholly out of proportion to the loss inflicted upon neutral individuals, that other States can be reasonably asked to forego their right of intercourse with the enemy. If a country itself professes that its quarrel is not serious or dangerous enough to make recourse to hostilities necessary, its needs cannot be so urgent as to justify a demand for privileges conceded only upon the ground of necessity and danger.

The practice, however, assumes a very different aspect when it is so conducted as to be harmless to the interests of third Powers. It is a means of constraint much milder than actual war, and, therefore, if sufficient for its purpose, it is preferable in itself. It is true that its very mildness may tempt strong Powers to employ it against weak countries on occasions when, if debarred from its use, they would not resort to hostilities; but it is not to be forgotten that weak countries sometimes presume upon their weakness, and that the possibility of taking measures against them less severe than war may be as much to their advantage as to that of the injured Power.

Westlake. (*"Revue de Droit International," &c.,* 1875, *p.* 611.)

Point de belligérants, point de neutres, et puisqu'il n'y a que les neutres que les blocus touchent il n'y a personne qui ait à respecter un blocus pacifique. On peut même ajouter que, sans guerre, il n'y saurait y avoir de conseil des prises. J'irais donc jusqu'à dire que, si un vaisseau appartenant même à un national de l'État contre lequel le blocus est dirigé était adjugé aux captures par un conseil des prises de l'État bloquant, les Tribunaux d'un État tiers ne devraient pas reconnaître ce procédé comme ayant opéré un transfert régulier de propriété.

Fauchille: "Du Blocus Maritime," 1882, *p.* 52.

Ce que nous venons de dire des navires de la nation bloquée est vrai à plus forte raison pour les bâtiments des autres Puissances. Pendant la paix, la navigation et le commerce sont absolument libres pour tous les peuples du monde, et une nation souveraine peut communiquer avec une autre sans avoir à demander aucune autorisation à une *tierce* nation; les nations sont indépendantes. Cette liberté n'est restreinte que quand une guerre éclate; alors, les devoirs spéciaux naissent à l'égard des États non engagés dans les hostilités: le caractère de neutre leur impose certaines obligations spéciales. Ces États ne doivent pas prendre part à la guerre, et dès lors ils doivent cesser toutes relations avec les ports bloqués. A l'égard des nations neutres le blocus a en effet son fondement dans les devoirs de la neutralité. C'est assez dire que, suivant nous, le blocus pacifique ne peut pas obliger les peuples, que d'ordinaire on appelle neutres: la neutralité suppose essentiellement l'état de guerre.

Comment du reste parler de confisquer ou de séquestrer en temps de paix des navires étrangers arrêtés en pleine mer ou sur un territoire étranger? Pour légitimer une séquestration ou une confiscation ne faut-il pas une décision d'un tribunal des prises? or, sans guerre il ne saurait y avoir de *conseils de prises.*

Wharton: "Digest of the International Law of the United States," 1886, *vol.* 3, *p.* 408.

After quoting instances of pacific blockades, he says:—

"Yet, notwithstanding these precedents, the weight of authority is that while as a war measure a blockade, when effectual, will be internationally respected, this will not be the case with a blockade instituted as part of a system of pacific pressure."

Perels: "Rapport sur le Droit de Blocus en Temps de Paix" (Annuaire de l'Institut de Droit International, 9e Année, 1887-88, *p.* 285).

Il nous reste à examiner et à fixer les limites des droits de la Puissance bloquante envers les navires appartenant à des nations tierces, qui ne respectent pas cette mesure. Il va sans dire que la résistance violente justifie l'emploi de la force pour vaincre la résistance. Mais la question la plus sérieuse est celle-ci: Les navires qui simplement entreprennent de rompre le blocus par la force, soit pour entrer, soit pour sortir, peuvent-ils être non seulement arrêtés et repoussés, mais même mis sous séquestre ou confisqués? Selon nous, une telle saisie et confiscation de navires des sujets d'États tiers serait illicite. Car si nous réclamons pour chaque État la faculté d'exécuter une mesure de coercition légitime envers un État adversaire, indépendamment de préjudices quelconques portés aux intérêts privés de sujets d'autres États, les limites juridiques d'une telle action sont, d'autre part, prescrites par son but même. La confiscation ou la séquestration de navires dans de telles conditions dépasserait le but; mais dans certaines circonstances, une détention provisoire peut être regardée comme licite.

Déclaration votée par l'Institut concernant le Blocus en dehors de l'état de Guerre.

L'établissement d'un blocus en dehors de l'état de guerre ne doit être considéré comme permis par le droit des gens que sous les conditions suivantes:—

1. Les navires de pavillon étranger peuvent entrer librement malgré le blocus;
2. Le blocus pacifique doit être déclaré et notifié officiellement, et maintenu par une force suffisante;
3. Les navires de la Puissance bloquée qui ne respectent pas un pareil blocus peuvent être séquestrés. Le blocus ayant cessé, ils doivent être restitués avec leurs cargaisons à leurs propriétaires, mais sans dédommagement à aucun titre. ("Annuaire de l'Institut de Droit International, Neuvième Année," 1887-88, pp. 300-301.)

Among the twenty-seven members of the Institute present at the adoption of the above Declaration were the following: Von Bar, Brusen, Von Bulmerincq, Lehr, De Martens, Von Neumann Rivière, and Lyon Caen.

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No. 37.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received December* 13.)

Royal Courts of Justice, December 12, 1893.

My Lord,

French blockade of Siam. H. M. S. "Linnet," at Bangkok. Rights of neutral ships of war in blockaded ports.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 13th September, stating, with reference to his previous letter of the 12th September relative to the blockade of the coast of Siam which the French Government had at one time intended to establish, that he was directed by your Lordship to transmit to us copies of correspondence which passed at the time relative to the question whether Her Majesty's ship "Linnet" should remain at Bangkok during the blockade for the protection of the lives and property of British and other foreign subjects. That Sir Thomas Sanderson was also to forward a letter from the Admiralty, inclosing a Report from the Commander of Her Majesty's ship "Pallas" as to the terms in which the blockade was notified by the French Admiral.

That it would be observed that the notification stated distinctly that the times of departure specified applied to vessels of war, as well as to merchant-vessels.

That Sir Thomas Sanderson was further to inclose a letter from the Admiralty, forwarding a Memorandum as to the right of the vessels of war of a neutral Power to visit a blockaded port, and a copy of a letter which had been addressed to the Admiralty in reply, forwarding a further Memorandum which had been drawn up in the Foreign Office on the same subject, and that Sir Thomas Sanderson was to request that we would favour your Lordship with our opinion whether the conclusions which were stated at the end of this latter Memorandum were correct, and with any additional observations which we might have to offer on the question, more especially as regards any distinction that might properly be drawn between the right of the blockading Powers to insist on the departure of neutral vessels of war from blockaded ports, and the right to prevent the entry of such vessels through the blockading lines.

In obedience to your Lordship's commands we have taken the matter into our consideration, and have the honour to

Report—

That we think Mr. Oakes' summary does not put the right of the belligerent high enough. We think that vessels of war come within the same rules as vessels of commerce, with this difference, that, as regards the former, they have, by comity or courtesy, been excepted from the strict operation of blockade; but we see no reason to doubt that the belligerent right exists to include ships of war, except possibly in the case suggested by Lord Stowell of communication with the Minister of the neutral Power, where no other means of communication exist.

It is obvious that cases must be frequent (and that of Bangkok probably is one of them) where the presence of, and communication from, a ship of war of a neutral, but still friendly, Power might have the effect of delaying that submission of the blockaded Power which it was the object of the blockade to accomplish.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Marquis of Dufferin	(No. 64.	Telegraphic)	July	23,	1893.
To Marquis of Dufferin		(No. 298 A)	July	25,	„
Captain Jones	(No. 58.	Telegraphic)	July	30,	„
To Captain Jones	(No. 38.	Telegraphic)	July	30,	„
Admiralty			July	30 (2)	„
Marquis of Dufferin	(No. 83.	Telegraphic)	July	31,	„
Admiralty			August	10,	
Memorandum			August	28,	„
Admiralty			September	8,	„
To Admiralty			September	13,	„

SPAIN.

No. 38.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received April* 7.)

Royal Courts of Justice, April 5, 1893.

My Lord,

Jurisdiction over foreign merchant-vessels in Brit. waters (Hong Kong).

WE were honoured with your Lordship's commands (relative to a question of jurisdiction over a foreign merchant-ship in British waters) signified in Sir Thomas Sanderson's letter of the 18th March last, stating:

That a Spanish subject named Fernel had absconded from the Spanish Colony of Manila, having been accused of the embezzlement there of 12,000 dollars. That on the request of the Spanish Consul at Hong Kong, a provisional warrant had been issued for Fernel's arrest in the event of his arriving at Hong Kong, with the view to his extradition.

Arrest of Fernel, a Spanish subject fugitive from justice.

That Fernel had arrived in the harbour of Hong Kong on board a Spanish vessel, the "Don Juan," and that whilst the British police were searching that vessel, an officer and boat's crew from the Spanish man-of-war "Reina Christina," which happened to be in port, had boarded the "Don Juan," seized the man Fernel, and had him taken on board the Spanish man-of-war, refusing to give him up to the police.

That the Governor of Hong Kong had requested that the man should be handed over to the territorial authorities, and that this request appeared to have been eventually complied with, after some correspondence between the Governor and the Spanish Consul, who maintained that the "Don Juan" retained, in regard to this circumstance, immunity from the jurisdiction of such territorial authorities.

That Fernel was subsequently brought before the Magistrate at Hong Kong upon extradition process in the ordinary manner, and after having been committed to gaol for the statutory period of fifteen days, which must elapse before a surrender by way of extradition, he had doubtless since been handed over to the Spanish Government, although that fact was not actually stated in the correspondence.

That this particular incident had thus been closed satisfactorily, but that the Governor of Hong Kong had suggested that the matter should be represented diplomatically to the Spanish Government with the view to the prevention of similar incidents in the future.

That no case involving considerations of an exactly analogous nature had, so far as was known to the Foreign Office or to the Admiralty, to whom special reference had been made, yet arisen.

T. W. Hoit's case *vide* L.O.R., 1891 (Conf. 6207), pp. 113 and 121.

That in 1891, however, a case, certain aspects of which it might be useful to consider in connection with the present inquiry, had arisen. That on that occasion the United States' Government had claimed the extradition of T. W. Hoit, a fugitive from the justice of the United States, who was on board of a German mail-steamer within British territorial waters off Southampton, and our attention was called to the reports given upon this case by our predecessors and dated the 26th June and the 7th November, 1891, respectively, from the latter of which it appeared that Sir R. Webster had differed in opinion upon the subject from Sir Edward Clarke, who had considered that an extradition warrant could only be executed upon a foreign vessel in British waters when such vessel belonged to the Power claiming extradition, and the fugitive was either a British subject or a subject of such Power.

That it appeared to your Lordship that all questions regarding the apprehension of persons in British territorial waters must primarily be governed purely by considerations of English municipal law, and that in such case the question whether a particular person was or was not wrongfully arrested was a question which would have to be decided (either on *habeas corpus* or otherwise) by a British Court administering English or British colonial law, according to the circumstances of the particular case.

That it would therefore seem first necessary to determine what was the municipal law upon the point.

But that, assuming that the municipal law would entirely negative the right of any foreign authority to execute arrests in British waters, even upon the persons of their own nationals on board of merchant-vessels of their own nationality, it was still advisable from the point of view of diplomatic controversy to consider how far international law and practice might afford arguments in support of any such usage.

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That on this point Sir Thomas Sanderson was to refer us to a passage in Mr. Hall's "International Law" which appeared concisely to summarize the extent and character of modern doctrine on this question, and which would be found in the third (1890) edition of that learned author's work at p. 198 *et seq*.

That Mr. Hall, after pointing out that French practice, and also to a certain extent French municipal law, recognized the immunity of merchant-vessels lying in the ports of a foreign State from the local jurisdiction more absolutely and widely than does the law and practice probably of any other State, added that outside France little disposition had been shown to put forward as representing actual law the views which there obtain, and further stated that it was unquestionable that these views "are at present destitute of international authority since they are not supported by the long continuance and generality of usage, which in the absence of consent are needed to give legal value to a practice derogating from so fundamental a principle as is that of sovereignty."

That it appeared to your Lordship, as then advised, that the release of Fernel by the Spanish authorities, in consequence of the representations of the Governor of Hong Kong, sufficiently justified the assumption that any claim to arrest him as of right while on a Spanish merchant-vessel in British territorial waters might, if it were ever intended seriously to be raised, now be regarded as abandoned and withdrawn by the Spanish Government, and that under those circumstances any formal representation of the case to that Government might be unnecessary if not impolitic.

That your Lordship would, however, before making any further communication to the Colonial Office, be glad to be informed—

(1.) Whether we concurred in this view, or whether we considered it necessary or desirable that any, and if so, what, representation should be addressed to the Spanish Government in connection with the arrest, release, and subsequent extradition of Fernel under the circumstances to which our attention had been called.

(2.) Whether, in our opinion, the action of the Governor of Hong Kong in the matter might be approved.

(3.) Whether we agreed generally with the views indicated in Sir Thomas Sanderson's letter as to the bearing of municipal and international law respectively upon the main question under discussion, or, if not, in what respects, and to what extent we differed from them.

(4.) Whether we adopted in its integrity the opinion given with respect to the case of T. W. Hoit by the late Attorney-General on the 7th November, 1891, or whether we only concurred in that opinion subject to the limitation added by the late Solicitor-General, which would confine its application to cases in which it was sought to execute an extradition warrant "upon a foreign vessel in British waters, when such vessel belongs to the Power claiming extradition and the fugitive is either a British subject, or a subject of such Power."

That Sir Thomas Sanderson was to add that your Lordship would be glad at the same time to be favoured with such other observations upon the subject generally as we might think it desirable to offer.

In obedience to your Lordship's commands we have taken the matter into consideration, and have the honour to

Report—

1. That we concur in the view that under the circumstances no formal representation to the Spanish Government is necessary.
2. That in our opinion the action of the Governor at Hong Kong may be approved.
3. That we agree generally with the views indicated in Sir Thomas H. Sanderson's letter of the 18th March, 1893.
4. That we adopt in its integrity the opinion given with respect to the case of T. W. Hoit by the late Attorney-General on the 7th November, 1891.

Whatever conclusions may ultimately be arrived at as to the concession to foreign Governments of jurisdiction over their own nationals in private ships of their own nationality lying in British ports, we do not think that any rule or principle of international law requires Her Majesty's Government to permit the exercise of such jurisdiction by force within British waters.

We have, &c.,
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers

(A.)	Colonial Office		February 21, 1893.
(B.)	Law Officers' Report	(Conf. 6207, p. 113)	June 26, 1891.
(C.)	Ditto	(„ „ p. 121)	November 7, 1891.

No. 39.

The Law Officers of the Crown to the Earl of Rosebery.—(Received April 25.)

Royal Courts of Justice, April 24, 1893.

My Lord,

Mr. D. N. Brims' claim on Spanish Government *in re* construction of dry dock at Bilbao.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us, for our consideration, the papers noted in the accompanying list respecting a claim advanced against the Spanish Government by Mr. D. N. Brims, contractor, of Newcastle-on-Tyne, in connection with a dry dock which he constructed at Bilbao under contract with the firm of Messrs. Martinez, Rivas, and Palmer.

That on the conversion of the above firm into a Limited Company, which occurred about January 1891, Mr. Brims declined to recognize the change, and maintained his position as a contractor with Messrs. Martinez, Rivas, and Palmer.

That during the year 1891, Mr. Brims found himself compelled to accept in payment bills at short date of the Limited Company; but that he gave the receipt as from Messrs. Martinez, Rivas, and Palmer. That some of those bills, however, which fell due in June and July 1892, were dishonoured, as well as a bill due in April of that year, which Mr. Brims had allowed to be renewed.

That the Limited Company having fallen into financial difficulties, the works were closed in April 1892, and the Spanish Government took possession of them.

That Mr. Brims thereupon applied to Messrs. Martinez, Rivas, and Palmer for instructions, but that they declined to give him any.

That he then took legal advice in England as to what he should do, and that, in conformity with that advice, he decided to finish the construction of the dry dock.

That the Spanish Government raised no difficulties to his pursuing that course, and that the work was accordingly finished by the month of June 1892. That as soon as it was completed, the Spanish Government took forcible possession of it, and, in fact, made use of it at once for one of their war vessels.

That Mr. Brims thereupon protested formally against the action of the Spanish Government, and received in reply a letter from General Cervera (the officer placed in charge of the dockyard), pointing out that the dry dock formed part of the premises of the dockyard, that the whole dockyard was hypothecated to the Spanish Government, and that, therefore, Mr. Brims' claim to hold the dry dock until his bills for the construction of the same had been met was one which could not be recognized.

That a Royal Order had, however, been signed, by which the Spanish Government authorized the payment to Mr. Brims of the amount due to him for the work he carried out since the date on which the Spanish Government took possession of the dockyard, but requiring first that Mr. Brims should produce a certificate signed by the proper authorities that the work had been well executed.

That as Mr. Brims had been unable yet to obtain that necessary certificate, the Spanish Government had, perhaps not altogether unreasonably under the circumstances, objected to pay him the amount he claimed in respect of his work, viz., 3,906*l.* 14*s.* 9*d.*

That that portion of the claim having thus apparently been admitted in principle by the Spanish Government, it was only upon the second portion of it that any question of law arose, *i.e.*, whether Mr. Brims had a valid claim against the Spanish Government on account of the work done by him for the firm of Messrs. Martinez, Rivas, and Palmer and their successors, the Limited Company, previous to the seizure of the dry dock.

That it appeared from the opinion of the Legal Adviser to Her Majesty's Embassy at Madrid (which would be found in the inclosure accompanying Sir H. D. Wolff's despatch No. 69), that, according to Spanish law, Mr. Brims has only a claim, with the other creditors, on the assets of the bankrupt Limited Company, whenever those assets have been realized by the liquidators.

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That your Lordship was inclined to think that the rights of Mr. Brims in that regard were determinable by the municipal law of Spain rather than upon considerations of international law, and that you were disposed to accept the opinion of the Legal Adviser to Her Majesty's Embassy upon that point.

That a draft of a letter which it was proposed to address to Mr. Brims had accordingly been prepared, but that, before dispatching it, your Lordship desired to submit it to us for our concurrence, or for such additions or modifications as we might think desirable in the circumstances.

That Sir Thomas Sanderson was, therefore, to request that we would take the inclosed draft, together with the other papers, into our consideration, and that we would favour your Lordship with our opinion upon the terms of the draft in question, and with any general observations which we might have to offer on the case.

We have taken the papers into our consideration, and, in obedience to your Lordships commands, have the honour to

Report—

That Mr. Brims' claim must depend entirely upon the contract entered into with him, the terms of which are not before us, but, in our opinion, the municipal law of Spain must govern his rights, if any, as against the dry dock, and we see no ground on which an appeal can be made to international law.

With reference to the money expended since possession was taken by the Spanish Government, the contract ought to provide for the giving of the necessary certificate.

We observe that Mr. Brims has obtained certificates from an engineer, and if this engineer is the person who, according to the contract, ought to sign certificates, the fact should be brought before the Spanish Government.

As to the money expended by Mr. Brims before the intervention of the Spanish Government, it is, we think, clear that nothing in Mr. Brims' statement leads to the conclusion that the Spanish Government are legally or morally responsible. If such responsibility exists, it must be on some ground not mentioned by Mr. Brims.

We see no reason to question the accuracy of the answers of the Legal Adviser to Her Majesty's Embassy at Madrid to the questions put to him, but we are by no means satisfied that the Embassy was in possession of all material facts, and we think, therefore, that it will be better to abstain from any expression of opinion as to the position of the Limited Company towards the Government. We have, therefore, modified the proposed letter to Mr. Brims, and, as altered, we approve of it.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

1. Mr. Brims	..	..	January 25, 1893.
2. To Sir H. D. Wolff	..	(No. 17)	„ 31, „
3. Sir H. D. Wolff	..	(No. 46)	February 7, „
4. Mr. Brims	..	..	„ 18, „
5. To Sir H. D. Wolff	..	(No. 33)	„ 22, ,
6. Mr. Brims	..	..	„ 23, ,
7. Sir H. D. Wolff	..	(No. 69)	March 10, „
8. To Mr. Brims	..	..	April ,

Annex.

Draft of Letter to Mr. D. N. Brims.

Sir, *Foreign Office, April* , 1893.

AS you have already been informed, the Earl of Rosebery referred to Her Majesty's Ambassador at Madrid your letter of the 25th January last, together with the papers which accompanied your subsequent letters of the 18th and 23rd February, and I am directed by his Lordship to inform you that a Report has now been received from Sir H. D. Wolff upon the subject of your claims against the Spanish Government.

These claims may conveniently be divided into two parts: the first for payment of the sum of 3,906*l.* 14*s.* 9*d.* in respect of the work carried out by you on the dry dock since the date on which the Spanish Government took possession of the dockyard; and the second for the work done by you for the firm of Messrs. Martinez, Rivas, and Palmer, and their successors, the Limited Company, previous to that seizure.

It is gathered that the first head of claim is, in principle, fully recognized by the Spanish Government, as a Royal Order appears to have been passed, authorizing the payment to you of the amount in question on your producing a *proper* certificate ~~duly signed by the proper authorities that the work was well executed.~~

As the only impediment to a satisfactory settlement of this portion of your claim seems to be the delay in the production of the necessary certificate, Sir H. D. Wolff has been instructed to speak to the Spanish Minister of Marine on the matter, and to endeavour to ascertain from his Excellency, whether it would not be possible to find some solution agreeable to the Spanish Government which would overcome this technical difficulty.

It would be important if you could show that Mr. Thompson, the engineer who appears to have signed a certificate for the amount claimed, was the proper person to sign such certificate under your contract.

With regard to the second head, Her Majesty's Government are advised that, according to Spanish Law, ~~parties to whom the Limited Company owed money for work done for them, or for other reasons, cannot sue the foreclosing mortgagees~~ (*i.e.*, ~~the Spanish Government~~) ~~for such sums, and hold them responsible for payment of the same, but that they become merely creditors of a bankrupt Society, with no claim beyond that to a "pro ratâ" division of the assets of the same. But no individual creditor can seize on any particular portion of the assets of the said bankrupt Society as a guarantee for the payment of his claim in full, to the prejudice of the interests of the other creditors.~~

~~Assuming, therefore, that the foreclosing mortgagees~~ (*i.e.*, ~~the Spanish Government~~) ~~exceeded their rights in seizing the dockyard, the only persons who can bring an action for damages against them would appear to be the Liquidators of the said Society, who, when all the assets are realized, will consider the claim of each creditor with a view to the payment to him of his proper share.~~ *there is nothing in the facts which you have brought to the notice of Her Majesty's Government to entitle you to any claim against the Spanish Government, or to any charge upon the dry dock taken possession of by them under their mortgage.*

No. 40.

The Law Officers of the Crown to the Earl of Rosebery.—(Received July 15.)

My Lord, *Royal Courts of Justice, July 14, 1893.*

As to obligation of Consul at Malaga to disclose confidential communications with Mr. A. Scott to Spanish Tribunals.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 20th ultimo, stating that he was directed to transmit to us papers relating to an inquiry made by Her Majesty's Consul at Malaga as to his obligation to disclose to a local Judge certain confidential communications which have passed between himself and a British subject named Mr. Adam Scott in connection with a case which is now before the Spanish Tribunals.

That so far as could be gathered from the archives of the Foreign Office, there was no precedent precisely in point with regard to the question, which appeared to be one for decision according to the general principles of the doctrine of privilege.

That it was clear that no privilege or immunity such as was enjoyed by a Diplomatic Representative attached to the Consul himself in his official capacity; but that your Lordship was disposed to think that immunity from disclosure could properly be claimed for communications of the character in question, on the ground that they were privileged communications made to the Consul by one of his nationals, who was seeking his advice in a confidential capacity, and that, in order to prevent delay, your Lordship had so instructed Her Majesty's Consul by telegraph.

But that as the question was an important one, your Lordship would be glad to be favoured with our opinion whether the above view of the case should be maintained, and as to what formal instructions, if any, should be issued to Mr. Consul Finn for his guidance in the matter.

That Sir Philip Currie was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion on the questions submitted to us, and with any general observations which we might have to offer.

We have taken the papers into our consideration, and in obedience to your Lordship's commands have the honour to

Report—

That the question arising on this reference is one of importance and novelty. A material part of the duty imposed upon Consuls is to advise their nationals with

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reference to litigation which may arise in the country where the Consul exercises his functions.

This is known to the Government of that country, and they give the Consul his exequatur for the purpose of enabling him to perform that among other duties.

It is a principle of international law that Consuls should not be interfered with in such a way as to disable them from performing their duties. We are of opinion (though the question does not appear anywhere to have been raised), that to compel a Consul to disclose communications made to him confidentially for the purpose of obtaining his advice would be such an interference as to disable him from advising with safety, and that in the event of the Spanish Courts proceeding to compel such a disclosure Her Majesty's Government would have good ground for making a representation to the Spanish Government with a view to obtain protection for our Consuls in Spain in this respect.

The question of the privilege of the client is a totally different one. In England it is confined to the case of a professional legal adviser, but that is a question of municipal and not of international law, and the law of Spain must decide whether the client has a right to claim as his privilege that the Consul shall not make a disclosure of confidential communications made to him.

To avoid misconception we ought to say that it would only be the actual communications (whether oral or in writing), disclosure of which ought to be restricted.

Documents deposited with the Consul would *not*, simply by the fact of being deposited with him, be saved from production.

We are of opinion that the Consul should decline to make a disclosure of confidential communications, and if the Spanish Court is disposed to make an order for disclosure Her Majesty's Government may fairly represent to the Spanish Government that such disclosure ought not to be insisted upon upon the grounds which we have indicated, and which, we need hardly say, equally apply to Spanish Consuls.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Mr. Gosselin..	(No. 47. Telegraphic)	July 19, 1867.
Law Officers	(Confidential No. 1745, p. 47)	August 28, 1875.
Ditto	(Confidential No. 4370, p. 37)	January 3, 1877.
Ditto	(Confidential No. 4216, p. 19)	June 22, 1881.
Ditto	(Confidential No. 4637, p. 36)	June 4, 1884.
Ditto	(Confidential No. 5121, p. 40)	
To Consul Finn	(No. . Telegraphic)	June 19, 1893

TURKEY.

No. 41.

The Law Officers of the Crown to the Earl of Rosebery.—(Received January 19.)

Royal Courts of Justice, January 17, 1893.

My Lord,

Brit. s.s. "Euxine" prevented from trading with Bartin by Turkish authorities. Claim of owners for compensation.

WE were honoured with your Lordship's commands signified in Sir Edward Grey's letter of the 5th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the case of the British steamer "Euxine."

That the facts of the case would be found briefly stated in the Report of the 5th August last from our predecessors in office. That it would be perceived that the cardinal point upon which the ultimate decision in the case must rest was, whether Bartin was a sea-port or an inland port.

That there did not appear to be any well ascertained principles of law, nor were there, so far as was known, judicial decisions or dicta governing the question of what was a sea-port, and what was an inland port; nor had any fresh fact or evidence on that point, beyond that contained in Messrs. Robinson and Wilkin's letter of the 30th November, been discovered since the date of the above-mentioned Report from our predecessors, with regard to the geographical position of Bartin, which would assist in arriving at an absolutely definite conclusion as to whether that port, in particular, must be classed as a sea-port or as an inland port.

That it had, however, been represented to your Lordship, on behalf of the owners of the "Euxine," that to whatever extent the Ottoman authorities might have been justified in strict law and on purely technical grounds in preventing the "Euxine" from running to Bartin, yet that the case was one, not only of considerable practical hardship to the owners, but one in which they were, from an ethical standpoint, at any rate, entitled to considerable sympathy.

That it seemed clear that their vessel was specially designed and built for the purpose of running to Bartin, and that she had for some time been permitted to do so; and that, moreover, she was undoubtedly stopped from so running in order to prevent her from competing with a line of steamers under the Ottoman flag.

That in those circumstances your Lordship had, notwithstanding the opinion already expressed by our predecessors, thought yourself justified in re-submitting the case, and that Sir Edward Grey was, therefore, to request us to take the papers into our consideration, and to be good enough to inform your Lordship whether we concurred in the opinion expressed by the late Law Officers in their Report of the 5th August last; or whether, on the other hand, we considered that there was sufficient evidence to justify Her Majesty's Government in holding that Bartin was a sea-port frequented, or capable of being frequented, by the sea-going vessels of other nations; or whether, failing that, any other grounds (and if so, what) existed upon which Her Majesty's Government could put forward a claim for compensation on behalf of the owners of the "Euxine."

L. O. R. 1892 (Conf. 6347), p. 70.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That in our opinion there are reasonable grounds on which Her Majesty's Government may put forward a claim for compensation on behalf of the owners of the "Euxine."

The evidence shows that Bartin is *not* a place whose traffic is confined to inland navigation, but that it is frequented by sea-going vessels which are, at any rate, engaged in the coasting trade.

It would seem that the Turkish Government does not question the right of British vessels to engage in the coasting trade, and, in our opinion, it was in the coasting trade, and not in the navigation of inland waters, that the "Euxine" was engaged.

It may be difficult to establish a claim for compensation on the ground that the "Euxine" was specially fitted for the trade to Bartin, and, having regard to the fact that the claim against the Turkish Government has been delayed for diplomatic reasons, we do not think that loss of profit during the time which has elapsed since the vessel was prohibited from trading can be claimed, but the case is one which, in our opinion, entitles Her Majesty's Government to demand substantial compensation.

We desire to point out that, if the Turkish Government can exclude British ships as suggested, such exclusion touches, in an important way, the Treaty rights of this country, and the case is no longer one merely affecting the claim of an individual trader to compensation.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Sir W. White	(No. 67. Commercial)	July	5, 1889.
Memorandum	.. .. ..	July	17, „
To Sir W. White	(No. 65. Commercial)	July	22, „
Sir W. White	(No. 125. Commercial)	November	28, „
Memorandum	.. .. ..	December	9, „
To Sir W. White	(No. 112. Commercial)	December	18, „
Sir W. White	(No. 72. Commercial)	April	18, 1890.
To Sir W. White	(No. 63. Commercial)	May	7, „
Mr. Fane	(No. 136. Commercial)	July	15, „
To Mr. Fane	(No. 105. Commercial)	July	28, „
Messrs. Layton, Steel, and Co. ..	.. .. ..	September	3, 1891.
To Messrs. Layton, Steel, and Co. ..	.. .. ..	September	7, „
To Sir W. White	(No. 82. Commercial)	September	7, „
Messrs. Layton, Steel, and Co. ..	.. .. ..	September	8, „
To Messrs. Layton, Steel, and Co. ..	.. .. ..	September	10, „
Messrs. Layton, Steel, and Co. ..	.. .. ..	September	18, „
To Sir W. White	(No. 83. Commercial)	September	21, „
Messrs. Layton, Steel, and Co. ..	.. .. ..	October	27, „
To Messrs. Layton, Steel, and Co. ..	.. .. ..	October	30, „
Sir W. White	(No. 133. Commercial)	November	2, „
To Sir W. White	(No. 98. Commercial)	November	20, „
Sir Clare Ford	(No. 26. Commercial)	March	30, 1892.
To Sir Clare Ford	(No. 35. Commercial)	April	19, „
Sir Clare Ford	(No. 40. Commercial)	May	20, „
To Sir Clare Ford	(No. 78. Commercial)	August	13, „
Messrs. Robinson and Wilkins ..	.. .. ..	November	1, „
Ditto	.. .. ..	November	30, „

No. 42.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received April 26.*)

My Lord, *Royal Courts of Justice, April 25, 1893.*

Surrender of six Armenians on British s.s. "Izgar" in Turkish waters.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 24th ultimo relating to the surrender to the Turkish police of six Armenians by the captain of the British steam-ship "Izgar" whilst in Turkish waters by order of the British Vice-Consul at the Dardanelles, and stating—

That the action of the Vice-Consul had been condemned by Her Majesty's Ambassador at Constantinople, but was supported by the late Law Officers of the Crown:

That the opinion of the late Law Officers had been privately communicated to the Ambassador, who had given in a Memorandum his reasons for adhering to the view which he had originally taken of the Vice-Consul's proceedings:

L. O. R. 1892 (Confidential No. 6347), p. 69.

That the questions raised were of considerable importance from a political as well as from a legal point of view, and that your Lordship therefore desired us to take the papers into our consideration, and to inform you whether we concurred with the Report of our predecessors, dated the 27th July, 1892, upon the subject, or, if not, in what respect we differed from the views therein expressed:

That your Lordship would, at the same time, be glad to be favoured with any observations which we might have to offer upon the case generally, and also more particularly upon the Memorandum inclosed in Sir Clare Ford's letter to Sir Philip Currie of the 13th February last, indicating how far, if at all, we considered the statements of law contained therein might be open to criticism or exception.

In obedience to your Lordship's commands we have taken the matter into our consideration, and have the honour to

Report—

That we agree with the Report of our predecessors, dated the 29th July, 1892.

With reference to the Memorandum inclosed in Sir Clare Ford's letter of the 13th February, 1893, we are unable to concur in the statement that British merchant-ships in Turkish ports or private residences enjoy, as matter of law, extra-territoriality.

Under the Capitulations, it may be that a usage or practice has grown up of requiring the intervention of the British Consular officer to any exercise of jurisdiction on the part of Turkish officials with reference to British ships, or private residences of British subjects, and, assuming that to be so, it may be undesirable on political grounds that any departure from the usage should be acquiesced in.

In like manner, from a political point of view there may be considerable force in the suggestion that every case of importance involving questions of principle or Treaty rights should be referred to the Ambassador, but we think that these considerations do not affect the legal position, and must be dealt with as matters of policy and not of law.

We wish to add that before surrender it ought to be made reasonably clear (1) that the charge is for an offence according to Turkish law, and (2) that the arrest is authorized by proper authority.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(*a.*) Papers respecting the surrender of six Armenians from the British steam-ship "Izgar." (Confidential No. .)

(*b.*) Law Officers' Report, the 28th February, 1891. (Confidential No. 6207, p. 107.)

No. 43.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received June 27.*)

My Lord, *Royal Courts of Justice, June 26, 1893.*

Surrender Turkish subjects on board Brit. merchant-vessels in Turkish waters to local authorities.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 22nd April last, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Constantinople,* forwarding a *note verbale* in the form of a Circular which he had received from the Porte in regard to a complaint made by the Governor-General of Aleppo against the masters of vessels at Alexandretta who refuse to surrender to the local authorities indigent natives of the Lebanon who have embarked on board their vessels with the intention of emigrating to America, and against certain agents at the same port who are reluctant to assist the authorities in searching the vessels in question.

That the Turkish Government requested Her Majesty's Embassy to give strict orders to the British Consular Agent at Alexandretta and to the masters of British ships to give all necessary facilities, and to render all the assistance in their power to the local authorities when called upon to do so.

That Sir Clare Ford reported the substance of communications which had passed between his Excellency and some of his foreign colleagues on the subject, and requested to be furnished with instructions as to the manner in which the question should be treated.

That your Lordship would be glad if we would take Sir C. Ford's despatch and its inclosures into consideration, in connection with the papers which were transmitted to us on the 24th March last in regard to the somewhat analogous case of the "Izgar," and favour you with such observations as we might desire to offer thereon.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, no claim to extra-territoriality in respect of British merchant-ships lying in foreign ports or waters can, as a matter of principle, be asserted; but that, by virtue of the Capitulations with Turkey and the practice which has obtained thereunder, the master of a British ship in Turkish waters, when required to surrender a Turkish subject or other person subject to Turkish law, is entitled to have it made reasonably clear that an offence against Turkish law has been committed, or is by proper authority charged against the person sought to be taken from the ship; and that, in the case of a British subject or person entitled to British protection, the assent of the

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* Sir C. Ford, No. 130.

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British Consulate has been given, and, in the case of any foreigner whose State is represented by a Consular officer, due notice has been given to such Consular officer.

We do not think that masters of ships or agents should be instructed to give active assistance to Turkish authorities unless in cases where the above conditions are complied with.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

UNITED STATES.

No. 44.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received March* 2.)

My Lord, *Royal Courts of Justice, March* 1, 1893.

Extradition of C. E. Miller, United States citizen, from Straits Settlements for embezzlement in Japan.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 7th January, stating that he was directed by your Lordship to transmit to us a letter and inclosures from the Colonial Office respecting an application made to the Governor of the Straits Settlements by the Acting United States' Consul at Singapore for the extradition of one C. E. Miller, a citizen of the United States, who, being accused of embezzlement in Japan, had escaped from the extra-territorial jurisdiction possessed by the United States' Consul in that country, and had taken refuge in the Straits Settlements.

That the extradition of Miller was refused in consequence of an informality in the warrant issued at Hiogo, and that the fugitive had been set at liberty; but that the Governor of the Straits Settlements had inquired whether the United States' Government had, under any circumstances, the right to claim from that Colony the extradition to the United States' authorities in Japan of a fugitive American citizen accused of an extradition offence within the meaning of the "Ashburton" Treaty of the 9th August, 1842, between Her Majesty and the United States of America, and the Extradition Convention supplementary to Article X of that Treaty, which was signed at Washington on the 12th July, 1889.

That before, however, furnishing him with instructions in the matter, the Secretary of State for the Colonies had asked whether there was any record in the Foreign Office of a previous case where extradition was demanded from any part of Her Majesty's dominions in respect of a crime committed in Japan, or in some other country in which the demanding Power possessed extra-territorial jurisdiction.

That no record of a similar case could be traced in the archives of the Foreign Office; and that since a question of principle of considerable importance was involved, Sir Thomas Sanderson was to submit to us the following observations, and to ask us to be good enough to favour your Lordship with our opinion upon the matter.

That Article X of the Treaty with the United States of the 9th August, 1842 (the Article relating to extradition), and the Act of Parliament giving effect to it, both referred to crimes committed "within the jurisdiction of the United States;" and that a similar expression was used in the other Extradition Treaties concluded prior to 1870 between this country and foreign States. That it was not specifically stated whether that term included extra-territorial jurisdiction; but that the inference would appear to be that it did not, since section 3 of the Act of Parliament (6 and 7 Vict., cap. 76) empowered a Secretary of State to deliver up an accused person to such person or persons as should be authorized to receive him, in order to convey him *to the territories* of the United States to be tried, &c.

That the Act of Parliament (6 and 7 Vict., cap. 75) for carrying out the Treaty with France of the 13th February, 1843 (now expired), also spoke of the conveyance of the accused person to the *dominions* of the King of the French.

That the Treaty with the United States of the 9th August, 1842, was still in force; but that both Acts of Parliament to which reference had been made were repealed by "The Extradition Act, 1870" (33 and 34 Vict., cap. 52).

That "The Extradition Act, 1870," did not contain the words "territories" or "dominions" in that connection. That the preamble alluded to crimes committed within the jurisdiction of foreign States, and that it was stated in section 11 of the Act that it should be lawful for any person to whom a warrant was directed, &c., "to receive, hold in custody, and convey *within the jurisdiction* of such foreign State the criminal mentioned in the warrant." That section 25, however, of the Act ran as follows:—"For the purposes of this Act every Colony, Dependency, and constituent part of a foreign State, and every vessel of that State, shall (except where expressly mentioned as distinct in this Act) be deemed to be within the jurisdiction of, and to be part of such foreign State." That if, therefore, the words contained in the above section were held to be an exhaustive definition of the term "jurisdiction," extra-territorial jurisdiction would seem to be excluded from the operation of the Act.

That most of the Extradition Treaties concluded by this country subsequent to the passing of "The Extradition Act, 1870," were worded so as to confine their operation to the cases of crimes committed within the "territories" of one of the contracting Parties. That of such were the Treaties with Germany, Belgium, Italy, Denmark, Sweden, Austria-Hungary, Brazil, France, Switzerland, Spain, &c. That an exception to that rule, however, was to be found in the Treaty with the Netherlands of the 19th June, 1874, which was worded so as to include crimes committed "within the *jurisdiction* of the requiring party" by persons who "shall be found within the territories of the other party." That that might possibly have been due to a printer's error in reprinting revises of the draft Treaty. That there was nothing in the archives of the Foreign Office to explain it.

That a question arose in 1873 as to whether the Extradition Treaties concluded by this country would apply in the case of a person who, having committed a crime in a foreign country, should seek refuge within the extra-territorial jurisdiction of Great Britain. That the point was submitted to the Law Officers, who reported, on the 6th June, 1873, against the surrender of such a person by the Judge of a British Consular Court, one of the reasons given for their opinion being that the Extradition Act applied to Her Majesty's dominions and possessions only. That the point was the converse of that which had now arisen. L. O. R. 1873 (Conf. 4259). p. 166 A.

That the Report of the 6th June, 1873, was sent to the Home Office in connection with certain proposed amendments of the Extradition Act, which were then under consideration, and that the Secretary of State replied that it was not considered desirable to extend the Bill for amending the Extradition Act so as to place the extra-territorial jurisdiction possessed by Her Majesty in Turkey in the same position with respect to the surrender of fugitive criminals as if such jurisdiction were co-equal in extent and character with that possessed in this regard by Her Majesty in a British Colony or possession.

That Sir Thomas Sanderson was to add that no application had ever been made by Her Majesty's Government to that of the United States for the extradition from the United States' territory of a British subject who had, in some country where Her Majesty possessed extra-territorial jurisdiction, committed an offence which would have been, if done within the British dominions, an extradition offence.

That Sir Thomas Sanderson was to request that we would take the papers inclosed with his letter into our consideration, and that we would favour your Lordship with our opinion upon the point more particularly submitted, and also, at the same time, with any general observations which we might have to offer in connection with the papers.

Having taken the matter into our consideration, we have the honour to

Report—

That in our opinion the Extradition Treaties and "The Extradition Act of 1870" are intended to insure mutual assistance to the Contracting Parties to each Treaty for the purpose of enabling them to enforce, in the cases provided for, the criminal law of their own country, and do not extend to cases where the Powers have obtained jurisdiction in the dominions of another Sovereign. We are of opinion, therefore, that such a case as that of Miller—where the United States' Representative called upon the British Colonial authorities to surrender a fugitive criminal to be dealt with under the

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United States' extra-territorial jurisdiction in Japan—is not provided for by the Treaty of 1842 or the Act of 1870.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Colonial Office (and three inclosures)	December	15, 1892.
(B.) Treaty with United States (Treaty No. 284)	August	9, 1842.
(C.) 6 & 7 Vict., cap. 76.		
(D.) 6 & 7 Vict., cap. 75.		
(E.) "Extradition Act, 1870" (33 & 34 Vict., cap. 52).		
(F.) Extradition Treaty with Germany (Treaty No. 536)	May	14, 1872.
(G.) " " Netherlands (Treaty No. 572) ..	June	19, 1874.
(H.) Law Officers' Report (Confidential No. 4259, p. 166 A) ..	June	6, 1873.

No. 45.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received March* 21.)

Royal Courts of Justice, March 18, 1893.

Seizure of "Henrietta" in Behring Sea by U. S. cruizer.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 15th instant, stating that he was, by direction of your Lordship, to transmit to us the papers noted in the accompanying list and relating to the seizure of the British schooner "Henrietta" by the United States' cruizer "Yorktown" in Behring Sea on the 4th September, 1892.

That the facts relating to this seizure were fully set out in the instruction which it was proposed to address to Her Majesty's Minister at Washington on this subject.

That the two sections of the Revised Statutes of the United States which the "Henrietta" was said to have violated would be found set out in full in Mr. Calderon Carlisle's Report, inclosed in Sir Julian Pauncefote's despatch No. 57 of the 15th ultimo.

That a copy of the *modus vivendi*, 1891 and 1892, was also inclosed.

That Sir Thomas Sanderson was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion as to whether the terms of the proposed draft to Sir Julian Pauncefote, instructing him to protest against the proceedings of the United States' authorities with regard to the "Henrietta," were right and proper under the circumstances, or whether they might, from a legal point of view, be advantageously modified or altered, and, if so, to what extent, and in what manner.

That your Lordship would be glad at the same time to receive any observations upon the case generally and upon its bearing on the somewhat analogous case of the "Coquitlan" which we might have to offer.

In obedience to your Lordship's commands, we have the honour to

Report—

That we think the terms of the proposed despatch to Sir Julian Pauncefote are, in the circumstances of this case, right and proper.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Colonial Office		January 14, 1893.
(B.) To Sir J. Pauncefote	(No. 15)	January 25, "
(C.) Sir J. Pauncefote	(No. 57)	February 15, "
(D.) Ditto	(No. 26. Telegraphic)	February 22, "
(E.) *Modus vivendi* of 1891–92.		
(F.) Proposed instruction to Sir J. Pauncefote		

Annex.

Draft of Despatch to Sir J. Pauncefote.

(No. .)

Foreign Office, March , 1893.

Sir,

I HAVE received your despatch No. 57 of the 15th ultimo, reporting representations which you had addressed to the United States' Government respecting the seizure of the British schooner "Henrietta" by the United States' cruizer "Yorktown" in Behring Sea.

I have also received your subsequent telegram No. 26 of the 22nd ultimo, announcing that, in reply to your representations, the United States' Government had stated that they would deliver the "Henrietta" to the proper British authority for trial under the *modus vivendi* of 1892, without prejudice of the rights of the United States as regards the violation of their Revenue Laws.

Your action in this matter is entirely approved by Her Majesty's Government.

The facts relating to the seizure of the "Henrietta" appear to be as follows:—

She was seized by the United States' cruizer "Yorktown" in Behring Sea on the 4th day of September, 1892, in latitude 54° north, longitude 170° 35′ west, 60 miles more or less from land. She is alleged to have had on board at the time of seizure 420 fur-seal skins taken in Behring Sea. She appears to have been removed to Ounalaska, where charges were made against her for alleged breaches of the Revenue Laws of the United States, as laid down in Sections 2867 and 2868 of their Revised Statutes.

The schooner was thereupon delivered to Captain Hooper, of the United States' revenue-cutter "Corwin," with instructions to take her to Sitka, and deliver her to the authorities of the United States' District Court for trial upon the above-mentioned charges, and, in case of failure to condemn her upon them, she was to be handed over to the British authorities at Victoria for the violation of the provisions of the *modus vivendi* of 1892.

After having been detained in custody at Sitka for a period of no less than six months while awaiting her trial, which never took place, upon the charge of violating the Revenue Laws, she is now, in consequence of your representations to the United States' Government, about to be handed over to the proper British authority for trial under the *modus vivendi*, upon the conditions mentioned in the second paragraph of this despatch.

With reference to the seizure of the "Henrietta," I have to draw your attention to Article III of the *modus vivendi*, which provides that:—

"Every vessel or person offending against this prohibition in the said waters of Behring Sea outside of the ordinary territorial limits of the United States may be seized and detained by the naval or other duly commissioned officers of either of the High Contracting Parties, *but they shall be handed over as soon as practicable* to the authorities of the nation to which they respectively belong, who alone shall have jurisdiction to try the offence and impose the penalties for the same. The witnesses and proof necessary to establish the offence shall be sent with them."

It is clear, therefore, if the "Henrietta" was seized for a violation of the *modus vivendi*, she should have been turned over as soon as practicable to British authority, which alone had jurisdiction to try this offence and impose the penalties for the same.

Instead of this, however, she was forcibly detained at Sitka under process of an American Court of Law for a period of six months, and is only now about to be released in consequence of the representations of Her Majesty's Government, and under conditions and reservations to the justice or propriety of which they are entirely unable to assent.

Turning now from this alleged infraction of the International Agreement to the supposed breach of municipal law with which the "Henrietta" has been charged, it appears that the material portion of the two Sections of the Revised Statutes of the United States which she is said to have violated runs as follows:—

"Section 2867. If after the arrival of any vessel laden with merchandize *and bound to the United States* within the limits of any collection district, *or within* 4 *leagues of the coast*, any part of the cargo of such vessel shall be unladen, for any purpose whatever, before such vessel has come to the proper place for the discharge of her cargo, or some part thereof, and has been there duly authorized by the proper officer of Customs to unlade the same, the master of such vessel and the mate, or other person next in command, shall respectively be liable to a penalty of 1,000 dollars for each such offence, and the merchandize so unladen shall be forfeited, except in the case of some unavoidable accident, necessity, or distress of weather."

* * * * * * *

The remainder of Section 2867, and the whole of Section 2868, appear to have no application to the particular circumstances attendant upon the seizure of the "Henrietta."

Upon this branch of the case it seems clear to Her Majesty's Government that the forcible arrest of that vessel 60 miles from land in Behring Sea for violation of municipal law was not only contrary to the law of nations, but also cannot be supported on the mere terms of the Statute itself. The Section of the Revised Statutes above quoted asserts a jurisdiction of the United States 4 leagues from the shore, but only as to vessels bound to the United States. It nowhere appears that the "Henrietta" was ever bound to the United States, and she was, moreover, seized outside the jurisdiction even as defined by the Statute.

The proceedings, therefore, against this vessel before the Sitka Court appear to be based on the assertion of an absolute right on the part of the United States which is not only inadmisible under the existing law of nations, but which cannot be justified by the terms of the municipal law under which they purport to have been taken.

Her Majesty's Government are, under these circumstances, constrained to the conclusion that the United States' District Court at Sitka was wholly devoid of jurisdiction in the matter.

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As both the original seizure of the "Henrietta" and her detention for so long a period after seizure appear to Her Majesty's Government to afford subjects of just complaint, I have to request you to address a note to the United States' Government, pointing out:—

1. That the seizure was unwarranted except under the *modus vivendi*, and was only permitted under that instrument on the condition (which was not fulfilled in this case) that British vessels seized should at the earliest opportunity be delivered to British authority, to which authority alone has been reserved the right to try the offence, and impose the penalty.

2. That the seizure 60 miles from land was contrary to the law of nations, even if the laws of the United States had been violated; and was also contrary to the municipal law itself, inasmuch as the terms of that law, although in asserting a jurisdiction extending to a distance even of 4 leagues from the shore, they go beyond what the law of nations warrants, yet do not cover such a jutisdiction as is sought to be established, and has been actually and wrongfully exercised, at a distance of 60 miles from the shore.

3. That the detention of the vessel from the 4th September last to a recent date was unlawful—

(*a*.) Because by International Agreement the United States' Government cannot hold, but must deliver over, as soon as practicable, to British authorities, a British vessel seized for violation of the *modus vivendi*.

(*b*.) Because the seizure of a foreign vessel for alleged violation of the United States' municipal law, if made, as was here the case, at a place beyond the territorial jurisdiction of the United States, can confer no jurisdiction on its Courts.

(*c*.) Because Sections 2867 and 2868 of the Revised Statutes of the United States assert a jurisdiction which, having regard to the settled principles of the law of nations, the United States cannot claim as against foreign vessels, and which therefore can, *quâ* foreign vessels, confer no jurisdiction on the Courts of the United States.

Her Majesty's Government observe from your despatch No. 57 of the 15th ultimo that the Secretary of State admits the delivery of the "Henrietta" to the authorities of the United States' District Court at Sitka for trial upon the charge of violating the Revenue Laws, and the alternative instruction, in case of failure to condemn, to hand her over to the British authorities for violation of the *modus vivendi*.

This extraordinary course seems also to call for diplomatic protest as again involving the pretension which, as already stated, Her Majesty's Government must altogether decline to admit on the part of the United States, to seize, 60 miles from land, a British vessel on a charge of violating their Revenue Laws.

Her Majesty's Government feel that it is the more incumbent upon them to urge this protest, inasmuch as it appears that the United States' Government, while handing over the "Henrietta" to be dealt with by the Canadian authorities under the *modus vivendi*, have in no way admitted that the attempt to justify her seizure on the ground that she had committed a breach of the municipal law of the United States must altogether fail, but have, on the contrary, explicitly reserved to themselves all their rights in respect of the alleged violation of the United States' Revenue Laws on her part.

I am to add that the terms of this despatch have been submitted to, and have received the general approval of, the Law Officers of the Crown.

As, however, certain portions of the note which you are instructed to address to the United States' Government deal with considerations of United States' municipal law, and involve the construction of American Statutes, it will be desirable that you should, before actually presenting it, also consult Mr. Calderon Carlisle, the legal adviser to Her Majesty's Legation, as to whether its terms are in any way open to exception.

Should they obtain the general concurrence of Mr. Calderon Carlisle, you are authorized at once to present a note couched in the terms indicated.

(Initialled) C. R.
J. R.

No. 46.

The Law Officers of the Crown to the Earl of Rosebery.—(Received March 21.)

My Lord, *Royal Courts of Justice, March 18, 1893.*

Seizure of "Coquitlan" for alleged breach of U.S. Revenue Laws.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us the further papers noted in the accompanying list relative to the seizure of the British steam-ship "Coquitlan," at Port Etches, for an alleged breach of the United States' Revenue Laws.

That it would be seen from Sir Julian Pauncefote's despatches Nos. 20 and 24 of the 16th and 20th January last that the United States' Secretary of State declined to abandon the prosecution of the "Coquitlan," and to release that vessel, on the ground that the seizure was made in waters over which the laws of the United States for the protection of the revenues extended.

That those despatches were, in due course, referred to the Secretary of State for the Colonies, and that Lord Ripon, in his reply, observed that, whether the seizure was made within the territorial waters of the United States or not, the alleged offence was undoubtedly committed outside the 3-mile limit. That his Lordship pointed out that in a note to Lord Ashburton of the 1st August, 1842, Mr. Webster, then United States' Secretary of State, laid it down in unqualified terms that "a vessel on the high seas beyond the distance of a marine league from the shore is regarded as part of the territory of the nation to which she belongs, and subjected exclusively to the jurisdiction of that nation;" and that the same doctrine was declared in Mr. Seward's despatch to Mr. Tassard of the 10th August, 1863 (see Wharton's "Digest," vol i, p. 103).

That, again, Mr. Fish, in his despatch to Sir E. Thornton of the 22nd January, 1875, admitted that the Revenue Laws referred to by Mr. Foster were practically obsolete, and were not enforced against foreign vessels.

That Lord Ripon went on to suggest, for your Lordship's consideration, that the attention of the United States' Government should be called to the papers cited above, and that they should be informed that Her Majesty's Government could not admit that the United States' Laws referred to applied to British vessels beyond those ordinary limits to the territorial waters of a State which were recognized by the law of nations, and that they could not therefore admit any right on the part of the United States' Courts to assume and exercise jurisdiction over the "Coquitlan" in the present case, and must hold the United States' Government responsible for any loss or damage sustained by the owners of that vessel owing to the proceedings of the United States' authorities.

L. O. R. 1892 (Conf. 6347, pp. 84 and 92).

That Sir Thomas Sanderson was to call our attention to our two previous Reports upon the case of the 9th September and 18th December last, and to the action taken by Her Majesty's Government in accordance with them, and that he was to add that your Lordship was disposed to agree with Lord Ripon that a further remonstrance in the terms of his Lordship's letter should be addressed to the United States' Government, but that before taking any action in the matter your Lordship desired to be favoured with our opinion as to whether the proposed terms of that remonstrance were right and proper in the circumstances, or whether, on the other hand, they might, from a legal point of view, be altered or modified with advantage, and, if so, in what manner, and to what extent.

Case of "Henrietta."

That Sir Thomas Sanderson was to add that it appeared to your Lordship that the action of the United States' Government in the case of the "Henrietta," which was also referred to us on the 15th instant, had a material bearing on the present case, and that, although for purposes of diplomatic representation, it would be better to keep the correspondence between the two Governments separate and distinct with regard to each case, it might be convenient for us to have both sets of papers under our consideration at the same time, inasmuch as the questions of law raised in both cases were, to a great extent, analogous.

That Sir Thomas Sanderson was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in his letter, and with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That we think that a remonstrance on the lines of Lord Ripon's letter of the 4th March, 1893, may properly be addressed to the United States' Government.

It cannot be admitted that the Revenue Laws of the United States give any right to adjudicate upon a foreign ship in respect of an act committed outside the ordinary 3-mile limit. The position cannot be put higher than this: that where outside the 3-mile limit a British vessel has been seized which was engaged in an attempt to break the Revenue Laws of another country, this Government will not complain of such seizure. This is the principle upon which, in the interests of comity of nations, the Hovering Acts have been dealt with.

In the present case, there seems to be no ground for the suggestion that the "Coquitlan" was engaged in any such attempt.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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List of Papers.

(A.)	Sir J. Pauncefote	(No. 20)	January 16, 1893.
(B.)	Ditto	(No. 24)	January 20, „
(C.)	Colonial Office		March 4, „
(D.)	Reference to Law Officers		August 25, 1892.
	Law Officers (Confidential No. 6347, p. 86)		September 9, „
(E.)	Law Officers (Confidential No. 6347, p. 92)		December 13, „

URUGUAY.

No. 47.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received March* 23.)

My Lord, *Royal Courts of Justice, March* 20, 1893.

Mr. J. Littlejohn's claim on Uruguayan Government.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to a claim against the Uruguayan Government presented by Mr. John Jones, acting in the capacity of executor of the will of the late Mr. Robert Littlejohn, a British subject.

That the despatch from Her Majesty's Minister at Monte Video, dated the 1st September, 1892, stated that for a long time past he (Mr. Satow) had been endeavouring to obtain from the Uruguayan Government a definite recognition of the claim, but that his efforts had hitherto resulted in nothing more than a vague admission by the Uruguayan Minister for Foreign Affairs, that, in his individual opinion, the Government ought to pay the amount claimed, for which judgment had been obtained against it in the Uruguayan Courts.

That Mr. Satow inclosed translations of extracts from the legal proceedings which had been taken from first to last in the case, as well as the Petitions presented to the Uruguayan Assembly, setting forth the main facts and arguments relied on by both sides, together with an unofficial Memorandum on the case which he delivered to the Minister for Foreign Affairs on the 4th August, 1891.

That the undisputed facts of the case appeared to be as follows:—

That Mr. Robert Littlejohn, a British subject, had, in 1879, obtained judgment against an American citizen, Mr. Nussel R. Pealer, for the sum of 12,234 dol. 40 c. That the defendant, however, failed to comply with the Decree, and that the next step, consequently, was to get a general order of attachment against all property possessed by him, or which might afterwards come into his possession. That Mr. Pealer had a claim for compensation outstanding against the Uruguayan Government arising, out of the forfeiture of a railway Concession, against which Mr. Littlejohn in 1885 obtained an order of attachment, notice being duly given to the proper Government Departments.

That to that order the Executive Power replied that it had no property or funds of Mr. Pealer's in its possession which could be attached; but that the Judge in whose Court the original Decree had been sued out repeated the order, and no further objection was raised on the part of the Executive.

That in January 1889 Mr. Littlejohn discovered that Mr. Pealer's claim had at last been settled by the Uruguayan Government handing to him certificates for a certain amount of amortizable debt, and that the Minister of Finance, when called upon by the Court to state the facts, admitted that that was true, but denied that the Government was in any way responsible to Mr. Littlejohn. That Mr. Pealer's own personality, it was alleged, had disappeared and become merged in that of his Government from the moment that the United States, acting through their Minister in Monte Video, had taken the matter in hand; in other words, that nothing had been paid to Mr. Pealer, and that the settlement made with the United States' Minister was not the discharge of a debt, but "a sacrifice to international interests and conveniences."

That Mr. Littlejohn thereupon applied to the Judge of the Court for a Decree against the Uruguayan Government for the amount of his liquidated claim against Mr. Pealer, with interest to date and costs.

That the Attorney-General of the Exchequer ("Fiscal de Hacienda") was heard in defence, and alleged that no administrative act was in existence by which the Uruguayan Government had acknowledged itself to be indebted to Mr. Pealer, nor was there any Judgment of a Court to that effect, Mr. Pealer never having brought any action for damages against the Government. That, in consequence of the representations initiated by the Legation of the United States, the personality of Mr. Pealer had completely disappeared, being replaced by that of the United States, to which payment was made, not in the character of a creditor of the Uruguayan Government, but with the view of maintaining the good relations existing between the two nations.

That the final Judgment, which was delivered on the 8th April, 1890, after reciting the facts and the plea of the Counsel for the Government, decided that the Executive Power was not justified in disregarding the order of attachment, in virtue of which it ought to have retained the sum Mr. Pealer was to receive, which would have sufficed to satisfy and cover the execution decreed in the judicial proceedings. That the Minister of the United States must be regarded as having acted as Mr. Pealer's agent or attorney, and that whatever might have been the motives of the Government for settling the claim, they were bound to retain and place at the disposal of the Court the amount attached; and it concluded by ordering the Government to pay into Court within ten days the liquidated amount for which Mr. Littlejohn had obtained execution against the State.

That the Uruguayan Government, Mr. Satow reported, did not appeal, but was deaf to all applications for payment.

That the plaintiff's attorney, on the 6th May, 1890, addressed to the Judge a protest against the neglect to comply with the order of a Court, which protest was sent to the Minister of Justice.

That about the same time the plaintiff's attorney presented a Petition to the Uruguayan Assembly, asking that the Executive Power might be called on to pay the amount of the Judgment.

That on the 3rd June the President of the Republic and the Minister of Justice signed an Administrative Decree denying the obligation of the Executive Power to pay, on the grounds already set forth by the Attorney-General of the Exchequer, which Decree they ordered to be transmitted to the Court.

That Mr. Littlejohn's attorney at once made a further application, and obtained a reiteration of the previous Decree against the Government, to which the Minister of Justice replied that the Uruguayan Government could not withdraw from what was established in its Resolution, dated the 3rd June, on the grounds stated in the same.

That in order to deprive the Uruguayan Government of all pretence for afterwards alleging that he ought to have exhausted all possible means of obtaining redress before invoking the influence of his own Government, Mr. Littlejohn again addressed the General Assembly, inclosing a copy of the Administrative Decree of the President and his Minister of Finance, repudiating the Judgment of the Court referred to above.

That, from the observations on the case made in the concluding paragraphs of Mr. Satow's despatch, it would be seen that that last step was also unattended by any practical result.

That a translation of a document showing the liquidated amount of the claim up to the 4th June last was inclosed for reference.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether Mr. Littlejohn's claim was one which could, with propriety, be formally represented to the Government of Uruguay, and, if so, upon what special grounds it could, in our opinion, be most advantageously pressed.

That your Lordship would also be glad to be favoured with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That there is no doubt considerable difficulty in this case arising from the facts (1) that Pealer appears to have had no liquidated or ascertained claim against the Government of Uruguay, and (2) that the settlement of that claim appears to have taken place with the United States as a matter of diplomatic arrangement which, as a general rule, would preclude the interference of the Government of the national making the claim.

Nevertheless, we think the claim of Littlejohn's executor can with propriety be formally represented to the Government of Uruguay, in order to obtain from them an official and formal answer of the grounds on which they refuse to give effect to the repeated orders of their own Court.

The grounds on which, in our opinion, such claim may be pressed are (1) that by Order of the Uruguay Court (as we understand the facts) the claim of Mr. Pealer against the Government was (by process analogous to our garnishee proceedings) attached in favour of Mr. Littlejohn; (2) that after such attachment the Government disregarded it, and settled the claim of Mr. Pealer by arrangement with a person who was a Representative of the United States; and, lastly (3), that by the Judgment of the 8th April, 1890, after argument by the Attorney-General of the Exchequer, the Court decided that the Government was bound to pay Mr. Littlejohn's claim.

After the answer of the Uruguayan Government it will be necessary to consider carefully the position before further action is taken by Her Majesty's Government.

We have, &c.

(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Mr. Satow	(No. 26)	September 1, 1892.
(B.)	Translation of extracts from Legal Proceedings.		
(C.)	Memorandum delivered to Uruguayan Minister for Foreign Affairs ..		August 4, 1891.
(D.)	Translation of Petitions presented to the Assembly.		
(E.)	Memorandum showing liquidated amount of claim		June 4, 1892.

VENEZUELA

No. 48.

The Law Officers of the Crown to the Earl of Rosebery.—(Received July 22.)

My Lord, *Royal Courts of Justice, July 22, 1893.*

Claim of Mr. C. Philip for seizure of cart and mules for use of Govt. troops against insurgents. Responsibility of Venezuelan Govt. for acts of its predecessors.

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 27th ultimo, stating that he was directed to transmit to us papers relating to the claim of Mr. Christian Philip, a British subject, against the existing Government of Venezuela for compensation in respect of a cart and eight mules taken from him by force in April and May 1892 for the use of the Government troops by Generals Luengo and Aneseto Cotua, who were in command of divisions of the forces of Venezuela under the Government of De Palam.

That the Government, having been worsted by the Revolutionary troops, another Administration was formed at Carácas under the Presidency of General Crespo, and that it was against General Crespo's Government that the present claim was advanced by Mr. Philip.

That the circumstances under which Mr. Philip's mules and cart were seized were explained in the document marked (A),* and that your Lordship was disposed to think

that the claim was *primâ facie* a good one on the merits, and that as it was understood that the value of a good cart mule in the district where the seizure took place might be estimated at from 30*l.* to 40*l.*, and that the cost of a cart was about 50*l.*, it did not appear that the damages, which were laid at 400*l.*, and included the cost and expenses incurred by Mr. Philip in endeavouring to obtain the restitution of his property, were in any degree excessive.

But that in the present case a further question arose which it was necessary to consider in regard to the responsibility of the existing Government of Venezuela for the acts of their predecessors.

That, as bearing on this point, Sir T. Villiers Lister was to call our attention to the view taken by Lord John Russell as to the non-settlement of claims of British bondholders and others by the Mexican Government some thirty years ago.

That in writing to Sir C. Wyke on the 30th March, 1861, with reference to the non-repayment of the loss sustained by the bondholders of a large sum of money belonging to them, which had been deposited for security in the house of Her Majesty's Legation at Mexico, his Lordship had said:—

"Her Majesty's Government will not admit as an excuse for hesitation in this respect the plea that the robbery was committed by the *late* Government, for, as regards this, *as indeed all other claims*, Her Majesty's Government cannot admit that the party who committed the wrong is alone responsible for wrongs done to British subjects by any party or persons at any time administering the powers of Government."

That, during the sitting of the Commission appointed under the Claims Convention with Venezuela of the 21st September, 1868, numerous claims were brought forward by British subjects on account of losses sustained by them for cattle, horses, and mules, seized by the Government troops, and sums were awarded by the Commissioners and Umpires, although it was not clear from the record whether the Government holding office at the time when the awards were given was the same as that which was in office when the seizures were made.

That on the 6th day of March, 1854, the Venezuelan Government had issued a Decree declaring the Republic exempt from the obligation to make good to foreigners the damages and losses which their property might suffer in consequence of political commotions, but that the Law Officers of the Crown had expressed an opinion on the 25th February, 1861, that such obligation, if it existed, was based on international law, which it was not competent to any State to abrogate by its own legislation.

That, again, when a question arose respecting the compensation to British subjects for losses or destruction of property during the civil war in North America, the then Law Officers of the Crown had stated, on the 21st October, 1861, as follows:—

"With regard to losses or destruction of property caused to British subjects exclusively by the officers or troops, or by those acting by the authority or on behalf of the Government under whose authority such British subjects are living at the time, we can only say that, as a general principle, such Government is responsible for them; and that the fact of their having been committed during the existence of a civil war, although it may sometimes palliate or extenuate the conduct of those concerned, will not exonerate the Government from its general responsibility."

That cases might also be cited in which diplomatic relations had been suspended between Her Majesty's Government and a foreign Government, and only renewed on condition that all pecuniary claims based on the *acts of the Federal Government* should be recognized.

That one of the most recent of such cases was that of the Provisional Agreement between Her Majesty's Government and that of Mexico of the 6th August, 1884.

That besides the case of Mr. Philip others had been furnished by the Acting British Consul at Carácas, in which British subjects had suffered injury in their persons and property during the recent revolution by the acts of the *de facto* Government as well as by those of the Revolutionary party, who have now succeeded in displacing the former.

That it might be that upon further examination some of these cases would be found not to possess merits sufficient to entitle them to presentation by Her Majesty's Government to that of the Venezuelan Republic; but that it was assumed that any general principles as to the responsibility of the present Government of Venezuela for the acts of the accredited Agents of previous Governments of that State, which might be adopted and urged in the case of Mr. Philip's claim, would be also of application with reference to such of any of those other claims as might appear *primâ facie* to be deserving of representation on their merits.

That Sir T. Villiers Lister was to request that we would take the papers trans-

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* Governor, Windward Islands, February 16, 1893.

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mitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

1. Whether Her Majesty's Government were justified in holding the present Government of Venezuela responsible, under the circumstances, for the acts of the previous Government of that Republic.

2. Whether, assuming that our answer to the preceding question should be in the affirmative, Her Majesty's Government might properly urge upon the Venezuelan Government a claim on Mr. Philip's behalf for the full amount of 400*l.* mentioned by him, or for any, and, if so, what less sum.

That Sir T. Villiers Lister was to add that your Lordship would be glad to receive any further observations which we might have to offer upon the case generally.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion—

1. Her Majesty's Government are justified in holding the present Government of Venezuela responsible, under the circumstances, for the acts of the previous Government of the Republic.

2. That Her Majesty's Government may properly urge upon the Venezuelan Government a claim on Mr. Philip's behalf for the full sum of 400*l.*

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Colonial Office..	.. ..		March	13, 1893.
(B.) Mr. Boulton ..	.. ..	(No. 57)	September	20, 1892.
(C.) Ditto ..	.. ..	(No. 19)	May	25, 1893.
(D.) Parliamentary Paper, "Mexico No. 1 (1884)," Foreign Office No. 2886.				

ZANZIBAR.

No. 49.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received February* 22.)

Royal Courts of Justice, February 21, 1893.

My Lord,

Effect of adhesion of Zanzibar to Free Zone system on import duties of British East Africa Co. L. O. R. 1892 (Conf. 6347), p. 106.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the position of the Imperial British East Africa Company in respect of import duties in view of the Sultan's declaration of adhesion to the "Free Zone system" of the Act of Berlin.

That the Company had now replied to the communication from the Foreign Office of the 8th December, 1892, in the terms of which our concurrence was intimated in our Report of the 2nd December last. That it would be seen that besides traversing the arguments and conclusions therein set forth, the Company further contended that the Brussels Act was never intended to create new powers of levying duties in substitution for existing rights to do so (but that the powers conferred by the Declaration were solely intended to provide new resources to meet the obligations imposed by the Brussels Act); that the Sultan's mainland possessions conceded to the Company were not within the Free Zone system, inasmuch as the Company had never acquiesced in the arrangement by which it was held that they were so placed, and that the draft Ordinance upon which Her Majesty's Government relied as evidence of their concurrence applied only to those frontiers of the territories under the Company's administration which were outside the Sultan's dominions.

That they, therefore, desired to reopen the whole issue on that point.

That your Lordship saw no reason to alter the views which had been already expressed to the Company with our concurrence.

That you were not disposed to admit the correctness of the limited scope which it was now sought to give to the draft Ordinance; and that you considered that the new contention, that the Sultan's acceptance of the invitation of the Powers was incomplete without the acquiescence of the Company, was untenable.

That a draft of the reply which your Lordship proposed to address to the Company in that sense was inclosed, and that Sir Philip Currie was to request that we would take it together with the other papers into our consideration, and that we would favour your Lordship with our opinion as to whether its terms suitably met the circumstances of the case, or, if not, in what respects they could be advantageously modified or altered. That Sir Philip Currie was to add that your Lordship would be glad, at the same time, to be favoured with any general observations which we might have to offer on the questions involved.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the draft despatch initialled by us is in accordance with the Reports which we have already given in this matter; and that the terms of the draft are in all respects suitable to meet the circumstances of the case.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) To Imperial British East Africa Company ..	.. ..	December 8, 1892.
(B.) From ditto	.. ..	December 16, "
(C.) To ditto	.. ..	
(D.) Law Officers (Confidential No. 6347, p. 105)	.. ..	December 2, "
(E.) Ditto (Confidential No. 6347, p. 106)	.. ..	December 2, "

And the papers referred to in the last two letters in bundles marked (F) and (G) respectively.

Annex.

Draft of Letter to Imperial British East Africa Company.

Foreign Office, February , 1893.

Sir,

I AM directed by the Earl of Rosebery to inform you, in reply to your letter of the 16th December last, that my letters of the 1st November and the 8th December, to which you take exception, were written after consultation, in each case, with the Law Officers of the Crown, and that, in the opinion of Her Majesty's Government, they correctly define the position of the Company in regard to the Sultan's declaration of adhesion to the Free Zone system of the Act of Berlin.

The question of the previous knowledge of that declaration by the Company was discussed only in reference to the suggestion that a claim for compensation might be founded upon the allegation of ignorance. Her Majesty's Government do not find in your recent letter any reason for changing their opinion that the Directors were aware of the Sultan's intention. They do not admit the correctness of the limited scope which it is now proposed to give to the draft Ordinance; and they adhere to the view that the subsequent correspondence is conclusive on the point.

While conveying to you this intimation, I am to state that the fresh contention advanced in your letter of the 16th instant, that the Sultan's acceptance of the invitation of the Powers is incomplete without the acquiescence of the Company, is absolutely untenable. His Highness, in delegating to the Company the administration of a portion of his dominions, retained his sovereignty. In the exercise of his sovereign powers he adhered to the Berlin Act, and subsequently completed his acceptance of its provisions by placing his dominions within the Free Zone. The Company, which has no voice in his Council, is bound, to the same extent as officers administering other portions of his dominions, to accept the Ruler's action, and to administer in accordance with it.

Should it decline to do so, it would be questionable whether its Concession would not thereby be invalidated.

It would be advisable, therefore, for the Directors to reconsider the intimation given in the final paragraph of your letter, if it is correctly interpreted as meaning that they intend to treat the Zanzibar coast under their administration as not included in the Free Zone.

I am, &c.

(Initialled) C. R.
J. R.

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No. 50.

The Law Officers of the Crown to the Earl of Rosebery.—(Received March 2.)

Royal Courts of Justice, February 28, 1893.

Seizure by H. M. S. "Philomel" of dhow flying Zanzibar flag. Is it a "foreign flag"?

My Lord,

WE were honoured by your Lordship's commands signified in Sir Philip Currie's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to a question recently raised before the International Slave Trade Bureau in Zanzibar in connection with the seizure by Her Majesty's ship "Philomel" of a dhow flying Zanzibar colours as to the interpretation of the term "foreign flag" in Article XLVII of the Brussels Act.

That the Article provided that "the Commander of a man-of-war who may have detained a vessel under a '*foreign flag*' shall in all cases make a report to his own Government, and state the grounds upon which he acted."

That the question arose whether, in view of the Protectorate declared by Her Majesty over Zanzibar, the Zanzibar flag was, as far as the cruizers of the Protecting Power were concerned, to be considered a "foreign flag" within the meaning of the Act.

That Zanzibar was a British Protectorate, and that the fact had been duly notified to the Powers parties to the Act of Berlin.

That the Sultan's relations with foreign Powers were conducted through the channel of Her Majesty's Government, and that His Highness was represented in the International Bureau by the British Agent and Consul-General.

That, as a matter of practical convenience, it was desirable to hold that the national flag of a British Protectorate was not, *quâ* the cruizer of Great Britain, a "foreign flag" within the meaning of the Brussels Act; and that your Lordship as then advised was disposed to think that such a contention might in the present case be fairly maintained.

That, before transmitting the necessary instructions on that point to Her Majesty's Acting Agent and Consul-General at Zanzibar, your Lordship was desirous of being favoured with our opinion thereon, and that Sir Philip Currie was to request that we would take the papers transmitted into our consideration, and that we would favour your Lordship with our view upon the particular question submitted in his letter, and also with any general observations which we might have to offer upon the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, we have the honour to

Report—

That we are of opinion that the Zanzibar flag is *not* a foreign flag within the meaning of the Brussels Act. The provisions with reference to foreign flags contained in the Act are, in our opinion, inserted for the protection of the rights of nationals flying the flags of their respective Governments, and with the view of affording opportunities for diplomatic intervention when thought expedient, and do not apply to the case of Zanzibar, where the British Protectorate is established.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

No. 51.

The Law Officers of the Crown to the Earl of Rosebery.—(Received March 29.)

Royal Courts of Justice, March 27, 1893.

Trade-marks (Zanzibar) O. in C.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 15th instant, respecting an Order in Council which it was proposed to issue relative to trade-marks, &c., at Zanzibar, and stating—

That Sir Gerald Portal had suggested on the 10th September last that "The Zanzibar Order in Council, 1884," should be amended by the addition of provisions respecting patents, designs, trade-marks, merchandize-marks, and copyright, and that your Lordship had concurred in Sir Gerald Portal's suggestion; and that Mr. Albert Gray had been instructed to prepare an Order in Council accordingly.

That on the 24th October, 1892, Mr. Gray had submitted a draft Order in Council. That the draft Order was sent to Zanzibar for the opinion of Her Majesty's Representative, and that Mr. Rodd's observations were contained in his despatch No. 1, Treaty, of the 21st January, 1893. That this despatch was referred to Mr. Gray, who had made certain amendments in the draft Order in accordance with the suggestions contained in Mr. Rodd's despatch, and had at the same time prepared an explanatory Memorandum on the subject.

That Sir Thomas Sanderson was to request us to inform your Lordship whether in our opinion the draft Order in Council, as amended by Mr. Gray, might be laid before the Queen in Council for Her Majesty's approval, and that we would at the same time favour your Lordship with any general observations which we might wish to offer in the matter.

We have taken the matter into our consideration, and, in obedience to your Lordships commands, have the honour to

Report—

That we are of opinion that the draft Order in Council, as amended by Mr. Gray, and initialled by us, may be laid before the Queen in Council in its present shape for Her Majesty's approval.

We have considered and concur in the observations made in the explanatory Memorandum also initialled by us.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Sir G. Portal	(No. 207)	September 10, 1892.
(B)	"Zanzibar Order in Council, 1884."	Confidential No. 5029*.	
(C.)	Mr. Gray		October 24, 1892.
(D.)	Mr. Rodd	(No. 1. Treaty)	January 21, 1893.
(E.)	Mr Gray		March 8, „

Annex.

Draft Order in Council respecting Trade-Marks, &c.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within the dominions of the Sultan of Zanzibar:

Now, therefore, Her Majesty, by virtue and in exercise of the powers by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. Any act which if done in British India would be an offence against the law for the time being in force in British India relating to trade-marks, merchandize-marks, copyright, designs, or inventions, shall, if done in Zanzibar by a person subject to the Orders in Council relating to Zanzibar, be an offence, whether such act is done in relation to any property or right of a British subject, or of a foreigner, or native, or otherwise; and any person guilty of such offence shall be punished with imprisonment for a term which may extend to two months, or with a fine which may extend to 1,000 rupees, or with both.

2. *Any Act of the Governor-General of India in Council, or of the Governor of Bombay in Council, amending or substituted for any of the Acts of those Legislatures respectively which are made applicable to Zanzibar by or under the provisions of Article* 8 *of "The Zanzibar Order in Council,* 1884," *or shall hereafter be made so applicable, shall apply to Zanzibar without any order of the Secretary of State in that behalf, subject, however, to the provisions made in that Article for facilitating the application of enactments.*

3. ~~2.~~ This Order shall be read and construed as part of "The Zanzibar Order in Council, 1884;" *and*

~~3.~~ ~~This Order~~ may be cited as "The Zanzibar (Trade-marks, &c.) Order in Council, 1893."

4.—(*a.*) This Order shall come into operation at the expiration of one month after it is first exhibited in the public office of the Consulate at Zanzibar: provided that any Act of the Imperial Parliament extending to India, or any Act of the Governor-General in Council which is passed after

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* (A) Mr. Rodd, No. 30; (B) Brussels Act (Treaty No 889); (C) Notification of Protectorate (Confidential No. 5997*).

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the commencement of this Order, and applies to Zanzibar by virtue of this Order, shall not take effect until the expiration of one month after such Act has been exhibited in like manner.

(*b.*) The Consul-General shall cause a copy of this Order and of every such Act to be exhibited, and for the said period kept exhibited, in the public office of the Consulate accordingly.

And the Right Honourable the Earl of Rosebery, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

(Initialled) C. R.
J. R.

Memorandum on Draft Order in Council.

1. The draft proposes to give the same jurisdiction in respect of these matters as has been given to other Consular Courts under the Orders cited by Sir G. Portal. It does not, however, provide for that which he describes at the outset of his despatch as being desirable—a system of registration of trade-marks at Zanzibar. The Orders to which he refers merely render punishable offences against the Imperial Acts and Orders in Council named or described, and I am not aware of any case in which provision has been made for registration of trade-marks in a Consulate.

2. The Zanzibar Order differs from other jurisdictional Orders in this respect, that the foundation of its law and procedure is that of India, the law of England being applied only where that of India is deficient or inapplicable (Article 8). Besides the specified Indian Acts, others may be applied by order of the Secretary of State. The intention apparently was that the law of India for the time being was to apply.

As respects merchandize-marks, the Indian Legislature has passed an Act (No. IV of 1889, amended by No. IX of 1891), in which the English Act of 1887 is adapted to Indian law and practice, and which is in some respects more stringent than the original. It, moreover, repeals the trade-mark sections of Chapter XVIII of the Penal Code, and substitutes other provisions. If the English Act of 1887 is now applied to Zanzibar, there may be some uncertainty in particular cases, whether the Indian law or the English applies.

I may add that under the English Act protection is given only to registered trade-marks, whereas under that of India registration is not a condition precedent; indeed, so far as I am aware, there is no registration of trade-marks in India. If, therefore, the Indian Act were to be applied to Zanzibar, the want of a registry to which Sir G. Portal refers would be little if at all felt.

The extension to Zanzibar of the Indian law on copyright, patents, &c., requires an Order in Council, because some of it is Imperial Statute Law extending to India, and the application of Imperial Acts by order of the Secretary of State is not authorized by Article 8 of the Order.

A new Order being required, I am inclined to think, on further consideration, that it will be best to include trade- and merchandize-marks, although the Indian law on this head might be applied by the Secretary of State. The wording of Article 8 is inconvenient, preventing (except in the case of bankruptcy law) the automatic operation of subsequent legislation. If the existing Indian Merchandize Marks Acts are applied by the Secretary of State, further applications would be necessary on each occasion of those Acts being amended. It is further advisable to deal with all these cognate subjects in one enactment.

Mr. A. Wilson, the Legal Adviser to the India Office, who was kind enough to attend a conference at the Foreign Office on the subject of this Order, is of opinion that the Indian law will give ample protection, whether the rights infringed have been acquired in India or in the United Kingdom.

This opportunity may, I would suggest, be taken to inquire whether the authorities at Zanzibar have experienced any inconvenience arising from the restrictions of Article 8 of the Order of 1884, and whether the application to Zanzibar of any Indian Acts passed after the commencement of the Order is desirable, with special reference to any Acts amending those specified in the Article.

(Signed) A. GRAY.

December 12, 1892.

The Agent-General and Mr. Cracknall having concurred in the suggestions made in the last paragraph of the above Memorandum, I have now, as instructed, added an Article providing that Indian Acts, amending or substituted for those already or hereafter applied, shall also apply to Zanzibar without any special order of the Secretary of State, subject, however, to the power of modification conferred by the Order of 1884.

A. G.

March 8, 1893.

(Initialled) C. R.
J. R.

No. 52.

The Law Officers of the Crown to the Earl of Rosebery.—(Received May 1.)

My Lord, *Royal Courts of Justice, April* 29, 1893.

Establishment of a Bank at Zanzibar.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 14th instant, stating that he was directed by your Lordship to transmit

to us the papers, noted in the margin,* relative to the establishment of a Bank at Zanzibar.

Agreement between Sultan and British East Africa Company of March 5, 1891.

That it would be seen from Sir C. Euan-Smith's despatch No. 75 of the 5th March, 1891, that the late Sultan of Zanzibar concluded an Agreement with the Imperial British East Africa Company on that day, by which the latter were authorized to establish a Bank at Zanzibar.

That by the terms of the Agreement, the Bank was to receive all the lawful support and assistance in the Sultan's power, and was to be viewed as the State Bank of the Zanzibar Sultanate.

That the Bank was granted the exclusive privilege and monopoly, for a term of fifty years from the date of the Agreement, of the right of issuing bank-notes of all denominations in Zanzibar and Pemba, and that the Agreement ran that "no other person or Corporation has been or will be granted this privilege."

That in consideration of that Concession, and of the further additional Concession in section 4, which, however, had not yet come into operation, the Imperial British East Africa Company undertook to pay the Sultan a sum up to and not exceeding 1,000*l.* per annum, to be taken from the net profits of the Zanzibar or Pemba branches of the Bank, and that they, or their nominees, were given the option of commuting the payment of the said 1,000*l.* at any time for the payment of 10,000*l.* down.

That in his communications, which were inclosed for our consideration, Mr. Rodd, Her Majesty's Acting Agent and Consul-General at Zanzibar, urged that such Agreement should be rescinded in the interests of the Government of Zanzibar.

That he argued (*a*), that the Company did not now wish to establish the Bank themselves, and that they had no right to dispose of it to third parties; and (*b*), that unless they did so establish it they should be called upon to withdraw from the Agreement, as forfeited by disuse.

That with regard to (*a*), your Lordship considered that there was force in Mr. Rodd's argument, that the Concessions were granted to the Company in view of the special position in which they stood at the time of the Sultan's Government, and that they should therefore be looked upon as personal and inalienable.

That the point, however, was one of great doubt, and that the difficulty appeared to be rather increased by the use of the word "nominees" in section 6 of the Agreement, which provides that the "Imperial British East Africa Company or their nominees shall have the option of commuting the payment" of the annual sum payable in consideration of the Concessions.

That it was possible that the Company might base on those words a claim to the right to alienate the Concessions to third parties, nominated by themselves, and that your Lordship was uncertain how far they would be legally justified in doing so.

That as to the second point (*b*), it appeared to your Lordship, that as there was no clause in the Agreement specifying any time within which the Bank should be established, and that as no notice had been given to the Company that they were unduly delaying the exercise of the privileges granted them, they could not be called upon to relinquish the Concession on the ground of non user.

That Sir Philip Currie was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion: (1) as to whether the Concession for the establishment of a Bank could be alienated by the Company; and (2) as to whether it had been forfeited by disuse, and with any general observations which we might have to offer on the case.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

(1.) That in our opinion the Concession of the 5th March, 1891, did not contemplate the carrying on of a Bank by the Imperial British East Africa Company, but the establishment of a Banking Company or Corporation by which the privileges granted by the Concession are to be enjoyed.

Sections 1, 2, and 3 plainly show this, and, although section 4 is not quite so clear in its terms, we are of opinion that the word "nominees" in that section also refers to the Bank to which—by the same section—the Contract there referred to is to be transferred. The mention of "shareholders of the Bank" in section 5, and of "nominees" in section 6, point to the same conclusion.

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* Mr. Rodd, No. 85; Mr. Rodd to Sir P. Anderson, March 4, 1893; Sir C. Euan-Smith, No. 75, March 5, 1891.

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We are, therefore, of opinion that, according to the terms of the Concession, the Company have the right to bring into existence as their "nominees" any Banking Company or Corporation, on such reasonable terms (not inconsistent with the Concession) as they may be able to make, and that properly speaking no question of alienation of the Concession arises.

We are of opinion, however, that from the nature of the case the Zanzibar Government has a right to require that the terms upon which the permission to establish the Bank is exercised are, in all respects, reasonable, and that in particular, having regard to section 5, no payment to the Company in respect of any profit reserved to themselves can be made to take precedence directly or indirectly, or to interfere in any way with the sum not exceeding 1,000*l.* a-year, stipulated for by that section. The result will be that any profit reserved to the Company must be taken subject to the 1,000*l.* a-year, and must then be of such moderate amount only as will not interfere with the commercial prospects of the Bank.

(2.) We are of opinion that no ground for forfeiture has arisen from the delay down to the present time, but that the Zanzibar Government have a right to require the Bank to be established on terms reasonably satisfactory, and within a reasonable time.

Notice to this effect should at once be given to the Company, and it should, at the same time, be pointed out, that unless the notice is complied with the Concession will be withdrawn, as, in our opinion, it may be in that event.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

No. 53.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received May* 9.)

Royal Courts of Justice, May 8, 1893.

My Lord,

Powers of judicial officers of Brit. East Africa Co.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to a question raised by Her Majesty's Acting Agent and Consul-General at Zanzibar, in regard to the powers of the judicial officers of the Imperial British East Africa Company, and set forth in Mr. Rodd's despatch No. 49.

That an application having been made to Mr. Cracknall, Her Majesty's Consul and Judicial Assistant at Zanzibar (who was also authorized to pay quarterly visits in his judicial capacity to the mainland territories of the Sultan under the administration of the Imperial British East Africa Company), to try a case in which a Zanzibar subject was to be indicted for causing the death of another Zanzibar subject, the question had arisen whether any jurisdiction vested in the officers of the Company to try cases in which Zanzibar subjects alone were concerned, in the parts of the territories above referred to, which did not come within the category of "aboriginal tracts."

That the question thus raised turned upon the construction to be placed upon Article II of the Sultan's Concession to the Company of 1888, from which their powers of jurisdiction were derived.

That the latter part of that Article prescribed that "The Judges shall be appointed by the Company or their representatives, and the Sultan shall confirm all such appointments, but all 'Kathis' shall be nominated by His Highness.

"That in aboriginal tracts the law shall be administered by the Company or their officials."

That in view of the seeming antithesis between those two clauses, your Lordship was disposed to think that a Zanzibari who committed a crime against another Zanzibari, was in such parts of the Company's territories as were not "aboriginal tracts," justiciable by the Sultan's "Kathis" alone, and not by the Company's judicial officers.

That Sir Philip Currie was, however, to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion on the question thus raised, as well as with any general observations which we might have to offer on the case.

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* Mr. Rodd's No. 49 and Article 2 of Imperial British East Africa Company's Concession.

We were also honoured with copies of Sir John Kirk's letters* of the 15th February and 21st April last respecting the powers and duties of the "Kathis."

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That having regard to Sir John Kirk's statements (contained in his letters of the 15th February and 21st April, 1893) as to the position of the "Kathis" at the time of the Concessions to the Company, we are of opinion that not only in aboriginal tracts (where probably there are no "Kathis"), but also in the districts where "Kathis" are appointed, native Zanzibaris and all others committing crimes are justiciable in the Courts of the Company's judicial officers.

The "Kathis" appointed by the Sultan will have such jurisdiction as they were allowed to exercise before the Concessions, and no other.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

No. 54.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received September* 18.)

Royal Courts of Justice, September 15, 1893.

My Lord,

Search of French dhows in Zanzibar waters.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the claim of Great Britain to the right of searching vessels under the French flag in the territorial waters of Zanzibar.

That the general question of the position of Powers exercising Protectorates in Africa was dealt with by our predecessors in their Reports of the 17th and 30th April, 1891, and 30th June, 1892, and that the point now at issue was gone into carefully in the draft to M. Waddington of the 13th June, 1891. That the contention now put forward by the French Government would be seen from the papers marked (M) and (O), and that the instructions which had been given to Her Majesty's naval officers would be found at p. v of Preface, and pp. 2 and 3 and 243 to 254 of the Volume of Slave Trade Instructions, drawn up by the Commission which sat in 1892 under the presidency of the late Sir Charles Butt.

That Sir Philip Currie was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion whether the terms of the proposed draft to the Marquis of Dufferin were right and proper, and, if not, in what way they should be amended, and with any general observations which we might have to offer on the case.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the terms of the proposed draft† to the Marquis of Dufferin, as initialled by us, are right and proper.

Attention is drawn to the marginal note on p. 3.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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* Sir J. Kirk, February 15 and April 21, 1893.

† This draft to the Marquis of Dufferin has not been printed, as the copy initialled by the Law Officers cannot be found. It had not been sent off up to April 7, 1894.

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List of Papers.

(A.) Treaty of 1844, France and Zanzibar. (State Papers, vol. xxxv, p. 1011.)	
(B.) Berlin Act. (Treaty No. 757.)	
(C.) Brussels Act. (Treaty No. 889.)	
(D.) Agreement with France, 1890. (Treaty No. 856.)	
(E.) Declaration of Protectorate, 1890. (Confidential No. 5997*.)	
(F.) Colonial Office Memorandum	February —, 1891.
(G.) Law Officers to Colonial Office .. .. (Confidential No. 6207, p. 10.)	April 17, „
(H.) Law Officers to Colonial Office .. .. (Confidential No. 6207, p. 18*.)	April 30, „
(J.) To M. Waddington	June 13, „
(K.) Law Officers to Foreign Office .. .. (Confidential No. 6347, p. 96.)	June 30, 1892.
(L.) To Marquis of Dufferin	May 29, 1893.
(M.) Baron d'Estournelles	July 7, „
(N.) Sir E. Hertslet, Memorandum	July 21, „
(O.) M. Renault, Memorandum	
(P.) Vol. I of Slave Trade Instructions.	
(Q.) Proposed draft to Marquis of Dufferin.	

No. 55.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received December* 13.)

Royal Courts of Justice, December 12, 1893.

My Lord,

Consols in name of Sultan of Zanzibar.

WITH reference to our opinion of the 19th September last,* to your Lordship's Memorandum, and to Mr. Davidson's note on the subject of the 200,000*l*. Consols standing in the name of the late Sultan of Zanzibar, we have the honour to

Report—

That we have further considered the matter, and, failing the indemnity we previously suggested, we think the following plan may be followed:—

We do not gather that the late Sultan left any will, in which case legal representation to him can only be effected by letters of administration. For this purpose affidavits should be obtained, properly authenticated, establishing the fact that the present Sultan is the heir, and of the next of kin of the late Sultan, and negativing the existence of any will.

The Sultan should further, by formal power of attorney, duly authenticated, appoint some person of, say, official position in this country to apply for letters of administration. We understand that the suggested objection to this course is its publicity. As to this, the Attorney-General has fully inquired from a Registrar of the Probate Division, who informed him that no publicity whatever will be given to the proceedings up to the point of the grant of the letters. After the grant is completed it is recorded in the Official Register, and then only can those who claim to inspect the Register become aware of the fact of the grant. It seems to us that at this stage no mischief can arise from publicity; we therefore suggest that the above course be followed.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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* Not printed, as it could not be found in the Foreign Office.

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Printed for the use of the Foreign Office. *July* 1895.

CONFIDENTIAL.

(6641.)

REPORTS

BY THE

LAW OFFICERS OF THE CROWN, &c.

1894.

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CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.: 1894.

AFRICA.

No. 1.

[**Colonial Office.**]

The Law Officers of the Crown to the Marquess of Ripon.

Royal Courts of Justice, April 18, 1894.

My Lord,

Extradition between British South Africa Company's territory and adjacent States.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 7th February last, stating that he was directed to thank us for our Report of the 21st November, 1893, on the subject of the wish of the British South Africa Company that extradition arrangements with the Orange Free State, the South African Republic, and the adjacent Portuguese possessions might be made with respect to the territory within the Company's field of operations.

That that territory was under the protection of Her Majesty, though not part of Her Majesty's dominions, and was within the zone defined by the VIIIth Article of the General Act of the Brussels Conference, dated the 2nd July, 1890.

That your Lordship trusted you were right in considering the effect of our Report to be as follows, viz.:—

That the right of extradition was the prerogative of the Sovereign of the country, that was to say, of Lobengula, and that Her Majesty, in taking under her protection Lobengula and his country, did not thereby acquire the right of extradition in respect of foreigners; that it was not open to Her Majesty to assume that right by Order in Council under "The Foreign Jurisdiction Act, 1890," or to confer it upon the High Commissioner; nor, without an assumption of territorial sovereignty, to give facilities to foreign police for the arrest of foreigners within the Protectorate; but that Her Majesty, who possessed certain jurisdiction within the Protectorate, might with the consent of a third Power lawfully extradite the subjects of that Power without reference to Lobengula.

That your Lordship regretted to be obliged to trouble us again on the subject, but that there were two questions which did not appear to have been sufficiently brought out in the reference on which our Report was asked, namely:—

Whether Lobengula had not, in fact, already conceded to Her Majesty, or by sufferance recognized the acquisition by Her Majesty of the right of extraditing foreigners, and whether the Powers who were Signatories of the General Acts of the Berlin and Brussels Conferences had not consented to the exercise of that right by Her Majesty.

That in connection with that point Mr. Bramston was specially to invite our attention to the Report of our predecessors in office, dated 17th April, 1891, and to the Memorandum which was thereto annexed.

That the case of Cyprus appeared to be analogous in its circumstances to the present case, and that Mr. Bramston was briefly to recall them.

That on the 4th June, 1878, Turkey by Convention assigned to Great Britain the Island of Cyprus "to be occupied and administered by England."

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That an Annex to that Convention, but not relating to the present question, was signed on the 1st July, 1878.

That by a further Convention, dated the 14th August, 1878, it was declared that the Sultan had transferred to Her Majesty for the term of the occupation full powers for making laws and Conventions for the government of the island in Her Majesty's name. That Her Majesty's authority in the island was recognized by foreign Powers.

That a subsequent Convention was made on the 22nd February, 1879, but that it did not bear on the present question.

That in exercise of the powers thus conferred, Her Majesty, under the advice of the Law Officers, made an Order in Council, dated the 15th July, 1881, regulating extradition in Cyprus. That a copy of that Order and of two Reports of the Law Officers, dated the 3rd and 20th May, 1881, were inclosed for reference. That it was suggested that the deduction to be drawn from those transactions was that the prerogative right of extradition was assignable by its possessor.

That the Charter to the British South Africa Company was dated the 29th October, 1889, and that an Order in Council delegating to the High Commissioner all powers and jurisdiction which Her Majesty at any time before or after the date of the Order had, or might have, within the limits of the Order (comprising, *inter alia*, the Company's field of operations), was, as we were aware, passed on the 9th May, 1891, and that, under that Order, Courts have been established and jurisdiction exercised without question by Lobengula.

That shortly after the making of that Order in Council, it was considered necessary for the peace of the country to prevent two persons, named Renny Tailyour and Hassförther (the latter a German subject), from returning to Buluwayo, Lobengula's chief place.

That Renny Tailyour was arrested at Tati, a place then nominally within Lobengula's territory, and within the limits of the Order; that Hassförther evaded arrest by escaping into the Transvaal; that Lobengula was much incensed at the occurrence, and that on the 18th August, 1891, the High Commissioner sent the following telegram to be delivered to Lobengula:—

"My Friend,

"I understand that you have spoken harsh words to Mr. Moffat, the Queen's Representative, and that you have charged him with being the cause of the arrest of Mr. Renny Tailyour and M. Hassförther. I send this message to inform you that they have been arrested by my orders, because I have reason to know that they desire to make mischief between you and the Great Queen. This I cannot permit. I believe that you desire to live in friendship with the Great Queen and with her people. I am responsible for the good behaviour of all white people within your territory, and to punish the evil-doers. I trust, therefore, that you will take back Mr. Moffat into your confidence. He will convey to me truly any message you may desire to send to me with respect to Mr. Renny Tailyour and M. Hassförther, or any other white men whom you may desire to visit you, and it will be my desire to meet your wishes if to do so will not endanger the peace of the country, or be injurious to your interests."

That the message was not delivered immediately, but that on the 31st August the High Commissioner telegraphed to Mr. Moffat at Buluwayo:—

"You must exercise your discretion as to delivering my message to Lobengula, but viewing the question in all its bearings from here, I am of opinion it should be delivered, so that Lobengula should realize that I exercise authority over all white men in the country."

That, in reply, Mr. Moffat telegraphed:—

"*Buluwayo, September* 11.—I read the Chief your message of the 31st (should have been the 18th) ultimo. He was quite willing to admit your right to deal with Europeans even up here."

That, although there had been differences with Lobengula on other matters, which had unfortunately ended in hostilities, there had been no dispute of any kind as to the exercise of jurisdiction over white men.

That it was important that the British authorities should have the power of extradition over foreigners within the territory in question, and thus prevent the territory from becoming an asylum for criminals from the foreign countries adjacent; and that if we should be of opinion that, under the circumstances detailed above, Her Majesty had not acquired that power from Lobengula either by grant or sufferance, care would be taken to secure it in the future settlement of the country, which must soon be made in consequence of the recent hostilities.

That your Lordship apprehended that if the power of extradition had been acquired from Lobengula, it should only be exercised over foreigners with the assent, express or implied, of their respective Sovereigns, and that, on that point, Mr. Wingfield was to invite our attention to Articles I to V of the General Acts of the Brussels Conference, with a view to considering whether the assent of the Signatories of that Act had not been already given.

That Mr. Wingfield was to ask us to be good enough to favour your Lordship with our opinion:—

1. Whether Her Majesty had acquired from Lobengula, by grant or sufferance, the power of extradition in proper cases, in respect of foreigners accused of committing crimes in foreign countries?

2. Whether such power, if acquired, could properly be exercised without the assent, express or implied, of the respective Sovereigns of such foreigners?

3. If not, whether such assent had been sufficiently given by the General Acts of the Berlin and Brussels Conferences so far as relates to the subjects of the Powers who were Signatories of those Acts?

4. Whether it was competent to the High Commissioner, by virtue of his Commission, to enter into extradition arrangements with the South African Republic, Orange Free State, and the authorities of the Portuguese possessions in South Africa?

5. Whether, if such arrangements were made, legislative sanction could be provided by proclamation of the High Commissioner under the Order in Council of the 9th May, 1891, or, if not, whether an Order in Council under "The Foreign Jurisdiction Act, 1890," would suffice as in the case of Cyprus?

Mr. Wingfield also inclosed, as having a bearing on the exercise of jurisdiction over foreigners in an European Protectorate, the papers mentioned in the accompanying list relating to the case of a British subject, a native of Mauritius, charged with having committed murder in the territory of the Sultan of Johanna (which was under the protection of France), who had been removed to the French Colony of Réunion, and brought to trial there, in which the "Cour de Cassation" at Paris had upheld the jurisdiction of the Réunion Court, and the Secretary of State for Foreign Affairs had informed Her Majesty's Consul at Réunion that Her Majesty's Government saw no objection to the exercise of criminal jurisdiction in the case by the Court of Réunion.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

1. That the answer to the first question depends entirely upon matters of fact, but the evidence before us does not in our opinion show that Her Majesty acquired from Lobengula such powers of extradition of foreigners as would form the basis of an effective system of extradition, or dispense with the necessity of securing sufficient powers on the resettlement of the country. The correspondence referred to is, for instance, limited to white people or Europeans, and does not directly refer to the coloured subjects of foreign States, who, nevertheless, would have to be dealt with in any effective scheme.

2. That as a matter of strict law, we see no reason why powers of extradition lawfully granted by the territorial Sovereign should not be exercised without the assent, express or implied, of the respective Sovereigns of foreigners to whom the powers are applied, but we do not differ from our predecessors, who have advised that any jurisdiction over foreigners in a protected State should, as matter of prudence, in general only be exercised with such consent. In the case of Cyprus, no such consent seems to have been given, but the devolution of powers from the Sultan was unusually comprehensive.

3. That such assent has been given partially only by the General Acts of the Berlin and Brussels Conferences, so far as relates to the subjects of Powers who were Signatories. The provisions of Article V of the Act of the Brussels Conference point directly to extradition, but are not sufficiently comprehensive to afford a basis for an effective system, being mainly confined to cases connected with the suppression of the Slave Trade, the immediate subject of the clauses.

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4. That it is competent to the High Commissioner, by virtue of his commission, to enter into extradition arrangements with the South African Republic, Orange Free State, and the authorities of the Portuguese possessions in South Africa.

5. If such arrangements are made, legislative sanction can be provided by Proclamation. The Order in Council of the 9th May, 1891, has, it seems to us, already committed to the High Commissioner the exercise on behalf of Her Majesty of all her jurisdiction, including that under "The Foreign Jurisdiction Act, 1890." The powers of the High Commissioner are to be exercised in conformity with instructions through a Secretary of State, and any acts of his are subject to disallowance, so that no difficulty is likely to arise from any excessive or undue exercise of the powers.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Governor, Mauritius, to Secretary of State	(No. 323)	September	18, 1893.
Consul, Réunion, to Governor, Mauritius		July	22, ,,
Ditto		July	22, ,,
Ditto		August	10, ,,
Pamphlet containing proceedings at Réunion.			
Order of Court of Cassation		October	27, ,,
Foreign Office to Colonial Office		January	5, 1894.
Colonial Office to Foreign Office		January	10, ,,
The Earl of Rosebery to Consul, Réunion	(Telegraphic)	January	11, ,,

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No. 2.

The Law Officers of the Crown to the Earl of Kimberley.—(Received May 23.)

My Lord,

Royal Courts of Justice, May 21, 1894.

Death sentence passed on A. J. Coker by Supreme Court of Niger Territories.

WE were honoured with your Lordship's commands signified in Sir H. Percy Anderson's letter of the 15th March last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to a sentence of death passed upon A. J. Coker, a native of Sierra Leone, by the Supreme Court of the Niger Territories, sitting at Asaba, on the 5th December, 1893.

That, in considering the case, it was necessary to observe that the territories of the Royal Niger Company had never been constituted a "local jurisdiction" under "The Africa Order in Council, 1889," although power was reserved for that purpose by Article 7 of the Order.

That justice was, at present, administered within them by delegation from the native Chiefs to the Company, and in accordance with the provisions of the Company's Charter.

That Article 9 of that Charter gave the Secretary of State power to exercise control over the proceedings of the Company in various matters, which included the administration of justice.

That in order to regularize their position, and establish an Administration in harmony with European ideas, the Company had issued a series of Regulations which had been communicated to the Secretary State.

That Regulation No. X of 1886 laid down that no sentence of death on a foreigner should be carried out until confirmation thereof had been received from the Company.

That there was, however, no provision for appeal to the Secretary of State beyond the general stipulation in Article 9 already referred to.

That in the present instance, therefore, there was no reason why the case should ever have been brought to the notice of the Secretary of State by the Niger Company. But that the prisoner appealed to him, and that his appeal was forwarded by the Company.

That it therefore became necessary for your Lordship to inquire into the matter; and that you had applied to the Company for the Report of the Supreme Court's proceedings. That it appeared therefrom that the prisoner was charged on two counts. That the first count was that he murdered the deceased, one Brass, a native of the Niger Company's Territories, in the employ of the Company, by administering a certain poison known as "sasswood;" that the second count was that he aided and abetted others to commit the said murder.

That the details of the case would be found in the copy of the proceedings of the Court, and in the Report of the Judges who tried the case.

That the Governor and Council of the Niger Company, having taken the case into their consideration, approved the finding of the Court, but in view of the remarks with which the Judgment was accompanied, commuted the death sentence to one of penal servitude for life.

That it appeared to your Lordship that the case was one of an unprecedented nature, and of a character which might not improperly excite considerable discussion and criticism if brought before Parliament; and that as the circumstances had been brought to the notice of the Secretary of State by the Petition of the British subject affected, a certain degree of responsibility might not unfairly be held to attach to Her Majesty's Government in regard to the matter.

That your Lordship therefore felt that the case was one which required careful consideration on your part, and that your Lordship was anxious, for your assistance in dealing with it, to be furnished with our views upon its legal aspects, as well as with any observations of a more general nature which we might be good enough also to offer.

That Sir H. Percy Anderson was therefore to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion—

1. As to whether, assuming that the Court had jurisdiction in the matter, the verdict was correct in law, and the subsequent commutation of the sentence such as was sufficient and reasonable in the circumstances?

2. As to whether it was incumbent on the Secretary of State, having regard to the fact that the petitioner is a British subject, to make any, and, if so, what representations to the Niger Company upon the subject?

3. Generally as to the case.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That we are of opinion—

1. That, assuming the Court had jurisdiction in the matter, the verdict was *not* correct in law, and the subsequent commutation of the sentence was *not* such as was sufficient and reasonable in the circumstances.

There was abundant evidence that Coker was aware of, and assenting to, "sasswood" being administered to Brass, and some evidence, which the Court was quite entitled to believe, that Coker ordered Brass to take the "sasswood." But there is not evidence upon which we can come to a conclusion that Coker thought he was really exposing Brass to the risk of death, and not the slightest evidence of any desire on Coker's part to injure Brass from any malicious motive. On the contrary, the two men seem to have been upon good terms, and Brass only took the "sasswood" on behalf of others who refused to take it.

We think the true view of the case is that Coker regarded the taking of "sasswood" as an ordeal which might lead to the detection of the thieves, and that he is not proved to have known it was an ordeal that endangered life. We consider that there was culpable recklessness in Coker, and that it resulted in the death of Brass.

Under these circumstances, it was, in our opinion, a wrong verdict to find Coker guilty of murder. A verdict of manslaughter would have been proper, and a sentence equivalent to twelve months' imprisonment with hard labour sufficient—whether as a punishment or as an example.

We have not in these papers any sufficient materials to deal with Coker's complaint as to his witnesses not being called and counsel denied to him. Such proceedings would have been a flagrant injustice; but we cannot assume that these complaints are well founded on the mere statement of Coker himself.

2. That it *would* be advisable for your Lordship to represent to the Niger Company that the sentence upon Coker passed in the first instance was not justifiable, because the evidence does not disclose a case of murder, but of manslaughter; and that the commuted sentence is out of proportion to the offence.

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The Secretary of State has, under clause 9 of the Charter, the right to require compliance with any suggestion he may make to the Company founded upon his dissent from any part of the proceedings of the Company relative to any of the inhabitants of its territories in respect of the administration of justice.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

Royal Niger Company	February 10, 1894.
Ditto	February 21, „
Ditto	March 1, „
Royal Niger Company's Charter	July 10, 1887.
Royal Niger Company's Regulation X (1886), and amending Regulations.	

[Colonial Office.] No. 3.

The Law Officers of the Crown to the Marquess of Ripon.

My Lord,

Royal Courts of Justice, July 3, 1894.

Suzerainty of Queen over South African Republic.

WE were honoured with your Lordship's commands signified in Mr. Fairfield's letter of the 28th ultimo, stating that he was directed by your Lordship to request us to favour you with our opinion on the question whether Her Majesty's suzerainty still existed in relation to the South African Republic, a point on which Her Majesty's Government had been challenged in Parliament to give an answer, in a manner which made it difficult to avoid doing so.

That, in the first place, Mr. Fairfield was to observe that the word "suzerainty," which was borrowed from the terminology of the feudal system, where it had a sufficiently definite meaning, was not a very apt term to apply to any recognized system of relationship between two modern States, each possessing Constitutional Government, and was not susceptible of a precise definition. That it had been remarked of it that it "may mean anything from the white palfrey of the King of Naples to full dominion."

That the South African Republic was founded by a number of British subjects of Dutch and Huguenot descent who, in order to escape from the restraints of British rule, migrated to the north of the Vaal River, *i.e.*, beyond the limits of Her Majesty's dominions. That after some years it was decided to come to a friendly understanding with those emigrant farmers, and that that was done by an instrument known as "The Sand River Convention," dated 15th April, 1852.

That the persons, whose right to manage their own affairs and govern themselves without any interference on the part of the Queen's Government was thus recognized, were at the time divided into three governmental groups, but that early in 1858 they amalgamated themselves into one State, known as the "South African Republic."

That the Republic was practically recognized by this and other countries as an independent foreign State until the 12th April, 1877, when the country was annexed on behalf of the Queen by Sir Theophilus Shepstone, whose act was ratified by Her Majesty's Government, the country being thenceforth administered, without physical resistance, as a British Crown Colony until towards the end of 1880, when a large part of the adult male population broke out into open insurrection. That after various engagements between the insurgents and the British forces, a preliminary Treaty of Peace was agreed to on the 21st March, 1881, between the British General, Sir Evelyn Wood, and the Transvaal leaders, of whom the principal was M. Paul Kruger, who for the last thirteen years has been the State President of the revived Republic.

That in Blue Book [C. 3114] of the year 1882, we should find at pp. 49-51 a full record of the negotiations between Sir Evelyn Wood and the leaders, which proceeded on the basis that the people of the Transvaal were to be granted self-government, subject to Her Majesty's suzerainty. That during the discussion M. Kruger said, "I accept suzerainty as explained by General Wood" (p. 51), and that Sir Evelyn Wood's explanation was set forth at the top of the following page (Annexure 8). That it was in the following words:—

"Suzerainty means: That the country has entire self-government as regards its own internal affairs, but that it cannot take action against, or with, an outside Power without the permission of the suzerain."

That that preliminary agreement being arrived at, the Transvaal forces broke laager and dispersed to their homes, it being left to the leaders to negotiate a definite and formal arrangement with a duly appointed Royal Commission. That those later negotiations took shape in the instrument known as the Pretoria Convention (see pp. 37-44 of Blue Book [C. 3114]).

That it would be seen that that instrument had no preamble or recital, but began at once with an operative clause, bearing no number, granting self-government, subject to the suzerainty of the British Crown and to the conditions and limitations set forth in a series of Articles numbered from I to XXXIII, the acceptance of the arrangement being contained in a concluding clause, also unnumbered, inserted below the signatures of the British Commissioners and itself signed by the Transvaal Representatives.

That our particular attention was requested to the Articles numbered II, III, XVIII, XXI, and XXII, which, it would be seen, claimed for Her Majesty (either in her regal capacity, or specifically as "suzerain") the entire conduct and control of foreign relations, and important rights of interference, both as to matters of internal government and border management.

That the Convention having proved distasteful to the Transvaal State, Her Majesty's Government agreed in 1883 to enter into negotiations for an amelioration of the then existing state of relations.

That the Transvaal State thereupon appointed a Delegation, consisting of M. Kruger and two other public men, who came to London with powers to negotiate; and that the correspondence between them and the then Secretary of State for the Colonies would be found in the Blue Book [C. 3947] of 1884. That it was important to observe in the opening letter, dated the 14th November, 1883, the Transvaal Delegation did not ask for a total abrogation of the suzerainty of the Queen, but rather their grievance was that, through duress, they had been forced in 1881 to accept Articles extending and developing that suzerainty, so as to make it something quite different and more hampering than what Sir Evelyn Wood had explained that it would amount to.

That the result of the negotiations between the Secretary of State and the Delegates was embodied in the London Convention of 1884 (pp. 47-58 of Blue Book [C. 3947]).

That the Resolution of the Volksraad of the South African Republic ratifying the Convention was inclosed for reference.

That in that Convention nothing was said, one way or the other, about suzerainty, and that the question was whether it survived notwithstanding. That in doing their work, Mr. Fairfield was to observe that the draftsmen, so far from appearing anxious to place the point beyond dispute, would almost seem to have desired to leave to each possible disputant something on which to base an argument, a course which was probably unavoidable if an agreement were to be arrived at, but which was directly answerable for the existing difficulty.

That in favour of the view that suzerainty survived, it might be said that—

1. It was not renounced, and Her Majesty ought not to be held to have deprived herself of such a right unless by express words.

2. The first part of the instrument, which was in the form of a direction and declaration by Her Majesty, did not say that the new Articles were to be substituted for the Convention of Pretoria, but for the "Articles" of that Convention, meaning presumably the numbered Articles, but excluding, by implication, the first (unnumbered) clause or sentence, which contained the grant of self-government to the Transvaal people, subject to Her Majesty's suzerainty.

3. Unless, at least, that opening part of the old Convention survived, the Transvaal people would have nothing in writing to show that the Queen had expressly abandoned her full sovereignty and dominion over the country as exercised between 1877 and 1881.

4. Although most of the attributes of suzerainty, as defined in the old Convention, disappeared in the new set of Articles, as much survived in Article IV, as Sir Evelyn Wood said that suzerainty consisted in, in fact, all that the new settlement did was to abandon those specific powers of suzerainty which Her

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Majesty's Government, in ignorance of the exact words used by Sir Evelyn Wood, had allowed, or directed, to be introduced, contrary to the understanding arrived at in March 1881.

That, on the other hand, it might be argued that:—

1. Her Majesty was made to speak of the new and substituted Articles as if they constituted "a new Convention," no words being used declaring or plainly implying that the new Articles were to be governed by, and read with, the opening sentence of the old Convention.

2. The declaration of suzerainty was over the "Transvaal State," a name imposed on the community by the Secretary of State's order against the wishes of the people and their leaders. The title of Transvaal State was quietly dropped in the new Convention and Articles, and the State was spoken of under its former title of the South African Republic, which before 1877 was undoubtedly an independent State. Although that Republic was for a time annexed, Her Majesty's authority being exercised over it *in invitam*, it was never made the subject of the particular form of dependence implied in the term suzerainty.

3. Her Majesty had never used the style of suzerain of the South African Republic in any public instrument, nor had any claim of suzerainty been made by Her Ministers on her behalf during the ten years which had elapsed since the London Convention was concluded.

4. The three earlier Conventions, viz.: those of Sand River, Pretoria, and London, were not in the form of agreements between equal parties, but, as to their opening and more operative parts, were in the form of grants by, or declarations of, the pleasure of a superior towards an inferior. The Conventions which had been concluded since 1884, were more in the form of agreements between equals. The Swaziland Convention of 1890 and that of 1893, which would be found in the documents noted in the margin, illustrated that proposition.*

5. As to the argument that, apart from the opening sentence of the Pretoria Convention, the British Crown had never undone the forcible annexation of 1877, and that the Transvaal people had otherwise no clear title to even a qualified independence, the answer of the Republic would probably be that the language of the Convention of 1884 and the subsequent attitude of this country constituted a tacit admission that the Sand River Convention constituted the true root and basis of the Republic's independence.

That the question was of no particular importance from a practical point of view, but that any unguarded utterance upon the subject might, in the present state of our relations with the South African Republic, produce mischievous results; and that your Lordship was inclined to think that, in answering questions in Parliament, it would be prudent—as far as possible—to adhere to the line taken by the late Mr. W. H. Smith in answering a question put to him by Mr. Edward Hardcastle on the 25th February, 1890.

That the question and answer were in the following terms:—

"*Mr. Edward Hardcastle*,—To ask the First Lord of the Treasury whether the suzerainty of the Transvaal was retained by the British Crown when the troops were withdrawn from that country? What is the nature and value of that suzerainty?

And whether, under it, British subjects, who are said already to outnumber the Boers, are entitled to the franchise?"

In reply, Mr. W. H. Smith said: "The Convention of London, made in 1884, between Her Majesty and the South African Republic, contains no express reservation of the Queen's right of suzerainty, and, although Her Majesty retains under the Convention the power of refusing to sanction Treaties made by the South African Republic with foreign States and nations and with certain native tribes, it is a cardinal principle of that settlement that the internal government and legislation of the South African Republic shall not be interfered with.

"No persons, whether British subjects or otherwise, could at present obtain the franchise within the South African Republic unless they make a declaration of allegiance to it, which involves, to a considerable extent, the renunciation, within the Republic, of their national rights and obligations as the subjects of the Queen."

That the last part of both question and answer were not directly material to the present question, but that the earlier parts were directly in point, and might perhaps be made more conclusive by the addition or interpolation of some reference to Sir Evelyn Wood's definition of suzerainty.

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* "African (South)," No. 400, p. 9. Blue Book, C. 7212, p. 149.

That your Lordship did not propose to formulate any series of specific questions on which a reply was asked, but that you would be glad to receive our advice and remarks on the above statement of facts and considerations.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the question whether there is not in Her Majesty a suzerainty over the South African Republic is of very little practical importance, though, on the whole, having regard to the negotiations which preceded the London Convention of 1884, the construction of that document itself, and the subsequent attitude of Her Majesty's Government towards the Republic, we are of opinion that the suzerainty has been abandoned. Whether this be so or not, the only subsisting right of interference, otherwise than by way of diplomatic representation, depends upon the Conventional right given by Article IV of the London Convention of 1884.

We have, &c
(Signed) JOHN RIGBY.
R. T. REID.

No. 4. [Colonial Office.]

The Law Officers of the Crown to the Marquess of Ripon.

My Lord, *Royal Courts of Justice, July* 3, 1894.

Commandeering of Brit. subjects in South African Republic.

WE were honoured with your Lordship's commands signified in Mr. Fairfield's letter of the 28th ultimo stating that he was directed by your Lordship to acquaint us that Her Majesty's Government desired to be favoured with our advice on the question (which had arisen out of the so-called "commandeering" of British subjects in the South African Republic) whether a State can, consistently with international law and comity, compel the subjects of another State who reside within its borders to render military service in maintaining the authority of the Government, or to pay a war tax in lieu of such service.

That the facts connected with the incident now occurring in the South African Republic were set forth in the proof prints of recent correspondence.*

That the only Treaty stipulation affecting British subjects in that behalf was that contained in Article XV of the Convention of London,† whereby British subjects, in common with other persons, not natives of South Africa, who settled in the territory between 1877 and 1881 were exempt.

That the six States noted in the margin‡ were known to have obtained a perpetual and total exemption for their subjects, and at the same time to have accorded reciprocal exemption to burghers of the South African Republic. That it was also believed that the Netherlands had such a Treaty with the South African Republic, although no copy of it appeared to be recorded in the archives of the Colonial Office or the Foreign Office.

That, as would be seen from the recent correspondence, there was a latent difficulty in the way of negotiating with the South African Republic on the basis of reciprocal treatment, although, notwithstanding, Sir Henry Loch seemed to be making an effort to do so.

That, as would be gathered from the papers, the question was not a new one. That it arose somewhat prominently in relation to the American Civil War, and again in the Transvaal itself, before its temporary annexation to the British Crown.

Mr. Fairfield inclosed with his letter the opinions given by the Law Officers of the day to the Secretary of State for Foreign Affairs at the time of the American War. He further stated that the opinion dated the 31st July, 1860, had evidently formed the basis of Lord Russell's despatch of the 4th July, 1861, which was quoted by your Lordship in the despatch to Sir Henry Loch of the 8th ultimo.

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* "African (South)," No. 470.
† London Convention of 1884. (Treaty No. 735.)
‡ Portugal, Belgium, France, Germany, Italy, and Switzerland.

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That two reports of the Law Officers of 1876, in regard to the earlier Transvaal case, were also inclosed, as well as a copy of the Blue Book C. 1748, which contained the despatch from Lord Carnarvon of the 22nd May, 1876, wherein he gave expression to the view contained in the first of those opinions.

That, as bearing on the question whether, in the abstract, a State has the right of exacting military service from aliens, it was worth noting that the States of the world were constantly abandoning that right by reciprocal arrangements in favour of one another's subjects, which seemed to afford evidence that it was admitted, by common consent, to exist. That this country had made such Treaties, and that a Treaty was now under discussion with Japan which contained such a stipulation, and in relation thereto it was mentioned that a difficulty had been felt as to the adhesion to it of those British Colonies, for such there were, which had passed laws based on the principle that aliens might be required to render service in the local armed corps. But that the Japanese Government had expressed its willingness to waive the objection and to accept the adhesion of any particular Colony, without insisting on an amendment of its local law. That the laws in question were, rightly or wrongly, left to their operation on the assumption that there was no doubt as to the competence of a country to impose such duties on aliens. That a list of them was noted in the margin of Mr. Fairfield's letter, but that the only one with which it seemed necessary to trouble us was the Cape Act, No. 7, of 1878, in connection with which it might be mentioned that at the time of the Basuto War, the Cape Government called out German subjects under its authority, and declined to defer to the objections of the German Government on the subject, a course in which Germany finally acquiesced.

That the so-called "Commando" system was described in the Law Officers' Report of 1876. That it had existed in the South African Republic ever since its foundation, but that the law at present in force dated from 1883. That a translation was inclosed. That it would be seen that the language of the law was not very clear or consistent. But that your Lordship did not desire to raise any question as to whether it had been exceeded in particular cases, or whether it was effectual for its purpose as generally understood. That, if any point of construction could be made against its application to British subjects as a class, or to individuals belonging to that class, the persons affected had had an opportunity of making it in the local courts of law, whose opinion was understood to have been in favour of the Republic upon the main question of law and competency. That your Lordship saw no present reason to doubt the impartiality of those Courts.

That the question on which our opinion was desired was, therefore, as follows:—

Assuming the Municipal Law of 1883 to be so framed as to render British subjects liable in terms to compulsory military service, and assuming its provisions to have been observed by the local authorities, is there nevertheless any valid reason to object to its application to British subjects on grounds of international law or comity; in other words, do we agree with the views of our predecessors, and do your Lordship's telegrams and your Lordship's despatch of the 8th ultimo treat the matter on a sound legal basis?

That as the matter was urgent, and might be raised in the House of Commons at an early date, your Lordship would be glad to receive our report as soon as possible.

In obedience to your Lordship's commands, we have considered the matter, and have the honour to—

Report—

That, in our opinion, on the assumption as to the Municipal Law suggested at the close of Mr. Fairfield's letter, there is no valid reason to object to its application to British subjects on the ground of international law and comity.

We agree with our predecessors, and are of opinion that the telegrams and the despatch of your Lordship of the 8th ultimo treat the matter on a sound legal basis.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

Annex (A).

(CAPE OF GOOD HOPE.)

The Law Officers of the Crown to the Earl of Carnarvon.

My Lord, *Temple, May* 9, 1876.

WE were honoured with your Lordship's commands signified in Mr. Malcolm's letter of the 23rd March last, stating that he was directed by your Lordship to transmit to us the accompanying copies of a correspondence respecting a complaint that one Hampden L. Smithers, a British subject, resident in the Transvaal Republic, had been compelled, in accordance with what was alleged to be the law of that State, to join a "commando" sent into the country of the Amazwazis, a native tribe, in order to help them against a threatened attack of the Zulus.

2. That a "commando" was a species of police force, organized in military fashion, in which it was understood that every able-bodied white resident in the Republic was compelled to serve when called upon.

3. That the principal object of the "commando" system was to provide a force which might be at all times available for the repression of disturbances among the savage tribes amongst or near whom the white inhabitants of the Republic dwell.

4. That assuming, as stated by Acting President Joubert, that the law of the Republic imposes upon all able-bodied residents the duty of compulsory service on a "commando," whether called out against the uncivilized tribes inhabiting and surrounding the Republic, or for whatever purpose, Mr. Malcolm was to request that we would advise your Lordship whether there was anything contrary to international comity and usage in the application of such a law to a foreigner, and whether the circumstances of Mr. Smithers' case appeared to be such as would justify any quasi-diplomatic intervention by Her Majesty's Representative in South Africa on his behalf, and that your Lordship would be obliged by any other observations which might occur to us on the subject generally.

In obedience to your Lordship's commands we have the honour to

Report—

That there is nothing contrary to international comity and usage in the application of such a law to a foreigner, and that there is nothing in the circumstances of Mr. Smither's case which would justify any quasi-diplomatic intervention on his behalf by Her Majesty's Representative in South Africa.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

Annex (B).

(CAPE OF GOOD HOPE.)

The Law Officers of the Crown to the Earl of Carnarvon.

My Lord, *Temple, July* 12, 1876.

WE are honoured with your Lordship's commands signified in Mr. Malcolm's letter of the 8th instant, stating that, with reference to the letter addressed by us to your Lordship on the 9th May last, in answer to your Lordship's letter of the 23rd March last, in which your Lordship asked for our opinion as to the power of the South African Republic to order a British subject out on a "commando," he was directed by your Lordship to inform us that further questions had arisen as to the rights of the South African Republic to exercise that power over a British subject.

2. That we should recollect that a "commando" was stated to be a species of police force organized in military fashion, in which it was understood that every able-bodied white resident in the Republic was compelled to serve when called upon; the principal object of the "commando" system being to provide a force at all times available for the repression of disturbances amongst the savage tribes of the country.

3. That your Lordship was, however, informed that recently the President of the South African Republic had decided to make an attack upon a powerful native Chief, who, it was maintained, was independent of the Republic, and had never owed them allegiance,

"That in order to carry out his purpose, the President had given orders for a large "commando" to be formed with the view of attacking the Chief; and numbers of British subjects, it was expected, would be summoned to serve upon it, and their cattle and waggons placed under requisition for the same purpose.

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4. That your Lordship could not see that in that instance the "commando" differs in any way from a declaration of war upon a neighbouring people; and as it would in that case have lost its true character of a police force for the maintenance of internal order, your Lordship apprehended that the President of the South African Republic could not, consistently with international comity and usage, or with the rights of British subjects, compel them to serve upon it.

That your Lordship therefore proposed to remonstrate against any measures being taken to compel the services of British subjects, or the appropriation of their property, for the purpose of any operations beyond the Republic.

But that before doing so your Lordship would feel obliged if we would advise whether, in conformity with the rules of international custom and usage, your Lordship was warranted in making such remonstrances.

That, as the matter presses, your Lordship would feel much obliged by an early reply.

In obedience to your Lordship's commands, we have the honour to

Report—

That we are of opinion that British subjects resident in and under the protection of the laws of a foreign country are, unless under Treaty exemptions, liable to military service and other burdens imposed upon the inhabitants in consequence of war.

The principle upon which we form this opinion is that, where a man chooses to live for his own advantage, he must, with the benefit, take the burdens to which the natural subjects of the State are liable, whether those burdens take the shape of taxes, loans, personal service, or the requisition of any part of his property for military operations entered into by the country.

In the case before us, it is said that the "commando" is for the purpose of carrying war into the territory of a neighbouring people.

It may be that, though in fact aggressive, the act will be a necessary part of defensive operations; but in any case we conceive that British subjects cannot claim, by reason of their British character, any exemption, personal or otherwise, from the duties and impositions borne by and laid upon other residents within the Republic.

We are, therefore, of opinion that your Lordship would not be warranted by international custom and usage in making the proposed remonstrance.

We think that your Lordship might, however, properly claim, on behalf of the British subjects who are unwilling to serve or have their property requisitioned, that they should be allowed a convenient and reasonable time for leaving the Republic.

We have, &c.
(Signed) JOHN HOLKER.
(For the Solicitor-General and myself),
J. PARKER DEANE.

[Colonial Office.] No. 5.

The Law Officers of the Crown to the Marquess of Ripon.

My Lord,
Royal Courts of Justice, August 24, 1894.

Extradition between British South Africa Company's territories and foreign States.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 14th instant, stating, with reference to our Report of the 18th April last respecting the power of extradition between British Protectorates and foreign territories, that he was directed by your Lordship to request us to consider the correspondence with the Foreign Office which had passed in reference to our Report, and that he was to ask us to inform your Lordship whether the despatch, of which the draft was inclosed, might properly be sent to the High Commissioner.

The documents referred to in the draft despatch were forwarded to us for reference.

In obedience to your Lordship's commands we have considered the matter, and have the honour to

Report—

That, in our opinion, the despatch of which the draft is inclosed may properly be sent to the High Commissioner.

As to the reference to "The Cape of Good Hope Act, 1882," it should be considered whether that Act is not defective as to the safeguards provided by the Treaties, and "The Extradition Act, 1870," with reference to political offenders, and other provisions for the protection of extradited persons.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

Annex.

Draft of Despatch to High Commissioner Sir H. Loch.

Sir,
Downing Street, August , 1894.

REFERRING to your despatch of the 20th March, 1893, South Africa, No. 139, transmitting a letter from the Secretary to the British South Africa Company, asking that extradition arrangements might be made in respect of Mashonaland, I have the honour to inform you that, in view of the position now occupied by the Company in Matabeleland and Mashonaland, Her Majesty's Government consider that the time has arrived when such arrangements may be taken in hand.

2. I have therefore to authorize you to enter into communication with the authorities of the South African Republic, the Orange Free State, and the Portuguese possessions in South Africa, with the object of coming to an agreement with them for the mutual extradition of fugitive criminals between those States and the territories which, by virtue of Her Majesty's Order in Council of the 18th July, 1894, are under the authority of the above-mentioned Company.

3. You state in your despatch that the question of extradition with the Portuguese territories is a matter which is beyond your Commission, but I am advised by the Law Officers that the terms of the 3rd Article of that Commission of the 28th August, 1889, are sufficient to authorize you to make such Agreements with the Representatives of Portugal in South Africa.

4. When you have effected an arrangement with these three States, or any of them, you may by a legislative Proclamation give effect and legal sanction to the arrangements; and I may add that "The Cape Extradition Act, 1882" (No. 22 of 1882), appears to furnish a convenient precedent for your guidance, **so far as its provisions extend; but the Law Officers have pointed out that it does not contain the safeguards provided by the Treaties and "The Extradition Act, 1870," with reference to political offenders, and other provisions for the protection of extradited persons. I have accordingly to draw your attention to section 3 of the Act of 1870, and to request you to take care that similar provisions are included in the Agreements with the above-mentioned States and in your Proclamation.*

5. Any such arrangement and Proclamation should be made to apply to the whole of the territories within the limits of the Order in Council of the 18th July, 1894.

I have, &c.

ARGENTINE REPUBLIC.

No. 6.

The Law Officers of the Crown to the Earl of Rosebery.—(Received January 25.)

My Lord,
Royal Courts of Justice, January 25, 1894.

O. in C. for carrying out Extradition Treaty with Argentine Republic.

WE were honoured with your Lordship's commands signified in Mr. Francis Bertie's letter of the 24th instant, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council for carrying into effect an Extradition Treaty between Great Britain and the Argentine Republic, which was signed at Buenos Ayres on the 22nd May, 1889, and of which the ratifications were exchanged on the 15th December, 1893.

That Mr. Bertie was to request that we would favour your Lordship with our opinion whether the draft Order in Council might be laid before the Queen in Council for Her Majesty's approval.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That in our opinion the draft Order in Council initialled by us is sufficient and proper for carrying out the object intended, and an Order in terms of such draft may properly be submitted to Her Majesty for approval.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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* The words in italics were added in pursuance of the suggestions in the last paragraph of the above Report of the Law Officers.—W. E. D.

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Annex.

Draft Order in Council.

WHEREAS by the Extradition Acts, 1870 and 1873, it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient; and that if, by any Law made after the passing of the Act of 1870 by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying the said Acts in the case of any foreign State, or by any subsequent Order, suspend the operation within any such British possession of the said Acts, or of any part thereof, so far as it relates to such foreign State, and so long as such Law continues in force there and no longer:

And whereas by an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," provision is made for carrying into effect within the Dominion the surrender of fugitive criminals:

And whereas by an Order of Her Majesty the Queen in Council, dated the 17th day of November, 1888, it was directed that the operation of the Extradition Acts, 1870 and 1873, should be suspended within the Dominion of Canada so long as the provision of the said Act of the Parliament of Canada of 1886 should continue in force and no longer:

And whereas a Treaty was concluded on the 22nd day of May, 1889, between Her Majesty and the President of the Argentine Republic, for the mutual extradition of fugitive criminals, which is in the terms following:—

[Treaty follows.]

And whereas the ratifications of the said Treaty were exchanged at Buenos Ayres on the 15th day of December, 1893:

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the * day of , 18 , the said Acts shall apply in the case of the Argentine Republic and of the said Treaty with the Argentine Republic.

Provided always, and it is hereby further ordered, that the operation of the said Extradition Acts, 1870 and 1873, shall be suspended within the Dominion of Canada so far as relates to the Argentine Republic and to the said Treaty, and so long as the provisions of the Canadian Act aforesaid of 1886 continue in force, and no longer.

(Initialled) C. B.
J. B.

AUSTRIA-HUNGARY.

No. 7.

Foreign Office to the Law Officers of the Crown.

Postal Convention with Austria-Hungary.

Gentlemen,

Foreign Office, August 29, 1894.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the inclosed correspondence in print (Paper A), respecting a proposed Postal Convention between Great Britain and Austria-Hungary.

In 1892 and 1893 representations were made by the Austro-Hungarian Government respecting the position of the Austrian Lloyd's steamers in Indian and certain colonial ports, and on the 10th June, 1893, the Earl of Rosebery suggested to the Austro-Hungarian Ambassador that the most satisfactory way of meeting the wishes of his Government in regard to Austro-Hungarian postal steamers visiting the ports of British Colonies and foreign possessions would be the conclusion of a Convention between the two countries respecting postal communications (p. 11 of print). A copy of the Postal Convention between Great Britain and France of the 30th August, 1890 (p. 12 of print), was at the same time sent to the Austro-Hungarian Ambassador as a basis for the negotiation of the proposed Convention.

The Austro-Hungarian Ambassador informed the Earl of Rosebery on the 2nd February last (p. 26 of print) that his Government approved in principle of the conclusion of a Postal Convention on the model of the Anglo-French Convention of the 30th August, 1890, and a draft Convention was accordingly prepared by Her Majesty's Postmaster-General (p. 28 of print).

The draft Convention was slightly modified at this Office (p. 30 of print), and was then submitted to the Treasury, Colonial Office, and India Office for the observations of those Departments. The views of the Colonial Office and the Treasury will be found at p. 33 of the print. The Government of India does not desire that the Convention should be applied to India (p. 35 of print).

The draft Convention, printed separately (Paper B), contains the modifications suggested by the several Departments concerned, and I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Kimberley with your opinion whether the draft Convention (Paper B), may properly be submitted to the Austro-Hungarian Government in its present shape for their consideration.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Confidential Print.
(B.) Draft Convention.

Report.

In our opinion, the proposed draft Convention in some respects may be considered to inconveniently depart from the provisions of "The Mail Ships Act, 1891."

Article I of the draft Convention provides that packets shall not be diverted from their destination, or be liable to seizure, embargo, or "Arrêt de Prince."

This is beyond the language of section 5 of the Act, and though Her Majesty can of course make engagements as regards the use of her prerogative without statutory sanction, yet it is not certain that the limitation of the Royal prerogative, coupled with the statutory restrictions on private rights contained in section 5, exhaust every possible cause of seizure, embargo, or arrest, though they would cover nearly all; and, in so far as the draft goes beyond the Act in limiting the rights of private persons, it could not be enforced in Great Britain.

The same Article requires notice, prior to boarding, to be given to the Consul or Vice-Consul.

The Act (section 1 (*a*)), requires such notice only where there is at the port a Consulate of that State.

It is for the consideration of your Lordship whether the Convention should require notice except where there is such a Consulate. It might be inconvenient.

The same Article requires deposit of cash or securities of the United Kingdom. This follows the Act, but as the Act only deals with deposits in Great Britain it may, perhaps, not have been intended that deposits in Austria should be in the securities of the other party to the Convention.

The same Article provides that "the payment or transfer into Court is to abide the law of the country relating to it." We presume this means the law of the country in which the payment or transfer is made, and we further suggest that the nature and amount of the security to be provided should also be determined by the law of the same country as is required by section 3 (1) of the Act.

In regard to Article VI of the draft Convention, it purports to forbid the carriage of any letter not included in the mails, except despatches of the respective Governments. Under British law, however, persons are entitled to convey that class of letters which are referred to in section 2 (sub-section 5) of "The Mail Ships Act, 1891," and no Convention could, without statutory sanction, prevent the lawful carriage of those letters in the territory of the United Kingdom.

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* Date to be inserted by Council Office, and to be a date ten days after publication in "London Gazette."

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This, however, may not be considered important, as it would not expose Her Majesty's Government to the risk of being disabled by our own law from carrying out Treaty engagements.

The other Articles of the proposed Convention appear to us not to require comment.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
December 12, 1894.

BELGIUM.

No. 8.

The Law Officers of the Crown to the Earl of Kimberley.—(Received July 21.)

Interpretation of Article XV of Commercial Treaty of 23rd July, 1862. Meaning of "British origin."

My Lord,

Royal Courts of Justice, July 20, 1894.

WE were honoured with your Lordship's commands signified in Sir H. Percy Anderson's letter of the 2nd ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to a doubt which had arisen as to the meaning to be attached to Article XV of the Treaty of Commerce of the 23rd July, 1862, between Great Britain and Belgium.

That the full text of that Article was as follows in the English version, and in the French counterpart respectively:—

"Articles, the produce or manufacture of Belgium, shall not be subject, in British Colonies, to other or higher duties than those which are, or may be, imposed upon similar articles of British origin."

"Les produits d'origine ou de manufacture Belge ne seront pas grevés, dans les Colonies Britanniques, d'autres ou de plus forts droits que ceux qui frappent ou frapperont les produits similaires originaires de la Grande-Bretagne."

That it would be seen that the English text uses the words "similar articles of British origin," where the French text employs the expression "produits similaires originaires de la Grande-Bretagne."

That Her Majesty's Secretary of State for the Colonies had under consideration, as we should perceive from the Colonial Office letter of the 16th April last, the question of facilitating trade relations between the British Colonies, by arrangements which might, apparently, involve preferential terms in regard to customs duties, and that it therefore became matter for practical consideration whether the words of the English text were to be taken to indicate articles produced in any part of Her Majesty's dominions, or articles produced in the United Kingdom of Great Britain and Ireland, or, lastly, articles produced in Great Britain proper, *i.e.*, England, Wales, and Scotland, to the exclusion of all other parts of Her Majesty's dominions.

That if each text were clearly unambiguous in itself, and if both texts were clearly contradictory as between themselves, it was conceived that the question which of the two texts should be held to prevail, could only be settled by amicable arrangement between the High Contracting Parties, whereby they might declare their present and original intention to be, and to have been, whatever they might now mutually agree that it should be.

That if, however, the English text were admittedly ambiguous, the following further questions appeared to arise. What was the meaning of the French text? Could the French text be consulted to explain the English text; and must the French text, if held to be unambiguous, be taken as decisive of the ambiguity of the English text?

That the subject was so fully discussed in the papers referred to us that it did not seem to be necessary to trouble us with any further or more detailed observations.

That Sir H. Percy Anderson was to request us to take the papers into our consideration and to favour your Lordship with our opinion whether, in Article XV of the Treaty of the 23rd July, 1862, between Great Britain and Belgium, the words "similar articles of British origin," when considered in conjunction with their equivalent in the French text, relate to the produce of the United Kingdom alone, or should be taken to include the produce of any part of Her Majesty's dominions. Whether, also assuming the words "articles of British origin" to include the produce of any part of Her Majesty's dominions, it was open to Belgium (or any other nation claiming most-favoured-nation treatment) to demand the full benefit of that reading notwithstanding the words in the French text "produits originaires de la Grande-Bretagne."

That Sir H. Percy Anderson was to request us to be good enough, at the same time, to favour your Lordship with any general observations which the consideration of the papers might suggest to us.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, in Article XV of the Treaty of the 23rd July, 1862, between Great Britain and Belgium, the words, "similar articles of British origin," by themselves, as well as in conjunction with their equivalent in the French text, relate to the produce of the United Kingdom alone.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

Treaty with Belgium	(Treaty No. 468)	July 23, 1862.
Colonial Office		March 22, 1894.
Minute thereon by Sir H. Bergne.		
Colonial Office		April 16, 1894.
Ditto		April 16, 1894.
Minute thereon by Sir H. Bergne.		
Sir E. Grey		April 20, 1894.
With Minute by Mr. Davidson.		
Colonial Office		May 24, 1894.

BRAZIL.

No. 9.

The Law Officers of the Crown to the Earl of Kimberley.—(Received March 17.)

My Lord,

Royal Courts of Justice, March 16, 1894.

Position of British ship-owners in respect to claims arising out of civil war in Brazil.

WE were honoured with the Earl of Rosebery's commands signified in Mr. Francis Bertie's letter of the 2nd instant, stating that he was directed to transmit to us the accompanying letter from the Clyde Sailing-ship Owners' Association, containing inquiries in regard to the position of British ship-owners in respect to claims arising out of the civil disturbances in Brazil.*

That a draft of the reply which it was proposed to return to that communication was also inclosed.

That since the commencement of the dissensions in Brazil, the Foreign Office had been requested from various quarters to support claims against the Brazilian Government for losses suffered by British subjects in connection with those dissensions.

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* Clyde Sailing-ship Owners' Association, February 19, 1894.

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That the reply sent in such cases had been to the effect that claims arising out of the civil disturbances in Brazil must await the termination of those disturbances, when they would be considered upon their merits.

That the Secretary of State was anxious, however, not to encourage ship-owners to entertain the belief that they were likely to get compensation for the delays to which, in consequence of the exceptional state of affairs then, and for some time past, prevailing within the harbour and port of Rio, merchant-ships had been, or might be, exposed in discharging their cargoes.

That claims upon the Brazilian Government based directly upon such delays, or in respect of demurrage paid, or future charters lost or forfeited in consequence of them, evidently differed in many respects from those arising out of the actual seizure of lighters or goods, the forcible detention of vessels, the incidental killing of British subjects or their imprisonment or ill-treatment, which were all proper subjects for consideration by a Mixed Commission or otherwise.

That, in order to prevent misapprehension on that point, the qualifying passage which appeared as the third paragraph of the inclosed draft had in the present case been added.

That Mr. Bertie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour the Secretary of State with our opinion as to whether the proposed reply to the Clyde Sailing-ship Owners' Association was, as it stood, a proper one; or whether it might advantageously be altered or modified, and, if so, in what respects.

We have taken the matter into our consideration, and have the honour to

Report—

That, in our opinion, the letter—of which a draft is submitted to us—is a proper one in the existing circumstances.

We have, &c.,
(Signed) C. RUSSELL.
JOHN RIGBY.

Annex.

Draft of Letter from Foreign Office to the Clyde Sailing-ship Owners' Association.

Sir,

Foreign Office, March , 1894.

I AM directed by the Earl of Rosebery to acknowledge the receipt of your letter of the 19th ultimo, containing inquiries regarding the position of British ship-owners in respect to losses caused by the detention of their vessels at Rio.

I am to inform you that all claims in connection with the civil disturbances in Brazil must await the termination of those disturbances, when they will, in so far as Her Majesty's Government are concerned, be considered and dealt with according to their respective merits.

Her Majesty's Government cannot, however, pledge themselves to support, and, as at present advised, they do not consider that the Brazilian Government would be likely to entertain, claims for compensation in respect of losses purely arising out of the delay experienced by ship-masters in discharging their cargoes at Rio owing to the state of affairs lately prevailing in that harbour.

In answer to your inquiry whether, after order has been restored, it will be the duty of Her Majesty's Government to bring about a Convention and endeavour to obtain the appointment of a Commission which will deal with all claims arising out of the disturbances, I am to say that it is impossible for Lord Rosebery to commit Her Majesty's Government beforehand as to the particular form of action which may eventually commend itself to them as most suitable for the purpose in view, since such action must depend in great measure upon circumstances and conditions not yet ascertained or ascertainable.

I am, &c.

[Initialled] C. R.
J. R.

No. 10.

The Law Officers of the Crown to the Earl of Kimberley.—(Received August 17.)

My Lord,

Royal Courts of Justice, August 15, 1894.

Detention of "Arethusa" at Rio. Claim for demurrage on Brazilian Govt.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us the papers relating to a claim for demurrage which the owners of the British barque "Arethusa" wished to prefer against the Brazilian Government on account of the vessel's detention by the orders of the port authorities at Rio from the 12th December, 1893, to the 16th April, 1894.

That the facts of the case were very fully set forth in the letter from Messrs. Macfarlane and Co. of the 29th May, 1894, which contained a full statement of claim, the protest entered by the master of the "Arethusa" before Her Majesty's Consul-General at Rio, and a copy of the charter-party.

That the facts of the case did not appear to your Lordship to justify Her Majesty's Government in advancing a claim for compensation against the Brazilian Government, and that the "Arethusa" Company were so informed on the 9th ultimo, and were told that they should, in the first instance, exhaust such legal remedies, if any, as they might be advised were open to them in the Brazilian Courts.

That the Company now stated in a letter of the 27th ultimo (Paper C) that, before preferring their claim to the Foreign Office, they had exhausted all the means open to them to recover compensation at Rio, but without success, and they urged a reconsideration of their case with a view to the Brazilian Government being pressed by Her Majesty's Government for a settlement of their claim.

That as the present case was similar to many other claims brought to the notice of Her Majesty's Government, Mr. Bertie was to request that we would take the papers into our consideration, and favour your Lordship with our opinion as to whether the case was one in which compensation might properly be demanded by Her Majesty's Government from the Government of Brazil, and with any further observations which we might have to offer on the case.

A Report by our predecessors of the 16th March with regard to the position of British ship-owners in respect of claims arising out of the civil disturbances in Brazil was also sent to us for reference.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That the case is not one in which compensation can properly be demanded by Her Majesty's Government from the Government of Brazil.

If it were shown that the Government of Brazil could have granted the necessary facilities, and did not choose to do so, or that the Government were granting compensation in like circumstances, the case might be altered, but nothing of the kind is shown in regard to the "Arethusa."

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

(A.) "Arethusa" Ship Company	May 29, 1894.
(B.) To ditto	June 9, "
(C.) "Arethusa" Ship Company	July 27, "
(D.) Law Officers' Report	March 16, "

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No. 11.

The Law Officers of the Crown to the Earl of Kimberley.—(*Received August* 17.)

T. J. Hughes killed by Brazilian insurgents. Claim of his mother to compensation.

My Lord, *Royal Courts of Justice, August* 16, 1894.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the papers[*] relating to a claim for compensation on the part of Mrs. Hughes, widow, on account of the death of her son, Thomas J. Hughes, an apprentice on board the British ship "Crown of India," who was killed on the 21st December last at the public landing-place in Rio Harbour by a shot from the Brazilian insurgent vessel "Jupiter."

That the facts of the case were fully set forth in the protest entered by the master of the "Crown of India" at Her Majesty's Consulate-General at Rio, a copy of which was inclosed in the letter from Messrs. Weightman, Pedder, and Co., and in the despatch from Sir H. Wyndham No. 14 of the 10th January.

That it would be seen that Hughes had, in the discharge of his duties, gone ashore at the Praça da Harmonia, the landing-place assigned by the Brazilian Government for the boats of men-of-war and merchant-vessels, as safer than the normal landing-place at the Marine Arsenal, which had been rendered exceedingly dangerous by the fire of the insurgents.

That Mr. Bertie was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion as to whether the case was one in which compensation might properly be demanded by Her Majesty's Government from the Government of Brazil on behalf of the mother of the deceased, and, if so, on what particular ground the claim should be supported, having regard to the fact that the shot by which Hughes was killed was fired from a vessel beyond the control of the Brazilian Government.

In obedience to your Lordship's commands, we have taken the papers into our consideration, and have the honour to

Report—

That we see no ground for the conclusion that the Brazilian Government in this case neglected to afford any protection which they were capable of giving, and that under these circumstances we are of opinion that the case is not one in which compensation can properly be demanded by Her Majesty's Government from the Government of Brazil.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

No. 12.

Foreign Office to the Law Officers of the Crown.

Detention of "Bertie Mills" at Rio Grande do Sul. Claim for compensation.

Gentlemen, *Foreign Office, August* 4, 1894.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying despatch, and its inclosures, from Her Majesty's Minister at Rio de Janeiro,[†] which relates to a claim for compensation presented by the master (since deceased) of the British ship "Bertie Mills" on account of the detention of that vessel, by order of the Brazilian authorities at Rio Grande do Sul, from the 30th January to the 15th February last.

The circumstances of the case are fully set out in the Memorandum which accompanies Sir H. Wyndham's despatch. From this it appears that the ship, after giving public notice of her sailing with cargo for Paranagua, was duly cleared and dispatched, with the sanction of the Customs authorities and Captain of the Port, but was stopped and detained at the bar by order of the Military Commander of the district, owing to Paranagua having fallen into the hands of the insurgents, but was subsequently released, and permitted to proceed to her destination.

This case appears to differ from many other claims for demurrage arising out of the civil disturbances in Brazil which have been presented to Her Majesty's Government, the detention of the vessel being due to the direct action of the Brazilian Government authorities.

I am to request that you will take these papers into your consideration, and that you will favour Lord Kimberley with your opinion as to whether the case is one in which compensation may properly be demanded by Her Majesty's Government from the Government of Brazil for the owners of the "Bertie Mills;" and, if your answer to this question be in the affirmative, whether the amount of 95*l.* 14*s.* 4½*d.*, claimed by the master, appears to you to be a fair and reasonable sum.

I am, &c.
(Signed) FRANCIS BERTIE.

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[*] Messrs. Weightman, Pedder, and Co., July 26; and Sir H. Wyndham, No. 14, January 10, 1894.

[†] Sir H. Wyndham, No. 184, June 28, 1894.

Report.

In our opinion, a claim may properly be pressed upon the Brazilian Government, and the amount mentioned does not appear to be unreasonable.

A war *de facto* was being carried on, and the Government, by prohibiting the "Bertie Mills" to continue the voyage because the port of destination was in the hands of the insurgents, treated the port as an enemy's port. As against neutrals, trade with such a port can only be legally prevented by an efficient blockade, which did not exist in the case before us.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
August 24, 1894.

No. 13.

Foreign Office to the Law Officers of the Crown.

Mr. Davies' claim on Brazil for damage to property during revolution.

Gentlemen, *Foreign Office, September* 24, 1894.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list relating to the claim of Mr. William Davies, a British subject, against the Brazilian Government for damage to his property during the late revolution in Brazil.

Mr. Davies resided at Toque Toque, a place near Nictheroy, and his house was situated in an elevated position directly opposite the island of Mocangué.

As the site was well suited for a military post, he and his family were ejected from their home by Brazilian soldiers on the 17th February last and his house has ever since been occupied by them.

The circumstances of his eviction are described in a despatch of the 21st March last from Mr. Wyndham, then Her Majesty's Minister at Rio, which is herein inclosed (Paper A).

To a communication which Her Majesty's Minister subsequently addressed to the Government of Brazil on this subject, a reply was made which will be found set out in Paper (B).

A despatch has recently been received (Paper C) from Her Majesty's Chargé d'Affaires at Rio, inclosing various communications from Mr. Davies, in which he describes the injury done to his property. He states that he considers that his residence has been rendered unsafe owing to an explosion of a powder magazine in the neighbourhood caused by the firing of the Government troops, and the firing of heavy guns. He also sets forth the damages which he considers he is entitled to claim.

I am to request that you will take the papers transmitted herewith into your consideration, and will favour Lord Kimberley with your opinion as to whether

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Mr. Davies' claim for compensation should be supported, and also with any general observations which you may have to offer on the case.

It will be observed that Mr. Davies affirms that neither he nor his family in any way violated the strict neutrality which it was their duty to observe during the whole period of the revolution.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Mr. Wyndham	(No. 102)	March	21, 1894.
(B.) Ditto	(No. 166)	June	15, „
(C.) Mr. Greville	(No. 219)	August	13, „

Report.

In our opinion Mr. Davies' claim for compensation in respect of what was done during the continuance of hostilities is not of a character which can be insisted upon.

Mr. Davies, as a resident in Brazil, took the risks of intestine war, and is in the same position as a native Brazilian, and we do not understand that in regard to compensation native Brazilians have been treated differently.

If Mr. Davies' house had been kept from him after reasonable military necessities have ceased, we think he would be entitled to compensation.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
November 7, 1894.

BULGARIA.

No. 14.

The Law Officers of the Crown to the Earl of Kimberley.—(*Received March* 14.)

My Lord,

Royal Courts of Justice, March 13, 1894.

Power of Bulgaria to conclude Commercial Treaties with Great Britain.

WE were honoured with the Earl of Rosebery's commands signified in Sir H. Percy Anderson's letter of the 2nd ultimo, stating that he was directed to transmit to us the papers noted in the accompanying list relative to the question whether the Principality of Bulgaria was in a sufficiently independent position properly to negotiate directly, and to conclude Treaties or other International Agreements with Great Britain respecting trade, industry, navigation, and other subjects exclusively involving the commercial relations between the two countries.

That prior to the date upon which the Treaty of Berlin of the 13th July, 1878, came into operation, the territory now known as Bulgaria was, both administratively and politically, an integral part of the Ottoman Empire.

That Article I of the Treaty of Berlin was as follows:—

"Article I. Bulgaria is constituted an autonomous and tributary Principality under the suzerainty of His Imperial Majesty the Sultan;" and that a Constitution for the Principality was promulgated on the 16th (28th) April, 1879.

That the other Articles of the Treaty of Berlin which had a direct or indirect bearing upon the question were Articles VIII, IX, and X. That they were as follows:—

"Article VIII. The Treaties of Commerce and of Navigation, as well as all the Conventions and arrangements concluded between foreign Powers and the Porte, and now in force, are maintained in the Principality of Bulgaria, and no change shall be made in them with regard to any Power without its previous consent.

"No transit duties shall be levied in Bulgaria on goods passing through that Principality.

"The subjects and citizens and commerce of all the Powers shall be treated in the Principality on a footing of strict equality.

"The immunities and privileges of foreigners, as well as the rights of Consular jurisdiction and protection as established by the Capitulations and usages, shall remain in full force so long as they shall not have been modified with the consent of the parties concerned.

"Article IX. The amount of the annual tribute which the Principality of Bulgaria shall pay to the Suzerain Court—such amount being paid into whatever bank the Porte may hereafter designate—shall be fixed by an Agreement between the Powers signatory of the present Treaty at the close of the first year of the working of the new organization. This tribute shall be calculated on the mean revenue of the territory of the Principality.

"As Bulgaria is to bear a portion of the Public Debt of the Empire, when the Powers fix the tribute they shall take into consideration what portion of that debt can, on the basis of a fair proportion, be assigned to the Principality.

"Article X. Bulgaria takes the place of the Imperial Ottoman Government in its undertakings and obligations towards the Rustchuk-Varna Railway Company, dating from the exchange of the ratifications of the present Treaty. The settlement of the previous accounts is reserved for an understanding between the Sublime Porte, the Government of the Principality, and the administration of this Company.

"The Principality of Bulgaria likewise, so far as it is concerned, takes the place of the Sublime Porte in the engagements which the latter has contracted, as well towards Austria-Hungary as towards the Company, for working the railways of European Turkey in respect to the completion and connection, as well as the working of the railways situated in its territory.

"The Conventions necessary for the settlement of these questions shall be concluded between Austria-Hungary, the Porte, Servia, and the Principality of Bulgaria immediately after the conclusion of peace."

That few cases illustrating the position created for Bulgaria with respect to her capacity to contract with other Powers on commercial or other kindred matters had as yet come under consideration.

That in 1881, however, our predecessors in office reported that Varna, a Bulgarian port, was no doubt, in a sense, a part of the Ottoman Empire, but that it was equally clear that Bulgaria had been made, for fiscal purposes, independent of the Porte, and might make her own Treaties with foreign Powers with reference to import and export duties, which particular duties were then under consideration.

L.O.R. 1881. (Conf. 4637), p. 102.

That it was, moreover, mentioned in the letter of reference to the Law Officers which was recited in the Report above quoted, that in December 1879 the Ottoman Government had ordered their Customs officials to treat goods arriving at Constantinople for transmission to Bulgaria as goods intended for a foreign country.

That in 1889 the Governments of Great Britain and of Bulgaria agreed, by means of an exchange of notes, on certain provisional stipulations regarding the Customs treatment to be accorded in either country to the trade of the other, and similar Agreements were also entered into, in a similar manner, by the German, French, Austrian, and Belgian Governments with Bulgaria.

That the following international compacts had also been entered into by the Bulgarian Government:—

June 24, 1879. Accession. Postal Union. (Hertslet's Treaties, vol. xv, p. 1068.)

September 18, 1880. Accession. International Telegraph Convention. (Hertslet's Treaties, vol. xv, p. 5034.)

May 9, 1883. Railway Convention with Turkey, Austria-Hungary, and Servia. (State Papers, vol. lxxiv, p. 155.)

July 28, 1883. Convention with Russia—expenses of occupation. (State Papers, vol. lxxiv, p. 1230.)

March 1, 1884. Accession to Geneva Convention for the amelioration of the condition of the wounded in armies in the field. (State Papers, vol. lxxv, p. 491.)

October 7, 1884. Agreement with Eastern Roumelia for the free admission of local products. (State Papers, vol. lxxv, p. 555.)

June 21, 1890. Convention. International Telegraph Regulations. (Hertslet's Treaties, vol. xviii, p. 540.)

That, as had been previously observed, by Article I of the Treaty of Berlin,

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Bulgaria was constituted "an autonomous and tributary Principality under the suzerainty of His Imperial Majesty the Sultan." That neither the Treaty nor the Minutes of the International Conference at which the terms of the Treaty were settled contained any definition of, or commentary on, the word "autonomous." That it must presumably be understood in the sense deducible from its derivation, and as meaning that Bulgaria was henceforth to be at liberty to make her own laws free from the control of any other Power. That it was also presumed that the only limitations to that liberty would be those limitations which were imposed by the Treaty itself—which had not been modified in that respect by any subsequent Agreement—and by such rules of international law and of the comity of nations as affect generally other States.

That it had been suggested that Article VIII of the Treaty appeared to foresee the possibility, and to admit the legality, of Bulgaria and another Power agreeing to modify the "Treaties of Commerce and Navigation as well as all the Conventions and arrangements" subsisting between them at the moment Bulgaria became an "autonomous Principality."

That, on the other hand, the actual language of the Article seemed scarcely to go further than to make the consent of the other Power necessary. That it was not stated whether the modifications were to be arranged with Bulgaria or with the Porte. That inasmuch as Treaties between the Porte and foreign Powers were in question, *quâ* Bulgaria, it might conceivably be the latter.

That the list of designations of international compacts given in the said Article VIII was very full, and might well have been intended to include all International Agreements other than such political matters of external relationship as were reserved to Turkey as being Bulgaria's "Suzerain."

That Article X of the Treaty indeed directed that Conventions in regard to certain railway matters should be concluded between Bulgaria and other countries.

That if the view now suggested of the meaning and effect of the word "autonomous" were correct, it was conceived that Bulgaria could, except for any limitations imposed by the Treaty of Berlin itself, by international law, or by the comity of nations, legislate as freely as any other State, and that it was further conceived that she could therefore contract with any other State on any matter on which she could legislate.

That if that were so, it seemed that Bulgaria was at liberty to enter into an Agreement with Great Britain similar in substance to the draft Convention inclosed in Mr. Dering's despatch No. 61, Commercial, of the 30th October, 1893.

That it was thought, however, that the form given to the proposed Convention by the draft in question should be altered, as it would be improper that the Queen should contract on a footing of equality with the Prince of a vassal State.

That it was also thought that the words "ties of friendship" should be omitted from the preamble as possibly trenching on a question of political relationship which appertained rather to the Porte as Bulgaria's Suzerain.

That Sir Percy Anderson was to request that we would take the papers into our consideration, and favour the Secretary of State with our opinion as to whether the matters included in the above-mentioned draft Convention forwarded by Mr. Dering could properly form the subject of a compact between Her Majesty's Government and the Government of Bulgaria, and generally with any observations which might occur to us upon the subject.

We have taken the papers into our consideration, and have the honour to

Report—

That, in our opinion, the matters included in the above-mentioned draft Convention may properly form the subject of a compact between Her Majesty's Government and the Government of Bulgaria.

Our opinion is founded on considerations substantially the same as those set out in Sir Percy Anderson's letter; and we concur also in the suggestions therein contained as to the form to be given to the Convention.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Mr. Dering.. .. .. .. (No. 61. Commercial)	October 30, 1893.
Parliamentary Paper "Commercial No. 7 (1890)." Correspondence respecting a Provisional Commercial Agreement with Bulgaria. (Parliamentary No. 3314.)	
Parliamentary Paper, "Turkey No. 44 (1878)." Treaty of Berlin. (Treaty No. 623.)	
Law Officers. (Confidential No. 4637, p. 102)	December 13, 1881.

CHILE.

No. 15.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received January* 17.)

My Lord, *Royal Courts of Justice, January* 16, 1894.

Violation of rights of Nitrate Railway Co. by Chilean Concession for a railway from Alianza to Chucumata.

WE were honoured with your Lordship's commands signified to us in Sir Thomas Sanderson's letter of the 29th December last, stating that he was directed by your Lordship to transmit to us the accompanying papers relating to matters arising out of the questions at issue between the Nitrate Railways Company and the Government of Chile.

That it would be seen from the letter of Messrs. A. Gibbs and Sons that their firm in Chile, Messrs. Gibbs and Co., were seeking to obtain a Concession from the Chilean Legislature for the construction of a line of railway from Alianza to Chucumata, which the Nitrate Railways Company contended was in violation of their rights.

That Messrs. A. Gibbs and Sons stated that they understood Her Majesty's Minister at Santiago had received instructions to use his influence with the Chilean Government to stop any executive action affecting the alleged privileges of the Nitrate Railways Company pending the decision of the Chilean Courts with regard to those privileges. That they had also learned that Mr. Kennedy had extended this intervention unofficially by endeavouring to prevent legislative action with a view to granting the fresh Concession which they had applied for to Congress, and which had already passed the Chamber of Deputies, and had been reported upon favourably by a Commission of the Senate.

That, in view of the situation, they asked that Her Majesty's Minister might be instructed to refrain from action until Congress had dealt with their Bill, and that he should reserve any protest, if it should be thought necessary to make one, until the promulgation of the Law was in the hands of the Executive. That they argued, however, that no such process was necessary or expedient, that British interests called for a position of neutrality on the part of Her Majesty's Government, and that the Nitrate Railways Company had adequate remedies for the protection of their rights in the local Courts without Mr. Kennedy's support, and they pressed for immediate instructions to Mr. Kennedy in the sense desired by them, as Congress would shortly rise, and a delay of the Concession till next autumn would be very injurious to them.

That it would be in our recollection that various questions relating to the affairs of the Nitrate Railways Company, some of which had already been before our predecessors in office at intervals during the two previous years, were referred to us on the 13th September, 1892, and that on the 3rd November of that year we replied that "in our opinion nothing has taken place since the Report of the Law Officers dated the 14th May, 1892, which ought to lead Her Majesty's Government to depart from the decision then arrived at, namely, to defer the consideration of the question of the propriety of further diplomatic action until the legal proceedings before the Chilean Tribunals have come to an end."

L.O.R. 1892. (Conf. 6347), p. 13.

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Sir Thomas Sanderson further stated that since the date of our last Report several communications had been received from Messrs. Budd, Johnson, and Jecks, the solicitors to the Nitrate Railways Company, asking for the good offices of Her Majesty's Government to prevent further action by the Chilean Government in contravention of their asserted monopoly until the Law Courts had pronounced upon the validity of their claim. Upon these communications telegrams were addressed to Her Majesty's Minister on the 10th June last, the 29th November, and the 3rd December, authorizing him to make unofficial representations in this sense, such instructions being considered to be in accordance with the general tenour of the opinions given by us and by our predecessors.

That this correspondence was inclosed for our information, together with Memoranda explanatory of it.

That it was difficult to form any satisfactory opinion on the points raised in Messrs. Anthony Gibbs' letter as against those contained in the letters from Messrs. Budd, Johnson, and Jecks, which involved an expert knowledge of Chilean law and procedure, and the application of such knowledge to the *ex parte* statements presented —now by the Nitrate Railways Company—now by their opponents in interest, Messrs. Gibbs and Sons. But that unless the correspondence were sent to Her Majesty's Minister for a Report, and for an expert opinion from a Chilean lawyer of eminence (a course which time did not permit), the necessary alternative was to deal with it on the spot.

That it did not appear to your Lordship that Her Majesty's Minister, whose representations had been unofficial, had departed to any extent from that neutral attitude which a British Minister was no doubt bound to maintain *pendente lite* towards British subjects in controversy before the Tribunals of the Power to which he was accredited.

But that under the circumstances, as time was of great importance, your Lordship had dispatched a telegram to Mr. Kennedy, of which a copy was inclosed, authorizing him to abstain from opposition to the passing of the Concession through the Senate, if this would not entail material injustice to the Nitrate Railways Company.

That your Lordship would be glad to be favoured with our opinion on the following points arising out of the correspondence:—

1. Whether the Nitrate Railways Company had sufficient legal remedies to allow of Her Majesty's Government refraining from opposition to the grant of fresh Concessions *pendente lite*.

2. Whether in particular the circumstances justified a definite instruction to Mr. Kennedy to abstain from action as regards the passing of the Concession to Messrs. A. Gibbs and Sons through Congress.

3. What course it would be proper that he should take as regards any action of the Executive to promulgate the Concession after Congress had passed it; and

4. Whether it would further be desirable specially to warn Mr. Kennedy to be careful to preserve a strictly neutral attitude as to the merits of the dispute.

We have also the honour to acknowledge the receipt of Mr. Francis Bertie's letter of the 12th instant, inclosing further correspondence, as noted in the margin.*

We have taken all the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

In answer to the 1st question:

That we have no sufficient knowledge of the law of Chile, or, indeed, of the exact facts, to enable us to state with certainty what are the legal remedies of the Nitrate Railways Company. We gather, however, that Messrs. Gibbs are seeking not a Charter or grant from the Executive Government, but an Act of the Legislature of Chile authorizing them to construct the line of railway in question. Assuming that the Legislature act *intra vires* in such legislation, and that it is without condition and receives such Executive assent as the Constitution of Chile requires, we fail to see that the Nitrate Railways Company would have any remedy whatever, either by injunction or by action.

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* Messrs. Budd and Co, January 11; to ditto, January 12; Messrs. A. Gibbs and Sons, January 11; to Mr. J. G. Kennedy, Telegraphic, January 11; Messrs. Budd and Co. (second letter), January 11, 1894.

In answer to the 2nd question:

That, in our opinion, the instructions to Mr. Kennedy ought to be that Her Majesty's Government would desire that nothing should be done either by legislation or by Executive act to alter the *status quo* until it shall have been seen how far the issue of the pending litigation has cleared up the complicated questions which have arisen. We fear that the telegram of the 11th January, 1894, to Mr. Kennedy would not unnaturally be understood as conveying that Her Majesty's Government were in favour of the passing of the Act by the Senate subject to remonstrance against its proclamation.

In this state of things it is important to have definite information whether, as alleged, the promulgation is a merely formal and matter of course act; if it is not it would appear to afford an adequate opportunity of remonstrance should the occasion justify it.

As to the pending litigation, it is impossible to predicate how far its issue will clear up the questions involved. We gather that one of those questions raises the contention that according to the law of Chile a Concession may be revoked by the Council of State, and, if this be the law, the Concession must, we conceive, be read subject to this power of revocation.

As to the 3rd question:

That Her Majesty's Government would be justified in asking the Executive not to promulgate the Concession *pendente lite*, and we think this course ought to be followed, if necessary.

As to the 4th question:

That it is desirable specially to warn Mr. Kennedy to be careful to preserve a strictly neutral attitude as to the merits of the dispute.

Generally:

That, in our opinion, there is no obligation on the part of Her Majesty's Government to interfere in the present state of things, except in the manner above indicated.

Messrs. Gibbs and Co. would appear to have given currency to the statement that Her Majesty's Government are in favour of the measure for granting their Concession passing the Senate, and we think it would be well (so far as is consistent with the telegram of the 11th January, 1894) that this impression should be removed.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Messrs. A. Gibbs and Sons	.. ..	December 18, 1893.
(B.)	Law Officers' Report.	(Confidential No. 6347, p. 13).. ..	November 3, 1892.
(C.)	Ditto.	(Confidential No. 6113, p. 9)	February 10, 1890.
(D.)	Ditto.	(Confidential No. 6113, p. 11).. ..	April 28, „
(E.)	Ditto.	(Confidential No. 6207, p. 35).. ..	May 14, 1891.
(F.)	Messrs. Budd, Johnson, and Jecks	.. .. ..	June 7, 1893.
	Ditto	.. ..	November 14, „
	To Mr. J. G. Kennedy	.. .. (No. 2. Telegraphic)	June 10, „
	Ditto	.. .. .. (No. 8. Telegraphic)	November 29, „
	Ditto	.. .. .. (No. 9. Telegraphic)	December 3, „
(G.)	Ditto	.. .. .. (No. 10. Telegraphic)	December 27, „

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CHINA.

No. 16.

The Law Officers of the Crown to the Earl of Rosebery.—(Received February 15.)

Chinese passenger traffic between Chefoo and Vladivostock. Over-crowding of vessels.

My Lord, *Royal Courts of Justice, February* 14, 1894.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 18th November last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relating to a question to which your attention had been called by Her Majesty's Minister at Peking in regard to the over-crowding of vessels engaged in the Chinese passenger traffic between Chefoo and Chinese and Russian Manchuria.

That the position of the question, so far as British vessels were interested in it, was fully stated in Mr. O'Conor's despatch (No. 171) of the 29th July, 1893.

That our attention was especially invited to the despatch on the subject, addressed by Mr. Allen, the British Consul at Chefoo, to the Government of Hong Kong on the 27th June, in which he explained the grounds which, in his opinion, necessitated the adoption of effective measures in order to provide against the risks of over-crowding in British vessels conveying passengers between Chefoo and the districts above referred to.

That Mr. Allen appeared to have consulted the Chief Justice of the Supreme Court at Shanghae whether he should put in force the Regulations of the Hong Kong Ordinances No. 5 of 1874 and No. 1 of 1889 in the case of steamers clearing from Chefoo to Vladivostock with more than twenty Chinese passengers.

That eventually a Proclamation was issued by the Hong Kong Government under section 3 of the Chinese Passengers Act of 1855, whereby obligations were imposed on British ships so employed as to additional accommodation fees, &c., such as are not entailed in the case of shorter voyages.

That that Proclamation was, however, subsequently withdrawn on the ground of the disadvantages entailed thereby on British shipping, so long as the vessels of other Treaty Powers were not subjected to similar Regulations for the safety of passengers.

That the Board of Trade, to whom the correspondence had been referred, had expressed the opinion that it was desirable that effective measures should be taken to prevent over-crowding as far as British vessels engaged in the Chinese passenger traffic between Chefoo and Chinese and Russian Manchuria were concerned, but that power to interfere with British ships in such a matter should not be intrusted to a Consular officer unless he was in a position to avail himself of the requisite technical advice and assistance.

That Sir Thomas Sanderson was to request that we would take the papers into our consideration, and that we would favour your Lordship with our views as to the form which such restrictive measures should take. That your Lordship was of opinion that, in any event, before such measures were enforced against British subjects and ships, it would be necessary that Her Majesty's Government should procure the concurrence of other Maritime Powers to similar restrictions being applied in respect of their nationals and vessels respectively.

That your Lordship also desired to be favoured with any general observations we might have to offer on the subject.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, any measures for the regulation of the passenger traffic in British vessels between Chefoo and Vladivostock should be in the form of a special Ordinance of the Legislature of Hong Kong to be passed, under section 2 of "The Chinese Passengers Act, 1855," after consultation with and obtaining the concurrence of other Maritime Powers as regards their ships, and to be duly proclaimed as mentioned in the said 2nd section.

The course already attempted of bringing the case within the existing Ordinances, by proclaiming that the voyage is to be deemed to be a voyage of more than seven days' duration, seems to us less desirable, both on account of the questions raised as to the actual duration of the voyage and the apparently unnecessary stringency in some respects of the existing Ordinances.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Mr. O'Conor .. .. (Nine Inclosures.)	(No. 171)	July 29, 1893.
(B)	Board of Trade		October 30, „
(C.)	"Chinese Passengers Act, 1855." 18 & 19 Vict. cap. 104.		
(D.)	Ordinances of Hong Kong: 1866–1882 (volume).		
(E)	Ordinance of Hong Kong: No. 1 of 1889.		

No. 17.

Foreign Office to the Law Officers of the Crown.

Issue of permits exempting rice from customs duty by Chinese Govt. to Chinese to the exclusion of foreign shipping lines.

Gentlemen, *Foreign Office, May* 19, 1894.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to a practice on the part of the Chinese Government of issuing free permits exempting rice from customs duty to the China Merchants' Steam Navigation Company, to the exclusion of foreign shipping Lines.

This practice, as will be seen from the accompanying despatch from Mr. O'Conor, Her Majesty's Minister at Peking (No. 19 of the 16th January, 1893, Paper A), has arisen from a custom which has existed in China for many years past, of issuing, whenever there is by reason of famine or inundation a scarcity in a particular part of the Empire, Proclamations permitting the free import of grain into such districts with a view to reduce the price of food.

The Superintendent of Customs at the port of shipment was in such cases in the habit of issuing certificates granting exemption of duty, called "Huchass," to all applicants, for such quantities of rice or wheat as they might require, and the holders of these permits were formerly at liberty to ship their grain by any line of steamers they pleased, the only condition being that the certificates should be used within a reasonable period of time from their issue.

Until recently vessels of all nationalities have participated in this trade, and, as showing the magnitude which it attained, it may be mentioned that as much as 150,000 tons were, during the year 1891, exported in this way from Shanghae alone.

In August 1892 orders were issued to permit the export of grain free of duty to Tien-tsin, and the local authorities at Shanghae accordingly commenced to issue exemption certificates, but introduced an important difference in the wording, making them available only by the steamers of the China Merchants' Company, a native Line.

The agents of the two principal Lines of British steamers at once protested to Her Majesty's Consul-General at Shanghae at this attempt to oust them from their fair share in the carrying trade.

Representations were in the first instance made by Her Majesty's Consul-General to the local authorities, and on this proving of no avail, a more formal protest was addressed by Her Majesty's Legation at Peking to the Chinese Government, by whom it was argued that the grain in question was virtually Government property, and was exempted from duty on the same principle as the tribute grain which is brought annually from the south to Tien-tsin, and the conveyance of which is confined exclusively to the steamers of the China Merchants' Company.

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It was proved, however, by Her Majesty's Minister, as the result of practical experiment, that the rice in question was, in point of fact, bought and sold in open market; this contention would therefore appear to be unsustainable.

Under these circumstances, Her Majesty's Minister formally protested against the Concession to a native Company of preferential privileges in the carriage of an ordinary article of commerce as an infringement of Article III of the Commercial Treaty of 1880 between China and the United States (Paper B), to the benefits of which British subjects are entitled under Article LIV of the Treaty of Tien-tsin of 1858 (Paper C).

This view was strongly contested by the Chinese Government, who maintained that that clause merely provides for uniformity of duties upon articles of commerce carried by foreign and native vessels, but that it does not necessarily imply that rice carried for the relief of distress is such an article of commerce.

It was, nevertheless, finally promised that the monopoly complained of should be abolished. (Mr. O'Conor's No. 120 of the 9th May, 1893, Paper D.)

Owing, however, to the disastrous floods of last summer in northern China, the system was revived, and further free permits for rice for the affected districts were issued again exclusively to the China Merchants' Steam Navigation Company, as reported in Mr. O'Conor's No. 200 of the 30th August, 1893 (Paper E).

It appeared to Her Majesty's Government that if the rice was an ordinary article of commerce and not the *boná fide* property of the Chinese Government, no preferential treatment could properly be granted to any one Company to the exclusion of others without infringement of the Articles of the Treaties above mentioned, and Her Majesty's Minister was instructed to point out to the Chinese Government that it was impossible to admit the pretension that urgent measures of relief could form an excuse for, or indeed be otherwise than hindered by, this monopoly, and to claim for the firms affected the rights to which they were entitled by Treaty. (*Vide* despatch to Mr. O'Conor, No. 248, of the 2nd November, 1893, Paper F.)

The course of the discussions and the contentions of the Chinese Government are further illustrated by Mr. O'Conor's despatches Nos. 226 and 235 of the 10th and 24th October, 1893, respectively (Papers G and H).

In the opinion of Her Majesty's Government, besides the Articles of the Treaties above quoted, Article XLIV of the Treaty between Spain and China of the 10th October, 1864 (Paper I), may be relied on as supporting this view. The Article in question grants to Spanish vessels the right of engaging in the coasting trade.

Similar Articles also exist in the Treaties between—

China and Austria, 1864	Paper marked (J)
„ Belgium, 1865	„ (K)
„ Denmark, 1863	„ (L)
„ Italy, 1866	„ (M)

Her Majesty's Minister, however, in view of the tenacity with which the Chinese Government have adhered to its own view, is disposed to think that little impression is likely to be produced by continued argument, unless accompanied by a claim for compensation for the loss inflicted on British shipping interests by the unjust privileges given to their rivals. (Mr. O'Conor's despatch No. 63 of the 14th March, 1894, Paper N.)

Lord Kimberley therefore wishes to submit to you the question whether the practice complained of does (as contended by Her Majesty's Government) constitute an infringement of the Treaty rights of Great Britain; and, if so, whether Her Majesty's Government would be justified in advancing a claim for compensation in the manner contemplated.

I am to request that you will take the Papers transmitted herewith into your consideration, and that you will favour the Earl of Kimberley with your opinion upon these questions, as well as with any general observations which you may have to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Mr. O'Conor	(No. 19) ..	1893
(B.)	Treaty: United States and China		November 17, 1880
(C.)	„ Great Britain and China (Treaty No. 448).		November 8, 1858, and October 24, 1860
(D.)	Mr. O'Conor	(No. 121) ..	1893
(E.)	„	(No. 200) ..	1893
(F.)	To Mr. O'Conor	(No. 248) ..	1893
(G.)	Mr. O'Conor	(No. 226) ..	1893
(H.)	„	(No. 235) ..	1893
(I.)	Treaty: China and Spain		October 10, 1864
(J.)	„ „ Austria	..	1864
(K.)	„ „ Belgium	..	1865
(L.)	„ „ Denmark	..	1863
(M.)	„ „ Italy	..	1866
(N.)	Mr. O'Conor	(No. 63) ..	1894

Report.

That, in our opinion, the practice complained of would constitute an infringement of the Treaty-rights of Great Britain if British subjects were excluded from the benefits of carrying rice duty free.

We are further of opinion that Her Majesty's Government would be justified in addressing a claim for compensation in the manner contemplated whenever damage is occasioned thereby to British subjects.

At present, however, it appears to be admitted that no such damage is occasioned, owing to the pooling arrangements mentioned in the correspondence, but care should be taken to reserve clearly the right of diplomatic representation, and claim for damages to British subjects whenever occasion requires.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
June 29, 1894.

No. 18.

The Law Officers of the Crown to the Earl of Kimberley.—(*Received August* 17.)

My Lord,
Royal Courts of Justice, August 16, 1894.

Chinese passenger traffic. Overcrowding of vessels. Power of Hong Kong Govt. to make Regulations under Act of 1855.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us the papers relating to the question of the overcrowding of vessels engaged in the Chinese passenger traffic between Chefoo and Chinese and Russian Manchuria.

That the previous history of this case was brought to the attention of our predecessors in November last, and that, with a view to carry out the recommendations of the Law Officers as expressed in their Report of the 14th February, a draft Circular to Her Majesty's Representatives at the Courts of the Maritime Powers was prepared inviting them to co-operate in an attempt to check this abuse by enforcing upon their subjects Regulations analogous to those contemplated by Her Majesty's Government.

That the Colonial Office and Board of Trade were, in the meanwhile, consulted with a view to the preparation of a draft Ordinance to be passed by the Legislature of Hong Kong for the enforcement of the proposed Regulations.

That the Board of Trade had now communicated a Memorandum which they had received from their Solicitor, stating that he had been unable to satisfy himself that the Government of Hong Kong had any power under the Chinese Passenger Act of

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1855 to make Regulations in respect of vessels proceeding to sea on voyages of less than seven days' duration.

That the reasons for this view were fully set forth in the Memorandum by Mr. Murton, C.B., which accompanied the Board of Trade letter of the 10th July.

That this Memorandum was subsequently considered in conference by the legal advisers of the Colonial and Foreign Offices respectively, who concurred generally in the views expressed by Mr. Murton, and it had therefore been considered desirable to resubmit the papers to us in order to obtain our opinion on the specific point raised in his Memorandum, and in the event of that view of the construction of the Act being considered correct, on the further question, whether a short amending Act should not be passed, or some other, and, if so, what steps should be taken to confer upon the Government of Hong Kong the powers necessary to enforce Regulations of the nature desired.

That the papers previously submitted to our predecessors, which included a copy of the Chinese Passenger Act of 1855, were sent for convenience of reference.

Mr. Bertie further stated that he was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in his letter, and with any general observations which we might have to offer on the matter.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the Government of Hong Kong have power under the Chinese Passenger Act of 1855 to make Regulations in respect of vessels proceeding to sea on voyages of less than seven days' duration.

There is no limitation in the 2nd section of the Act, which is the source of the authority of the Legislature of Hong Kong to make Regulations.

The limitations appearing in Schedule (A) represent the scope of the Regulations thought suitable when the Act was passed; they do not qualify the power of the Legislature of Hong Kong to make other quite different Regulations if they see fit.

The limitations appearing in sections 4 and 8 of the Act expressly enjoin certain duties upon ships on voyages of more than seven days, and penalties for non-compliance, but do not in any way curtail the provisions of section 2.

We therefore see no necessity for any amending Act, or any other step of that character, considering that the existing law suffices for the purpose.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

(A.) Law Officers	February 14, 1894.
(B.) Circular.	
(C.) Board of Trade	July 10, "

No. 18*.

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, November 13, 1894.

Conveyance by sea of silver lent to China by Hong Kong and Shanghae

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying letter from the Hong Kong and Shanghae Banking Corporation,* stating that they have recently made arrangements for a loan of half-a-million sterling to the Chinese Government, and that it is intended that an instalment of the loan shall be provided by the Shanghae branch of the Bank, under conditions explained, by means of silver shipped to Tien-tsin. It has, however, been suggested to the Corporation that, from the fact of the Bank having raised a loan for the Chinese Government, such shipment of silver might be declared contraband of war, and, although conveyed by a steamer under the British flag, be liable to seizure by the Japanese. They are therefore desirous to know how the case stands, and solicit advice and assistance in the matter.

Banking Corporation. Liability to seizure as contraband of war.

The main question which appears to arise is whether this money, which is on board a neutral vessel going to a belligerent port, is not properly to be considered to be *ancipitis usus*, and thus conditionally contraband, and whether, if so, the further presumption does not fairly arise in the particular case that it is intended to use the money in furtherance of the purposes of war. This is, no doubt, a matter of the appreciation of evidence, and would have, if the vessel were seized for carrying contraband, to be settled by the Japanese Prize Court; and under these circumstances there would seem to be no ground for objecting to the vessel being stopped on the high seas, with a view to being brought in, for adjudication before the competent Tribunal, by a Japanese man-of-war.

It appears to Lord Kimberley to be quite out of the question, in any circumstances, for Her Majesty's Government to provide the vessel with a naval convoy, as is apparently suggested in the postscript to the letter from the Corporation.

It is important for the Corporation to have a speedy vessel, as the navigation of the Peiho will be closed in a few days by frost.

I am to request that you will take this matter into your immediate consideration, and that you will favour Lord Kimberley, at your earliest convenience, with your opinion, and with any general observations which you may have to offer on the case.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

In our opinion, money may or may not be contraband according to its destination, and the purpose for which it is intended. In this particular case we think there is a fair presumption which would warrant a Japanese war-ship in stopping the vessel carrying the silver on the high seas, and bringing her in for adjudication. Whether or not the money would be condemned would then depend upon whether the evidence established a purpose to apply it in furthering military operations in China.

We agree that it would be quite contrary to usage for a convoy to be furnished by Her Majesty's Government.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
November 16, 1894.

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* November 12, 1894.

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EGYPT.

No. 19.

The Law Officers of the Crown to the Earl of Rosebery.—(Received February 15.)

Submission of G. Pegna, Brit. subject, partner in German firm, to jurisdiction of German Consul in Egypt.

My Lord, *Royal Courts of Justice, February 14, 1894.*

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 3rd ultimo, stating that he was directed by your Lordship to transmit to us a copy of a despatch from Her Majesty's Representative at Cairo respecting an application made by Mr. Guttieres Pegna, a British subject, to be permitted to submit himself to the jurisdiction of the German Consulate in Egypt in all matters relating to a German firm in which he was about to become a partner.

That Mr. Bertie was also to inclose, for our information, copies of the Minutes written in the Foreign Office on Lord Cromer's despatch.

That your Lordship requested that we would take the matter into consideration, and that we would favour your Lordship with our opinion whether Mr. Pegna's request might properly be granted; and

That your Lordship would also be glad to be furnished with any general observations which we might wish to offer upon the legal points involved.

In obedience to your Lordship's commands we have considered the matter, and have the honour to

Report—

That, in our opinion, there is no reason in principle why Mr. Pegna's request to be allowed to submit himself to the jurisdiction of the German Consulate in Egypt in all civil matters relating to the German firm should not be granted. The withdrawal of Mr. Pegna from the jurisdiction of the British Court either in criminal or civil matters ought not to be permitted, but this withdrawal would not, in our opinion, be effected by such a submission as above mentioned.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Lord Cromer	(No. 17. Treaty)	November 11, 1893.
(B.)	Minutes thereon.		
(C.)	Law Officers. (Confidential No. 5246, p. 169)		September 21, 1885.
(D.)	Ditto. (Confidential No. 4637, p. 81)		December 24 1881.

No. 20.

The Law Officers of the Crown to the Earl of Kimberley.—(Received July 19.)

Remission of sentence on V. Minasi.

My Lord, *Royal Courts of Justice, July 18, 1894.*

WE were honoured with your Lordship's commands signified in Sir H. Percy Anderson's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us a despatch* which had been received from Sir Charles Cookson, Her Majesty's Consul-General and Judge at Alexandria, inclosing a Petition from Vicenzo Minasi, a convict in the prison of the Chief Consular Court for Egypt, who was sentenced by that Court to one year's penal servitude on the 28th November, 1893, upon his conviction after trial by jury of the offence of embezzlement in his capacity of clerk.

That Sir Percy Anderson was also to inclose a copy of the Judge's notes of the evidence taken at the trial.*

That Sir C. Cookson recommended the prayer of the convict to the favourable consideration of the Secretary of State on two grounds: his previous good conduct, and his good behaviour while in prison.

That the former ground was doubtless considered by the Judge in pronouncing sentence on Minasi; while, by the operation of the system of "days of grace," Minasi's good conduct during his imprisonment would enure to his advantage, and would procure him his discharge somewhat before the expiration of the term of his original sentence.

That, as the case appeared to your Lordship to have been a very serious one of breach of trust, and as the sentence did not seem to have been at all excessive under the circumstances, your Lordship entertained serious doubts as to the propriety of granting the prisoner's petition, but that your Lordship was anxious to be favoured with our opinion on this point before finally deciding the matter.

That Sir Percy Anderson was therefore to request that we would take the papers into our consideration, and favour your Lordship with our opinion as to whether any, and, if so, what, remission of Minasi's sentence might properly be made.

In obedience to your Lordship's commands, we have taken the matter into our consideration, and have the honour to

Report—

That we think that a remission of three months of the sentence may properly be made if the Secretary of State thinks fit. We do not advise this upon the ground that the original sentence was excessive, but upon the ground that the Judge who passed it considers the case, with the merits of which he is familiar, as one for merciful consideration.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

No. 21.

Foreign Office to the Law Officers of the Crown.

Provincial Consular Court at Alexandria. As to holding concomitantly with and during closing of Chief Court for Egypt.

Gentlemen, *Foreign Office, August 6, 1894.*

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which raise questions with regard to the arrangements to be made for the discharge of the legal business of the Chief Consular Court for Egypt during the absence on leave, or on emergency, of the Judge of that Court.

It will be seen that by the conjoint operation of the Ottoman Orders in Council, 1873 (Article 14) and 1874, Her Majesty's *Consul* at Alexandria for the time being holds the office of Judge of Her Britannic Majesty's Chief Consular Court—to which he is appointed by a separate warrant under Her Majesty's Sign Manual—that he must be (with certain exceptions which it is unnecessary for the present purpose to consider) at the time of his appointment a member of the Bar of England, Scotland, or Ireland, of not less than seven years' standing, and that during a vacancy in the office of Judge, or on emergency, a *fit person* approved by the Secretary of State may

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* Sir C. Cookson, No. 16, May 9, 1894.

* Inclosure in Sir C. Cookson's No. 21, June 11, 1894.

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temporarily be Acting Judge, with all the jurisdiction, power, and authority of Judge.

Sir Charles Cookson, who was originally appointed *Consul* "for the city and port of Alexandria" and Judge at that place on the 30th November, 1874, still holds the office of Judge of the Chief Court. In 1891 he was promoted to be Consul-General, the district assigned to him in his commission as Consul-General being also the city and port of Alexandria.

Up to the year 1889 it appears to have been the invariable custom—when Sir Charles Cookson went on leave, or other emergencies arose—to appoint temporarily as Acting Judge some gentleman from the Consular service or elsewhere who possessed the legal qualification prescribed in section 3 of Article 15 of the Ottoman Order of 1873.

Since the year 1889, however, this practice seems to have been discontinued, and on the recommendation of Sir Charles Cookson, Mr. Alban, the British Vice-Consul at Alexandria, who has from time to time during the absence of Sir Charles Cookson on leave been appointed Acting Consul-General at that place, but who himself possesses neither a Royal Commission nor the legal qualification above mentioned, has been on more than one occasion permitted to discharge judicial functions at Alexandria during the absence of the Judge.

Lord Kimberley, however, entertains some doubt as to whether such functions can be exercised at Alexandria—which is the seat of the Chief Consular Court for Egypt—by any one except the Judge of that Court, or, in his absence, by some person possessing the legal qualification prescribed by Order in Council in the case of an Acting Judge, and duly appointed to that office.

Sir Charles Cookson is, as is gathered, of opinion that a Provincial Court can sit at Alexandria concomitantly with the Chief Court, and that the Judge of the Chief Court being, according to the proper construction of the Order in Council, a Consular officer duly qualified to hold and form a Provincial Consular Court for his Consular district can as Consul-General hold and form such a Provincial Court for the city and port of Alexandria, notwithstanding that Alexandria is the seat of the Chief Consular Court.

It is suggested that Mr. Alban, as Acting Consul-General, can sit in such Provincial Court for Alexandria when and if it has been held and formed by the Consul-General for that city and port; and that such a Court, although its sittings are in abeyance so long as the Consul-General presides in the Chief Consular Court in his capacity of Judge, has always existed, and—on the closing of the Chief Consular Court during the absence of the Consul-General and Judge—revives so as to permit the Acting Consul-General to sit therein, and to adjudicate upon all cases which are within the competence of a commissioned Consular officer when sitting in a Provincial Court.

Sir Charles Cookson has, however, been good enough to prepare a Memorandum, to which I am to beg your especial attention, setting forth in more detail the grounds on which he bases his opinion.

On the other hand, it is suggested that the holding of a Provincial Court at Alexandria—either concomitantly with the Chief Consular Court, or while that Court is temporarily closed—is inconsistent with the general scheme and system of arrangement of the Courts under the Ottoman Orders in Council.

These Orders, more especially the Principal Order of 1873, do not appear to contemplate the holding of a Provincial Court at Alexandria at any time, and it appears doubtful whether the word "provincial," as used in the Orders in Council, is properly applicable to any act, event, or entity which is done, takes place, or exists at the seat of the Chief Consular Court.

This view is strengthened by reference to the provisions of the Order which deal with the Supreme Court at Constantinople in its connection with, and relation to, the various Provincial Courts within its district.

Moreover, Article 31 of the Order of 1873 clearly differentiates the Chief Court for Egypt (which sits at Alexandria) from the various Provincial Courts, as also does Article 35.

Again, Article 36, while providing that the Chief Court shall sit at Alexandria, makes no provision for a Provincial Court there.

Article 2 of the Order of 1874 makes Her Majesty's Consul (now Consul-General) at Alexandria the Judge of the Chief Court, and Article 94 of the Order of 1873 provides for the Judge of the Chief Court referring less important matters to the Law Secretary, a provision which seems inconsistent with the holding of a Provincial Court in the same place.

In these circumstances, Lord Kimberley will be glad if you will take the provisions of the Orders in Council into your consideration, and favour him with your opinion as to—

1. Whether a Provincial Consular Court can be held at Alexandria (*a*) concomitantly with and (*b*) during the temporary closing of the Chief Court for Egypt.

2. If the answer to either or both of the above questions be in the affirmative, by what Consular officer, *i.e.*, whether the Consul-General for the city and port of Alexandria, or the Vice-Consul, should such Provincial Court be held and formed?

I am, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

Memorandum by Sir C. Cookson	July 19, 1894.
Collection of Ottoman Orders in Council (Confidential No. 2354.)	

Report.

1. In our opinion, unless the Secretary of State has made an exception under Article 15 of the Order in Council of 1873, a Provincial Consular Court can be held at Alexandria both (*a*) concurrently with and (*b*) during the temporary closing of the Chief Court for Egypt.

We see nothing in the general scheme of the Order that is inconsistent with this view, and we may observe that the Articles in the China and Japan Order for 1865, prohibiting the holding of Provincial Courts in the districts where the superior Courts are held, seem purposely to have been omitted from the Order of 1873.

2. In this case, as the Acting Consul-General is also Vice-Consul, we are of opinion that no difficulty arises in his forming and holding a Provincial Court unless the Secretary of State has made an exception in his case under Article 15. If any conflict of jurisdiction arose between the Consul-General and the Vice-Consul, the Secretary of State could determine it by excluding either or both of them under Article 15 from forming and holding a Provincial Court.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
August 24, 1894.

FRANCE.

No. 22.

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 22, 1894.

Gentlemen,

H.M.'s Treaty obligations in Newfoundland.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, relating to two questions connected with Her Majesty's Treaty obligations in Newfoundland, which have been raised upon consideration of the Naval Officers' Reports on the Newfoundland fisheries for the season of 1893.

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These questions are :—

1. Salting lobsters for export.

1. Whether the new industry of salting lobsters for export is or is not an infringement of the *modus vivendi*.

2. Transfer of lobster factories to new sites.

2. Whether, in regard to certain proposed transfers of lobster factories to new sites, a matter which is provided for in the *modus vivendi*, but as to which the French Admiral raised serious difficulties for the first time last year, Her Majesty's Government are justified in remonstrating against the refusal of the French Admiral to sanction any such transfers.

As regards the salting of lobsters, it will be seen from the 9th paragraph of the Colonial Office letter of the 11th February that Her Majesty's Secretary of State for the Colonies is of opinion that this industry is not an infringement of the *modus vivendi;* but Lord Kimberley entertains grave doubts on this subject—doubts which are in a great measure confirmed by a perusal of the annexed Memorandum by Mr. Hall, to whom the papers were referred. Whether or not the salting is done on board ship or on shore does not appear clearly from the correspondence, but his Lordship understands from the Colonial Office that it is, as a matter of fact, done on shore in the houses of the fishermen, and not on board ship. This would appear to be a point of considerable importance in considering the legality of the industry under the provisions of the *modus vivendi*.

In regard to the refusal of the French Admiral to sanction transfers of lobster factories to new sites, Lord Kimberley concurs in the views expressed in paragraphs 10 to 14 of the Colonial Office letter of the 11th February, and, subject to your concurrence, he proposes to address a representation to the French Government on this subject if it be eventually decided to propose a renewal of the *modus vivendi* for the ensuing season.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour his Lordship with your opinion on the questions submitted in this letter, viz., whether, under the *modus vivendi*, Her Majesty's Government are bound to prohibit the salting of lobsters or not, or whether they may leave it open, as suggested by Mr. Hall, as a set-off against the refusal of the French authorities to permit transfers of British lobster factories to new sites; and lastly, whether, if the *modus vivendi* should be renewed, they would be justified in remonstrating against the action of the French Admiral in refusing his sanction to the transfer of existing British lobster factories to new sites.

Lord Kimberley would be glad at the same time to be favoured with any general observations which you may desire to offer on the papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Colonial Office (A)	February	11, 1894.
(B.)	Memorandum by Mr. W. E. Hall..	March	7, „
(C.)	To Colonial Office	March	19, „
(D.)	*Modus Vivendi*.		
(E.)	Arbitration Agreement.		

Report.

1. Although the point is by no means free from difficulty, it is on the whole the better construction of the *modus vivendi* to hold that it was intended, with reference to the whole question of lobster fishery, to preserve the existing state of things, and that the new method of salting lobsters was not contemplated, and is not permissible.

If, as it now appears, the salting is carried on in the fishermen's houses on shore, there is even greater difficulty in supporting it than if it were done on board the fishing-vessels.

2. That we concur in the views expressed in paragraphs 10 to 14 of the Colonial Office letter of the 11th February last, and are of opinion that a representation on the subject may properly be addressed to the French Government.

3. That the construction of the *modus vivendi*, which on the whole we adopt on the first question, is not so clear as to make it improper to leave that question open as a set-off against the contention of the French authorities on the other question.

(Signed) C. RUSSELL.
JOHN RIGBY.

Royal Courts of Justice,
April 7, 1894.

Annex.

Colonial Office to Foreign Office.

(A.)

Downing Street, February 11, 1894.

Sir,

I AM directed by the Marquess of Ripon to transmit to you, to be laid before the Earl of Rosebery, copies of the Naval Officers' Reports on the Newfoundland fisheries for the season of 1893.

2. The only points in Commodore Howe's covering letter to which Lord Ripon desires to call attention are the remarks as to the continued prevalence of smuggling and the want of medical attendance among the inhabitants of the Treaty Shore, and his Lordship proposes to bring Commodore Howe's remarks on these points to the notice of the Colonial Government.

3. The letter printed at p. 44, as to the reoccupation of the coast, forms the subject of a separate communication.

4. On the letter which forms the third inclosure, p. 45, containing the report on the working of the *modus vivendi*, several questions of importance arise.

5. The difficulty alluded to in paragraph 2 as arising from the fact that the renewal of the *modus vivendi* is not notified till the spring, while the preparations for the lobster fishery are made in the autumn, does not appear to Lord Ripon to be of serious importance, as the present position with regard to the arbitration must be well known on the coast, and also, therefore, the probability of a continued renewal of the *modus vivendi;* but if by the end of the next fishing season no steps have been taken for providing the necessary permanent legislation which must precede the arbitration, it may be desirable to arrange for the renewal of the *modus vivendi* for the season of 1895 during the next autumn, with a view to avoiding any pretext of a grievance on this account.

6. With regard to the observations in paragraphs 3, 4, 5, and 16 as to the limits prescribed for adjacent lobster facfories, Lord Ripon entirely agrees in Commodore Howe's view, that the naval officers should not interfere in disputes between British subjects, for, although the Colonial Magistrates have not, so far as his Lordship is aware, any authority to compel the observance of the factory limits assigned by the naval officers, it is the duty of the Colonial Government to provide for the maintenance of peace and order amongst the population, and it is undesirable that the naval officers should use the arbitrary powers intrusted to them except in cases where the Treaty rights of the French are clearly involved. Captain Howe has informed the Colonial Government of his views on this question in his letter of the 3rd October, pp. 55–57.

7. Similarly, with regard to the remarks in paragraphs 17 to 19, Lord Ripon concurs in the Commodore's view, that the naval officers should exercise their powers as colonial justices as little as possible, and should endeavour to divert the cases in which they are now called upon to act as Justices to the Courts of the local Magistrates. It is no doubt convenient to the Colonial Government to engage the services of the naval officers in this capacity, and, so long as the population of the Treaty Coast consisted entirely of poor fishermen, the arrangement was one for which there were good reasons. Now, however, that a large number of capitalist employers has grown up who are ready to misrepresent every action of the naval officers for local political purposes, the time appears to have come when the naval officers should be confined to their proper duties in connection with the fishery, and the Colonial Government called upon to make proper provision for dispensing justice among the inhabitants of the coast.

8. The action of the master of the steam-ship "Harlaw" in encouraging violations of the *modus vivendi*, which is referred to in paragraphs 11 to 14, Lord Ripon proposes to bring to the notice of the Colonial Government, and to request them to instruct their Customs officials to inform the naval officers of any consignments of tins for persons who are not the owners of authorized factories.

9. With regard to the practice, referred to in paragraph 20, of salting lobsters for export, Lord Ripon fails to see that it infringes the *modus vivendi*. That arrangement deals only with factories for the canning of lobsters, and neither under it, nor under the old Treaties, are Her Majesty's Government under any obligation to prevent British subjects from catching either lobsters or any kind of fish, unless such catching interferes with the actual exercise of French rights. If any question is raised, therefore, by the French naval officers as to the new industry, Lord Ripon thinks that the Commodore should decline to intervene except there is interference with the legitimate fishery operations of French subjects.

10. The question of transfers of lobster factories to new sites, as to which the French Admiral raised difficulties for the first time, is a very serious one. It will be seen from the correspondence printed at pp. 54 and 55, and from Commodore Howe's letter to the Governor of the 9th October (p. 58), that Admiral Sallandrouze de Lamornaix maintains that the transfer of a factory from one

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site to another is equivalent to the creation of a new factory, to which, under the *modus vivendi*, his consent is indispensable, and the concluding words of his letter of the 30th June would seem to imply that for the future a transfer of an English factory would only be allowed in return for the transfer of a French factory. If the French Government intend to maintain this view, which is not warranted by the terms of the *modus vivendi*, Lord Ripon fears that serious complications will arise. The intention of the *modus vivendi* was that the *status quo* of the lobster industry on the 1st July, 1889, should be maintained pending the settlement by arbitration of the questions at issue between Her Majesty's Government and the Government of France.

11. The Agreement carefully distinguishes transfers from new factories, and while it provides that for each new English factory a new French factory may be established, it makes no such condition as to transfers, simply making them subject to the agreement of both the naval officers, a condition necessary to prevent disputes, and not intended to confer on either party an arbitrary veto on transfers by nationals of the other.

12. It is to be remembered that the English factories outnumber the French by more than seven to one, and to admit the right of the French naval officer to refuse a transfer on purely arbitrary grounds would mean, in a very short time, that the English factories would be reduced to the same number as the French, a result which could scarcely be called maintaining the *status quo.*

13. It appears to Lord Ripon that where the site to which it is proposed to transfer a factory is such that it would not interfere with the operations of an existing factory or with the cod-fishery of the French, that the transfer should be allowed as a matter of course, subject always to the condition insisted upon by the French Commodore in his letter of the 7th July, 1891, that the buildings on the old site are demolished.

14. Lord Ripon would suggest that the attention of the French Government should be called to the matter, and that a protest should be made against the action of Admiral Sallandrouze de Lamornaix in arbitrarily refusing his consent to transfers of British factories.

15. I am to observe, in conclusion, that Commodore Howe appears to have acted throughout the season with tact and judgment, and Lord Ripon proposes, if Lord Rosebery concurs, to so inform the Admiralty.

I am, &c.
(Signed) EDWARD FAIRFIELD.

No. 23.

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 22, 1894.

Gentlemen,

Occupation of Newfoundland Treaty Shore for fishery purposes by fishermen from St. Pierre.

I HAVE the honour to transmit to you, by the direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to the projected occupation of the Treaty Shore of Newfoundland for fishery purposes by individual fishermen from St. Pierre, and to the measures taken by the French authorities at St. Pierre to encourage and assist this novel mode of carrying on the cod-fishery.

The details of the scheme are explained in the Colonial Office letter marked B of the 11th February, and it will be seen that in the opinion of Her Majesty's Secretary of State for the Colonies the proceedings contemplated are inconsistent with existing Treaty stipulations, and that consequently a protest should at once be addressed to the French Government.

The extracts from the several Treaties and other engagements defining the French rights of fishery will be found set out at length in the paper which is inclosed marked (C).

The question was referred to Mr. W. E. Hall for his observations, and these will be found in a Memorandum by that gentleman dated the 11th instant.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Kimberley with your opinion as to whether it is necessary or desirable to address a remonstrance to the French Government upon the subject; and, if so, that you will further be good enough to indicate the grounds upon which such a remonstrance may, from a legal point of view, most advantageously be based.

Lord Kimberley would also be glad to receive any general observations which you may have to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Colonial Office B	February 11, 1894.
(B.) Memorandum by Mr. W. E. Hall	March 11, "
(C.) Extracts of Treaties and other stipulations relative to the French rights of fishery in Newfoundland (taken from Preamble to draft Bill). Inclosure in Colonial Office, April 23, 1894.	

Report.

That, in our opinion (though the question is not free from difficulty), and subject to the possibility of the French Government having evidence, at present unknown, of the bye-boat system of fishing having been employed by French fishermen previously to the Treaty of Paris, the projected occupation of the Treaty Shore for fishery purposes by individual fishermen from St. Pierre is inconsistent with existing Treaty stipulations, and we concur in, and adopt, the reasoning contained in Mr. Hall's Memorandum received on the 12th March.

We are of opinion, therefore, that it is desirable that a remonstrance should be addressed to the French Government, based on the grounds that the proposed method of fishing was not the recognized method that French fishermen had followed down to the time of the Declaration of 1783, and that the use proposed to be made of the Island of St. Pierre is inconsistent with the purpose for which that island was ceded.

We may add that, although we have not had all the means of arriving at a decision on the point of fact which appear to have been, at one time or another, at the disposal of Mr. Hall, we see no reason to differ from the conclusion at which he has arrived as to the meaning of the words "the method of carrying on the fishery which has been at all times acknowledged," occurring in the Declaration of 1783.

(Signed) C. RUSSELL.
JOHN RIGBY.

Royal Courts of Justice,
April 7, 1894.

Annex.

Memorandum by Mr. Hall.

THE occupation of Tweed Island in 1893 by boat-fishermen from St. Pierre violates, in my opinion, the spirit of the Treaties conferring fishing privileges upon French citizens; the extensive "reoccupation of the French Shore" which it is proposed shall be effected during the present year will, of course, constitute a further violation, grave in proportion to its magnitude. I think, at the same time, that the intended encroachment is ingeniously conceived, and that it is one the true nature of which it may not be altogether easy to place in a clear light. I am not—at present, at least—quite certain what may have been the fishing practices in the eighteenth century; and so much misuse of St. Pierre and Miquelon has been permitted that there is a certain difficulty in showing that their use as a fishing-base differs markedly from much that has been quietly allowed.

The intended "reoccupation" appears to be modelled upon the practice of "bye-boat" fishing, which prevailed among the English fishermen during the end of the seventeenth and a great of the eighteenth century. Men were taken out from England in the regular fishing-ships as passengers, who owned small boats, with which they seem to have fished independently, curing also their fish independently, I suppose precisely as it is intended that the French boat-fishermen shall fish and cure during the coming summer. It is so long since I had occasion to read the very voluminous papers referring to the Newfoundland fisheries, for the purpose of drawing the draft Case, that I cannot be sure that I either remember all the passages which may bear upon the practice in question, or that I can place my hand upon them—the point had no immediate connection with the lobster dispute. But so far as I can recall, or can discover without reading afresh nearly the whole mass of material, I do not think there is anything to show that this mode of fishing was practised on the shore where the French had fishing rights; and as it was certainly not part of the general customs of the fishery of which we commonly hear (it was a subject of complaint within the exclusively English fishery), I think it more than doubtful whether it can have existed there. Nor can I remember any indication that the French themselves at any time practised this method of fishing.

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Apart, then, from a certain amount of boat-fishing by local inhabitants, or "planters," it is, I think, pretty clear that at the time of the Declaration of 1783 there was no "bye" or other boat-fishing on the shore where the French were allowed to fish, and that—so far as the French were concerned—the sole method of fishing contemplated in that Agreement, as the "méthode qui a été de tout temps reconnue," was the method of fishing from vessels of sufficient tonnage to cross the ocean, by means of boats attached to them, manned from their crew, and bringing in their fish to be cured at the stages occupied for the season. At the same time, the possibility that the French Government may have evidence of this "bye-boat" system having been employed by French fishermen previously to the Treaty of Paris cannot be wholly lost sight of. They will also, no doubt, contend that they are at liberty to pursue all methods of fishing which were practised by the English before 1783, and as the English then both fished from St. John's and still employed "bye-boats" to some extent, it may be argued, with a superficial appearance of truth, that French fishermen, in fishing by means of small boats annually sent out from St. Pierre, are only using a method of fishing which is strictly analogous to one which was followed by the English anteriorly to the Treaty of Paris.

St. Pierre and Miquelon were, however, only ceded to the French for a narrow and strictly defined purpose, which to my mind is wholly inconsistent with the use which it is now intended to make of them. They were to serve "réellement d'abri aux pêcheurs Français;" in other words, they were to serve as a purely temporary shelter, as a place of refuge from weather, a place for watering, provisioning, and refitting. The word is incapable of bearing the interpretation that the islands are to be treated as a Colony, with fishing interests of its own, with fishery regulations different from those of the fishermen from France, with an independent share in the privileges of the "French Shore." It may indeed be reasonably contended that the limitations imposed upon the use of St. Pierre and Miquelon cast a reflex light upon the meaning of that part of the Declaration which provides that the fishery shall be carried on upon both sides according to "la méthode qui a été de tout temps reconnue," and from it to have been intended that each party should continue to fish in the manner which it had itself habitually followed, if in view of the difference between the then existing customs of the French and English respectively, doubt upon the subject could otherwise be entertained. Cut out the right of using St. Pierre as a Colony, or as an independent fishing base, and all fishery analogous to much of that which was pursued by the inhabitants of Newfoundland before 1783 becomes impossible to French fishermen.

(Signed) W. E. HALL.

March 11, 1894.

No. 24.

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, November 7, 1894.

Occupation of Newfoundland Treaty Shore for fishery purposes by fishermen from St. Pierre.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to the question of the occupation of the Treaty Shore of Newfoundland for fishery purposes by individual fishermen from St. Pierre, with the approval and assistance of the French local authorities.

In accordance with the opinion expressed in the Report with which the Law Officers of the Crown favoured his Lordship on the 7th April last (see paper marked D), Her Majesty's Ambassador at Paris was instructed to address a remonstrance to the French Government, based on the grounds that the proposed method of fishing was not the recognized method which French fishermen had followed down to the time of the Declaration of 1783, and that the use to be made of the Island of St. Pierre was inconsistent with the purpose for which that island was ceded to France (see paper marked E).

The reply of the French Government to that representation is contained in a note from M. Hanotaux, dated the 31st July (see paper marked F), in which it is argued at some length that the course contemplated by the local authorities at St. Pierre and Miquelon is not at variance with the stipulations of the Declaration of the Treaty of Versailles of 1783. It is likewise argued that the instructions issued to the British and French Naval Commanders in Newfoundland waters obviate the possibility of any fears being entertained that the relations between the naval authorities and the inhabitants of the Island of St. Pierre might be embittered by the occupation contemplated.

M. Hanotaux' note was referred to Mr. W. E. Hall for his observations, and these will be found in a Memorandum by that gentleman, dated the 17th August (see paper marked G).

A copy of a letter from the Colonial Office, indicating the view taken of M. Hanotaux' arguments by the Marquess of Ripon, is also inclosed herewith (see paper marked H).

The papers in regard to this question, which were submitted to the Law Officers on the 22nd March last, are sent herewith for convenience of reference (see A, B, and C).

I am to request that you will take the whole correspondence into your consideration, and that you will favour Lord Kimberley with your opinion whether the annexed draft of a despatch to the Marquis of Dufferin, instructing his Excellency to renew the protest which he made to the French Government in April last, contains a suitable exposition of the case from a legal point of view, or whether its terms may be advantageously modified or amended, and, if so, in what respects.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Colonial Office (B)		February 11, 1894.
(B.)	Memorandum by Mr. W. E. Hall (received March 12).		
(C.)	Extracts of Treaties and other stipulations relative to the French rights of fishery in Newfoundland.		
(D.)	Law Officers' Report		April 7, „
(E.)	To the Marquis of Dufferin	(No. 156)	April 20, „
(F.)	Mr. Phipps	(No. 315)	August 5, „
(G.)	Memorandum by Mr. W. E. Hall		August 17, „
(H.)	Colonial Office		September 19, „
(I.)	Proposed draft to the Marquis of Dufferin.		

Report.

That, in our opinion, the annexed draft of a despatch to the Marquis of Dufferin contains a suitable exposition of the case from a legal point of view.

We desire, however, to call attention to the three following points:—

1. On p. 3 of the draft despatch the language used seems to import that the only engagements by which the sovereignty of France over St. Pierre and Miquelon is limited are the engagements there specified. Legally, however, there appear to be other engagements contained in Article VI of the Treaty of Paris, 1763, which limit that sovereignty.

2. On p. 4 of the draft despatch the language used seems to import that the strip on the Newfoundland side of the middle of the strait between Newfoundland and the two islands is non-territorial water. Legally, we consider this to be very disputable, and such a statement might at some time be construed as an admission.

3. On p. 5 of the draft despatch the language used seems to import that, under the Treaty of Utrecht, Article XIII, French fishermen are entitled to *reside* on the Treaty Shore for the purpose of drying fish. Legally, we do not consider it at all clear that such right exists, however it may be admitted in practice.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
November 9, 1894.

Annex.

The Earl of Kimberley to the Marquis of Dufferin.

(No. .)
Foreign Office, November , 1894.

My Lord,

HER Majesty's Government have considered, in consultation with the Law Officers of the Crown, Mr. Phipps' despatch No. 315 of the 5th August last, transmitting copy of a note from M. Hanotaux in reply to the representation which your Excellency addressed to the French Government on the 21st April last, in regard to the question of the occupation of the Treaty Shore of Newfoundland by individual fishermen from St. Pierre, with the approval and assistance of the French local authorities.

I have to request that your Excellency will state to M. Hanotaux that the arguments put forward by his Excellency in his note of the 31st July last do not appear to Her Majesty's Government to contain any facts tending to invalidate the opinion which they had previously formed on the subject under discussion.

With regard to the conditions attached to the cession of St. Pierre and Miquelon, M. Hanotaux observes: "Aux termes du Traité de 1763, comme des Déclarations annexées au

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Traité de Versailles, l'Angleterre a cédé ces îles à la France '*afin de servir réellement d'abri à ses pêcheurs*,' et pour éviter que ces possessions devinssent '*un objet de jalousie entre les deux nations*,' certaines stipulations ont été édictées, aux termes desquelles notamment la pêche entre les Iles de Saint-Pierre et Miquelon et Terre-Neuve ne pourrait se faire, de part et d'autre, que jusqu'à mi-canal."

This statement, however, appears to be entirely inconsistent with the Declarations of 1783. M. Hanotaux apparently argues that the restriction of fishery by French and English respectively to mid-channel was the means, or at least the principal means, by which it was intended to prevent St. Pierre and Miquelon from becoming an "*objet de jalousie entre les deux nations*," and that, with the exception of this limit, the French are free to act as they please in those islands.

But in the Declarations the stipulations that the islands were not to become an object of jealousy and the limitation of the fishing to mid-channel are in no way connected; they are entirely distinct, and it is impossible to read into the Treaty that the one stipulation is merely auxiliary to and explanatory of the other.

The English Declaration says: "Le Roi de la Grande-Bretagne en cédant les Iles de Saint-Pierre et de Miquelon à la France, les regarde comme cédées afin de servir réellement d'abri aux pêcheurs Français, et dans la confiance entière que ces possessions ne deviendront point un objet de jalousie entre les deux nations; et que la pêche entre les dites îles et celle de Terre-Neuve sera bornée à mi-canal."

The paragraph is clearly disjunctive, and its full force would best be obtained by reading after "les deux nations" the words "et dans la confiance entière que la pêche," &c.

The French Declaration places beyond doubt the independence of the stipulations. It says:—

Paragraph 1. ". . . . Le Roi de la Grande-Bretagne met indubitablement trop de confiance dans la droiture des intentions de Sa Majesté, pour ne point se reposer sur l'attention constante qu'elle aura d'empêcher que les Iles Saint-Pierre et Miquelon ne deviennent point un objet de jalousie entre les deux nations;" paragraph 2 applies to the fishery arrangements on the Treaty Coast; and paragraph 3 then resumes: "Pour ce qui est de la pêche entre l'Ile de Terre-Neuve et celle de Saint-Pierre et Miquelon, elle ne pourra se faire, de part et d'autre, que jusqu'à mi-canal," &c.

This appears to Her Majesty's Government to be a sufficient proof that the the three stipulations (1) that the islands were to be "*réellement d'abri*," (2) that they were not to become "*un objet de jalousie entre les deux nations*," and (3) for the regulation of the fishery in the narrow channel between the islands and Newfoundland, were three separate and distinct conditions, and in no way dependent on or explanatory of any one of the others.

With regard to M. Hanotaux' further observations on this point, in the paragraph beginning "Quant à la réglementation," &c., it is only necessary to remark that he is answering an argument which has never been put forward on behalf of Her Majesty's Government.

M. Hanotaux claims, as a necessary consequence of the cession of St. Pierre and Miquelon, "*en toute propriété*," that, "sous la réserve d'exceptions formellement exprimées, la France est libre d'exercer, en ce qui concerne ces îles, tous les attributs de la souveraineté." The principle involved in this statement is incontestable; and it is not for Great Britain to question it, since her own contentions with respect to the fishery rights of her subjects and of French citizens respectively are founded upon the doctrine that rights of sovereignty are absolute, except to the extent of derogations from them clearly and expressly made. But, while Her Majesty's Government fully concur with the statement of principle made by M. Hanotaux, they must point out that the principle is entirely alien to the facts with which his Excellency connects it.

Cession "*en toute propriété*" conveys full rights of sovereignty within the territory ceded; it does not of itself necessarily invest the population of that territory with all the privileges which may be already enjoyed on foreign soil by subjects of the Power to which cession is made. Servitudes over portions of the territory of a foreign State, such as wood-felling and pasturage rights, may belong to the inhabitants of particular districts; and whether a given servitude is, or is not, a privilege which can be enjoyed by all the subjects of a State must depend upon its nature and on all the circumstances of the case. In the instances of St. Pierre and Miquelon, although it is not to be questioned that France owns all sovereign powers within the territory—except in so far as they are limited by the engagements that the islands are to serve "*réellement d'abri aux pêcheurs Français*," and shall not become an "*objet de jalousie*"—it does not follow that the inhabitants of the islands have rights of fishing within British waters. In order that they may have such rights, they must be proved to be in a position to share in the special effects of those parts of the Treaties previously made, by which limited fishing privileges were conferred on French fishermen. If the customs of the fishery which were taken up into the Treaties were consistent with fishing on the part of the inhabitants of St. Pierre and Miquelon within British waters, the right to fish exists; if they were not consistent with it, the fishermen of St. Pierre and Miquelon do not possess the right to fish within British waters.

No claim has ever been made by the French Government to the possession of a right to small-boat fishing on the ground of usage existing before the year 1783.

M. Hanotaux' statement that no complaint has been made of the people of St. Pierre having for many years past taken part in the regular fishery upon the Treaty Shore is not quite accurate. It has been a constant complaint with the Newfoundland fishermen that these men, engaging in the fishery on equal terms with them as regards proximity to the fishing-grounds, enjoy all the advantages of the bounties granted to fishermen proceeding from France, and the practice complained of has, in fact, led to the Islands of St. Pierre and Miquelon becoming the bases of the fishery, instead of being merely places of refuge for fishermen arriving from France. It is true that Her Majesty's Government, from a desire to take no step which might hamper the development of the islands, have not seriously objected to this practice; but the present question is entirely one as to the legitimacy of a new departure.

The next part of M. Hanotaux' argument deals with French rights under the Treaty of Utrecht as distinct from the Declarations. He says:—

"Si les Traités ont défini les conditions dans lesquelles nos marins pourront pratiquer la pêche, ils l'ont fait de façon à empêcher une extension abusive de leurs entreprises, au delà de l'industrie spéciale à laquelle ils doivent se livrer."

To this interpretation of the meaning of the Treaties Her Majesty's Government must demur. The Treaties have defined the conditions under which the French fishermen may exercise their industry, not only negatively, but positively; for they are not only restricted to the one industry, but that industry must be exercised by them strictly in the manner in which they exercised it at the time of the Treaty of Utrecht.

M. Hanotaux continues:—

"Pêche en mer, séchage, préparation du poisson, résidence temporaire sur le rivage comme conséquence du droit de pêche, toutes ces opérations leur sont permises par les Traités. Mais s'ensuit-il qu'ils doivent rigoureusement se livrer à chacune d'elles."

This statement likewise is not entirely accurate, as the only rights granted are those of fishing and drying; fishing does not imply or require a right to reside, and it follows that residence is only granted, if at all, so far as it is necessary for the purpose of drying.

Proceeding on the assumption that the inhabitants of St. Pierre and Miquelon have a right of fishing in British waters, M. Hanotaux goes on to assert that the various acts or operations which in their entirety make up the old customs of the Newfoundland fishery are not "forcément toutes corrélatives les unes des autres, sous peine de déchéance du droit de pêche, mais simplement facultatives, en vue d'assurer l'exercice de ce droit;" and in particular, that "le droit de pêcher ne comporte pas nécessairement l'obligation de sécher ou de résider sur le rivage, mais il en donne la faculté."

The suggestion here would seem to be that the Declaration of 1783 was intended solely to give facilities to the French for the enjoyment of their privileges, and that customs are mentioned only in confirmation of, and not in restriction of, those privileges. M. Hanotaux can hardly have put forward such a contention seriously.

The plain meaning of the Declaration is that the French shall have every facility for enjoying the fishery rights accorded to them by the Treaty of Utrecht, subject to the customs of the fishery, restrictive allusion being at the same time made to certain points upon which infringement of the customs had taken place.

Without insisting that every practice shall remain rigidly fixed so long as the Treaties are in force, it is evident that the system on which the fishery is conducted must remain the same in all important particulars—the fishermen of each nation fishing according to the customs which were already habitual to them; and Her Majesty's Government cannot admit the claim which M. Hanotaux apparently seeks to put forward to destroy every obligation by rejecting each usage in turn, and to leave as a residuum an unrestricted right of fishing in such manner as may be convenient to the French themselves.

M. Hanotaux then endeavours to reduce the meaning of the injunction to "*faire la pêche*" in the manner which has been "*de tout temps reconnue*" to methods of capture and to "l'emploi dans l'avenir des engins nuisibles ou dévastateurs des fonds de pêche." But, according to the information which Her Majesty's Government possess in regard to this point, no method of capture other than the customary fishing with hook and line had been invented in 1783, and none other could therefore have been contemplated at that time. Bultows, traps, and cod-nets have all been introduced at later periods. There were then no "*engins nuisibles*" or "*dévastateurs*" the employment of which could have been foreseen, or against which the precaution of a Treaty stipulation could have been taken.

The object of the Treaty of Utrecht was to secure the Island of Newfoundland in full sovereignty to the British Crown, and the restrictions and limitations imposed on the French were intended to prevent any such occupation by them as would be inconsistent with or in any way tend to impair that sovereignty. It is in this light that the Declaration attached to the Treaty of Versailles must be read, not, as M. Hanotaux suggests, as simply forbidding destructive modes of exercising the fishery. It definitely prescribes that the method of the fishery is to be that which has always been recognized, and the method now introduced was never either practised or recognized on the Treaty Shore.

Her Majesty's Government must therefore, in view of the importance of the subject, renew the protest which was made to the French Government in April last; and your Excellency will state to M. Hanotaux, in the most definite terms, that this new departure cannot be recognized, or this mode of fishery be protected by Her Majesty's Government. You will, at the same time, inform them that, while Her Majesty's Government cordially acknowledge the conciliatory attitude of the French Admiral on the fisheries protection service during the present season, and the readiness he has shown to co-operate with the British Commodore in preventing and accommodating difficulties which have arisen, it cannot be admitted that this friendly action in any way diminishes the objections to the new departure as a breach of the Treaty and an encroachment by the French on an island of which the undisputed sovereignty belongs to Great Britain, and in respect of which France is bound by a solemn obligation under the provisions of the Treaty of Utrecht not to impair the sovereignty of the British Crown.

I am, &c.

(Signed) KIMBERLEY.

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GENERAL.

No. 25.

The Law Officers of the Crown to the Earl of Kimberley.—(Received July 24.)

Royal Courts of Justice, London, July 23, 1894.

My Lord,

Consular Courts (Admiralty) Order in Council, 1894.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers respecting a draft Order in Council, to be known as "The Consular Courts (Admiralty) Order in Council, 1894," for the purpose of applying "The Colonial Courts of Admiralty Act, 1890," to Her Majesty's extra-territorial Courts having Vice-Admiralty jurisdiction.

That Mr. Bertie was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion whether the draft Order might be laid before the Queen in Council for Her Majesty's approval.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to

Report—

That in our opinion the draft Order in Council may, in its present shape, be laid before the Queen in Council for Her Majesty's approval.

We have, &c.

(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

Sir H. Jenkyns to Mr. W. E. Davidson, Q.C.	May 4, 4894.
Mr. A. Gray	June 8, "
Draft Order in Council	—

Annex.

"COLONIAL COURTS OF ADMIRALTY ACT, 1890."
(53 & 54 Vict., cap. 27.)

Jurisdiction of Consular Courts.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction in the countries and places named in the Schedule to this Order;

And whereas by "The Colonial Courts of Admiralty Act, 1890," it is enacted that Her Majesty in Council may from time to time make Orders for the purposes authorized by that Act;

And whereas by the said Act Her Majesty in Council may by Order direct that that Act shall, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, apply to any Court established by Her Majesty for the exercise of jurisdiction in any place out of Her Majesty's dominions which is named in the Order, as if that Court were a Colonial Court of Admiralty, and to provide for carrying into effect such application.

Now, therefore, Her Majesty, in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," and tho said recited Act in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. The following enactments of "The Colonial Courts of Admiralty Act, 1890," that is to say, section 2, subsections (2) to (4), section 5, section 6, and section 16, subsection (3), shall apply to every Court which has been established by Her Majesty under any Order in Council relating respectively to the countries and places named in the Schedule to this Order, and to which Vice-Admiralty jurisdiction has been assigned by Order in Council, as if such Court were in the said sections mentioned in lieu of a Colonial Court of Admiralty, and as if such countries and places respectively were referred to in the said sections in lieu of a British possession.

2. For the purposes of this Order the expressions "judgment" and "appeal" shall, in the enactments of the recited Act hereby applied, have the same respective meanings as are assigned thereto in section 15 of that Act.

3. This Order may be cited as "The Consular Courts (Admiralty) Order in Council, 1894."

(Initialled) J. R.
R. T. R.

SCHEDULE.

China;
Corea;
Japan;
Ottoman Empire;
Persian Coast;
Siam;
Zanzibar; and
places within the limits of any local jurisdiction constituted under "The Africa Order in Council, 1889."

No. 26.

[Home Office.]

Case for the Law Officers of the Crown.

Readmission to British nationality of a widow who is a statutory alien.

THE Law Officers of the Crown are requested to advise the Secretary of State whether a period of residence within the United Kingdom is requisite before he can issue a certificate of readmission to British nationality to a widow, who, being a natural-born British subject, and having become an alien by marriage, makes application to him under section 10 (2) of "The Naturalization Act, 1870," and if so, in what manner the period should be calculated.

By section 7 of the Act mentioned:—

"An alien who within such limited time before making the application hereinafter mentioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order or on any special occasion has resided in the United Kingdom for a term of not less than five years, may apply to one of Her Majesty's Principal Secretaries of State for a certificate of naturalization. The applicant shall adduce in support of his application such evidence of his residence and intention to reside as such Secretary of State may require. The said Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance."

By section 8 of the same Act:—

"A natural-born British subject who has become an alien in pursuance of this Act, and is in this Act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's Principal Secretaries of State for a certificate, hereinafter referred to as a certificate of readmission to British nationality, readmitting him to the status of a British subject."

Section 10. The following enactments shall be made with respect to the national status of women and children:—

"(1.) A married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject.

"(2.) A widow, being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of readmission to British nationality in manner provided by this Act."

The effect of these sections is that a widow who is a statutory alien and who desires to be readmitted to British nationality must apply to the Secretary of State for a certificate. But questions have arisen whether any, and if so, what, period of residence in the United Kingdom is a condition precedent of the grant of such a certificate.

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On the one hand, it is maintained that it is necessary to give effect to the words "at any time" which occur in section 10 (2) and not in the sections 7 and 8 quoted above, and that to do so it is necessary to hold that the condition as to a previous period of residence in the United Kingdom does not apply to the widows referred to. This would distinguish these widows from other statutory aliens dealt with by the Act, see sections 3, 4, 6, 10 (3); and it is contended that it was the intention of Parliament so to distinguish them. Otherwise this subsection (2) need not have been inserted at all, and the widows included within its scope might have been left to be dealt with under section 8 of the Act.

Moreover, as a ground for such a distinction, the requirement of five years' residence in the United Kingdom may have been regarded as more necessary in the case of other statutory aliens as a guarantee of their intention permanently to place themselves under the allegiance of the Crown, and to reside in the United Kingdom. Whereas, in the case of a woman, a British subject, who marries a foreigner, the disability of allegiance is an incident of her marriage imposed by Statute, in some cases against her wish, and it may have been considered that immediate application to be relieved of the disability so soon as that is legally possible is sufficient proof of the intention and desire to revert permanently to the status of a British subject.

On the other hand it is argued that if there had been any intention to dispense British-born widows from all conditions as to residence, &c., such a dispensation would have been granted in explicit terms, and that the supposed reason for treating British-born widows with exceptional indulgence, if it has any force when the comparison is made with those who, under sections 3, 4, 6, have made themselves statutory aliens by some voluntary process fails when the comparison is made with children under section 10 (3) who are converted into statutory aliens merely because their parent is one. Then as a matter of construction the suggested interpretation gives a forced and excessive importance to the words "at any time during widowhood," whilst it would render almost meaningless the far more material words, "in manner provided by this Act." The two phrases must be used together, and then the whole passage, "A widow being . . . . . may as such, at any time during widowhood, obtain a certificate of readmission in manner provided by this Act," is seen to mean that an application may be made by her at any time on complying with the conditions prescribed by sections 7 and 8 (including a five years' residence in the United Kingdom).

The whole subsection, it is true, thus becomes mere surplusage; but its insertion in section 10 is explained by a not unnatural desire to make that section a complete *conspectus* of the position of women and children; and in support of this view it may be pointed out that after the definition in section 8 of the statutory alien as a natural born British subject who has become an alien in pursuance of this Act, and after the enactment in section 10 (1) that a married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject, it was equally surplusage in section 10 (2) to enact that a widow, being a natural-born British subject who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien.

Secondly, if a period of residence is necessary it is still left doubtful by the Act from what point of time the five years' period must be counted:—

(i.) Whether the whole five years must be after the husband's death; or
(ii.) Whether a period of married life may be included; or
(iii.) Whether a period of ante-connubial life may be included;

supposing, of course, that in every case the period in question comes within the "limited time" allowed by the Secretary of State under section 7.

It has been the practice of the Home Office to insist on the interpretation (i) as being most consonant with the general principles of the Act. There does not appear to be any direct authority in the Statute for this view, but it secures that in the case of these widows as in the case of other aliens (statutory and other) there shall be the guarantee afforded of five years' residence in the United Kingdom after the time when residence and future allegiance become matters within the applicant's choice.

On the other hand, it may be argued in favour of (ii), *i.e.*, of the counting of a period of married life, that, where the national status of a married woman follows that of her husband, there is no reason why a widow should be in a worse position as regards the choice of her allegiance than her alien husband would have been had he lived. Had he lived, and been minded to apply for British nationality, his residence during married life in this country would have counted; why should it not be counted by his widow after his death?

As regards the inclusion of a period of ante-connubial life (iii) the argument is perhaps not so strong. To include such a period would involve the reckoning in a period of probation for British nationality of a time antecedent to a formal decision to give up that status. But, it may be said, Why should a period of marriage with an alien husband operate more adversely against a widow than does, in the case of an alien applying for naturalization, a period of absence from the United Kingdom intervening between two periods of residence within it? Such a period of absence merely does not count; it does not nullify an anterior period of residence within the "limited time allowed."

The questions for the Attorney- and Solicitor-General are:—

(*a.*) When a natural-born British subject who is the widow of an alien applies for a certificate of readmission to British nationality, is it necessary for her to show a period of five years' residence within the United Kingdom?

(*b.*) If the answer to the question (*a*) be affirmative, must such period of residence be wholly subsequent to the death of her husband, or may it include:—

(1.) A period of residence during coverture;
(2.) A period of residence before marriage?

Opinion.

We are of opinion:—

1. That when a natural-born British subject, who is the widow of an alien, applies for a certificate of readmission to British nationality, it is necessary for her to show a period of five years' residence within the United Kingdom.

Section 10 of the Naturalization Act of 1870 is obscurely expressed, but, on the whole, we consider that its meaning is to place the widow in the same position as other statutory aliens for this purpose.

2. That assuming that a period of five years' residence is required in the case of a widow, such period of residence need not be wholly subsequent to the death of her husband.

It would be sufficient that she has resided in the United Kingdom for a term of not less than five years wholly irrespective of coverture.

It would also be sufficient if she had resided in the United Kingdom for a term of not less than five years before her marriage.

Provided, in each case, that the Secretary of State, either by general order or on any special occasion, allowed a period of time before such widow made her application long enough to cover the years of residence before the marriage, or during the coverture, as the case might be (see section 7 of the Act).

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
July 31, 1894.

No. 27.

The Law Officers of the Crown to the Earl of Kimberley.—(Received August 7.)

Royal Courts of Justice, August 6, 1894.

Lumley *v.* Kirby. Production of official documents in Law Court. Personal attendance of Secretary of State.

My Lord,

WE were honoured by your Lordships commands signified to us in Sir Thomas Sanderson's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us a letter which had been addressed to the Chief Clerk of the Foreign Office requiring certain information relating to the journeys to Paris and Constantinople of Captain Lumley, Queen's Foreign Service Messenger, during the years 1890 and 1891, to be produced in the Court of Queen's Bench in the case of Lumley *v.* Kirby, which was expected to come on for trial early in the present week.

That Sir Thomas Sanderson was also to inclose the copy of a "subpœna duces tecum" which was left at the Foreign Office by Messrs. Ashurst's clerk, and which, in addition to the matters alluded to in their letter, demanded the production of "all papers relating to a proposed railway between Salonica and Dedeagatch, in the Empire of Turkey."

That the reply which your Lordship had caused to be returned to Messrs. Ashurst's letter was also annexed. That it would be seen that it promised the production of the papers respecting Captain Lumley's journeys, which there seemed to be no reason for withholding.

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That with reference, however, to the papers relating to the proposed railway between Salonica and Dedeagatch, Sir Thomas Sanderson was to state that although certain reports, more or less confidential in their nature, had from time to time been received from Her Majesty's Diplomatic and Consular officers upon that subject, they did not in any apparent way bear upon the case of Lumley *v.* Kirby, and that although they might not contain much the publication of which would be actually prejudicial to public interests, your Lordship was nevertheless of opinion that, as a matter of principle, and in order to avoid the risk of establishing a bad precedent, it would not be advisable that these papers should be produced in Court.

That your Lordship proposed, therefore, to instruct the gentleman who would attend the Court from the Foreign Office, in obedience to the subpœna, to represent to the Judge, in the event of those papers being called for, that they were of a confidential nature, that they had no bearing on the question at issue, and that the Secretary of State considered that their production would be prejudicial to public interests.

Sir Thomas Sanderson further stated that he was to inclose the various Reports on the subject of this proposed railway, and was to request that we would take the matter into our consideration at our early convenience, and favour your Lordship with our opinion as to whether the course proposed to be followed was the proper one, or in what other way the matter should be dealt with.

In obedience to your Lordship's commands we have taken the matter into our consideration, and have the honour to

Report—

That, in our judgment, the course proposed is the proper one to take.

We have, however, to observe that some difficulty may arise as to the manner of making the objection. In some cases it has been suggested that it is necessary for the Secretary of State himself to attend and to state that he has considered the matter, and that in his opinion it will be injurious to the public service to produce the documents. In others it seems to be laid down that it is sufficient if a deputy attend, and state that he is authorized by the Secretary of State to depose to the above effect, *i.e.*, that the Secretary of State has considered the matter and is of opinion, &c. In the present case the principle only is at stake, the documents themselves being of no importance either to the parties, so far as we can judge, or to the public, and we suggest that Mr. Fraser should be authorized by the Secretary of State to appear as his deputy, and, if necessary, make the aforesaid statement. Even if the Court thinks his statement insufficient, no particular harm will be done; but it seems desirable to resist, as far as possible, the doctrine that the Head of the Department must attend in person.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

(A.)	Messrs. Ashurst and Co.		August	3, 1894.
(B.)	" Subpœna duces tecum."			
(C.)	To Messrs. Ashurst and Co.		August	4, „
(D.)	Consul-General Blunt ..	(No. 7. Commercial)	April	10, 1889.
(E.)	Ditto	(No. 17. Commercial)	June	8, „
(F.)	Ditto	(No. 9. Commercial)	February	25, 1890.
(G.)	Colonel Chermside	(No. 12)	March	22, 1892.
(H.)	To Sir Clare Ford	(Commercial)	April	1, „
(I.)	Mr. W. L. Bright		April	29, „
(J.)	Mr. B. Maimon		April	29, „
(K.)	To Sir Clare Ford	(No. 100)	May	3, „
(L.)	To Mr. W. L. Bright..		May	9, „
(M.)	To Sir Clare Ford	(No. 116)	May	14, „
(N.)	Sir Clare Ford	(No. 165)	May	14, „
(O.)	Consul-General Blunt.. ..	(No. 7. Commercial)	March	20, 1893.
(P.)	Ditto	(No. 9. Commercial)	April	23, „
(Q.)	Ditto	(No. 11. Commercial)	May	15, „
(R.)	To Newspapers		May	26, ,
(S.)	Reports on Trade, 1893. No. 1310 Annual Series.			

GERMANY.

No. 28.

The Law Officers of the Crown to the Earl of Kimberley.—(*Received April* 19.)

Royal Courts of Justice, April 18, 1894.

My Lord,

Expulsion of B. Müller, naturalized Brit. colonial subject, from Prussia. His right to Brit. protection.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Berlin respecting the case of Mr. Baruch Müller, a naturalized colonial British subject (of Cape Colony), of Russian origin, and of the Jewish faith, who had been ordered to leave the territory of the Kingdom of Prussia.

That Mr. Bertie was to request that we would take the matter into our consideration, and favour your Lordship with our opinion as to the right of Her Majesty's Government to protect in Prussia a naturalized colonial British subject of Russian nationality of origin from the consequences of his being a Russian subject of Jewish faith.

That, should we be of opinion that a naturalized colonial British subject was, as a rule, entitled so to be protected, Mr. Bertie was further to inquire whether the circumstances under which, and the recent date (8th December, 1893) on which Mr. Müller obtained his colonial certificate of naturalization, did not raise such a presumption of *mala fides* on his part as would justify Her Majesty's Government in refusing to extend to him their protection in this particular case.

That your Lordship would also be glad to be furnished with any general observations which we might be good enough to offer upon the legal points involved.

In obedience to your Lordship's commands, we have taken the matter into our consideration, and have the honour to

Report—

That, in our opinion, Her Majesty's Government have no right, in the absence of Treaty engagements with Prussia extending to the case, to demand from the Prussian Government the exemption in Prussia of a naturalized British subject from the consequences of his being a Russian subject of Jewish faith.

Our answer above given seems to render the second question submitted to us irrelevant, but we think it right to say that, in our opinion, Her Majesty's Government would be justified in withholding protection from a naturalized British subject where, as in the present case, the certificate of naturalization has been obtained without any *bonâ fide* intention of residence within Her Majesty's dominions, but simply for the purpose of establishing a claim to be treated, in the country of residence, as a British subject,

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Sir E. Malet	(No. 7. Treaty)	February	9, 1894.
(B.)	Minutes thereon.			
(C.)	Law Officers' Reports: Nos. 55, 56, 57, 58, and 59 in 1881 (Confidential No. 4637); and No. 52 in 1891 (Confidential No. 6207)			
(D.)	Foreign Office Circular (Library No. 1624)		April	20, 1882.
(E.)	To Sir E. Thornton	(No. 458)	December	29, 1881.

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No. 29.

The Law Officers of the Crown to the Earl of Kimberley.—(*Received May* 3.)

My Lord, *Royal Courts of Justice, May* 2, 1894.

Proposed amendment of Article III of Extradition Treaty with Germany of May 14, 1872.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 16th March last, stating that he was directed to transmit to us the papers respecting a proposed amendment of Article III of the Extradition Treaty between Great Britain and Germany of the 14th May, 1872, which Article runs as follows:—

"No German shall be delivered up by any of the Governments of the Empire to the Government of the United Kingdom, and no subject of the United Kingdom shall be delivered up by the Government thereof to any German Government."

That the attention of Her Majesty's Government had been specially directed to the advisability of altering the text of the Article in question by a difficulty which occurred some four years since in connection with a German subject named Lippert.

That in the year 1890 a warrant was issued at the Cape of Good Hope for the arrest of W. A. Lippert, who was charged with the crime of forgery in that Colony. The fugitive was supposed to have taken refuge in Germany, and Her Majesty's Ambassador at Berlin was, on the 19th August, 1890, instructed to inform the German Government that documents in support of a demand for his extradition were on their way from the Cape. His Excellency was further instructed to say that if the fugitive proved to be not a native of Germany, a requisition for his surrender would be forwarded as soon as possible, but that, if he were a native of that country, it was hoped that the papers sent would be sufficient to enable the German Government to deal with the crime by their own Tribunals.

That, in acknowledging the receipt of the communication made by Sir E. Malet, the German Government stated, on the 2nd September, 1890, that it appeared that Lippert possessed German nationality, in which case the only question which could arise would be whether he should be prosecuted before German Tribunals for an offence committed at Cape Town. That, in the meanwhile, they wished to be informed whether, if an Englishman had committed a crime in Germany, and had returned to his own country, he would be prosecuted for the offence before the English Courts.

That, in reply to this inquiry, Her Majesty's Chargé d'Affaires at Berlin was instructed to inform the German Government as follows:—

Except in the case of murder or manslaughter committed on land, Slave Trade offences, and one or two other offences, Her Majesty's Government had no power at present to try British subjects in a British Court for crimes committed outside the Queen's dominions. That a Bill to amend the law in this respect was introduced into Parliament in the previous Session, but that, owing to pressure of public business, it was not found possible to pass it into law.

That this information was duly communicated to the German Government, and that on the 8th November, 1890, Her Majesty's Chargé d'Affaires at Berlin was informed that in the event of Lippert being found in Germany proceedings would be instituted against him in the proper Hamburg Court for the forgery committed by him at Cape Town.

That the German authorities did not, however, succeed in tracing the fugitive, and no further action appeared to have been taken in the matter until the 23rd March, 1893, when a telegram was sent to Her Majesty's Ambassador at Berlin, instructing him to inform the German Government that Lippert had been seen at Baden Baden; that upon receipt of this information the German Government had made inquiry as to the actual condition of the Bill for the prosecution of British subjects for offences committed abroad, and that Her Majesty's Chargé d'Affaires was instructed to inform them, in reply, that the Bill, which was introduced into the House of Lords in 1890, had had to be subsequently abandoned in consequence of legal difficulties.

That on learning this fact the German Government informed Sir E. Malet that in the absence of reciprocity they would not feel themselves justified in carrying further a criminal action against a German for offences committed by him on British territory.

That the Earl of Rosebery thereupon consulted the Secretary of State for the Home Department as to whether any convenient course was open to Her Majesty's Government with the object of removing the difficulty, and Mr. Secretary Asquith, in reply, suggested that the Treaty might be amended by providing for the surrender to Germany, under certain circumstances, of British subjects, in return for an undertaking on the part of Germany to prosecute German subjects who might have committed crimes on British territory.

That Lord Rosebery concurred in this suggestion, and that on the 29th July, 1893, Sir E. Malet was instructed to submit to the German Government the terms of an amended Article which Her Majesty's Government proposed to substitute for Article III of the Treaty of the 14th May, 1872. That the draft of this proposed Article would be found at pp. 7 and 8 of Paper (M).

That on the 28th December, 1893, the German Government informed Sir E. Malet that they concurred in principle in the proposal made by Her Majesty's Government, but that they desired to suggest a different wording of the Article in order that it might apply to cases in the future when Her Majesty's Government might be able, by means of fresh legislation, to prosecute British subjects for offences committed abroad.

That the German version of the Article seemed, however, to be open to some objection, chiefly on account of its complicated wording, and as a result of communications between the Foreign Office and the Home Office the Article had been redrafted.

That in connection with the general question as to the surrender of nationals Mr. Bertie was to call our attention to the recommendations contained in the Report of the Royal Commission on Extradition of 1878, and to the various precedents in Treaties between Great Britain and foreign Powers for the surrender of British subjects, particularly to the stipulations contained in Article I of the Treaty between Great Britain and Spain of the 4th June, 1878, and in Article I of the Treaty between Great Britain and Switzerland of the 26th November, 1880.

That Mr. Bertie was also to inclose, for our information, a copy of a confidential print containing the correspondence, &c., between 1884 and 1890, relating to the surrender of nationals, and to the Bill providing for the prosecution in this country of persons charged with offences committed abroad.

That Mr. Bertie was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion whether the draft Article, in its present shape, might be properly submitted to the German Government for their consideration, and with any general observations which might occur to us in connection with the papers.

In obedience to your Lordship's commands, we have taken the papers into our consideration, and have the honour to

Report—

That, in our opinion, the terms of the proposed draft Article are such as may properly be submitted to the German Government for their consideration.

The proposed Article does not appear to go beyond the recommendation of the Commission, or the terms of the Treaty with Switzerland already entered into.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Extradition Treaty with Germany (Treaty No 536)	..	May	14, 1872.
(B.)	Home Office	..	August	18, 1890.
(C.)	To Sir E. Malet	(No. 37. Treaty)	August	19, „
(D.)	Sir E. Malet	(No. 33. Treaty)	September	2, „
(E.)	To Mr. Trench	(No. 43. Treaty)	September	11, „
(F.)	Mr. Trench	(No. 46. Treaty)	November	10, „
(G.)	Home Office	..	March	23, 1893.
(H.)	Mr. Trench	(No. 15. Treaty)	March	31, „
(I.)	To Mr. Trench	(No. 15. Treaty)	April	10, „
(J.)	Sir E. Malet	(No. 21. Treaty)	June	16, „
(K.)	To Home Office	..	June	22, „
(L.)	Home Office	..	June	30, „
(M.)	To Sir E. Malet	(No. 26. Treaty)	July	29, „
(N.)	Sir E. Malet	(No. 53. Treaty)	December	29, „
(O.)	To Home Office	..	January	5, 1894.
(P.)	Home Office	..	January	18, „
(Q.)	To Home Office	..	January	29, „
(R.)	Home Office	..	February	3, „
(S.)	Report of Royal Commission on Extradition (Parliamentary No. 2051)	..	..	1878.
(T.)	Extradition Treaty with Spain (Treaty No 627)	..	June	4, 1878.
(U.)	Extradition Treaty with Switzerland (Treaty No. 674)	..	November	26, 1880.
(V.)	Correspondence: Surrender of Nationals (Confidential No. 6111)		..	1884–90.

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Annex.

Draft Declaration between Great Britain and Germany.

THE Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, &c., &c., and the Government of His Majesty the German Emperor, King of Prussia, &c., &c., being desirous to provide for the more effectual repression of crimes and offences in their respective territories, have in due form authorized the Undersigned to agree as follows:—

Article III of the Extradition Treaty between Great Britain and Germany signed at London on the 14th May, 1872, is hereby cancelled, and the following Article is substituted therefor:—

"A British subject committing an offence comprised in Article II, within German territory, shall be delivered up by the British Government, unless the laws of the United Kingdom should permit of his prosecution for such offence in a British Criminal Court, and unless the British Government should undertake such prosecution.

"A German subject committing an offence comprised in the said Article II, within British territory, shall not be delivered up, but in lieu thereof the German Government shall undertake his prosecution for such offence in a German Criminal Court."

The present Declaration shall come into force ten days after its publication in the manner prescribed by law in the respective countries, and shall have the same force and duration as the Treaty to which it relates.

In witness whereof the Undersigned have signed the same, and have affixed thereto the seal of their arms.

No. 30.

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 31, 1894.

Gentlemen,

Nationality of a child born of German parents in English waters.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, in connection with an inquiry that was recently made of this Department by a Mr. G. Jones, as to the nationality of a child born of German parents in English waters.

The point raised in the case appears to Lord Kimberley to be a novel one of some importance, viz., whether a child born of German parents on a German merchant-vessel in British territorial waters is a British subject in contemplation of English law; and I am to call your special attention to the observations upon the question which are contained in the letter written to the Home Office by his Lordship's direction on the 7th May last (Inclosure D) and which indicate the views of this Department.

It will be observed, however, that the Home Office and Board of Trade, to whom the matter was referred, have expressed divergent opinions upon the point at issue, the Home Office being of opinion, for the reasons stated in their letter of the 17th May, that a child born in the circumstances stated is clearly of British nationality, while the Board of Trade, on the other hand, consider (see their letter to this Department of the 30th June last) that such child is not a natural-born British subject.

In these circumstances Lord Kimberley is anxious to obtain your opinion on the point, which is of considerable importance, and which may at any moment be raised in a practical shape.

I am to add that the existence of "The Territorial Waters Jurisdiction Act, 1878," had not escaped the attention of this Department, but that as the enactment in question did not appear to have a direct bearing upon the special point under consideration, it was purposely not alluded to in the letter to the Home Office of the 7th May last.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Kimberley with your opinion on the question specially submitted in this letter, as well as with any general observations which you may have to offer on the matter.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Mr. G. Jones	April 1894.
(B.) To ditto	April 27, 1894.
(C.) Mr. G. Jones	April 28, "
(D.) To Home Office	May 7, "
(E.) Home Office	May 17, "
(F.) To Board of Trade	June 12, "
(G.) Board of Trade	June 30, "

Report.

So far as we are aware there has been no decision exactly in point.

Four possible solutions present themselves:—

1. That in territorial waters British nationality attaches exclusively.
2. That nowhere in territorial waters does it attach.
3. That there is a double nationality.
4. That there is British nationality where the ship is within the body of a county, but not otherwise.

Plausible arguments may be advanced in support of each of these solutions, but the case can only be solved when the circumstances require that it should be, by the judgment of a competent Court. At present the case raises no practical question.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
August 25, 1894.

Annex.

Foreign Office to Home Office.

Foreign Office, May 7, 1894.

Sir,

I AM directed by the Earl of Kimberley to transmit to you, to be laid before Mr. Secretary Asquith, copy of the correspondence marked in the margin, relative to an inquiry that has been made by Mr. G. Jones as to the nationality of a child born of German parents in English waters.

It appears to Lord Kimberley that this correspondence raises a point of some importance, viz., whether a child born of German parents on a German merchant-vessel in British territorial waters is a British subject in contemplation of English law; and I am to request that his Lordship may be favoured with an expression of Mr. Secretary Asquith's views upon this question, together with any observations which he may desire to make upon the matters dealt with in Mr. Jones' letter of the 28th ultimo.

It will be remembered that the converse question of the nationality, in contemplation of English law, of a child born on board a British merchant-vessel within the territorial waters of a foreign State formed the subject of correspondence between the Home and Foreign Offices in 1891, when it was considered that such child must be deemed to be a British subject so far as English law was concerned (see Foreign Office to Home Office of the 15th July, 1891, and Home Office to Foreign Office of the 4th August, 1891).

The point raised in the present case is, however, so far as Lord Kimberley is aware, a novel one, which is not directly governed by any decision of our Courts, although the case of Regina *v.* Anderson, 1 C.C.R., p. 161, appears to bear indirectly upon it.

In the course of that case Mr. Justice Blackburn said: "It has been decided that a ship which bears a nation's flag is to be treated as part of the territory of that nation. A ship is a kind of floating island;" and although the nationality of the ship does not necessarily oust the nationality of the territorial waters, and may indeed co-exist with the latter for many purposes, it seems very doubtful, having regard to the decision in Regina *v.* Keyn, L.R., 2 Ex. Div., 63, and to the opinions expressed by the majority of the Court who decided that case, whether the soil in the 3-mile littoral zone can any longer be regarded as so far part of the territorial domain of the Crown as to impress British nationality *jure soli* upon a child born on the superincumbent territorial waters. On the other hand, it is presumed that a child born on a foreign merchant-vessel which was lying either in a British harbour or in waters within the body of a British county, Colony, or possession would, whatever may be the view ultimately taken with regard to the nationality of a child born on a foreign vessel within the territorial waters of the 3-mile littoral zone, properly be regarded as a natural-born British subject in contemplation of English law.

I am, &c.
(Signed) T. H. SANDERSON.

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[Home Office.]

No. 31.

The Law Officers of the Crown to Mr. Asquith.—(Received from Home Office, November 5.)

[In reply to the following Home Office letter, the Law Officers gave, on the 24th October, 1894, their opinion as on p. 55:—]

"*Mr. Cunynghame to the Solicitor to the Treasury.*

"Sir,

"*Whitehall, September* 7, 1894.

"I AM directed by the Secretary of State to transmit to you two copies of a Case respecting the admission to bail of a person charged with an extradition crime, and to ask you to be so good as to obtain the opinion of the Law Officers of the Crown upon the matter.

"I am, &c.
(Signed) "HENRY CUNYNGHAME."

Case for the Law Officers.

Admission to bail of a person charged with an extradition crime.

The Attorney- and Solicitor-General are requested to favour the Secretary of State with their opinion as asked in Mr. Cunynghame's letter.

The Secretary of State desires to be advised by the Law Officers of the Crown whether the release on bail of a person charged with an extradition crime before a Metropolitan Police Magistrate at Bow Street, and remanded for further evidence, is authorized by the law of England; and, secondly, whether, in the case of a person whose surrender is claimed by the German Government, release on bail in such circumstances would be contrary to the Treaty between Her Majesty and the German Emperor.

By section 9 of "The Extradition Act, 1870," it is enacted that:—

"When a fugitive criminal is brought before the Police Magistrate, the Police Magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England."

The jurisdiction and powers of a Police Magistrate in dealing "with an indictable offence committed in England" are, so far as relates to the power to remand, set out in section 21 of "The Indictable Offences Act, 1848," which runs as follows:—

"If from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of the witnesses for any time, it shall be lawful to and for the Justice or Justices before whom the accused shall appear or be brought, by his or their warrant, from time to time to remand the party accused for such time as by that Justice or Justices in their discretion shall be deemed reasonable, not exceeding eight clear days, to the common gaol or house of correction, or other prison, lock-up house, or place of security, in the country, riding, division, liberty, city, borough, or place for which such Justice or Justices shall then be acting; or if the remand be for a time not exceeding three clear days, it shall be lawful for such Justice or Justices verbally to order the constable or other person in whose custody such party accused may then be, or any other constable or person to be named by the said Justice or Justices in that behalf, to continue or keep such party accused in his custody, and to bring him before the same or such other Justice or Justices as shall be there acting at the time appointed for continuing such examination: Provided always, that any such Justice or Justices may order such accused party to be brought before him or them, or before any other Justice or Justices of the Peace for the same county, riding, division, liberty, city, borough, or place at any time before the expiration of the time for which such accused party shall be so remanded, and the gaoler or officer in whose custody he shall then be shall duly obey such order: Provided also, that instead of detaining the accused party in custody during the period for which he shall be so remanded, any one Justice of the Peace before whom such accused party shall so appear or be brought as aforesaid may discharge him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Justice, conditioned for his appearance at the time and place appointed for the continuance of such examination; and if such accused party shall not afterwards appear at the time and place mentioned in such recognizance, then the said Justice, or any other Justice of the Peace who may then and there be present, upon certifying upon the back of the recognizance the non-appearance of such accused party, may transmit such recognizance to the Clerk of the Peace for the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *primâ facie* evidence of such non-appearance of the said accused party."

It is held as a matter of practice at Bow Street that the above provisions of the law justify the remand on bail of persons charged with extradition offences at the instance of foreign Governments; but of course the power to release such prisoners on bail is very carefully and sparingly used.

On the other hand, it is argued that the words "as near as may be" in the above-quoted section of the Extradition Act, when taken in conjunction with the words and spirit of the Treaty between Her Majesty and the German Emperor, must be taken to mean that the power of remanding on bail is excluded in extradition cases in which the German Government is the demanding party.

It is pointed out that by Article I of the Treaty in question the High Contracting Parties "engage to deliver up to each other" such persons; and that these binding words must be held so to limit the discretion which the Magistrate would otherwise exercise as to preclude him from taking any steps otherwise open to him which might render the fulfilment of the obligation to surrender less certain.

It is also pointed out that by Article XII of the Treaty it is agreed that if sufficient evidence to justify surrender be not produced in two months from the date of apprehension the fugitive shall be set at liberty; and it is argued that the inference should be drawn that before that period expires the fugitive shall not be released.

And further, as a practical argument in support of these views, it is urged that in view of the fact that under Article XIII of the Treaty all articles in the possession of the fugitive at the time of his apprehension may be ordered to be delivered up with him, it would be unreasonable to release a fugitive wholly or even partially on the security of such property, which may, and frequently does, really belong to other parties, and may be the subject of the charge on which extradition is demanded.

To these arguments it may be replied that by Article IX of the Treaty "the prisoner is to be brought before a competent Magistrate, who is to examine him and conduct the preliminary investigation of the case just as if the apprehension had taken place for a crime committed in the same country," that these words clearly include the power of remanding on bail given by the Indictable Offences Act quoted above; and that, just as in other cases, the Magistrate must be trusted so to exercise this discretion as to avoid the practical dangers and difficulties pointed out.

The Secretary of State will be glad if the Law Officers will advise him on the questions set out in the first paragraph of this Case.

Opinion.

1. We are of opinion that the release on bail of a person charged with an extradition crime before a Police Magistrate at Bow Street, and remanded for further evidence, is authorized by the law of England.

2. In our opinion, it would not be contrary to the Treaty with Germany to release an accused on bail in a proper case. The power of release on bail should be used with the utmost caution.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
October 24, 1894.

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JAPAN.

No. 32.

The Law Officers of the Crown to the Earl of Rosebery.—(Received February 16.)

Judgment in appeal of H. M. Supreme Court in Chishima-Ravenna case.

My Lord, *Royal Courts of Justice, February* 16, 1894.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 22nd December last, stating, with reference to our letter of the 12th December, that he was directed to transmit to us the accompanying despatches which had been since received from Her Majesty's Chargé d'Affaires at Tôkiô, reporting and commenting shortly upon the Judgment in appeal delivered by Her Majesty's Supreme Court for China and Japan in the Chishima-Ravenna case.

That, in connection with the principal point upon which that Judgment appeared to turn, Sir Thomas Sanderson was to inclose a Memorandum by Sir Edward Hertslet respecting the Inland Sea of Japan; and was also to call our attention to pp. 1290, 1314 *et seq.*, and 1342-43 of the Report ("Compte Rendu," Part VI) of the proceedings before the Tribunal of Arbitration which was convened at Paris in the present year with reference to the seal fishery in Behring Sea.

That, in view of the importance of the subject, and of the probability of a further appeal to the Judicial Committee of Her Majesty's Privy Council respecting it, your Lordship was anxious that we should have the earliest opportunity of considering the Judgments which had been delivered by the Chief Justice and Assistant Judge of the Supreme Court at Shanghae.

That your Lordship was unaware whether there was anything contained in those Judgments which would modify the opinions which we had already expressed upon the points submitted to us in the reference from the Foreign Office of the 22nd September last, and we were therefore requested to inform your Lordship, after considering the papers, whether we desired to make any alteration in or addition to our Report of the 12th December last.

Sir Thomas Sanderson further stated that your Lordship would also be glad to receive any general observations upon the present aspect and future course of the case.

In obedience to your Lordship's commands, we have considered the matter, and have the honour to

Report—

That, in our opinion, there is nothing contained in the Judgments now submitted for our consideration to induce us to modify the opinion which we have already expressed upon the points submitted to us in the reference of the 22nd September, 1893.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Law Officers' Report (Confidential No. 6508, p. 39)		December	12, 1893.
(B.) Mr. de Bunsen	(No. 119)	November	8, "
(C.) Ditto	(No. 120)	November	13, "
(D.) Sir E. Hertslet (Memorandum)		December	16, "
(E.) Report of Behring Sea Tribunal, May 31 to June 8, 1893.			
(F.) Mr. de Bunsen.. .. .. (Sent February 6, 1894.)	(No. 146)	December	31, ,

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No. 33.

The Law Officers of the Crown to the Earl of Kimberley.—(Received August 2.)

Sinking of British transport "Kow-Shing" by Japanese. As to compensation.

My Lord, *Royal Courts of Justice, August* 2, 1894.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us the papers relating to the circumstances arising out of the differences between China and Japan in regard to Corea.

That the attitude which these two Powers had mutually bound themselves to assume towards the Kingdom of Corea was set forth in the Convention signed at Tien-tsin on the 18th April, 1885, from which it would be seen that in case of any disturbance of a grave nature occurring in Corea which rendered it necessary for the two Contracting Powers, or either of them, to send troops to that country they should, under certain conditions, be at liberty to do so.

That the position of Corea, although it was considered by China as a dependency of hers, was autonomous as regards both internal government and foreign relations.

That a Treaty between this country and Corea was concluded on the 6th June, 1882, copy of which was inclosed in Mr. Bertie's letter, together with an explanatory Memorandum drawn up in the Foreign Office with regard to Corea.

That an insurrection having recently broken out at Tongukuto in Corea, Chinese troops—at the instance of the King—were sent to suppress it. That shortly afterwards Japan officially notified to China that she did not recognize Chinese suzerainty over Corea, and dispatched 4,000 troops to that country, giving the requisite notice to China under the Treaty of 1885.

That negotiations for the mutual withdrawal of the Chinese and Japanese troops ensued, with the assistance of the good offices of the Representatives of this and other countries, but failed to bring about an understanding as to the places to which each side should retire.

That on the 28th June Her Majesty's Government were informed that the King of Corea had refused to discuss matters with the Japanese Minister while foreign troops occupied his territory, and that this attitude was approved of and supported by the Chinese Government.

That this refusal eventually led up to the Palace at Seoul being invested by the Japanese forces, and the King becoming practically a prisoner.

That in the course of the proposals for negotiations between China and Japan the Japanese Government notified that any further dispatch of troops from China to Corea would be regarded as a menace, and that they would not be answerable for the consequences.

That the attitude of the Japanese Government would be found described in a communication which they had addressed to the foreign Representatives at Tôkiô.

That on the 24th ultimo Her Majesty's Government had received information from Peking that 9,000 Chinese troops had left for Corea on the 22nd, and that on the 28th they were unofficially informed by the Japanese Minister at this Court that his Government had received intelligence that a Japanese squadron had, under provocation, been compelled to have an engagement with the Chinese ships escorting the transports near Fontao, and that one Chinese transport with troops had been sunk and a Chinese war-ship captured.

That from the inclosed letter from the Indo-Chinese Steam Navigation Company it appeared that the transport sunk by the Japanese war-ships was a British vessel chartered by Messrs. Jardine, Matheson, and Co., their Shanghae agents, under the general powers, to Li Hung-chang, the Chinese Viceroy of Chih-li, and that when attacked and destroyed she was presumably carrying the British flag.

That the vessel was, moreover, officered by British subjects, whose lives had been sacrificed by the action of the Japanese naval forces.

That although encounters had taken place between the Corean Palace guards and the Japanese troops in the vicinity of Seoul, no declaration of war had, so far as was known, been made either by China or by Japan at the time of the recent naval engagement, and that under those circumstances your Lordship would be glad to be furnished with our advice on the point of international law raised by the attack on and sinking of the British vessel, presumably flying the British flag, engaged in the conveyance of Chinese troops to a foreign country, ostensibly for the purpose of restoring order there on the invitation of the King, but alleged by the Japanese Government to be intended

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to expel their forces from Corea, and sent thither in full knowledge of the warning given by Japan to China to desist from dispatching more troops.

That your Lordship would be glad to know whether in our opinion Her Majesty's Government were entitled to claim redress from the Japanese Government, and also to be favoured with any general observations which we might have to offer on the case.

We have also to acknowledge the receipt of a further telegram from Her Majesty's Chargé d'Affaires at Tôkiô,* and also Mr. Bertie's note of the 1st instant, inclosing additional papers marked in the margin.†

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, Her Majesty's Government are entitled, under the circumstances of this case, to claim full redress for the sinking of the British transport and for any loss of life or property occasioned thereby to British subjects.

We should be of this opinion even on the statements made by the Japanese Ambassador.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

(A.)	Treaty between China and Japan..	April	18, 1885.
(B.)	„ „ Great Britain and Corea	June	6, 1882.
(C.)	Memorandum	December	19, 1882.
(D.)	Japanese Circular to foreign Representatives at Tôkiô.		
(E.)	Indo-China Steam Navigation Company	July	30, 1894.

No. 34.

The Law Officers of the Crown to the Earl of Kimberley.—(Received August 2.)

Royal Courts of Justice, August 2, 1894.

My Lord,

War between China and Japan. Neutrality. Proclamation, &c.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 1st instant, stating that Her Majesty's Government had received intelligence from Her Majesty's Chargé d'Affaires at Tôkiô that the Japanese Government had, by an official note to him and the other foreign Representatives, announced that a state of war existed between Japan and China, and that Her Majesty being resolved to maintain the strictest neutrality, your Lordship requested that we would immediately take into our consideration the accompanying draft of a Royal Proclamation to that effect to be issued in case of need, and also drafts of letters to the Boards of Admiralty and Treasury, and to the Colonial Office, War Office, and India Office, announcing the same.

L.O.R. 1884. (Conf. 5121), p. 40.

Mr. Bertie inclosed for our information copies of like documents prepared in 1884 on the occasion of hostilities then existing between France and China, which documents were approved by the then Law Officers in their Report of the 2nd September, 1884.

Mr. Bertie also inclosed a copy of the Report of the Neutrality Laws Commissioners.

Mr. Bertie further stated that your Lordship would be glad to be informed whether the proposed drafts were, in our opinion, right and proper under the circumstances.

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* Mr. Paget, No. 46, July 31, 1894.

† Japanese Government to Viscount Aoki, Telegraphic, July 31; Indo-China Steam Navigation Company, August 1, 1894.

In obedience to your Lordship's commands, we have the honour to

Report—

That, in our opinion, the drafts (A) and (B) initialled by us are right and proper under the circumstances.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

(A.)	Draft Proclamation.	
(B.)	Draft of letters to Boards of Admiralty and Treasury, Colonial Office, War Office, and India Office.	
(C.)	Law Officers' Report (Confidential No. 5121, p. 40) ..	September 2, 1884.
(D.)	Report of Neutrality Laws Commissioners, 1867–68 (Parliamentary No. 1147).	

Annex (A).

By the Queen.

A PROCLAMATION.

VICTORIA *R.*

WHEREAS We are happily at peace with all Sovereigns, Powers, and States:

And whereas a state of war unhappily exists between His Majesty the Emperor of China and His Majesty the Emperor of Japan, and between their respective subjects and others inhabiting within their countries, territories, or dominions:

And whereas We are on terms of friendship and amicable intercourse with each of these States, and with their subjects and others inhabiting within their countries, territories, or dominions:

And whereas great numbers of Our loyal subjects reside and carry on commerce, and possess property and establishments, and enjoy various rights and privileges, within the territory of each of the aforesaid States, protected by the faith of Treaties between Us and each of the aforesaid States:

And whereas We, being desirous of preserving to Our subjects the blessings of peace which they now happily enjoy, are firmly purposed and determined to maintain a strict and impartial neutrality in the said state of war unhappily existing between the aforesaid States:

We, therefore, have thought fit, by and with the advice of Our Privy Council, to issue this Our Royal Proclamation:

And We do hereby strictly charge and command all Our loving subjects to govern themselves accordingly, and to observe a strict neutrality in and during the aforesaid war, and to abstain from violating or contravening either the Laws and Statutes of the Realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril:

And whereas in and by a certain Statute made and passed in a Session of Parliament holden in the 33rd and 34th year of Our reign, intituled "An Act to regulate the Conduct of Her Majesty's Subjects during the existence of Hostilities between Foreign States with which Her Majesty is at Peace," it is, amongst other things, declared and enacted as follows:—

"This Act shall extend to all the dominions of Her Majesty, including the adjacent territorial waters.

"*Illegal Enlistment.*

"If any person, without the licence of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign State at war with any foreign State at peace with Her Majesty, and in this Act referred to as a friendly State, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign State as aforesaid,—

"He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"If any person, without the licence of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent,—

"He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which

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the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"If any person induces any other person to quit Her Majesty's dominions, or to embark on any ship within Her Majesty's dominions, under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State,—

"He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"If the master or owner of any ship, without the licence of Her Majesty, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions any of the following persons, in this Act referred to as illegally enlisted persons, that is to say:

"(1.) Any person who, being a British sucject within or without the dominions of Her Majesty, has, without the licence of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign State at war with any friendly State:

"(2.) Any person, being a British subject, who, without the licence of Her Majesty, is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State:

"(3.) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State:

"Such master or owner shall be guilty of an offence against this Act, and the following consequences shall ensue; that is to say:

"(1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour; and

"(2.) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two Justices of the Peace, or other Magistrate or Magistrates having the authority of two Justices of the Peace; and

"(3.) All illegally enlisted persons shall, immediately on the discovery of the offence, be taken on shore, and shall not be allowed to return to the ship.

"*Illegal Shipbuilding and illegal Expeditions.*

"If any person within Her Majesty's dominions, without the licence of Her Majesty, does any of the following acts; that is to say,—

"(1.) Builds or agrees to build, or causes to be built, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State; or

"(2.) Issues or delivers any commission for any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State; or

"(3.) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State; or

"(4.) Dispatches, or causes or allows to be dispatched, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State;

"Such person shall be deemed to have committed an offence against this Act, and the following consequences shall ensue:

"(1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"(2.) The ship in respect of which any such offence is committed, and her equipment, shall be forfeited to Her Majesty:

"Provided, that a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed by this section in respect of such building or equipping, if he satisfies the conditions following (that is to say):—

"(1.) If forthwith upon a Proclamation of Neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Secretary of State:

"(2.) If he gives such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for insuring that such ship shall not be dispatched, delivered, or removed, without the licence of Her Majesty, until the termination of such war as aforesaid.

"Where any ship is built by order of, or on behalf of, any foreign State when at war with a friendly State, or is delivered to, or to the order of, such foreign State, or any person who, to the knowledge of the person building, is an agent of such foreign State, or is paid for by such foreign State or such agent, and is employed in the military or naval service of such foreign State, such ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign State.

"If any person within the dominions of Her Majesty, and without the licence of Her Majesty,—

"By adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting, the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign State at war with any friendly State,—

"Such person shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"If any person within the limits of Her Majesty's dominions, and without the licence of Her Majesty,—

"Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly State, the following consequences shall ensue:—

"(1.) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"(2.) All ships, and their equipments, and all arms and munitions of war, used in or forming part of such expedition, shall be forfeited to Her Majesty.

"Any person, who aids, abets, counsels, or procures the commission of any offence against this Act, shall be liable to be tried and punished as a principal offender."

And whereas by the said Act it is further provided that ships built, commissioned, equipped, or dispatched, in contravention of the said Act, may be condemned and forfeited by Judgment of the Court of Admiralty; and that if the Secretary of State, or chief executive authority, is satisfied that there is a reasonable and probable cause for believing that a ship within Our dominions has been or is being built, commissioned, or equipped, contrary to the said Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be dispatched, contrary to the Act, such Secretary of State, or chief executive authority, shall have power to issue a warrant authorizing the seizure and search of such ship, and her detention until she has been either condemned or released by process of law:

And whereas certain powers of seizure and detention are conferred by the said Act on certain local authorities:

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said Statute, We do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said Statute, upon pain of the several penalties by the said Statute imposed, and of Our high displeasure.

And We do hereby further warn and admonish all Our loving subjects, and all persons whatsoever entitled to Our protection, to observe towards each of the aforesaid States, their citizens, subjects, and territories, and to all belligerents whatsoever, with whom We are at peace, the duties of neutrality; and to respect, in all and each of them, the exercise of those belligerent rights which We and Our Royal predecessors have always claimed to exercise.

And we hereby further warn all our loving subjects, and all persons whatsoever entitled to Our protection, that if any of them shall presume, in contempt of this Our Royal Proclamation, and of Our high displeasure, to do any acts in derogation of their duty as subjects of a neutral Sovereign in a war between other States, or in violation or contravention of the law of nations in that behalf, as more especially by breaking, or endeavouring to break, any blockade lawfully and actually established by or on behalf of either of the said States, or by carrying officers, soldiers, despatches, arms, ammunition, military stores or materials, or any article or articles considered and deemed to be contraband of war according to the law or modern usages of nations, for the use or service of either of the said States, that all persons so offending, together with their ships and goods, will rightfully incur and be justly liable to hostile capture, and to the penalties denounced by the law of nations in that behalf.

And We do hereby give notice that all Our subjects and persons entitled to our protection who may misconduct themselves in the premises will do so at their peril, and of their own wrong; and that they will in nowise obtain any protection from Us against such capture, or such penalties as aforesaid, but will, on the contrary, incur Our high displeasure by such misconduct.

Given at Our Court at , this day of , in the year our Lord one thousand eight hundred and , in the forty-eighth year of Our reign.

God save the Queen.

J. R.
R. T. R.

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Annex (B).

*The Earl of Kimberley to the Lords Commissioners of the Admiralty.**

My Lords, *Foreign Office,*

HER Majesty being fully determined to observe the duties of neutrality during the existing state of war between the Emperor of China and the Emperor of Japan, and being moreover resolved to prevent, as far as possible, the use of Her Majesty's harbours, ports, and coasts, and the waters within Her Majesty's territorial jurisdiction, in aid of the warlike purposes, of either belligerent, has commanded me to communicate to your Lordships, for your guidance, the following rules, which are to be treated and enforced as Her Majesty's orders and directions:—

Her Majesty is pleased further to command that these rules shall be put in force in the United Kingdom, the Isle of Man, and the Channel Islands on and after the , and in Her Majesty's territories and possessions beyond the seas, six days after the day when the Governor, or other chief authority of each of such territories or possessions respectively, shall have notified and published the same; stating in such notification that the said rules are to be obeyed by all persons within the same territories and possessions.

During the continuance of the present state of war, all ships of war of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom, the Isle of Man, or the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities for warlike equipment; and no ship of war of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or waters subject to British jurisdiction from which any vessel of the other belligerent (whether the same shall be a ship of war or a merchant ship) shall have previously departed until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

2. If any ship of war of either belligerent shall, after the time when this Order shall be first notified and put in force in the United Kingdom, the Isle of Man and the Channel Islands, and in the several Colonies and foreign possessions or dependencies of Her Majesty respectively, enter any port, roadstead, or waters belonging to Her Majesty, either in the United Kingdom, the Isle of Man, or the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs; in either of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been allowed to remain within British waters for the purpose of repair shall continue in any such port, roadstead, or waters for a longer period than twenty-four hours after her necessary repairs shall have been completed. Provided, nevertheless, that in all cases in which there shall be any vessel (whether ships of war or merchant ships) of the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war or merchant ship) of the one belligerent and the subsequent departure therefrom of any ship of war of the other belligerent; and the time hereby limited for the departure of such ships of war respectively shall always, in case of necessity, be extended so far as may be requisite for giving effect to this proviso, but no further or otherwise.

3. No ship of war of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination, and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.

4. Armed ships of either party are interdicted from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, the Isle of Man, the Channel Islands, or any of Her Majesty's Colonies or possessions abroad.

J. R.
R. T. R.

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* Similar letters to be addressed to the Treasury, Home Office, Colonial Office, War Office, and India Office.

No. 35.

The Law Officers of the Crown to the Earl of Kimberley.—(Received August 3.)

My Lord, *Royal Courts of Justice, August 3, 1894.*

Sinking of "Kow-Shing." Responsibility of Japanese Government for losses to British subjects.

WE were favoured with your Lordship's commands signified in Mr. Bertie's note of the 2nd instant, stating that, with reference to our Report on the subject of the destruction of the "Kow-Shing,"* he was directed by your Lordship to inquire whether a further telegram from the Japanese Government,† which had just been communicated to your Lordship by Viscount Aoki, contained anything to induce us to modify the opinion already expressed by us on the circumstances of the case as previously reported.

In obedience to your Lordship's commands, we have the honour to

Report—

That, in our opinion, the further telegram submitted to us, assuming its contents to be correct, in no way alters the responsibility of the Japanese Government for the loss occasioned to British subjects.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

No. 36.

The Law Officers of the Crown to the Earl of Kimberley.—(Received August 3.)

My Lord, *Royal Courts of Justice, August 3, 1894.*

Detention of torpedo-catcher at Elswick believed to be for Japanese Govt.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of this day's date, stating that he was directed by your Lordship to transmit to us the papers noted in the margin, relative to a torpedo-catcher now lying at Elswick, which was reported to have been sold to the Japanese Government, and to be in course of equipment for dispatch within a fortnight.

That Mr. Bertie was to request that we would take the papers into our consideration, and inform your Lordship whether the Customs authorities might properly be instructed to take any necessary measures to prevent the departure of the vessel in question pending a verification of those suspicions, and in the meanwhile to use their best efforts to obtain further information as to the vessel's destination, and as to whether any violation of "The Foreign Enlistment Act, 1870," was intended, such as would justify the issue of a warrant for her detention.

In obedience to your Lordship's commands, we have taken the matter into our consideration, and have the honour to

Report—

That, in our opinion, the Customs authorities at Newcastle-on-Tyne may properly be instructed to take any necessary steps to prevent the departure of the vessel in question pending the investigation into the statements made, and in the meanwhile to use their best efforts to obtain further information on the points mentioned in Mr. Bertie's letter.

Independently of express instructions, it is the duty of the officers of Customs, under section 24 of "The Foreign Enlistment Act, 1870," if a representation is made to them, and they believe the representation, that there is reasonable and probable cause for believing that a ship within Her Majesty's dominions is being equipped and is about to be taken beyond Her Majesty's dominions contrary to the Act, to detain the ship and communicate with the Secretary of State. Under section 23, if the Secretary of State is satisfied that there is a reasonable and probable cause for the like belief in a similar case, the Secretary of State is empowered to issue a warrant.

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* Law Officers' Report, August 2, 1894.

† Telegram from Japanese Government to Viscount Aoki, August 2, 1894.

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We should be prepared to advise that proof of the fact that work is being pressed on rapidly, day and night, at the present time, when news of the Chino-Japanese war has just reached the country, is of itself a reasonable and probable cause for believing the ship to be equipping and about to be sent out for employment in the naval service of one or the other belligerent. Of course there would be a certain risk of the Treasury being made liable to costs in case of a mistake being made on this head, but it is for the Secretary of State to consider whether such a risk ought not to be run. The detention need not be maintained if satisfactory explanations are received.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

(A.)	Customs	March 14, 1894.
(B.)	To ditto	March 15, „
(C.)	Customs	August 3, „

No. 37.

The Law Officers of the Crown to the Earl of Kimberley.—(Received August 8.)

My Lord,
Royal Courts of Justice, August 7, 1894.

War between China and Japan. Duties of Consuls in sale and transfer of British vessels.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 4th instant, stating that Her Majesty's Chargé d'Affaires at Tôkiô had, in view of the state of war existing between China and Japan, inquired of your Lordship in a telegram, of which Mr. Bertie inclosed a copy, whether neutrality required that Her Majesty's Consuls in Japan should refuse to exercise their administrative and executive functions in the matter of the sale and transfer of British vessels to the Japanese flag under certificate of sale.

That Mr. Paget stated that it seemed probable that the vessels were required for purposes of military transport.

That the duties of a British Consular officer in connection with the sale of a British vessel to a foreigner were performed in virtue of the provisions of the Merchant Shipping Act, and were definitely laid down in section 30, p. 14 of the Board of Trade Instructions to Consuls; and that it appeared doubtful whether any discretion rested with the Consul in the performance of those duties when called upon by the principals in the transaction to perform them.

That as there appeared to be no precedent in the archives of the Foreign Office bearing directly on this point, and as the question did not appear to be one which had previously been submitted to the Law Officers of the Crown, your Lordship requested that we would take the matter into consideration, and give our opinion as to the answer which should be returned to Mr. Paget, with any general observations which we might have to offer on the subject.

In obedience to your Lordship's commands, we have taken the matter into our consideration, and have the honour to

Report—

That, in our opinion, Mr. Paget's telegram should receive an answer in the negative. The duties of neutrality do not require or authorize Consuls to refrain from exercising their administrative functions under the Merchant Shipping Acts, or authorize a departure from the instructions given to them as to certificates of sale.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

Mr. Paget (Telegraphic), No. 49.
Board of Trade Instructions to Consuls.

No. 38.

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, August 8, 1894.

Detention of torpedo-catcher at Elswick believed to be for Japanese Govt.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to the torpedo-catcher now at Elswick, which formed the subject of your Report of the 3rd instant, herewith returned, and I am to request that you will take them into your immediate consideration, and favour his Lordship with your opinion whether the information now furnished by the Acting Collector of Customs at Newcastle in his letter of yesterday, marked (D), would justify Her Majesty's Government in taking any further action with regard to this vessel, and, if so, what the character of such action should be.

Drafts of the usual warrants of detention (A) and (B) are inclosed herein.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Law Officers	August 3, 1894.
(B.)	Acting Collector of Customs, Newcastle	August 6, „
(C.)	Customs	August 7, „
(D.)	Acting Collector of Customs, Newcastle	August 7, „
(E.)	Draft Warrants (A) and (B).	

Report—

That, having regard to the special circumstances of this case, the information now furnished by the Acting Collector of Customs at Newcastle in his letter of the 7th August—marked (D)—and the other papers transmitted to us, does not alter our opinion that there is reasonable and probable cause for believing that the vessel is being equipped, or is about to be dispatched, in contravention of the Act. Only a neutral Government could be looked upon as a possible purchaser otherwise than for the purposes of one of the belligerents, and if there were such a purchaser behind it would be perfectly easy to show it.

We are of opinion that Her Majesty's Government would be justified in taking further action in regard to this vessel by the issue by the Secretary of State of the warrants in the Forms (A) and (B).

It would be advisable to require from the firm of Armstrong, Mitchell, and Co. information on the following points:—

Where the vessel came from, and by whom she was built.

With whom they contracted for the equipment.

What is the cause of the unusual rapidity with which she has been equipped.

Whether any and what Government has caused her to be built or equipped, or contemplates purchasing her.

Where and to whom it is the intention of the Company to deliver her.

Whether they are willing to furnish any documentary evidence as to the points above referred to.

The answers may influence the Secretary of State as to releasing the ship hereafter or further detaining her. Any refusal to give information on these points ought to have weight with the Court of Admiralty in the event of any application for her release.

(Initialled) J. R.
R. T. R.

August 9, 1894.

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No. 39.

Foreign Office to the Law Officers of the Crown.

Torpedo-catcher at Elswick. Continuance of work on whilst under detention.

Gentlemen, *Foreign Office, August* 10, 1894.

WITH reference to your Report of yesterday's date respecting the torpedo-catcher now at Elswick, I have the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying letter from the Board of Customs,* asking whether, under present circumstances, and while the vessel by virtue of the warrants is under seizure and detention, they are to allow work to be continued on her, with a view to the completion of her equipment.

I am to request that you will favour Lord Kimberley with your opinion on the question submitted in the letter herein inclosed.

I am, &c.
(Signed) FRANCIS BERTIE.

Report.

We are of opinion that no interference is necessary with the work which is being done on the torpedo-catcher, but that it should be allowed to be continued, and that Messrs. Armstrong should have notice to that effect.

(Signed) JOHN RIGBY.
R. T. REID.

August 10, 1894.

No. 40.

The Law Officers of the Crown to the Earl of Kimberley.—(*Received August* 14.)

Conversion of "Islam" into a transport. As to violation of Foreign Enlistment Act.

My Lord, *Royal Courts of Justice, August* 14, 1894.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the letter from the Board of Customs, with its inclosures,† relative to a merchant-vessel, named the "Islam," which is now being fitted out at Glasgow, and was supposed to be in process of conversion into a transport for troops.

That Mr. Bertie was to request us to favour your Lordship with our opinion whether any violation of the Foreign Enlistment Act was involved in this case, and, if so, what steps should be taken in the matter by Her Majesty's Government.

In obedience to your Lordship's commands, we have the honour to

Report—

That there is a violation of the Foreign Enlistment Act in this case, if the vessel is being equipped, fitted, or adapted for a transport in order to be used by the Japanese Government.

In any case there is, in our opinion, reasonable and probable cause for believing that this vessel is being equipped and is about to be dispatched contrary to the Act.

Accordingly we advise that warrants be issued to detain the vessel, notice being given that the work upon her will not be interfered with, and in the meantime, information should be obtained, as far as possible, as to the character of the work intended, and the interest of the Japanese Company in her, the commerce in which it is stated she is to be used, and the cause of the rapidity with which she is being fitted.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

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* Customs, August 10, 1894.

† Customs, August 13, 1894.

No. 41.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 15, 1894.

Torpedo-catcher detained at Elswick. As to release of.

WITH reference to your letters of the 9th and 10th instant, respecting the torpedo-catcher now under detention at Elswick, I have the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying letter from the Commissioners of Customs, and telegram from the Acting Collector of Customs at Newcastle-on-Tyne, stating that Messrs. Armstrong and Co. have informed him that the torpedo-catcher has now been fully paid for, and is no longer their property, the purchaser being a British subject, who is, as appears from their letter inclosed in the one from the Board of Customs, a Mr. Palmer, of 50, Finsbury Square, London, E.C. The Acting Collector, as you will see from his telegram, expects an application to be made to him to register the vessel as a British ship.

I am to request that you will favour Lord Kimberley with your opinion whether the torpedo-catcher may now be released on the owner giving security that the vessel shall not be employed contrary to the provisions of "The Foreign Enlistment Act, 1870."

If, in your opinion, it would not be advisable to release the vessel, Lord Kimberley would be glad if you would inform him what action you would advise beng taken on the inclosed papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Customs		August 14, 1894.
(B.)	Acting Collector of Customs, Newcastle ..	(Telegraphic)	August 15, „

Report.

In our opinion, the purchaser, Mr. Palmer, ought to be asked to furnish evidence as to the destination of the torpedo-catcher. No private person would be likely to purchase such a vessel except for re-sale to a foreign Government, and if he is acting for a neutral Government, he can have no difficulty in proving the fact.

If he is able to produce evidence on the point, we think that the vessel should be released, but it would depend upon the nature of the evidence whether the release should be unconditional, or subject to the owner giving security to the satisfaction of the Secretary of State that the ship shall not be employed contrary to the Act. If Mr. Palmer cannot or will not make a *primâ facie* case of sale to a neutral Government, we do not think that the vessel should be released, even though security is offered.

August 16, 1894.

(Signed) JOHN RIGBY.
R. T. REID.

No. 42.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 21, 1894.

Detention of "Tatsuta" under Foreign Enlistment Act, and withdrawal of British portion of crew.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying papers respecting the Japanese cruizer "Tatsuta."

The Board of Customs reported on the 31st ultimo (Paper B) that the "Tatsuta" had passed down the Tyne with her guns in position, and inquired whether any steps should be taken to prevent the vessel from sailing, and they were informed (Paper C) that, no declaration of war having been made by China or Japan, there was no reason why, under the then existing circumstances, Her Majesty's Government should detain the "Tatsuta" under the Foreign Enlistment Act.

The "Tatsuta" sailed from the Tyne on the 31st July, and entered the Suez Canal on her way to Japan on the 19th of this month (Papers E and F).

The Earl of Kimberley has been informed by the Chinese Minister (Paper G)

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that the "Tatsuta" has on board of her a crew notoriously consisting in great part of British subjects, and his Lordship has been requested, in view of the Queen's Proclamation of Neutrality and of the provisions of the Foreign Enlistment Act, to give orders, in the event of the vessel touching at Aden or any other place in Her Majesty's dominions, to have the British portion of her crew withdrawn, and to take such other measures as may be necessary to prevent a violation of the Foreign Enlistment Act and of the law of nations.

Sir Halliday Macartney, English Secretary to the Chinese Legation, called at this Office yesterday with reference to the "Tatsuta."

In reply to inquiries made of him, he said that he had no reason to doubt that the vessel is commanded by a Japanese officer, and that part of her crew are Japanese subjects. But he stated that the Chinese Minister had been advised that the engagement of the British seamen, and their continuance to serve after the declaration of war, constituted a continuance of equipping in contravention of the Foreign Enlistment Act.

I am to request that you will take the inclosed papers into your consideration, and that you will inform Lord Kimberley at your earliest convenience whether, in your opinion, Her Majesty's Government should take any action with regard to the "Tatsuta," and, if so, what instructions should be sent to the Governors of Her Majesty's possessions abroad, where the vessel is likely to touch on her way to Japan.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Customs		April 9, 1894.
(B.)	Ditto		July 31, „
(C.)	To ditto		July 31, „
(D.)	Admiralty		July 31, „
(E.)	Mr. Rodd	(No. 95. Telegraphic)	August 19, „
(F.)	Ditto	(No. 96. Telegraphic)	August 19, „
(G.)	Kung Ta-jên		August 20, „
(H.)	Foreign Enlistment Act (33 & 34 Vict., cap. 90).		
(I.)	Proclamation of Neutrality (Confidential No. 6507*).		

Report.

In our opinion, no action can be taken in this matter. The "Tatsuta" appears to be a Japanese war-vessel in the command of a Japanese officer, and as such she cannot be boarded for any such purpose as is suggested. We are of opinion also that the continuance of the voyage by the British seamen does not constitute a continuance of equipping within the meaning of "The Foreign Enlistment Act, 1870."

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
August 21, 1894.

No. 43.

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 17, 1894.

Gentlemen,

War between Japan and China. Competency of Prize Courts to deal with British vessels.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list which relate to a question arising out of the hostilities now being carried on between China and Japan.

On the 14th instant a telegram was addressed by the Lords Commissioners of the Admiralty to the Commander-in-chief on the China Station, informing him that the Proclamation of Neutrality just issued by Her Majesty's Government warned British ships from conveying troops, arms, or contraband of war for either belligerent, and that persons offending were liable to hostile capture. Sir E. Fremantle was further informed that Her Majesty's ships of war must not interfere to release British merchant-vessels captured by either belligerent beyond the territorial limits of Her Majesty's dominions for violation of neutrality.

The Admiral replied on the 15th instant that it was doubtful whether either China or Japan possessed suitable Prize Courts for the trial of captured vessels, and he stated that the Captains of their men-of-war had little respect for international law, and that he was apprehensive of violent and illegal proceedings on their part.

In these circumstances, it is necessary to consider before what Courts British vessels captured on account of breaches of neutrality could properly be tried.

It is assumed that neither China nor Japan can on its own initiative constitute a Prize Court competent to deal with British vessels, as, owing to the exterritorial jurisdiction possessed by Great Britain, neither of the belligerents has power to deal judicially with the persons or property of British subjects. They are under the jurisdiction of Her Majesty's Consular Courts in China and Japan. Vice-Admiralty jurisdiction has been conferred upon these Courts by the 54th Article of the China and Japan Order in Council of the 9th March, 1865, and by Articles 7 and 11 of the China and Japan Order in Council of the 14th August, 1878, of which copies are inclosed for convenience of reference. (Papers A and B.)

Copies of "The Colonial Courts of Admiralty Act, 1890," and "The Consular Courts (Admiralty) Order in Council, 1894," which bear on this, are also annexed. (Papers C and D.)

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Kimberley with your opinion as to what course Her Majesty's Government should pursue in the event of British ships being captured by the cruizers of either of the belligerents, and being taken into port for adjudication.

I am further to request that you will be so good as to furnish Lord Kimberley with any general observations which you may have to make on the subject referred to in this letter.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	China and Japan Order in Council (Confidential No. 1354)	March 9, 1865.
(B.)	China and Japan Order in Council (Confidential No. 3697)	August 14, 1878.
(C.)	"Colonial Courts of Admiralty Act, 1890" (53 & 54 Vict., cap. 27).	
(D.)	Consular Courts (Admiralty) Order in Council (Confidential No. 6508*)	August 7, 1894.

Report.

In our opinion, the exterritorial jurisdiction exercised by Her Majesty under the Treaties with China and Japan has nothing to do with the law or procedure of Prize Courts.

According to international law a Prize Court must be the Court of a belligerent, and the belligerent Power must, in our opinion, bring the Court into existence. This was done by Turkey in the Russo-Turkish War, notwithstanding the exterritorial jurisdiction of the European Powers in the Ottoman dominions.

In such a Prize Court British subjects could only appear as claimants, and the questions tried would not be questions between British subjects within the exterritorial jurisdiction, but between British subjects not necessarily resident in the belligerent State, or in any way subject to the jurisdiction of the Consular Courts, and belligerent Government, or the captors.

If a Prize Court is established by either belligerent, and professes to be conducted according to the rules of international law, its decision will bind the property in the vessels dealt with, but the belligerent State will be directly responsible to the neutral Government for any unlawful decision of the Court. If no Prize Court is established the neutral Government will have the right to hold the belligerent State directly responsible for all seizures of, and damage done to the property of, subjects of the neutral State.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
August 22, 1894.

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No. 44.

The Law Officers of the Crown to the Earl of Kimberley.—(Received August 22.)

My Lord, *Royal Courts of Justice, August 22, 1894.*

Case of the "Tatsuta."

WE were honoured with your Lordship's further commands of to-day's date[*] respecting the "Tatsuta," and, in obedience thereto, have the honour to

Report—

That the nationality of the Captain would not in any way alter the opinion we have already given if the vessel is really a commissioned vessel of war. It does, however, suggest that she may not yet be commissioned, and the question should be dealt with on that hypothesis.

Even then we are of opinion that the British seamen could not lawfully be removed by use of force, though there would not seem to be any reason why they should not be told of the risks which they are likely to run, of which they may by possibility be ignorant.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

No. 45.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August 24, 1894.*

Detention of "Diogenes" in pursuance of Foreign Enlistment Act.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the inclosed letters from the Board of Customs,[†] respecting a vessel named the "Diogenes," which is now undergoing alterations at the Thames Ship-Building Yard at Blackwall.

According to the Report of the Inspector of the Waterguard, dated the 21st instant (Inclosure 1 in Paper A), there is no doubt but that the vessel is being fitted for war purposes; and the Inspector observes that the fact that models of guns are being tried or fitted in gun carriages may point to the possibility that it is intended to ship the guns after the ship's departure.

It is, however, stated in the second Report from the Board of Customs (Paper B), that information has been received from the Secretary to the Thames Ship-Building Company that the vessel is being fitted for disposal to any customer offering, other than the Governments of China and Japan.

I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Kimberley with your opinion whether any action should be taken by Her Majesty's Government in regard to the vessel in question.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

In our opinion, and assuming the entire accuracy of the statements made by the Ship-Building Company, there is yet a reasonable and probable cause for believing that any purchaser at the present time will purchase for one of the belligerent Powers, and that the Secretary of State may properly issue a warrant when it seems likely that the vessel is about to sail, unless he gets satisfactory evidence that she is really intended for some neutral Sovereign.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
August 24, 1894.

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[*] Private letter from Mr. Bertie to the Attorney-General.

[†] (A) and (B), August 22, 1894.

No. 46.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August 24, 1894.*

"Islam," detained in pursuance of Foreign Enlistment Act. As to release of.

WITH reference to your Report of the 14th instant, respecting the case of the steam-ship "Islam," which is now under detention at Glasgow in pursuance of warrants issued in virtue of the provisions of the Foreign Enlistment Act, I have the honour to transmit to you, by direction of the Earl of Kimberley, the inclosed letter from the Board of Customs, transmitting a copy of a Report, and its inclosures, from the Acting Collector of Customs at Glasgow respecting the vessel in question.

It appears that the "Islam" has been transformed from a purely cargo vessel to one for carrying not less than twenty-two cabin passengers and about 2,000 steerage passengers or emigrants, besides cargo. The work which has been done is described in the first paragraph of the Acting Collector's Report, and he states that, in the opinion of a Board of Trade Surveyor at Glasgow, the vessel is now admirably fitted as a transport for troops, that the ice-house could be well utilized as a small-arms magazine, and that the cargo ports could be used for quick-firing and machine-guns, and also for firing torpedoes.

It is further stated (paragraph 2) that the vessel is owned by the Japan Mail-ship Company of Tôkiô; that she is to be used in carrying cabin passengers, steerage passengers, or emigrants and cargo around the coasts of Japan, and between Japan and Corea, China, &c. (paragraph 3); that there has been no undue pressing forward of the work (paragraph 4); and that the owners of the vessel are subsidized by the Japanese Government, so that their vessels may be used for transports and armed cruizers in case of necessity.

On the 14th August a note was addressed to Lord Kimberley by the Japanese Minister (Paper B), inclosing a copy of a letter from the Japanese Consul at Glasgow, in which it was stated that the "Islam" is an ordinary merchant-vessel which was purchased on behalf of the Nippon Yusen Kaisha from Messrs. D. and W. Henderson, and that the alterations effected in her were made in order to adapt her to the Company's trade.

In inclosing the letter from the Consul at Glasgow, the Japanese Minister expressed the hope that, under the circumstances stated, no obstacle would be thrown in the way of her departure from a British port.

Viscount Aoki was informed on the 16th instant that warrants had been issued for the detention of the "Islam" under the provisions of the Foreign Enlistment Act, but that his communication would be at once considered by Her Majesty's Government. (Paper C.)

I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Kimberley with your opinion whether, in view of the Report from the Customs, Her Majesty's Government should take any, and, if so, what action, as regards the release of the "Islam."

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Customs	.. ..	August 22, 1894.
(B.) Viscount Aoki	.. ..	August 14, „
(C.) To Viscount Aoki	.. ..	August 16, „

Report.

The most important item of further evidence consists in the allegation, intrinsically likely in itself, that the Japanese Government have a right to the services of the ships of the owner Company for transport services.

1894

It seems to be the fact that the equipment of the "Islam" is practically the same as that of the other vessels of the Company, but it would also seem that although suitable to be used as a passenger ship in time of peace, she is admirably adapted for a transport in time of war.

Under the circumstances, we do not think that she should be released.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
August 24, 1894.

No. 47.

Foreign Office to the Law Officers of the Crown.

Detention of vessel at Wallsend in pursuance of Foreign Enlistment Act.

Gentlemen, *Foreign Office, August 24*, 1894.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying Report from the Board of Customs,* respecting a small steel vessel built at Wallsend-on-Tyne, and now lying near the Wallsend ferry boat landing stage.

I am to call your attention to the Report of the Solicitor of Customs of the 23rd instant (Inclosure 2), stating the facts which have been brought to his knowledge respecting this vessel, and expressing his opinion that there is no reasonable cause to believe that a violation of the Foreign Enlistment Act is intended; and I am to request that you will take the matter into your consideration, and inform Lord Kimberley whether, in your opinion, any action in regard to the vessel should be taken by Her Majesty's Government.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

In our opinion there is not at present any evidence such as would afford reasonable and probable ground for believing that the small steel vessel at Wallsend is being built or equipped, or about to be dispatched contrary to the Foreign Enlistment Act. It may be well to direct the local authorities to keep watch upon the vessel, but unless further evidence is obtained we do not think that the Secretary of State can be advised to issue a warrant for her detention.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
August 24, 1894.

No. 48.

Foreign Office to the Law Officers of the Crown.

Detention of "Islam." As to release.

Gentlemen, *Foreign Office, August 24*, 1894.

WITH reference to my previous letter of this day's date respecting the case of the "Islam," I have the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying letter from the Board of Customs, inclosing a Report from the Acting Collector of Customs at Glasgow, together with a rough sketch of the vessel.†

You will observe that the Acting Collector at Glasgow attaches credence to the rumour that several of the steamers of the Japanese Mail Steam-ship Company are being employed by the Japanese Government in connection with the present war between China and Japan.

I have, &c.
(Signed) FRANCIS BERTIE.

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* August 23, 1894.

† August 24, 1894, and two Inclosures.

Report.

We do not think that the further papers referred to in Mr. Bertie's letter of the 24th instant materially affect the case with reference to the ship "Islam," except, perhaps, that the suggestion that a few only of the ships of the Company are being used as transports puts off somewhat further the probability of this one being so used. We did not intend in our Report of yesterday's date to exclude the release of the vessel in the event of adequate security being given that she shall not be used for war purposes.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
August 25, 1894.

No. 49.

Foreign Office to the Law Officers of the Crown.

Detention of "Tatsuta" at Aden.

Gentlemen, *Foreign Office, August 27*, 1894.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, with reference to your Report of the 21st instant respecting the case of the Japanese vessel "Tatsuta," a copy of a telegram from the Resident at Aden to the Secretary of State for India.*

The Resident at Aden reports that the "Tatsuta" arrived at that port on the 25th instant with a Captain and crew, British subjects; that the naval authorities there ruled that she was not in commission; and he also states that she has no Japanese naval officers or officials on board. He further reports that the crew were warned, in accordance with your recommendation, of the issue of the Queen's Proclamation, and that he had directed the Captain to leave Aden by 5 o'clock this evening, failing which he intended to detain the vessel pending Her Majesty's pleasure. The Captain has, as you will observe, intimated his inability to comply, owing to a portion of the crew refusing to proceed, and the Resident asks for further instructions.

I am to request that you will take the inclosed telegram into your consideration, and that you will, at your earliest convenience, favour Lord Kimberley with your opinion as to the instructions which should be sent to the Resident at Aden in the circumstances reported by him.

I have, &c.
(Signed) FRANCIS BERTIE.

Foreign Office to the Law Officers of the Crown.

Mr. Bertie presents his compliments to the Attorney-General and the Solicitor-General, and, with reference to the letter from this Department of the 27th instant respecting the Japanese vessel "Tatsuta," is directed by the Earl of Kimberley to inclose a copy of a telegram from the Senior Naval Officer at Aden,† reporting that, at the Governor's requisition, he has taken charge of the vessel, that the majority of the crew have left, and that she is unable to proceed to sea.

Foreign Office, August 28, 1894.

Foreign Office to the Law Officers of the Crown.

Mr. Bertie presents his compliments to the Attorney-General and the Solicitor-General, and, with reference to the letters from this Department of the 27th and 28th instant respecting the Japanese vessel "Tatsuta," is directed by the Earl of Kimberley to inclose a copy of a letter from the Admiralty,‡ transmitting an extract from a Report, dated the 18th instant, from the Acting British Consul at Port Saïd. It is stated in the Report that the crew of the "Tatsuta" are all Englishmen, and that the vessel would probably meet her Japanese crew on the high seas in the Gulf of Bengal, or off Acheen Head, Sumatra.

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* Telegram from the Resident at Aden, August 27, 1894.

† Senior Naval Officer, August 27, 1894.

‡ Admiralty, August 28, 1894.

Foreign Office, August 29, 1894.

Foreign Office to the Law Officers of the Crown.

Mr. Bertie presents his compliments to the Attorney-General and Solicitor-General, and, with reference to previous letters from this Department respecting the case of the Japanese vessel "Tatsuta," has the honour to transmit herewith copies of telegraphic correspondence between the Secretary of State for India and the Resident at Aden.*

The Resident at Aden reports, in his telegram of this day's date, that there are no Japanese on board the "Tatsuta," that she has a paper from the Japanese Minister authorizing R. W. Stranack to proceed in the vessel as sailing master, and that she has no other papers except ordinary log-book and muster-roll. He further reports that he has been informed that three Japanese officers took the vessel out of the Tyne and then left her, and that the vessel is now detained in charge of the Senior Naval Officer, half of her crew having refused to go on and left her.

The Secretary of State for India has informed the Resident that recruitment for dispatch of the "Tatsuta" should be forbidden pending further instructions.

Foreign Office, August 29, 1894.

Report.

In our opinion, the utmost care should be taken to prevent any recruitment or enlistment of men at Aden for service on board the "Tatsuta."

From the telegram of the 27th August, it would appear that this step will be sufficient to prevent the vessel from putting to sea, but, if necessary, she should be detained until further order.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
August 29, 1894.

No. 50.

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 29, 1894.

Gentlemen,

Prize Courts in Japan. Establishment of.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to the establishment by the Japanese Government of Prize Courts to adjudicate in cases of neutral vessels captured for violation of neutrality during the continuance of hostilities with China.

On the 24th instant despatches were addressed to Her Majesty's Ministers at Peking and Tôkiô, communicating to them the views expressed in your Report of the 22nd instant (copy annexed, Paper A), with regard to the rights of China and Japan to establish such Courts.

On the same day, however, a telegram was received from Mr. Trench (Paper B) reporting that an Imperial Ordinance had been issued, without any previous consultation with Her Majesty's Legation, promulgating Regulations for Prize Courts entirely Japanese in their constitution and jurisdiction in all prize cases.

Mr. Trench inquired whether he should take any notice of these Regulations, and was informed (Paper C) that if they differed in any essential point from those issued by Turkey in 1877, or contained provisions which might lead to unjust decisions, he was to report by telegraph. He was further informed that it was especially desirable that there should be a right of appeal.

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* India Office, August 29, 1894, and inclosure.

A copy of the Turkish Regulations is inclosed for convenience of reference (Paper D).

In reply, Mr. Trench states (Paper E) that the Regulations provide for appeal to higher Prize Courts. He also states that they differ in some respects from those issued by Turkey in 1877, and mentions various points for which provision is not made. He adds that, in the opinion of the Acting Judge of Her Majesty's Court for Japan, upon a seizure being made it would be advisable to notify the Japanese Government that Her Majesty's Government in any case involving British interests reserve the right of remonstrance, and may refuse to be bound should they consider the decision of the Court to be unjust.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Kimberley with your opinion on the course suggested by the Acting Judge, bearing in mind the fact that the Regulations have been actually promulgated, and that the Japanese Government would probably be unwilling to withdraw or modify them.

I am further to request that you will be so good as to furnish his Lordship with any general observations on the case, in connection with which I am to call your attention with reference to the remark in your Report of the 22nd instant, as to the analogy in Turkey and Japan as regards extra-territoriality, that the cases are somewhat different, as in some matters British subjects are amenable to the jurisdiction of Turkish Courts, as will be seen from the inclosed Memorandum (marked F), but in no cases are they or their property subject to the jurisdiction of Japanese Courts.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Law Officers' Report	.. ..		August	22, 1894.
(B.)	Mr. Trench ..	.. ..	(No. 61. Telegraphic)	August	24, "
(C.)	To Mr. Trench	.. ..	(No. 42. Telegraphic)	August	24 "
(D.)	Turkish Regulations ..	.. .. ..			
(E.)	Mr. Trench ..	.. ..	(No. 63. Telegraphic)	August	27, "
(F.)	Memorandum by Mr. Oakes	.. ..		August	29, "

Report.

In our opinion, and so far as we can judge from the telegram of Mr. Trench, No. 63, there is nothing in the Prize Regulations issued by the Japanese Government to call for remonstrance. Nothing should be done to relieve the Japanese Government from the responsibility which they are under of making their own Regulations, or which can be construed as an approval of them by Her Majesty's Government. In all cases in which the Japanese Prize Courts may arrive at decisions unwarranted by international law, Her Majesty's Government will have a direct right as against the Japanese Government to claim redress on behalf of British subjects. We do not consider it necessary to give an express notification to this effect on the occasion of a seizure. The proceedings of the Prize Courts should be carefully watched, and any decision apparently contrary to international law noted.

We have considered the Memoranda of Mr. Oakes, as to differences between British jurisdiction in Turkey and Japan, and do not think that they materially affect the position.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
September 6, 1894.

No. 51.

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 1, 1894.

Gentlemen,

Detention of "Tatsuta" at Aden.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying further papers respecting the Japanese vessel "Tatsuta," whose detention at Aden formed the subject of your Report of the 29th ultimo.

1894

You will observe that on the 29th ultimo the Japanese Minister asked for information respecting the detention of the vessel in question, and inquired whether the authorities of Aden would be instructed to take charge of the vessel provisionally until the Japanese Government could relieve them of their responsibility in the matter.

Viscount Aoki has been informed that the "Tatsuta" arrived at Aden on the 25th ultimo, that the crew were warned of the issue of the Queen's Proclamation of Neutrality, and that upon receiving the notification half of the crew refused to proceed and left the vessel. He has also been informed that the "Tatsuta" is detained in charge of the Senior Naval Officer at Aden, and that no recruitment or enlistment of men for service on board of her can be permitted.

I am to inclose a letter from the India Office, transmitting a copy of telegraphic correspondence with the Resident at Aden. In his telegram of the 31st ultimo the Resident reports the circumstances under which he decided to detain the vessel, and he states that she is still in charge of a guard placed on board of her, on the 27th ultimo, by the advice of the naval authorities. He also explains the reason why this course was considered imperative.

The Resident further reports that the master of the "Tatsuta" has recently admitted that, notwithstanding his statement that he could not put to sea without his full crew, it was his intention to have slipped out during the night with what crew remained, on the chance of filling up elsewhere.

You are aware, from telegrams addressed by the Resident at Aden to the India Office, which are returned herewith, that the vessel is found not to be regularly commissioned in the service of the Japanese Government, but that the master was only provided with sailing directions from the Japanese Minister in this country.

I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Kimberley, at your earliest convenience, with your opinion whether, under present circumstances, any further instructions in the matter should be sent to the Resident in view especially of a possible claim from the Japanese Government, or the Captain of a Japanese vessel of war, to take possession of her.

Your previous Reports, and the papers which accompany them, are returned herewith.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Viscount Aoki	August 29, 1894.
(B.)	To ditto	September 1, „
(C.)	India Office	September 1, „
(D.)	Law Officers' Report	August 21, „
(E.)	Ditto	August 22, „
(F.)	Ditto	August 29, „
(G.)	Packet of papers previously sent.	

Report.

In our opinion, as it is now ascertained that the "Tatsuta" was not a commissioned ship when she arrived at Aden, the Resident has acted rightly in preventing her from putting to sea, and that the English sailing master and crew would be guilty of an offence under "The Foreign Enlistment Act, 1870," if they attempted to dispatch the vessel on her voyage without licence.

Whether Her Majesty's licence should be granted or refused depends upon questions of policy rather than of ascertained law. The weight of authority is in favour of the view that notwithstanding the rules laid down in the Treaty of Washington, and the stringent provisions of "The Foreign Enlistment Act, 1870," the obligations of Great Britain as a neutral Power are not enlarged (in the absence of Treaty) beyond what was required by previously ascertained international law. And we are of opinion that under previously ascertained international law the vessel might now be given up, without breach of neutrality, to a Japanese minimum navigating crew, if security be taken against her being manned up to a fighting standard in the neighbourhood of the port of dispatch, and any supply of coal at Aden limited to a reasonable liberal allowance, not exceeding her requirements for a voyage to her next port of destination.

The important question is, whether Her Majesty's Government intend to maintain in future with reference to nations other than the United States the rules of international law as they exist independently of the Washington Treaty, or by their practice to further the introduction into general use of the rules of that Treaty.

Regard must be had on the one hand to the engagement entered into with the United States as to recommending the rules to the other maritime nations; and, on the other hand, to the fact that no common understanding has yet been arrived at between the two nations as to the meaning of the rules, and no recommendation of the kind suggested has been made. Although we do not think that other nations have a right to call for the enforcement of the rules, it cannot, with confidence, be predicted whether, in the event of a reference to arbitration, the Tribunal might not decide that the Washington rules are applicable, or whether, in case of such a decision, the Tribunal might not further decide that permission to the "Tatsuta" to leave Aden would constitute a breach of them.

We see no reason why, at the request of the Japanese Ambassador, possession should not be taken of the vessel, but it should be made clear that such taking of possession does not imply any engagement to give her up when required, unless that course is deliberately decided upon.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
September 17, 1894.

No. 52.

Foreign Office to the Law Officers of the Crown.

Detention of "Tatsuta" at Aden.

Gentlemen,
Foreign Office, September 14, 1894.

WITH reference to the letter from this Department of the 1st instant, I have the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying letter from the India Office, inclosing a copy of a Report by Her Majesty's Political Resident at Aden relative to the detention of the Japanese vessel "Tatsuta."*

The Resident gives full particulars of the action taken by him in regard to the "Tatsuta" down to the 29th August, but his Report contains no information of importance not already communicated to you.

I am to request that, when you favour Lord Kimberley with your opinion upon the points submitted to you in the letter from this Office of the 1st instant, you will, at the same time, inform his Lordship whether you concur in the proposal of the Secretary of State for India to approve the Resident's proceedings in the matter.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

In our opinion, the Secretary of State for India may properly write approving the conduct of the Resident at Aden with reference to the "Tatsuta."

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
September 20, 1894.

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* India Office, September 12, 1894.

No. 53.

Memorandum by the Lord Chancellor.

Detention of "Tatsuta" at Aden; delivery of to Japanese authorities.

I DO not think it would be a breach of the Foreign Enlistment Act or of any international duty if the "Tatsuta" were allowed to leave Aden during the existing war. She had, as I understand, become the property of the Japanese Government, and had left the United Kingdom before a state of war was recognized, in charge of a British master and crew, who were engaged to navigate her to Japan. In the course of her voyage she puts in to a British port. I do not feel altogether satisfied that the crew would have violated the injunctions of the Proclamation of Neutrality, or committed an offence under the Foreign Enlistment Act if they had prosecuted the voyage. They do not appear to me to have accepted an engagement in the naval service of Japan, because they were engaged to navigate to a Japanese port a vessel intended to be commissioned as a ship of war. Supposing no war to have existed, could it be said that such a contract on their part was an engagement in the naval service of Japan? If not, the breaking out of hostilities whilst they were fulfilling their contract could, of course, not alter its character. Nor do I think the prosecution of the voyage would have brought them within the provisions of section 8, sub-section (4). If I turn to the Rules agreed upon for the occasion under the Treaty of Washington, I do not see that the prosecution of the voyage or the absence of any steps to prevent its prosecution would have involved a violation of those broader international obligations. The case is clearly not within the first part of the first Rule. It is to be observed that the second part of it is confined to vessels specially adapted within the jurisdiction to warlike use. This cannot, I think, apply to a case like the present, where the vessel has lawfully departed from the jurisdiction within which she has been equipped before hostilities break out. Otherwise, it would be necessary to inquire into the history of ships entering British ports during a time of war, and to prevent the departure of any belonging to either belligerent which happened to have been built, however long ago, in this country. This never can have been intended. Then, would the case have come within the second Rule as a use of the British port for the recruitment of men? Clearly not, if the crew originally engaged had continued to prosecute the voyage. It does not seem certain that if fresh members of the crew had been engaged at Aden merely for the purpose of navigating the vessel to Japan any offence would have been committed. I find it laid down in Mr. Hall's work on "International Law," p. 601 (third edition), that a belligerent ship entering a neutral port with a crew reduced, from whatever cause, to a number less than that necessary to her safe navigation, may take on board a sufficient number of men to enable her to reach a port of her own country. He gives no authority for this proposition, but treats it as established. I have not the opportunity at present of consulting any other authorities on international law, but I have generally found Mr. Hall an accurate exponent of it. If the proposition enunciated be correct, the present is an *à fortiori* case, and I do not think the hiring of seamen merely for the purpose of conveying an uncommissioned vessel to its port of destination could be properly regarded as a "recruitment of men" within the meaning of the second of the Washington Rules.

It follows from what I have said that I think the vessel may properly be given up to any person authorized by the Government of Japan to take charge of her for the purpose of conveying her to a Japanese port; but though I doubt whether it would constitute a breach of international duty to permit the engagement of the crew requisite for the purpose in the British dominions, it would certainly be better to avoid doing this.

As I am writing without the opportunity of a full consultation of the authorities, I would suggest that this Memorandum should be laid before the Law Officers before action is taken.

H.

Bosahan, St. Martin's, R.S.O., Cornwall,
September 22, 1894.

No. 54.

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, September 27, 1894.

Detention of "Tatsuta" at Aden. Memorandum of Lord Chancellor.

WITH reference to your Reports of the 21st, 22nd, 28th, and 29th ultimo and 17th and 20th instant, I have the honour to transmit to you, by direction of the Earl of Kimberley, for your consideration, a Memorandum by the Lord Chancellor on the case of the cruizer "Tatsuta," now under detention at Aden.

The Memorandum, which is dated the 22nd September, is given at p. 7 of the inclosed print, which also contains your several Reports on the case.

I also inclose (B) the three Rules of the Treaty of Washington of the 8th May, 1871; (C) "The Foreign Enlistment Act, 1870;" (D) the Queen's Proclamation of Neutrality of the 7th August, 1894.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

We have read and considered the Lord Chancellor's Memorandum of the 22nd September, and, so far as it deals with matters of international law, we concur therein, though we thought it right, in view of opinions expressed by recent writers, to point out in our Report of the 17th September that it cannot with confidence be predicted what view would be taken by a Tribunal of Arbitration in case such a Tribunal had to deal with the question.

The question of municipal law depends entirely on the construction of the Act of 1870.

The Proclamation of Neutrality seems to divide all ships into two classes, ships of war and merchant-vessels. The "Tatsuta" must be a ship of war as opposed to a merchant-vessel.

The Act of 1870 (having regard to section 32) extends, in our opinion, to all ships except commissioned ships, and the definition of "naval service" contained in section 30 might, we think, bring within the terms of the Act the employment of sailors to navigate a ship of war from port to port, though she may not be in course of use for any naval operation. However this may be, section 8 (4) of the Act makes it a separate offence to dispatch a ship from any part of Her Majesty's dominions with knowledge that she is to be employed in the naval service of a foreign State at war with any friendly State. This would, in our opinion, apply to any ship, whether built before the outbreak of war or not, provided only that she had not a commission. Any case of hardship arising from this construction could be met by the grant of a licence.

On the whole, we venture to adhere to our opinion, already expressed, that to dispatch the ship without licence would be an offence against the Act of 1870.

We do not understand this opinion to be altogether opposed to the Memorandum of the Lord Chancellor, as, if the ship were by licence allowed to proceed to sea, no offence against the Act would be committed.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
October 8, 1894.

No. 55.

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 28, 1894.
Gentlemen,

Claim for compensation owing to sinking of the "Kow-Shing."

WITH reference to your Reports of the 2nd and 3rd ultimo, I have the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to the sinking of the British steamer "Kow-Shing" by the Japanese man-of-war "Naniwa."

1894

The depositions, sworn before Her Majesty's Consul at Nagasaki, of Captain Galsworthy, the master of the "Kow-Shing" (Inclosure No. 3 in Paper A), and of Mr. Tamplin, the chief officer (Inclosure 4 in Paper A); their statements made on board the "Naniwa" (Inclosure 5 in Paper A); the statement made before Her Majesty's Vice-Consul at Chemulpo of Captain von Hanneken, a German officer who was on board the vessel (Inclosure 2 in Paper G); the statement made by the Quartermaster, Pedro Realte, a Manilaman, before Her Majesty's Consul at Chefoo (Inclosure 4 in Paper G); and the Report of the proceedings before the Naval Court held at Nagasaki (Paper B), give particulars with regard to the destruction of the ship, and the communications which passed between her and the "Naniwa" before the latter opened fire.

The "Kow-Shing" was a British-registered ship, the property of the Indo-China Steam Navigation Company, and had been chartered by the Chinese Government to convey troops to Corea. She left Taku on the 23rd July, some time before the date (1st August) on which the Japanese Government notified that a state of war existed between China and Japan (Paper E).

Upon the 25th July, while on her way to Asan, in Corea, with Chinese troops, she was stopped and boarded by the Japanese vessel of war "Naniwa." Her papers having been examined, and the purpose of her voyage ascertained, she was ordered to follow the "Naniwa." The captain expressed his readiness to obey this order in presence of superior force; but the General commanding the Chinese troops on board refused to consent, or to permit the Europeans to leave the vessel. This position of affairs was communicated to the "Naniwa," and another boat was sent, but the officer, to whom explanations were given, did not board again owing to the threatening attitude of the Chinese. Signals were subsequently exchanged between the vessels, in the last of which the "Naniwa," though ordering the Europeans to quit, declined to send a boat for them, and shortly afterwards fired a torpedo and broadside into the "Kow-Shing," which sank almost immediately.

The Japanese official account given by the Minister for Foreign Affairs to Her Majesty's Chargé d'Affaires at Tôkiô (Inclosure in Paper D) states that the "Kow-Shing" was under convoy by the Chinese ship of war the "Tsao Kiang," and that while the "Naniwa" and the "Kow-Shing" were exchanging signals a Chinese vessel, the "Tsing Yuen," came up, and at short range discharged a torpedo at her, and that an engagement took place.

These statements are not borne out by the evidence of Captain Galsworthy and the other survivors.

On the receipt of your Reports of the 2nd and 3rd ultimo, a communication was addressed to the Japanese Minister (Paper E), stating that Her Majesty's Government had come to the conclusion that they must hold the Government of Japan responsible for any loss of British life and property resulting from the proceedings of the Japanese naval officers concerned.

Viscount Aoki, in reply (Paper F), formally declared that his Government had instructed him to give the assurance of their sincere desire to make every reparation in their power if the action of the Japanese naval officers were proved to have been in default.

The Indo-China Steam Navigation Company, in a letter dated the 19th instant (Paper G), say that they are in possession of sufficient data to formulate an approximate statement of their claim, and they put the amount at 80,000*l.*: 60,000*l.* for the loss of the steamer and loss of profit on her charter, the coals and stores on board being included, and 20,000*l.* as compensation for the surviving officers and members of the crew and for the families of those lost.

The charter-party of the vessel, as will be seen from the copy forwarded by Her Majesty's Minister at Peking (Inclosure 4 in Paper H), was signed on the 17th July. It provides that, in the event of hostilities breaking out between China and Japan, it was to be clearly understood and agreed that the ship should at once be dispatched to Shanghae, where the charter should terminate, subject to the condition that the charterer should have the alternative of purchasing outright the "Kow-Shing" for 190,000 dollars, Mexican, net, payable at Tien-tsin or Shanghae, a sum equivalent to about 19,000*l.*

I am to request that you will take these papers into your consideration, and that you will favour Lord Kimberley with your opinion as to whether the evidence now submitted leads you in any way to modify the view previously expressed by you that Her Majesty's Government are entitled under the circumstances of the case to claim full redress for the sinking of the British transport, and for any loss of life or property occasioned to British subjects, and, if not, whether, before making a formal demand, Her Majesty's Government should communicate the information in their possession to the Japanese Government, so as to give them an opportunity of showing mitigating circumstances.

Your Reports of the 2nd and 3rd ultimo, together with the papers previously submitted to you, are inclosed for convenience of reference.

I have, &c.
(Signed) FRANCIS BERTIE.

P.S.—I am also to transmit to you a Report of the proceedings of a Court of Inquiry held at Tien-tsin (Inclosure 2 in Paper I), and also a despatch (Paper K) from Mr. Wilkinson, Vice-Consul at Chemulpo, just received through the Board of Trade, summarizing the statement made before Her Majesty's Consul at Nagasaki.

F. B.

List of Papers.

(A.)	Mr. Paget	(No. 85)	
(B.)	Ditto	(No. 90)	
(C.)	Ditto	(No. 48. Telegraphic)	
(D.)	Ditto	(No. 81)	
(E.)	To Viscount Aoki		August 3, 1894.
(F.)	Viscount Aoki		August 8, "
(G.)	Indo-China Steam Navigation Company		September 19, "
(H.)	Mr. O'Conor	(No. 254)	
(I.)	Ditto (Inclosure 2.)	(No. 267)	
(K.)	Board of Trade		September 26, "

Sent subsequently.

Indo-China Steam Navigation Company (Sent on October 3.)		October 2, "
Mr. Trench	(No. 95)	
Admiralty		October 1, "
Board of Trade		October 2, "
Mr. O'Conor	(No. 276)	

Report.

We have perused and considered all the papers submitted to us, and are still of opinion that Her Majesty's Government may properly press the Japanese Government for redress in respect of the loss and damage occasioned by the sinking of the "Kow-Shing."

We think, however, it will be well before entering into the question of figures to apply to the Japanese Government for their final statements with reference to the case.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
October 8, 1894.

[Sir J. Rigby having in the meantime ceased to be Attorney-General by his acceptance of judicial office as Lord Justice of Appeal, the papers were resubmitted to Sir R. T. Reid, who had succeeded Sir J. Rigby as Attorney-General, and to Sir F. Lockwood, who had succeeded Sir R. T. Reid as Solicitor-General.]

In our opinion, so far as China is concerned, the facts disclose a liability on the part of China to make good the losses caused to British subjects and property by the destruction of the "Kow-Shing."

The Chinese troops took possession of the ship, and whether Japan is liable or not, the Chinese were partakers in causing the disaster, and we see no difficulty in saying that two nations might be liable in international law for the same injury, just as two individuals might be liable in municipal law.

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Upon the question whether Japan is, in fact, liable to pay compensation, we are not able to arrive at a joint conclusion.

The Attorney-General regards the case as one in which, owing to the absence of any notification of war, a neutral vessel engaged on a lawful voyage had suddenly imposed upon her the duties of neutrality, which she could neither discharge nor avoid, and without any actual fault of her own was placed in a position where destruction was inevitable, and so was destroyed by a Japanese war-ship.

Granting that there was a paramount military necessity justifying the destruction of the vessel, the Attorney-General is unable to alter his former opinion that a right to compensation follows. But the case is a novel one, and from its novelty, as well as the diversity of opinion in regard to it, it obviously cannot be regarded as a clear case.

The Solicitor-General has come to the conclusion that the Japanese were entitled to act as they did. In his opinion, the "Kow-Shing," at the time she was fired upon by the Japanese man-of-war, had become in fact a Chinese transport. This condition of things arose from the European officers having lost all control over the ship, such control having passed into the hands of the Chinese officers. Having thus lost dominion over the ship, the officers of the ship were unable to avail themselves of the notice which was given; indeed they were forcibly prevented by the Chinese officials from so doing.

If it be material to ask who is to blame for this situation, it appears to the Solicitor-General that the only answer is: Those who entered into the charter to carry troops on the eve of the outbreak of a war to what was known would be the seat of war. A moment's reflection would surely have made it clear that, in the probable event of hostilities commencing during the voyage, the European officers would find themselves powerless to do otherwise than submit to the superior numbers which had been shipped on board the "Kow-Shing."

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
December 4, 1894.

No. 56.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, October* 3, 1894.

Japanese Prize Court Regulations.

WITH reference to your Reports of the 22nd August and 6th September, respecting the establishment of Prize Courts by Japan in consequence of the outbreak of hostilities between that country and China, I have the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying despatch from Her Majesty's Minister at Tôkiô,* forwarding a copy of the Regulations for those Courts, published by Imperial Ordinance on the 20th August, together with a Memorandum upon them drawn up by Mr. Wilkinson, Her Majesty's Acting Judge for Japan.

I am to request that you will take the Regulations into your consideration, and that you will favour Lord Kimberley with your opinion as to the provisions which they contain, and also as to whether they should, if in themselves right and proper, be published in this country, as was done in the case of those promulgated by the Turkish Government during the war with Russia in 1877-78.

His Lordship would be glad to be favoured, at the same time, with any observations which you may be good enough to offer on the Memorandum prepared by Her Majesty's Acting Judge for Japan, which forms an inclosure in Mr. Trench's despatch.

Your previous Reports, together with the papers already submitted to you on this subject, are also inclosed, for convenience of reference, in a separate packet.

I am, &c.
(Signed) FRANCIS BERTIE.

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* Mr. Trench, No. 99.

Report.

In our opinion, there is nothing in the Regulations for Prize Courts, published by Imperial Ordinance of the Japanese Government on the 20th August, requiring protest.

We see no objection to publishing these Regulations in this country, for the information of those concerned, and think it would be a convenient course.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
October 11, 1894.

No. 57.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, October* 18, 1894.

Release of "Tatsuta," detained at Aden.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying copy of a note from the Japanese Chargé d'Affaires, renewing the application of the Japanese Government for the release of the "Tatsuta," now under detention at Aden, and stating that the Japanese Government are prepared to send a Japanese officer and crew to take charge of her at that port.

I am to request that you will be good enough to favour his Lordship at your earliest convenience with any observations which you may have to offer on the various points raised in Mr. Uchida's note, and especially as to how far, if at all, the conclusions which you have previously expressed with reference to the case are modified by the considerations now put forward by the Japanese Chargé d'Affaires.

I am, &c.
(Signed) FRANCIS BERTIE.

Foreign Office to the Law Officers of the Crown.

Mr. Bertie presents his compliments to the Law Officers of the Crown, and has the honour, by direction of the Earl of Kimberley, to transmit to them herewith, for their consideration in connection with the papers now before them, a draft of the reply which it is proposed to return to the note of the 11th instant from the Japanese Chargé d'Affaires relative to the case of the "Tatsuta."

Foreign Office, October 20, 1894.

Report.

The observations contained in the letter of the Japanese Chargé d'Affaires, dated the 11th October, do not in any way alter or affect the opinion we have formerly expressed.

We do not consider that the duties of Great Britain, as a neutral Power, arise from, or can be dated from, the issue of the Royal Proclamation. They arise from the usage of nations on the occurrence of war; and likewise the right of Great Britain to take necessary steps for the protection of her neutrality arises as soon as a state of war exists.

We also consider that the stringent provisions of "The Foreign Enlistment Act, 1870," are not the measure of British obligations to belligerent Powers. They go up to and beyond the international obligations of neutrals, and, so far as they exceed those obligations, are intended to arm the Executive with authority wide enough to cover any unforeseen emergency, or even any case of policy.

We are of opinion that the letter proposed to be sent by your Lordship (draft of which is herewith inclosed) may properly be sent, if your Lordship thinks fit, with the following qualification. We think it is advisable that the "Tatsuta" should not be allowed to quit Aden in a condition to commence hostilities, but that she proceed (as she would have if not detained) in charge of a minimum navigating crew—with an

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undertaking not to engage in hostilities, unless attacked, until after her arrival in some Japanese port. This precaution is suggested in view of the duty of neutrals not to permit armed expeditions to quit their territory, and the construction placed by writers of authority upon this obligation.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
October 23, 1894.

List of Papers.

(A.) Mr. Uchida	October 11, 1894.
(B.) Print.	
(C.) Law Officers' Report	„ 9, „

Annex.

Draft of Letter to Mr. Uchida.

Sir, *Foreign Office, October* 31, 1894.

HER Majesty's Government have given their careful consideration to the views of the Japanese Government respecting the detention of the Japanese vessel "Tatsuta" at Aden, as expressed in your note of the 11th instant. They are of opinion that it would serve no useful purpose to continue the discussion of the complicated questions of law which have arisen in connection with this case, owing particularly to the master in charge of the vessel and the whole of the crew being British subjects, and there being no Japanese officer in command of her.

In view of the statement contained in your note, that the Japanese Government are prepared to send at once a duly commissioned Japanese officer and a sufficient Japanese crew to take charge of the "Tatsuta" on her voyage to Japan, Her Majesty's Government are ready to issue instructions to their officers at Aden for the delivery of the vessel to the authorized Agent of the Japanese Government upon his arrival at that port.

Her Majesty's Government presume that the "Tatsuta" will not be used for hostile operations until after she has been navigated to a Japanese port.

I am, &c.

LIBERIA.

No. 58.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received March* 8.)

My Lord, *Royal Courts of Justice, March* 7, 1894.

Extradition Treaty with Liberia. Draft O. in C. for carrying into effect.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council for the purpose of carrying into effect an Extradition Treaty between Great Britain and Liberia, which was signed in London on the 16th December, 1892, and of which the ratifications were exchanged on the 31st January last.

Mr. Bertie was pleased to inclose letters from the Home Office, Colonial Office, and India Office, stating that the terms of the draft Order in Council were concurred in by those Departments, and he requested that we would favour your Lordship with our opinion as to whether it might in its present shape be laid before the Queen in Council for Her Majesty's approval.

In obedience to your Lordship's commands, we have considered the matter, and have the honour to

Report—

That the draft Order in Council, as initialled by us, may, in our opinion, properly be submitted for Her Majesty's approval.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Draft Order in Council.	
(B.) Home Office	February 6, 1894.
(C.) Colonial Office	February 14, „
(D.) India Office	February 16, „

Annex.

Draft Order in Council.

WHEREAS by the Extradition Acts, 1870 and 1873, it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient; and that if, by any law made after the passing of the Act of 1870 by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying the said Acts in the case of any foreign State, or by any subsequent Order, suspend the operation within any such British possession of the said Acts, or of any part thereof, so far as it relates to such foreign State, and so long as such Law continues in force there, and no longer:

And whereas by an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," provision is made for carrying into effect within the Dominion the surrender of fugitive criminals:

And whereas by an Order of Her Majesty the Queen in Council, dated the 17th day of November, 1888, it was directed that the operation of the Extradition Acts, 1870 and 1873, should be suspended within the Dominion of Canada so long as the provisions of the said Act of the Parliament of Canada of 1886 should continue in force, and no longer:

And whereas a Treaty was concluded on the 16th day of December, 1892, between Her Majesty and the President of the Republic of Liberia, for the mutual extradition of fugitive criminals, which Treaty is in the terms following:—

[The Treaty is not printed here.]

And whereas the ratifications of the said Treaty were exchanged at London on the 31st day of January, 1894:

Now, therefore, Her Majesty, by and with the advice of her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the * day of , 1894, the said Acts shall apply in the case of Liberia, and of the said Treaty with the Republic of Liberia.

Provided always, and it is hereby further ordered, that the operation of the said Extradition Acts, 1870 and 1873, shall be suspended within the Dominion of Canada so far as relates to Liberia and to the said Treaty, and so long as the provisions of the Canadian Act aforesaid of 1886 continue in force, and no longer.

[Initialled] C. R.
J. R

MADAGASCAR.

No. 59.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, September* 8, 1894.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list which relate to the question of the validity of marriages solemnized by clergymen of the Church of England in Madagascar.

Marriages in Madagascar by clergymen of Church of England.

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* Date to be inserted by Council Office, and to be a date ten days after publication in "London Gazette."

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It will be seen that, in 1876, the Law Officers reported that they had no information as to the law of Madagascar, but they entertained no doubt that a marriage between British subjects celebrated in Madagascar by a clergyman of the Church of England was valid.

L.O.R. 1876 (Conf. 4028), p. 50.

The question has, however, been again raised in a correspondence between Mr. Sauzier, the Acting Consul at Tamatave, and the Bishop of Madagascar, in which the latter contends that the common law as to marriage, as it existed prior to Lord Hardwicke's Act, is unaffected by the recent legislation, so far as marriages in Madagascar are concerned.

In deciding this question, it will have to be considered whether Madagascar is a Christian or non-Christian country.

I am, therefore, to observe that a large portion of the Hovas and other tribes in the central districts of the island have adopted Christianity, which is also acknowledged and protected by the Government, and that there are believed to be about 450,000 Protestants and about 50,000 Roman Catholics, while the remaining three-fifths of the population are Pagans.

It cannot, however, be affirmed that there has been any such progress in the condition of Government and society since 1876 in Madagascar to entitle the country to be regarded as a civilized State. In these circumstances, Lord Kimberley will be obliged if you will take these papers into your consideration, and favour him with your opinion as to whether Madagascar, a quasi-Christian State, should be considered as coming within the category of "Mahommedan, Heathen, or un-civilized States," so far as the validity of marriages by priests in holy orders was concerned, and, if so whether a marriage between British subjects solemnized in Madagascar by a clergyman of the Church of England would be valid in contemplation of English law.

I am also to invite any general observations which you may have to offer on the matter.

I am, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

Law Officers (Confidential No. 4028, p. 50)		July 8, 1876.
Acting Consul Sauzier	(No. 25)	June 25, 1894

Foreign Office to the Law Officers of the Crown.

SIR PERCY ANDERSON presents his compliments to Her Majesty's Attorney- and Solicitor-General, and, with reference to his letter of the 8th ultimo, transmitting certain papers relative to the question of the validity of marriages solemnized by clergymen of the Church of England in Madagascar, begs, by direction of the Earl of Kimberley, to inclose in connection with this question a further despatch which has lately been received from the Acting Consul at Tamatave,* as well as a Minute by Mr. Davidson, Q.C., the legal adviser to this Office, which it is requested may be considered, together with the papers previously submitted to, and now before them for report.

Foreign Office, October 12, 1894.

Report.

In our opinion, upon the statements made in reference to Madagascar, that country should be considered as coming within the category of Mahommedan, Heathen, or uncivilized States, so far as the validity of marriages by ministers in holy orders is concerned. And that a marriage between British subjects solemnized in Madagascar by a clergyman of the Church of England would be valid in contemplation of English law.

We would, however, add that in all cases where it is at all possible it would be most advisable that, in addition to the religious ceremony, the marriage should be solemnized in the manner provided by "The Foreign Marriage Act, 1892," for the sake of record and of certainty; and also because proof of the validity of any marriage not so solemnized, and of the circumstances of Madagascar justifying the use of the common law religious rite of England, might be required by an English Court, and such evidence might be difficult and expensive to obtain. There is sufficient difference of opinion between jurists of authority upon the subject to make this precaution a point of extreme importance.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
October 23, 1894.

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* Acting Consul Sauzier, No. 45, September 6, 1894.

MEXICO.

No. 60.

The Law Officers of the Crown to the Earl of Kimberley.—(Received April 17.)

Royal Courts of Justice, April 16, 1894.

My Lord,

WE were honoured with the Earl of Rosebery's commands signified in Mr. Bertie's letter of the 9th February last, stating that he was directed to transmit to us the papers noted in the accompanying list, relative to the claims of Messrs. Walter Browning and John Prescott, British subjects, to compensation at the hands of the Government of Mexico on account of imprisonment and detention under the following circumstances, as set forth in Mr. Browning's letter of the 29th July, 1893, and the Memorandum by Sir Spenser St. John (Her Majesty's Minister in Mexico at the time of the occurrences).

Imprisonment of W. Browning and J. Prescott by Mexican Govt. Claims for compensation.

That Messrs. Browning and Prescott were owners of mining interests in the State of Chihuahua, and in discharging some of their mining hands gave them the usual certificates of good conduct, as they wished to proceed in search of work to the State of Sonora.

That, instead of proceeding to Sonora, however, some of them went to the scene of political riots at a distance of some 70 leagues from the mines, and in an entirely different direction from the district whither they had stated their intention to proceed in search of work.

That there one of them was arrested by the Commander of the military force sent to quell the riots, and was found to be in possession of a certificate of discharge of the character above described, which the General chose to regard in the light of a "safe-conduct."

That for that view there appeared to have been no sufficient ground, as the paper merely recommended the workman named in it as "a good worker and an honest man."

That the paper was, moreover, not found in the hands of the miner to whom it was given, but in those of another, who had obtained wrongful possession of it.

That on such evidence Mr. Browning, who had signed the certificate, was arrested on a charge of complicity in the riots, and of affording countenance and protection to the rioters.

That he demurred energetically to that treatment, and was handed over some days later by the military to the civil authorities, by whom he was committed to prison "as an accomplice in the offence of sedition," and detained for a period of forty-five days in all pending a full inquiry into the case.

That Mr. Prescott was also arrested, but, probably owing to his more conciliatory attitude, was released after ten days' detention.

That representations were at the time addressed to the Mexican Government by Sir Spenser St. John, and since by those Diplomatic officers who had succeeded him in charge of Her Majesty's Legation in Mexico, but that the long-promised explanation of the civil authorities had only lately been received.

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That from that Report (see Mr. Trench's despatch No. 47 of the 8th December, 1893) it would be seen that on the 3rd July, forty-five days after Browning's arrest, the Judge declared that "there appearing against James Browning no further evidence of connection with the present inquiry than the paper of recommendation written by him, which is not legally a passport, and the data which served as a basis for declaring the said Browning formally imprisoned having disappeared, in accordance with Article 258 of the Penal Code, James Browning is ordered to be placed at liberty, on the understanding that he may be rearrested in case of necessity."

That in forwarding that Report Mr. Trench added that the Minister for Foreign Affairs admitted that "Browning's detention was unwarrantable."

That with respect to Mr. Prescott, as to whose case there would appear to have been no official inquiry, no evidence whatever was adduced, and his apparently arbitrary arrest would seem the more unjustifiable in view of his long distance from the scene of the riots, and the intrinsic improbability of his connection with them.

That the question then arose whether any, and, if so, what amount of compensation might properly be claimed from the Mexican Government by Her Majesty's Government on behalf of Messrs. Browning and Prescott.

That no definite amount of compensation had been claimed by the sufferers; but that they stated that, apart from their illegal detention, they lost by this act of the Mexican Government several thousand dollars' worth of tools, provisions, and rich ore, stolen during their enforced absence from their mines.

That it would be seen from Sir S. St. John's Memorandum of the 8th January that he considered both men fairly entitled to compensation for any losses which they might have incurred through their wrongful arrest, but he thought that the joint claim should not exceed 4,000 Mexican dollars, or 500*l*.

That a Memorandum by the Librarian of the Foreign Office dealing generally with the question, and giving a list of various cases of a similar nature which had formed the subject of Report by the Law Officers of the Crown between the years 1870 and 1886, was also inclosed for our information.

Mr. Bertie further requested that we would take the papers transmitted to us into our consideration, and give our opinion as to whether (1) the case was one in which compensation might properly be demanded by Her Majesty's Government from the Government of the Mexican Republic on behalf of both or either of the claimants, and (2) if our answer to the previous question should be in the affirmative, what amount of compensation might reasonably be demanded in each case.

We have taken the papers into our consideration, and have the honour to

Report—

That, in our opinion, there was no reasonable *primâ facie* case for the arrest and detention of the claimants, and Her Majesty's Government may fairly press for compensation.

Upon the question of the amount of compensation, we can only say that the sum (500*l*.) named seems to us to be very reasonable.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Mr. Browning		July 29, 1893.
(B.)	Sir S. St. John		August 19, „
(C.)	Mr. Bland	(No. 38)	September 11, „
(D.)	Mr. Browning		October 2, „
(E.)	Ditto		October 27, „
(F.)	Mr. Trench	(No. 43)	October 28, „
(G.)	Ditto	(No. 47)	December 8, „
(H.)	Mr. Browning		December 20, „
(I.)	Sir S. St. John		January 8, 1894.
(J.)	Sir E. Hertslet (Memorandum)		January 26, „

NETHERLANDS.

No. 61.

The Law Officers of the Crown to the Earl of Kimberley.—(Received March 28.)

Royal Courts of Justice, March 28, 1894.

My Lord,

Netherlands' India Ordinance respecting pearl fisheries.

WE were honoured with the Earl of Rosebery's commands signified in Sir Edward Grey's letter of the 5th instant, transmitting to us the accompanying printed correspondence* respecting the pearl fisheries in the Netherlands East Indies, and stating that several questions were raised in this correspondence, but that those on which our opinion was now sought arose on the Netherlands India Ordinance No. 261 of the 5th October, 1893.

That Lord Rosebery's attention had been called to this Ordinance by the letter of the 1st ultimo from the Pearling and Trading Company.

That the Company wished his Lordship to protest to the Netherlands Government on the grounds stated in their letter, which amounted practically to the contention (*a*) that it was against the comity of nations to refuse access to ports for repairs and supplies, and (*b*) that the terms of the Ordinance amounted to such refusal, because it imposed on vessels found with pearl shells, &c., on board, the onus of proving that such pearl shells, &c., were fished outside territorial waters, and also that the Ordinance conferred the right of search within territorial limits.

That there existed between Great Britain and the Netherlands a Treaty which appeared to bear on this case, the Treaty, namely, of the 17th March, 1824, a copy of which was inclosed in Sir Edward Grey's letter. That Articles I, II, III, and IV of this Treaty granted general freedom of commerce and most-favoured-nation treatment, but that Article VII stated that—

"The Molucca Islands, and especially Amboyna, Banda, Ternate, and their immediate dependencies, are exempted from the operation of the Ist, IInd, IIIrd, and IVth Articles, until the Netherlands Government shall think fit to abandon the monopoly in spices; but if the said Government shall at any time previous to such abandonment of the monopoly allow the subjects of any Power, other than a native Asiatic Power, to carry on any commercial intercourse with the said islands, the subjects of Her Britannic Majesty shall be admitted to such intercourse upon a footing precisely similar."

Sir Edward Grey further stated that it was not known to what extent the monopoly in spices still existed, but that a Proclamation was issued by the Governor-General of Netherlands India on the 8th September, 1853, declaring the ports of Amboyna, Banda, and Ternate to be free ports. But that whether Articles I, II, III, and IV of the Treaty of 1824 were in force or not, its provisions were not referred to in the representations made by the Netherlands Chargé d'Affaires at this Court in regard to the proceedings of the Pearling and Trading Company given at pages 10 and 11 of the printed correspondence, and that such being the case, it would probably be more convenient to consider the terms of the Netherlands Ordinance apart from Treaty stipulations.

Sir Edward Grey therefore requested us to give our opinion as to—

Whether the terms of the Ordinance in question were contrary to the comity of nations, or were reasonably open to objection on the part of Her Majesty's Government on any other, and, if so, what specific grounds.

Sir Edward Grey at the same time requested that we would furnish the Foreign Office with any observations of a more general character which we thought might be of assistance in the conduct of the case.

We have taken the matter into our consideration, and have the honour to

Report—

That, in our opinion, the terms of the Ordinance in question are in no way contrary to the comity of nations, nor is there anything in the Ordinance itself reasonably open to objection on the part of Her Majesty's Government.

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* Confidential No. 6596, Nos. 1–29.

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If, in the enforcement of the Ordinance, any case of unfair or unequal treatment of British subjects should arise, it should be considered with reference to its special circumstances, and dealt with accordingly.

It is to be noted that the Ordinance, by its strict limitation to territorial waters, departs from the broad ground taken by the Resident in his communication of the 22nd March, 1893.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

Annex.

Netherlands India Government Ordinance No. 261 *of October* 5, 1893.

(Translation.)

ARTICLE 1. If any persons not belonging to the indigenous population are found fishing for pearl shells, mother-of-pearl shells, or bêche-de-mer in the territorial waters of Netherlands India without permission from, or in the name of, the Governor-General, the master of the vessel used for the purpose, or his substitute, shall be liable to a fine of 10 fl. to 1,000 fl., or imprisonment from six days to two years in case of Europeans, and to a similar fine or rigorous imprisonment from six days to two years in case of natives and those assimilated with natives.

The implements with which the offence is committed, as well as the shells or bêche-de-mer fished in contravention of the Regulations, may be declared forfeited.

The vessel with which the offence is committed is liable for the fine and costs of proceedings, and the vessel may be seized and sold in case of non-payment.

Art. 2. By the expression "fishing for pearl shells, mother-of-pearl shells, and bêche-de mer" in this Ordinance is meant the obtaining of these articles out of the sea in whichever way or by whatever means or implements.

Art. 3. If a vessel not belonging to and not manned by persons belonging to the indigenous population, and not having the permit referred to in Article 1, be found within the territorial waters of Netherlands India with pearl shells, mother-of-pearl shells, or bêche-de-mer on board, or having on board implements for fishing for these products, the master or his substitute shall be considered as having infringed Article 1 of these Regulations unless he can give proofs to the contrary.

Art. 4. The Commanders of Dutch men-of-war, the masters of vessels of the Dutch colonial marine and of dispatch-boats, and persons acting under their authority, are empowered to detect transgressions of this Ordinance. The persons mentioned in the foregoing paragraphs are authorized, in order to maintain the enactments of this Ordinance, to search vessels the passengers or crew of which are suspected of committing or contemplating actions in contravention of this Ordinance as long as such vessels are within the territorial waters.

The Articles 2, 3, 4, and 5 of Ordinance of the 20th August, 1865 (Government Gazette No. 84) are applicable in connection with such search.

Art. 5. This Ordinance will come into force on the date of insertion in the Government Gazette of Netherlands India.

Buitenzorg, October 5, 1893.

Issued the 7th October, 1893.

No. 62.

The Law Officers of the Crown to the Earl of Kimberley.—(Received April 5.)

Royal Courts of Justice, April 3, 1894.

My Lord,

Detention of crew of "Costa Rica Packet" at Ternate.

WE were honoured with the Earl of Rosebery's commands signified in Sir H. Percy Anderson's letter of the 9th February last, stating that he was directed to transmit to us the papers noted in the accompanying list respecting the case of the "Costa Rica Packet," in regard to which we reported on the 19th April and the 29th September last.

Claim for compensation.

That Sir H. Percy Anderson was to call our special attention to the Report and evidence communicated by Sir Saul Samuel on the 23rd January last, and in particular to the evidence at pages 23 and 24 respecting the measure of damages.

That Sir H. Percy Anderson was to request that we would take the matter into our consideration, and favour the Secretary of State with our opinion as to whether the further papers which came before us for the first time led us to modify, and, if so to what extent, the opinions expressed in our previous Reports.

We have also the honour to acknowledge the receipt of Mr. Bertie's letter of the 27th ultimo, stating that he was directed to transmit to us a despatch (Sir H. Rumbold's No. 19, Commercial, of the 19th March, 1894) which had recently been received from Her Majesty's Minister at the Hague with reference to Mr. Carpenter's claim.

L.O.R. 1898 (Conf. 6508), p. 44.

That the despatch in question contained the answer of the Netherlands Government to a note which was addressed to them, in accordance with the opinion expressed in our Report of the 19th April, 1893.

That a copy of that note was inclosed in Sir H. Rumbold's despatch No. 31, Commercial, of the 20th May, 1893, which would be found among the papers relating to the case transmitted to us in Sir H. Percy Anderson's letter of the 9th February, 1894.

That the question submitted to us in that letter related more particularly to the claims of the owners and crew of the vessel to compensation for the interruption of her voyage, which resulted from the arrest of the master, but that the reply of the Netherlands Government affected those claims equally with that of Mr. Carpenter.

That Mr. Bertie was accordingly to request us to take the further despatch from Sir H. Rumbold into our consideration in connection with the papers previously transmitted to us.

In obedience to the Earl of Rosebery's commands, we have the honour to

Report—

That we have carefully considered the evidence given before the Select Committee of the Legislative Council of New South Wales and the Report of the Committee, and we find nothing which would cause us to depart from the opinions already given by us.

There is nothing to show that the treatment of Mr. Carpenter in this case in any way differed from that which he would have experienced if he had been a Dutch subject.

The Dutch law appears to allow of arrests in cases of plausible suspicion, and preliminary examinations of the accused and of witnesses of the nature which took place in Carpenter's case. There is in this nothing so contrary to the practice of civilized nations as to enable Her Majesty's Government to found thereon a claim for compensation.

The real mischief arose from the distance between the place where the warrant was issued and that at which it was executed.

The Resident at Ternate appears to have had no power, according to Dutch law, either to exercise any discretion as to executing the warrant, or to receive bail for the subsequent appearance of the accused.

It is of the greatest importance that Her Majesty's Government should not put forward any claims for compensation which they would not be prepared to entertain on behalf of foreigners; and, although a similar state of circumstances is not likely to occur in any settled part of Her Majesty's dominions, it is by no means unlikely that great inconvenience and loss may be suffered by the execution of process of law against foreigners, not rightfully accused, in places remote from the seat of any fixed Tribunal, and it would be dangerous to admit the principle that for such loss Her Majesty's Government should be held responsible.

Indeed, the difficulty of enunciating any principle upon which a claim for compensation for loss arising out of the application of the municipal law is so great, that it was only on the consideration of the very great carelessness in issuing the warrant against Carpenter, shown by an examination of the evidence on which it was issued, that we were able, not without hesitation, to advise that his claim to compensation for a reasonable amount should be pressed.

We cannot, on consideration of the evidence before the Committee, arrive at the conclusion that the Dutch authorities at Macassar are chargeable with anything more than the great carelessness above referred to; and, although we adhere in this particular case to the advice already given as to Carpenter's claim, we wish it to be clearly understood that we do not found that advice on any supposed right of Her Majesty's Government to question, in the case of British subjects, the sufficiency or expediency of the system of criminal law adopted by a friendly nation for the governance, within its dominions, of all persons alike.

As to the question of damages, we see no reason to depart from our previous opinion.

If the arrest of Carpenter had, in our opinion, borne the character, which some of the witnesses before the Committee appear to attribute to it, of a merely wanton

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attack upon a person entitled to British protection—amounting to a deliberate insult to the British flag—we certainly should not be disposed to limit, by any legal reasoning, the claim for damages. But, inasmuch as, in our view of the evidence, such an outrage is excluded, we must have regard to the ordinary legal and equitable doctrine, that only the direct consequences of a wrong-doing can be visited upon the offender. In this connection we may point out that, according to the evidence, the protest made at Ternate could be of no avail, as the Resident there had no authority to give effect to it.

On the whole, therefore, we must adhere to our opinion already given, that the alleged consequential losses arising from Carpenter's arrest are too remote, and cannot properly be claimed in the circumstances of this case.

We have also perused and considered the answer of the Netherlands Government to the claim put forward on behalf of Carpenter.

The grounds on which we recommended the claim to be put forward do not appear to us to be met.

If there had been reasonable, or even plausible, evidence of the offence charged, *i.e.*, the taking of the cargo of the prow within 3 miles from the Island of Boeroe, the arguments put forward on behalf of the Netherlands Government would have had great weight. So far, however, as we can see, there was no allegation on the part of any witness that the prow was within the 3-mile limit when the cargo was taken, and, indeed, it must have been known from Palmer's evidence—uncontradicted, though not taken on oath—that the distance from land must have been much greater than 3 miles.

In the state of facts, we cannot consider the step of taking Carpenter from his ship a distance of 1,000 miles to have been warranted on any view, either of Dutch or of international law.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

Colonial Office		April	9, 1892.
To Sir H. Rumbold	(No. 16. Commercial)	April	19, „
To Colonial Office		April	19, „
Sir H. Rumbold	(No. 36. Commercial)	April	22, „
To ditto	(No. 17. Commercial)	April	28, „
To Colonial Office		April	28, „
Sir H. Rumbold	(No. 40. Commercial)	May	7, „
Colonial Office		August	9, „
To Sir H. Rumbold	(No. 25. Commercial)	August	12, „
Ditto	(No. 68. Commercial)	August	15, „
Sir G. Bonham	(No. 71. Commercial)	August	19, „
Ditto	(No. 72. Commercial)	August	20, „
To Colonial Office		August	24, „
Colonial Office		January	17, 1893.
Ditto		February	3, „
Ditto		April	15, „
To Sir H. Rumbold		May	17, „
Colonial Office		June	8, „
Ditto		July	18, „
Ditto		July	18, „
Sir H. Rumbold		July	22, „
Circular to Her Majesty's Consuls (Library No. 1624*)		April	20, 1882.
Mr. Creed		July	17, 1893.
Colonial Office		September	5, „
Ditto		September	23, „
Ditto		September	28, „

Law Officers (Confidential No. 6508, p. 44)		April	19, 1893.
Sir H. Rumbold	(No. 31. Commercial)	April	19, „
Law Officers (Confidential No. 6508, p. 46)		September	29, „
Colonial Office		October	26, „
To ditto		November	3, „
Sir H. Rumbold	(No. 76. Commercial)	November	3, „
To Colonial Office		November	22, „
Mr. Creed		November	26, „
Colonial Office		January	11, 1894.
Memorial communicated by Sir S. Samuel		January	23, „
Sir T. Sanderson to Sir S. Samuel		January	29, „

No. 63.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, July 23, 1894.*

"Costa Rica Packet" case. Terms on which arbitration could be agreed to.

I HAVE the honour, by direction of the Earl of Kimberley, to transmit to you the accompanying despatches from Sir Horace Rumbold, Her Majesty's Minister at the Hague, respecting the case of the "Costa Rica Packet," which formed the subject of Reports from the then Law Officers of the Crown on the 3rd April last, as well as on the 19th April and 29th September, 1893. Printed copies of these are inclosed for convenience of reference.

I am also to inclose a letter from the Colonial Office, to which Department Sir Horace Rumbold's two last despatches were, in the first instance, referred. With regard to the penultimate paragraph of that letter, Lord Kimberley is of opinion—having regard to the uncompromising attitude assumed by the Netherland Government—that there are no grounds to warrant the belief that any further diplomatic representation, with the view to obtaining the moderate sum asked for by way of compensation to Mr. Carpenter, would be attended with a satisfactory result. It must also be borne in mind that, even were it conceded, such a settlement would fall far short of meeting the views of the Colony of New South Wales as to what, in their judgment, constitutes an adequate compensation for the hardship and loss sustained by the master, the crew, and the owners of the vessel.

In these circumstances, it seems to his Lordship, on grounds of general policy, that the preferable course is to proceed to consider the proposal of the Netherland Government to submit the question to arbitration, and the bases on which that proposal may properly be accepted.

The amount of compensation originally claimed on behalf of all concerned in this matter was 25,000*l.* The way in which that sum was arrived at is set out in the statement of claim on pp. 11 and 12 of the inclosed copy of the "Case of Captain Carpenter."

Acting in conformity with the views expressed in the Law Officers' Report of the 19th April, 1893, Her Majesty's Government waived the question of compensation for the crew and owners of the vessel, and confined themselves to preferring a request for 2,500*l.* for the master alone. The exact text of the note addressed to the Netherland Government on this point will be found in Sir H. Rumbold's despatch No. 31, Commercial, of the 20th May, 1893, inclosed.

The question now arises whether, having regard to what has passed, it would be open to Her Majesty's Government, in accepting arbitration on the case, to state that the larger claim of 25,000*l.* must be submitted for the consideration of the Arbitrator or Arbitral Tribunal.

On the one hand, the Government of New South Wales strongly urge the full claim, and, from their point of view, it would undoubtedly be more satisfactory that it should be taken as a basis for arbitration. But, on the other hand, it seems almost certain from the terms in which arbitration is suggested at the end of M. de Roëll's note to Sir H. Rumbold of the 15th June, that the Netherland Government will not accept that basis without demur. But Her Majesty's Government might, it is thought, reasonably contend that, on the evidence first brought before them, and with the view, if possible, of arriving at a speedy settlement, they had abstained from the putting forward the whole claim, and had only asked for a sum which was so moderate that they apprehended no demur would arise to its being accepted; and the Netherland Government might be informed that as they have refused to settle the question on these terms, and prefer that the case should be submitted to arbitration, the questions to be considered by Arbiters would be whether the contention of the Dutch Government is correct that no compensation at all is due, or whether the payment of the sum originally claimed, or some portion thereof, affords an equitable solution of the controversy.

It should be borne in mind from this point of view that since the date of Sir H. Rumbold's first despatch the Colony has reiterated with much emphasis the arguments in favour of the claim of the owners and crew, and has furnished a large mass of evidence to support those arguments.

At the same time it may be questioned whether, after having once expressly disclaimed the intention of advancing any claim for compensation for the owners and crew of the vessel, Her Majesty's Government would now be justified in putting forward the more extended claim for the consideration of the Arbitral Tribunal,

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laying themselves open to a charge of inconsistency which would deprive it of much of its moral force.

Lord Kimberley feels also the weight of the observations made in the Law Officers' Report of the 3rd April, 1894, as to the importance of not putting forward claims which Her Majesty's Government would not be prepared themselves to entertain on behalf of foreigners who may suffer inconvenience and loss from the execution of process of law in portions of Her Majesty's dominions remote from the seat of any fixed Tribunal.

Lord Kimberley would accordingly feel obliged if you would favour him with an opinion, at your early convenience: Firstly, whether, in the event of Her Majesty's Government deeming it right to accept the proposal for arbitration, they could properly stipulate that the whole of the original claim shall be submitted for the consideration of the Arbitrators; and, secondly, whether, and in what manner, such a stipulation could be made without exposing Her Majesty's Government to dangerous liability for similar claims in the manner pointed out in the Law Officers' Report above referred to.

It has been suggested that the best method of procedure would be to stipulate that, in the event of the matter being submitted to arbitration, it shall be open to the Government of the Colony to bring before the Tribunal all the facts and arguments which they may think proper subjects for consideration, and that the Arbitrator or Arbitral Tribunal shall be left free to pronounce upon the amount, if any, of compensation due, and the persons entitled to receive it, without any previous restriction.

Lord Kimberley would wish to be favoured with your opinion upon this suggestion, and with any general observations which you may have to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Sir H. Rumbold	(No. 31. Commercial)	May 20, 1893.
Ditto	(No. 37. Commercial)	June 16, 1894.
Ditto	(No. 40. Commercial. Confidential)	June 21, „
Colonial Office		July 5, „
Case of Captain Carpenter.		
Law Officers' Report	(Confidential No. 6508, p. 44)	April 19, 1893.
Ditto	(Confidential No. 6508, p. 46)	September 29, „
Ditto		April 3, 1894

Report.

1. In the event of Her Majesty's Government deeming it right to accept the proposal for arbitration, they would not, as a matter of law, be precluded from stipulating that the whole of the original claim should be submitted for the consideration of the Arbitrators. Whether they should withdraw from the statement already made that they did not intend to press the claims of the owners and crew is a matter of policy. The fact of such a statement having been once made would, however, greatly prejudice the case before any Arbitrators, and might prevent the arbitration from satisfying the colonial feeling, and these considerations should not be lost sight of.

2. The putting forward of the larger claim in any manner would, in our opinion, form a precedent which might expose Her Majesty's Government to the danger of being held liable for similar claims.

The suggestion that, in the event of arbitration, it should be open to the Government of the Colony to bring forward the case of the owners and crew, does not seem to us one that ought to be adopted without careful consideration. Her Majesty's Government cannot avoid the responsibility toward the Dutch Government of deciding what claims ought to be put forward.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
August 15, 1894.

No 64.

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 5, 1894.

Gentlemen,

Extradition Treaty with Netherlands.

WITH reference to the Report which was furnished to the Earl of Rosebery by your predecessors on the 16th March, 1893 (see Paper A, pp. 21-23), I have now the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying copy of correspondence in print (Paper A) respecting the proposed new Extradition Treaty between Great Britain and the Netherlands, together with a copy of the draft Treaty (Paper B), containing the amendments agreed upon by the two Governments in the course of the negotiations.

I am to call your special attention to the revised list of extradition crimes given in Article II of the Treaty, and to the new provision contained in the penultimate paragraph of that Article; and I am to say that Lord Kimberley proposes, in order to meet as far as possible the views of the Netherland Government, as expressed in the notes from Baron Gevers (p. 29 of print) and Baron de Goltstein (p. 48), to suggest the addition to the first paragraph of Article II of the words "including such crimes when directed against the Sovereign, his heir, or any other person whomsoever, provided that the crime is not of a political character."

I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Kimberley with your opinion whether the draft Treaty, as now amended, may properly be submitted to the Netherland Government, and also whether the proposed addition to the first paragraph of Article II should be adopted.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

In our opinion, the draft Treaty may properly be submitted to the Netherland Government, subject to the following suggestions, which we submit to the consideration of your Lordship:—

It might be advisable to insert in Article II after the words "applied to" (p. 4, line 10) the following sentence, instead of the words suggested in your Lordship's letter:—

"Extradition is to be granted for each and all of the aforesaid crimes as well when they are directed against the Sovereign or his heir as when they are directed against other persons, provided in all cases that the crime is not of a political character."

The choice is really between different methods of drafting.

Article VII. The introduction of the words "during one month" appears to us undesirable. This gives a whole month during which an extradited person must have an opportunity of returning, *e.g.*, from England to Holland. Yet if, after having had a fortnight's opportunity, he were indicted in England for some crime other than the crime for which he was extradited, the indictment might have to proceed, for section 19 of "The Extradition Act, 1870," provides he shall have an opportunity, which means a reasonable opportunity, but does not secure him a month's opportunity. In such a case he might be subject to prosecution contrary to the Treaty.

Article XI. The words "within the term of twenty days" appear to us undesirable. For in England, under "The Extradition Act, 1870," the Magistrate fixes the time for the production of the documents, &c. He might say, for example, that fourteen days were sufficient, or even less, if he thought the demand unjust. It seems to us preferable to say "within the term of twenty days, or such other time as may be fixed in accordance with the law of the country on which the demand is made."

Article XII. In paragraph 4, the words "or some other Minister of the Netherlands" do not correspond with the language of section 15 of the Act of 1870, which says, "some other Minister of State." We think the words "of State" should be inserted.

Article XVIII. Our criticism as to the words "twenty days" in Article XI applies to the "sixty days" in this Article.

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The language of the last paragraph might be thought wide enough to extend to the United Kingdom, which is not intended. The words "for the purposes of this Article" might therefore be inserted after "shall."

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
December 14, 1894.

NICARAGUA.

No. 65.

The Law Officers of the Crown to the Earl of Kimberley.—(Received August 10.)

Trial by martial law of Brit. subjects for insurrection against Nicaraguan Prov. Govt. in Mosquito Reserve. Instructions to Commander of H.M.S. "Mohawk."

My Lord, *Royal Courts of Justice, August* 9, 1894.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us papers relating to the disturbed state of affairs existing in the Mosquito Reservation.

That in March last fresh disturbances arose there owing to the action of Nicaragua which had for some years past been encroaching on the Reserve. That it took the form of persuading some of the discontented Indians to sign a request for the incorporation of the Reserve with Nicaragua. That this afforded a pretext for armed interference, which culminated in the invasion of the Reserve, the ousting of the Mosquito Chief, and the establishment of a Provisional Government under General Lacayos.

That General Lacayos' attempt to administer the Reserve was opposed by the United States' citizens, who formed a considerable section of the trading community, as well as by British subjects established in the Reserve, and by the Mosquito Indians.

That, in the middle of July, the Mosquito Chief was restored to power and the Nicaraguans expelled, but that no particulars had been received as to how this had been effected.

That it was at the same time stated to Her Majesty's Minister accredited to the Government of Nicaragua that an insurrection of British subjects had occurred in the Reserve; that the Nicaraguan Government was determined to act energetically, and that the rebels would be subject to martial law.

That the Nicaraguan Government were then informed through Her Majesty's Minister that Her Majesty's Government would not uphold any proceedings of British subjects contrary to law, but that they must hold the Government of Nicaragua responsible if British subjects suffered any injuries owing to the illegal action of the Nicaraguan authorities.

That it would be seen, from the telegram from the officer commanding Her Majesty's ship "Mohawk" at Bluefields, that the Nicaraguan General Cabezas was at the Bluff, which was in the immediate vicinity of Bluefields, with troops, and that others were advancing from the interior, with the determination to assert the sovereignty of Nicaragua. That he stated that he thought he could prevent resistance on the part of the inhabitants, and he solicited instructions as to whether he should allow General Cabezas to try British subjects by martial law.

L.O.R. 1893. (Conf. 6508) p. 48.

That the rights of Her Majesty's Government were, as we were aware, governed by the Treaty of Managua, concluded between this country and Nicaragua in 1860, of which Mr. Bertie inclosed a copy for convenience of reference, and that the position of Her Majesty's Government in regard to that Treaty formed the subject of a Report from our predecessors on the 11th July, 1893.

That Mr. Bertie was to request that we would take the papers into our immediate consideration, and favour your Lordship at our earliest convenience with our opinion as to the instructions which should be sent to the Commander of the "Mohawk" on the point raised by him in his telegram of the 5th instant.

We have considered the matter, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the Commander of the "Mohawk" should be instructed not to interfere in any actual engagement, and to warn British subjects that if they continue fighting they must take the consequences, but that he should protect as far as he can any British subjects from any attempt of the Nicaraguan Commander to enforce against British subjects in his power any executions by way of martial law, that is to say, without regular legal trial by the ordinary Tribunals.

If any British subjects seek to escape from the application of martial law, they should have temporary protection.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

Admiralty	.. ..	August 6, 1894.
Treaty of Managua (Treaty No. 441)	.. .. ..	January 28, 1860.
Law Officers' Report (Confidential No. 6508, p. 48)	.. ..	July 11, 1893.

PERSIA.

No. 66.

The Law Officers of the Crown to the Earl of Kimberley.—(Received May 15.)

Right of Persian Bank Mining Rights Corporation to submit claims against Persian Govt. to arbitration.

My Lord, *Royal Courts of Justice, May* 11, 1894.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the question of the right of the Persian Bank Mining Rights Corporation to submit to arbitration their claims against the Persian Government.

That a Concession was granted by the Shah to Baron de Reuter in February 1889, conferring on him the right to establish a State Bank in Persia.

That Article 10 of the Concession provided for arbitration in case of a difference arising between the Persian Government and the Bank.

That Article 11 granted to the Bank the exclusive right of working certain mines throughout the Empire.

That an Appendix to the Concession was signed on the 27th July, 1889, under Article 9 of which the Bank was precluded from itself carrying out the mining operations mentioned in Article 11, but was empowered "to sell or cede all or any of the privileges, rights, and powers specified in that Article, such cession or sale to take effect in accordance with the terms of the Act of Concession," and subject to the approval of the Imperial Government.

That a Royal Charter of Incorporation was granted by Her Majesty to the Bank in August 1889.

That clause 6 of the Charter gave the Bank the right of promoting Companies for the purpose of carrying into effect Article 11 of the Concession and Article 9 of the Appendix.

That in virtue of the powers thus bestowed, the Bank, under an Agreement dated the 17th April, 1890, sold their mining rights to the Persian Bank Mining Rights Corporation, and that the cession received the sanction of the Persian Government.

That the Corporation desired to refer to arbitration the question whether the Shah and his Government had afforded the necessary protection to enable them to exercise

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the mining rights ceded to them by the Bank in accordance with the terms of the Act of Concession.

That they contended that they were entitled to the same right of arbitration as that granted to the Bank under Article 10 of the original Concession.

That your Lordship had informed the Corporation that, failing some special provision in the deed of transfer from the Bank to that body, to which the Persian Government had given their consent, it was doubtful whether the Corporation were entitled to claim arbitration under the provisions of the Concession to the Bank.

That the Corporation, however, still maintained their original contention with respect to their right to arbitration under Article 10, and were strenuously pressing Her Majesty's Government to make diplomatic representations to the Government of Persia in support of that view.

That in those circumstances, your Lordship desired to be favoured with our opinion on the legal aspect of the questions involved before making a final communication to the Corporation on the subject.

That in submitting the papers to us, Sir Thomas Sanderson was specially to call our attention to the fact, that Article 10 distinctly specified "differences between the Persian Government and the Bank."

That Sir Thomas Sanderson was to point out that the Agreement of the 17th April, 1890, between the Bank and the Corporation, contained no mention of the assent of the Persian Government to that transaction, and that the letter from the Amin-es-Sultan to the Bank of the 5th January, 1890, whilst mentioning Articles 11, 12, and 13 of the Concession, made no allusion to Article 10, which contained the arbitration clause.

That the fact that certain Articles were specifically referred to, while others were ignored, together with the fact that the Persian Government were informed merely that the Bank proposed to transfer its "droits miniers," made your Lordship hesitate to adopt the contention advanced on behalf of the Corporation.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion (1) as to whether Her Majesty's Government would be legally justified in giving their support to the claim to arbitration put forward by the Corporation; and (2) generally upon the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, Her Majesty's Government would *not* be legally justified in giving their support to the claim for arbitration put forward by the Corporation.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

1.	Bank of Persia Concession.	
2.	Appendix to Concession—No. 4.	
3.	Royal Charter.	
4.	Persian Bank Mining Rights Corporation	March 19, 1894.
5.	To Persian Bank Mining Rights Corporation	April 7, "
6.	Persian Bank Mining Rights Corporation	April 10, "
7.	To Persian Bank Mining Rights Corporation	April 14, "
8.	Persian Bank Mining Rights Corporation	April 24, "

PORTUGAL.

No. 67.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received February* 15.)

Royal Courts of Justice, February 14, 1894.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 21st December last, stating that he was directed to transmit to us the draft of an Order in Council, applying the Extradition Acts 1870 and 1873, in the case of a Treaty and Protocol between Great Britain and Portugal, signed at Lisbon the 17th October, 1892, and the 30th November, 1892, respectively. Extradition Treaty with Portugal. Draft O. in C.

That Sir Thomas Sanderson was to inclose letters from the Home, Colonial, and India Offices, showing that the terms of the draft Order in Council were concurred in by those Departments, and he was to request that we would favour your Lordship with our opinion whether the draft Order in its present shape might properly be laid before the Queen in Council for Her Majesty's approval.

That Sir Thomas Sanderson was to add that the draft Treaty between Great Britain and Portugal was transmitted to our predecessors for their consideration on the 25th November, 1891; and that he was to inclose the separate Reports made by them to the Marquis of Salisbury on the 21st January, 1892. L. O. R., 1892 (Conf. No. 6347, p. 53).

In obedience to your Lordship's commands, we have the honour to

Report—

That we are of opinion that the Order in Council, a draft of which we have considered and initialled, is fit and proper to be submitted to Her Majesty for approval.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Draft Order in Council	December 13, 1893.
(B.)	Colonial Office..	December 15, "
(C.)	Home Office	December 18, "
(D.)	India Office	January 21, 1892.
(E.)	Law Officers' Report (Confidential No. 6347, p. 53)	

Annex.

Draft Order in Council.

WHEREAS by the Extradition Acts, 1870 and 1873, it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient; and that if, by any law made after the passing of the Act of 1870 by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying the said Acts in the case of any foreign State, or by any subsequent Order, suspend the operation within any such British possession of the said Acts, or of any part thereof, so far as it relates to such foreign State, and so long as such law continues in force there, and no longer:

And whereas by an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," provision is made for carrying into effect within the Dominion the surrender of fugitive criminals:

And whereas by an Order of Her Majesty the Queen in Council, dated the 17th day of November, 1888, it was directed that the operation of the Extradition Acts, 1870 and 1873, should be suspended within the Dominion of Canada so long as the provision of the said Act of the Parliament of Canada of 1886 should continue in force, and no longer:

And whereas a Treaty was concluded on the 17th day of October, 1892, between Her Majesty and His Majesty the King of Portugal, for the mutual extradition of fugitive criminals, which Treaty is in the terms following:—

[The Treaty follows.]

And whereas the ratifications of the said Treaty and Protocol were exchanged at Lisbon on the 13th day of November, 1893:

Now, therefore, Her Majesty, by and with the advice of her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the * day of , 18 , the said Acts shall apply in the case of Portugal, and of the said Treaty and Protocol with His Majesty the King of Portugal.

Provided always, and it is hereby further ordered, that the operation of the said Extradition Acts, 1870 and 1873, shall be suspended within the Dominion of Canada so far as relates to Portugal and to the said Treaty and Protocol, and so long as the provisions of the Canadian Act aforesaid of 1886 continue in force, and no longer.

C. R.
J. R.

No. 68.

The Law Officers of the Crown to the Earl of Kimberley.—(Received March 9.)

My Lord, *Royal Courts of Justice, March* 8, 1894.

Trans-African telegraph. British right to construct under Anglo-Portuguese Convention of 11th June, 1891.

WE were honoured with the Earl of Rosebery's commands signified in Sir Philip Currie's letter of the 11th December last, stating that he was directed to transmit to us the papers noted in the accompanying list relative to a question which had arisen as to the interpretation of certain words in the Anglo-Portuguese Convention which was signed at Lisbon on the 11th June, 1891.

That the object of that Convention was to define the territories in East Africa within the dominion of Portugal, and the spheres of influence of that Power and of Great Britain, respectively, north and south of the Zambesi, and to make arrangements which would be mutually advantageous in respect to the territories under the influence of the two countries.

That one of the effects of the Convention was, to leave under the influence of Portugal a strip of territory between the north-eastern boundary of the British sphere south of the Zambesi, and the south-western boundary of that sphere north of the Zambesi.

That Article XI of the Convention was drawn up with the view of securing freedom of passage across the Zambesi, and the districts adjoining the right and left banks of that river mentioned in Article IV of that Convention, for each Power to its sphere lying north or south of that river.

That in the 5th paragraph of Article XI it was stated that "it is further understood that, in the above-named districts, each Power shall have the right, so far as may be reasonably required for the purpose of communication between territories under the influence of the same Power, to construct roads, railways, bridges, and telegraph lines across the district reserved to the other. The two Powers shall have the right of acquiring in these districts, on reasonable conditions, the land necessary for such objects, and shall receive all other requisite facilities."

By the 7th paragraph of the same Article: "Differences of opinion between the two Governments as to the execution of their respective obligations, incurred in accordance with the provisions of the preceding paragraph, shall be referred to the arbitration of two experts."

That in the month of July last the African Trans-Continental Telegraph Company, a British enterprise, notified to Her Majesty's Government their intention of constructing a telegraph line from the territory of the British South Africa Company south of the Zambesi to the British Central Africa Protectorate, and asked Her Majesty's Government to apply to the Portuguese Government, under Article XI of the Treaty of 1891, for facilities for the execution of that portion of it which was to pass through the Portuguese districts adjoining the Zambesi.

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* Date to be inserted by Council Office, and to be a date ten days after publication in "London Gazette."

That the Portuguese Government replied that they had already granted a Concession for the construction of telegraph lines in territories including the districts in question to a Portuguese Company, who were prepared to undertake the work, and that nothing further could be expected of them. That doubts were, however, entertained in this country as to the financial capacity of the Portuguese Company to carry out the work with the necessary expedition, and that it was, moreover, considered imperative that the frequent confidential communications which would pass between the authorities in the British territories north and south of the Zambesi should pass through a British line.

That the Portuguese Government were again applied to to allow the African Trans-Continental Telegraph Company to construct the line. That they had, however, again refused, and based their refusal on the ground that as the Portuguese Company had declared its ability and readiness to make the line as soon as the terminal points were decided upon, Her Majesty's Government had no claim for further facilities, and that they could not reasonably require more for the purposes of inter-communication between the territories under their influence.

That it would thus be seen that the matter really turned upon what was the proper interpretation of the words in Article XI of the Convention, "as far as may reasonably be required for the purposes of communication between territories under the influence of the same Power," and how far the proposed connection by a Portuguese line could be said to supply the reasonable requirements stipulated for by Her Majesty's Government under that Article.

That our opinion was requested upon that question.

We were also honoured with a letter from Sir H. Percy Anderson, dated the 8th ultimo, inclosing a further communication from the British South Africa Company upon the subject.*

We have taken the matter into our consideration, and have the honour to

Report—

That, in our opinion, the proposed connection by a Portuguese line does not supply the reasonable requirements of Her Majesty's Government under Article XI of the Treaty, but that Her Majesty's Government have a right to require all facilities to be given for the construction of a line under British control and management.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.)	Treaty of June 11, 1891. (Treaty No. 875.)				
(B.)	British South Africa Company		July	5,	1891.
(C.)	To Sir H. MacDonell	(No. 58)	July	13,	„
(D.)	Sir H. MacDonell	(No. 45)	September	23,	„
(E.)	Ditto	(No. 46)	September	25,	„
(F.)	To Sir H. MacDonell	(No. 90)	October	20,	„
(G.)	Sir H. MacDonell	(No. 52)	November	3,	„
(H.)	British South Africa Company		October	12,	„
(I.)	Mr. Maguire		December	4	„

No. 69.

The Law Officers of the Crown to the Earl of Kimberley.—(Received March 20.)

My Lord, *Royal Courts of Justice, March* 19, 1894.

Trans-African telegraph. Reference of obligations under Anglo-Portuguese Treaty of June 11, 1891, to arbitration.

WE were honoured with your Lordship's commands signified in Sir Percy Anderson's letter of the 17th instant, stating that, with reference to our Report of the 8th instant, he was directed to return to us the Treaty with Portugal of the 11th June, 1891, and to ask our opinion in regard to a further point which had arisen in connection with the interpretation of that document.

That the Portuguese Minister had intimated that, in the opinion of his Government, it was agreed, under paragraph 7 of Article XI, that all differences of opinion

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* British South Africa Company, January 29, 1894.

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between the two Governments as to the execution of their respective obligations under the 5th and 6th paragraphs of the Article should be referred to arbitration.

That it appeared to your Lordship to be doubtful whether the words of the 7th paragraph were properly susceptible of so wide an interpretation.

That arbitration was provided for under that paragraph in case of differences of opinion as to the execution of obligations incurred in accordance with the provisions of the preceding paragraph.

That the immediately preceding paragraph was short and unimportant.

That the original Treaty had been examined, and it was found that whereas in the English text, in which the draft was drawn up and initialled by the negotiators, the 5th and 6th paragraphs were divided as in the print, in the Portuguese text they were united.

That your Lordship did not, however, propose to base an argument on that point, as it seemed clear that the object of the negotiators was to apply arbitration to the two paragraphs which, in the English version, had been accidentally divided.

But that the wording of the 7th paragraph appeared to lead to the inference that it was inserted not as a general arbitration clause, but as explanatory of the "arbitration hereinafter mentioned" to be resorted to in case of differences of opinion respecting railway regulations and laws.

That if that interpretation were correct, there was no provision for arbitration in regard to differences of opinion respecting telegraphic communication.

That there was, however, in Article XV, a special reference to arbitration in the latter case. That under it, Great Britain and Portugal engaged to facilitate telegraphic communication in their respective spheres; that in paragraph 4 the two Powers engaged to give every facility for the connection of telegraphic lines constructed in their respective spheres; and that paragraph 5 stated that "details in respect to such connection shall, if not settled by common consent, be referred to the arbitration of experts under the conditions presented in Article XI."

That your Lordship was disposed to consider that that engagement was not applicable to the case under discussion. That Article XI dealt with the contingency of connecting telegraphs in two spheres belonging to one of the Contracting Parties by a line constructed across intervening territory belonging to the other party. That Article XV provided for the connection of telegraph lines constructed in adjoining spheres of the two parties.

That the cases were essentially different, and that, in your Lordship's opinion, the latter Article had no bearing upon the point now under discussion.

That it was, however, quite possible that the Portuguese Government might take another view, and put forward a general claim to arbitration founded on Article XV as well as Article XI.

That Sir Percy Anderson was, therefore, to request that we would further take the provisions of those two Articles into our special consideration, and that we would favour your Lordship with our opinion on the questions raised in the letter of reference with respect to their interpretation.

We have considered the matter, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, paragraph 7 (as to arbitration) of Article XI of the Treaty *does* apply to differences of opinion between the two Governments as to the execution of their respective obligations under the 5th and 6th paragraphs of the same Article of the Treaty (English version).

In our opinion, neither the provision as to arbitration at the end of paragraph 5 of Article XI, nor that at the end of Article XV, conflicts with this construction. Those provisions do not cover the same ground as paragraph 7 of Article XI.

We therefore think that the contention of the Portuguese Government, as expressed in the 2nd paragraph of the letter of the Secretary of State addressed to us, dated the 17th instant, is right.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

ROUMANIA.

No. 70.

The Law Officers of the Crown to the Earl of Kimberley.—(Received April 27.)

My Lord,
Royal Courts of Justice, April 26, 1894.

Extradition Treaty with Roumania. Draft O. in C. to carry out.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council for the purpose of carrying into effect an Extradition Treaty between Great Britain and Roumania, which was signed at Bucharest on the 21st March, 1893, and of which the ratifications were exchanged on the 13th ultimo.

Mr. Bertie also inclosed letters from the Home, Colonial, and India Offices, stating that the terms of the draft Order in Council were concurred in by those Departments, and he requested that we would favour your Lordship with our opinion as to whether it might, in its present form, be laid before the Queen in Council for Her Majesty's approval.

In obedience to your Lordship's commands we have considered the matter, and have the honour to

Report—

That an Order in Council, in the terms of the draft initialled by us, may, in our opinion, properly be submitted to the Queen in Council for Her Majesty's approval.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Draft Order in Council.		
(B.) Home Office	April	5, 1894.
(C.) Colonial Office	April	6, ,
(D.) India Office	April	20, „

Annex.

DRAFT ORDER IN COUNCIL.

WHEREAS by "The Extradition Acts, 1870 and 1873," it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient; and that if, by any law made after the passing of the Act of 1870 by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying the said Acts in the case of any foreign State, or by any subsequent Order, suspend the operation within any such British possession of the said Acts, or of any part thereof, so far as it relates to such foreign State, and so long as such law continues in force there and no longer:

And wheras by an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," provision is made for carrying into effect within the Dominion the surrender of fugitive criminals:

And whereas by an Order of Her Majesty the Queen in Council, dated the 17th day of November, 1888, it was directed that the operation of "The Extradition Acts, 1870 and 1873," should be suspended within the Dominion of Canada so long as the provision of the said Act of the Parliament of Canada of 1886 should continue in force and no longer:

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And whereas a Treaty was concluded on the 21st day of March, 1893, between Her Majesty and His Majesty the King of Roumania for the mutual extradition of fugitive criminals, which Treaty is in the terms following:—

[Here follows the Treaty.]

And whereas the ratifications of the said Treaty and Protocol of the 21st day of March, 1893, were exchanged at Bucharest on the 13th day of March, 1894:

Now, therefore, Her Majesty, by and with the advice of her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the * day of , 1894, the said Acts shall apply in the case of Roumania, and of the said Treaty and Protocol of the 21st March, 1893, and of the Protocol of the 13th March, 1894, with the King of Roumania.

Provided always, and it is hereby further ordered, that the operation of the said "Extradition Acts, 1870 and 1873," shall be suspended within the Dominion of Canada so far as relates to Roumania, and to the said Treaty and Protocols, and so long as the provisions of the Canadian Act aforesaid of 1886 continue in force, and no longer.

RUSSIA.

No. 71.

The Law Officers of the Crown to the Earl of Kimberley.—(Received May 3.)

Claim against Russian Govt. for compensation for seizure of sealing-vessel "Arctic."

My Lord, *Royal Courts of Justice, May* 1, 1894.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 16th ultimo, stating that he was directed to transmit to us the papers relating to a claim for compensation by Mr. Pyne, the master of the British sealing-schooner "Arctic," against the Russian Government for the alleged unlawful seizure of his vessel off the Commander Islands, in the North Pacific, on the 3rd August, 1893, and the consequent loss inflicted upon him by his being prevented from hunting during the remaining portion of the seal-fishing season, a loss which he estimated at 16,200 dollars.

That the "Arctic" having been sent for trial to Yokohama, under the provisions of the Sealing Agreement with Russia of the 4th July, 1893, proceedings were instituted, on behalf of the Crown, in Her Majesty's Court for Japan, upon the charge of contravening "The Seal Fishery (North Pacific) Act, 1893," and that on the 8th December last Judgment dismissing the case, as well as the counter-claim for damages which had been put forward by the defendant, was pronounced.

That the alleged position of the vessel at the time of seizure inside the prohibited zone round Copper Island was in dispute, and that Her Majesty's Judge, while accepting the position assigned to the "Arctic" by the Russian authorities, absolved the schooner on the ground that no act of hunting or fishing while within that zone was proved against her.

That Mr. de Bunsen expressed some hesitation in forwarding the claim, but, in deference to the opinion of Mr. Mowat, Her Majesty's Judge, and to the precedents quoted by him where somewhat similar claims for loss in respect of "probable prospective catch" had been entertained, and in one instance presented by Her Majesty's Government, he had not felt justified in declining to submit Captain Pyne's claim to the Secretary of State.

Mr. Bertie further stated that he was to request that we would take the papers transmitted to us into our consideration, and that we would favour your Lordship with our opinion as to whether the case was one in which compensation might properly be demanded by Her Majesty's Government from that of Russia, and, if so, what amount might reasonably be claimed on Mr. Pyne's behalf; or (2) whether Her Majesty's Government should decline to support the claim in any way, even by presenting it to the Russian Government.

In obedience to your Lordship's commands, we have taken the papers into our consideration, and have the honour to

Report—

That the case is not one in which compensation can properly be demanded by Her Majesty's Government from that of Russia, and that Her Majesty's Government should decline to support the claim in any way, even by presenting it to the Russian Government.

It was found as a fact by the Judge of Her Majesty's Court for Japan that the "Arctic" was within the prohibited zone at the time of her arrest, and Mr. Pyne himself, as appears from his letter of the 29th January, 1894, does not dispute this fact. It was also proved that she had seal-skins on board. This being so, there was a *primâ facie* case against her within section 1, subsection (6) of "The Seal Fishery (North Pacific) Act, 1893," sufficient to justify the action of the Russian officer under that Act, though the evidence given at the trial was sufficient, in the opinion of the Judge, to rebut the presumption.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

List of Papers.

(A.) Mr. de Bunsen .. .. (No. 19) February 20, 1894.
(B.) Sealing Agreement with Russia.
(C.) "Seal Fishery (North Pacific) Act, 1893" (56 & 57 Vict., cap. 23).
(D.) Mr. de Bunsen .. ..(No. 135) December 9, 1893.
(E.) Parliamentary Paper, "Russia No. 2 (1893)." (Library No. 3538).
(F.) Parliamentary Paper, "Russia No. 3 (1893)." (Library No. 3530).

No. 72.

Foreign Office to the Law Officers of the Crown.

Treatment of "Worlock" at Petropaulovsk under Anglo-Russian Sealing Agreement.

Gentlemen, *Foreign Office, May* 17, 1894.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to the case of the British auxiliary steam-schooner "Worlock," of Victoria, British Columbia, which was deprived of her papers, gear, &c., by the Russian authorities at Petropaulovsk in September last, and ordered to proceed to Yokohama to be dealt with by Her Majesty's Consul there.

It will be seen from the accompanying despatch from Her Majesty's Chargé d'Affaires in Japan (Mr. de Bunsen's No. 129 of the 2nd December, 1893, Paper A), and from the protocol of inspection drawn up by the Russian authorities at Petropaulovsk, of which copy is therein inclosed, that the "Worlock" left Columbia on the 10th June, 1893, for the purpose, as stated by the master, of sealing along the American coast and in the Pacific Ocean; that, in consequence of a breakage of her engine, she only reached Sand Point on the 28th July, the master having decided to go and seal outside the prohibited zone round the Commander Islands; that, in view of the necessity of further repairs and refitting, he there obtained a trade certificate for taking to Petropaulovsk (which is situated within the prohibited zone hereinafter mentioned, and where the "Worlock" arrived on the 5th September) a cargo which he specified as consisting of eight guns and other gear for sealing and fishing, and salt for the preservation of skins.

In view of the character of the alleged cargo, the Russian authorities held the certificate to be irregular, and obtained merely for the purpose of enabling the vessel to visit those waters, with, as they inferred, the intention of refitting and of subsequently engaging in the otter fishing in the Russian territorial waters on the coasts of Kamschatka and of the Commander Islands.

They therefore seized her papers and gear, but instead of bringing the case before their own Courts for a breach of Russian municipal law, as it was presumably within

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* Date to be inserted by Council Office, and to be a date ten days after publication in "London Gazette."

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their competence to do, they proceeded to deal with the case as if it constituted a breach of the then recent Sealing Agreement concluded between Great Britain and Russia of May 1893 (Paper B).

This Agreement provides for the prohibition of killing, taking, or hunting seals within zones of 10 and 30 miles respectively round portions of the Russian coasts and islands in the North Pacific.

It was enforced, so far as this country is concerned, by an Order in Council of the 4th July, 1893 (Paper C), which applied the provisions of "The Seal Fishery (North Pacific) Act, 1893" (Paper D), within the limits specified in the Agreement.

In obedience to the orders of the Russian authorities, the "Worlock" proceeded to Yokohama under a temporary certificate, and reported herself to Her Majesty's Consul there, to whom her papers, gear, and the protocol of the proceedings at Petropaulovsk were handed by the Russian Consul.

Her Majesty's Consul, after careful consideration in consultation with the Crown Prosecutor, came to the conclusion that, as the protocol disclosed no evidence that the master of the "Worlock" had hunted or attempted to take seals within the limits prescribed in the above-mentioned Agreement, proceedings, if taken in Her Majesty's Court for Japan, would assuredly fail. He did not, therefore, feel justified in submitting the case to the Court, and he accordingly released the vessel, and returned to the master her papers and gear.

The facts of the case have formed the subject of strong comment on the part of the Canadian Government, as will be seen from the Colonial Office letter of the 8th May, 1894 (Paper E).

They maintain that there is no evidence of a breach of the Anglo-Russian Agreement; they point out that the "Worlock" had taken no seals, but openly entered the Russsian port of Petropaulovsk with a clearance, seeking repairs, fuel, and water, in the enjoyment of rights for this object specially reserved under Article VI of the Agreement, and they urge that, in view of the danger to British shipping of such interference on the part of the Russian authorities, a strong representation should be addressed to that Government on the subject.

The question therefore arises whether, in all the circumstances of the case, Her Majesty's Government are justified in making such a representation as that desired by the Dominion Government, or whether they ought to refuse so to do.

Should you be of the former opinion, Lord Kimberley would be glad to be informed upon what specific grounds a representation to the general effect desired might, from a legal point of view, most advantageously be based.

Should you, on the other hand, incline to the latter view, his Lordship would wish to be favoured with your suggestions as to the reasons which might most properly be assigned in support of a refusal to intervene in the matter.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour the Earl of Kimberley with your opinion on the questions specially submitted in this letter, as well as with any observations of a more general character which you may be disposed to offer on the case.

I am, &c.

(Signed) H. PERCY ANDERSON.

List of Papers.

(A.) Mr. de Bunsen, No. 129.
(B.) "Russia No 1 (1893)." (Library No. 3527).
(C.) "Seal Fishery (North Pacific) Order in Council, 1893." (Confidential No. 6360*).
(D.) "Seal Fishery (North Pacific) Act, 1893" (56 & 57 Vict., cap. 23).
(E.) Colonial Office, May 8, 1893.

Report.

In our opinion, Her Majesty's Government would not be justified in making such a representation as that desired by the Dominion Government, and that they ought to refuse to do so.

Among the reasons which might properly be assigned in support of the refusal to intervene in the matter, the following appear to us to be the most important:—

Under sub-section 4 of the 1st section of "The Seal Fishery (North Pacific) Act, 1893," a ship, or any portion of her equipment, may be detained if, in the judgment of the naval officer, the ship is preparing to be used in contravention of the Act, and, under sub-section 6 of the same section, the fact of the ship being found having on board fishing and shooting implements within the specified waters is sufficient to constitute a *primâ facie* case against her. The signed protocol, the accuracy of which is not impeached by the master, contains what appears to us a very suspicious statement of facts on the part of the master, and shows, among other things, that the log-book was not in order, that an unsatisfactory account was given of the two nets, that there was no apparent object of legitimate trading, and that the master himself proposed to go to Yokohama, though his reason for going there appears not to be satisfactory. If, in addition, the statement, in the opinion of the Commission, that it appears from the ship's documents that her coming to Petropaulovsk was already decided upon in Victoria is to be taken as accurate, there would be a further strong reason for suspecting the whole story told by the master. That story is not of such a nature that the Russian authorities were bound to accept it.

We may add, though only as a warning to Her Majesty's Government, that it may be questionable whether the action of Her Majesty's Consul at Yokohama in not bringing the vessel to trial was in strict accordance with clause 3 of M. Chichkine's letter of the 10th May, 1893.

We consider the circumstances of this case so exceptional that the apprehensions of the Canadian Privy Council of danger arising from it to legitimate British enterprise in the Pacific are not well founded.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
June 9, 1894.

SWITZERLAND.

No. 73.

The Law Officers of the Crown to the Earl of Rosebery.—(*Received March* 8.)

Royal Courts of Justice, March 7, 1894.

Marriage of Mr. A. L. Carbonell at Zurich.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 6th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Berne, requesting to be supplied with certain information required by the authorities at Zurich in connection with the proposed marriage at that place of Arthur L. Carbonell, a British subject, together with a further despatch from Her Majesty's Minister inclosing the documents relating to the case.

That your Lordship proposed to reply to Mr. St. John's inquiries in the terms of the accompanying draft, but that before doing so your Lordship would be glad to have our opinion as to whether they were right and proper under the circumstances, and, if not, in what respects they might advantageously be modified.

Mr. Bertie further requested that we would at the same time favour your Lordship with any general observations which might occur to us in connection with the case upon a consideration of the papers.

In obedience to your Lordship's commands, we have considered the matter, and have the honour to

Report—

That, in our opinion, the draft despatch initialled by us is one that may, in the circumstances, properly be forwarded.

We have, &c.

(Signed) C. RUSSELL.
JOHN RIGBY.

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List of Papers.

(A.) Mr. F. R. St. John .. .. .. (No. 2. Treaty) January 6, 1894.
And Inclosures.
(B.) Mr. F. R. St. John .. .. .. (No. 3. Treaty) January 20, „
With Inclosures and Minutes.
(C.) Draft despatch to Mr. F. R. St. John.

Annex.

Draft of Despatch to Mr. F. R. St. John.

(No. . Treaty.)

Foreign Office, March , 1894.

Sir,

I HAVE had under my consideration your despatch No. 2, Treaty, of the 6th ultimo, requesting to be furnished with certain information required by the authorities at Zurich in connection with the proposed marriage at that place of Arthur L. Carbonell, a British subject.

The Secretary of State for Foreign Affairs possesses no authority to declare the law of England with reference to any particular case. This can only be done by a competent legal Tribunal sitting judicially for its determination. In the present instance, I am advised that, although it appears on the whole probable that an English Court would uphold the validity of the Decree of Divorce should this question come before it for decision, the matter is not one upon which a very confident opinion can reasonably be expressed on the materials and papers which have been submitted to me.

The original papers inclosed in your despatch No. 3, Treaty, of the 20th ultimo are returned herewith

I am, &c.

[Initialled] C. R.
J. R.

TURKEY.

No. 74.

The Law Officers of the Crown to the Earl of Kimberley.—(*Received March* 13.)

My Lord,

Royal Courts of Justice, March 13, 1894.

Administration of estate of Abdul Messih.

WE were honoured with the Earl of Rosebery's commands signified in Sir Percy Anderson's letter of the 5th instant, transmitting to us a copy of a letter from Messrs. Witham, Lambert, and Roskell,* asking for permission to see the original or a copy of a note addressed by the Ottoman Minister for Foreign Affairs to Her Majesty's Ambassador at Constantinople on the 24th January, 1886; and stating,

That that application was made with reference to the administration of the estate of Anton Youssouf Abdul Messih, an Ottoman subject, and a member of the Chaldean Catholic community, who claimed to be within the Ottoman dominions, a British protected person.

That the case had been from time to time a subject of correspondence with the Foreign Office, chiefly in connection with a claim of the Chaldean Catholic Patriarch to exclusive jurisdiction in regard to the estates of deceased Ottoman subjects (whether British-protected persons or not), belonging to the Chaldean Catholic community.

That certain of the issues involved in the matter had already come before the Judicial Committee of the Privy Council, a full report of whose Judgment would be found in vol. xiii of the Law Reports, Appeal Cases at pp. 431-445. That a copy of the Award of Sir Henry Fawcett, who was then Judge of Her Majesty's Supreme Consular Court for the Ottoman Dominions, but who had sat on that occasion by consent, in the capacity of Arbitrator to decide certain questions arising out of a suit which had been previously pending before his Court, was also inclosed.

Sir Percy Anderson further stated that Lord Rosebery did not suppose that we should find it necessary to refer to these decisions, or to be informed as to the particular point which was about to come before the Judicial Committee, and with regard to which his Lordship had no further information than was contained in Messrs. Witham and Co's. letter. Nor did his Lordship apprehend that any objection could be held to exist in this as in some cases, to allowing the solicitors to one of the parties to peruse, and, if desired, to be furnished with a copy of the document in question; and further to refer to it, or to an admitted copy of it before the Judicial Committee should that Tribunal permit.

That, at the same time, his Lordship before giving his assent to the request of the solicitors, desired to be furnished with our opinion as to whether it might reasonably and properly be complied with under the circumstances.

We have considered the matter, and in obedience to Lord Rosebery's commands, have the honour to

Report—

That in our opinion there is no reason in this particular case why the request of the solicitors to be allowed to see the despatch, or a copy of the despatch dated the 24th January, 1886, should not be complied with on the assumption that there is nothing in it of a confidential nature.

Whether it can be used before the Judicial Committee or not will be a question for the Committee, but we see no reason why objection should be taken to its being tendered, or why a copy should not be furnished for that purpose.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

No. 75.

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, June 6, 1894.

Detention of newspapers &c., at British Post Office at Constantinople.

I HAVE the honour, by direction of the Earl of Kimberley, to request that his Lordship may be favoured with your opinion on a question which has recently arisen in consequence of requests from the Turkish Government for the detention of certain postal packets by the British Post Office at Constantinople.

That Office is not the subject of any express Treaty stipulation, but was established in 1857, shortly after the close of the Crimean war, and has since been maintained on the ground that Great Britain is entitled under Treaties between her and the Porte to the same privileges as are enjoyed by other countries. As far as can be ascertained, the only Treaty provision which specifically alludes to postal facilities is contained in Article LXXVI of the Treaty of Commerce between Russia and Turkey of the 21st June, 1783, which is as follows:—

> "Article LXXVI. Pour faciliter le commerce des sujets respectifs, ainsi que la correspondance réciproque, la Sublime Porte s'engage de pourvoir aux moyens de la célérité, sûreté, et commodité de la poste et des courriers Russes, qui vont et viennent aux frontières de la Russie. C'est à quoi la Cour Impériale de Russie s'engage pareillement de son côté."

In the following year a Treaty of Commerce was concluded between Austria and Turkey which contains the following Article:—

> "Article V. The Sublime Porte declares further that, in accordance with the Commercial Treaties of Belgrade and of Passarowitz, and in view of the good understanding existing between the two Governments, the Government of Austria is entitled to claim for its subjects, without exception, the same privileges, advantages, and favours which are now enjoyed, or may hereafter be enjoyed, by other Frankish nations, and particularly by the French, the English, the Dutch, and the Russians, or by any other still more favoured nation."

In virtue of this stipulation an Austrian Post Office was established at Constantinople, and a French Post Office was subsequently instituted there under Article I of the Treaty of Commerce between France and Turkey of the 25th November, 1838, which accords to French subjects and ships all rights, privileges, and immunities granted by the Sublime Porte to the ships and subjects of any other foreign Power. A German Post Office was established in 1876.

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* February 28, 1894.

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All these Post Offices are maintained to the present day. It appears from a despatch recently received from Her Majesty's Ambassador that the Russian Post Office is managed by the Russian Steam-ship Company, and is under the Russian Consulate.

In 1884 a Circular note was addressed by the Porte to the Great Powers announcing its intention to take the postal service in Turkey into its own hands, claiming the withdrawal of the foreign Post Offices, and proposing as a first step that the land services maintained by some of the Powers in the Ottoman dominions should be at once suppressed. The Representatives of the Great Powers at Constantinople addressed notes to the Porte in reply, refusing to recognize its right to suppress the foreign postal services except after agreement come to with the Powers for their withdrawal. Discussions of considerable length ensued, in which the Austrian Embassy took a leading part, and contended that no modification of the existing system would be allowed until it was shown that the Porte had made adequate arrangements for conducting the service with proper efficiency and regularity; and eventually the subject dropped, though there is a constant tendency on the part of the Turkish Government to revive it whenever opportunity offers.

The British Post Office at Constantinople is not situate at the Embassy, but in a separate building. It is under the control of a Postmaster, who is appointed by Her Majesty's Postmaster-General, and who is for all purposes an officer of the British Post Office. His salary is charged on the Post Office Votes; he is liable to dismissal by the Postmaster-General; and, on the other hand, enjoys all such privileges and emoluments, including the right to pension, as are enjoyed by officers of the Post Office in the United Kingdom. The same remarks apply to the Postmaster's principal assistants. The office, therefore, forms no part of the Embassy, and is of course in no respect entitled to diplomatic immunities.

Letters passing from this country to Turkey travel through the various Continental countries in closed mails under the charge of the several Postal Administrations, and when they reach the frontier of Turkey are handed to Turkish officials, who convey them to Constantinople, and there deliver them to an officer of the British Post Office.

It may be assumed that the object of establishing a British Post Office was to secure a more regular delivery of correspondence to British merchants and residents at Constantinople. Originally, the office was in the nature of a "poste restante," and there was no delivery except to callers; but, owing to the inconvenient accumulation of postal matter thus arising, deliveries were after a time instituted, and letters are now, if not called for, delivered by messengers attached to the British Post Office in the same manner as in England.

From time to time the Turkish Government has objected to the circulation through the British Post Office of newspapers containing matter alleged to be prejudicial to the peace and good government of the country. In 1862 the Law Officers of the Crown were consulted by Lord John Russell, the then Secretary of State for Foreign Affairs, as to the course which the Government would be justified in taking in consequence of a request from the Porte to prevent the distribution by the British Post Office in Constantinople of a newspaper called the "British Star," published in London, and said to contain incitements to revolt. The Law Officers, in advising, stated that they understood the existence of a British Post Office at Constantinople to be a matter of mere permission on the part of the Turkish Government, and not of Treaty stipulation; they thought, therefore, that the rights of the British Government and of British residents were of a very precarious character, and very far from such as could be insisted upon against the reasonable wishes of the Porte, and they were of opinion that the Postmaster-General, with the sanction of the Government, would be perfectly justified in directing the British Postmaster at Constantinople, under the circumstances, to stop the papers in question. They added that they thought it would be better merely to stop the papers and not to hand them over to an officer of the Porte, as the latter course might furnish means of proof or accusation against the particular individuals to whom the papers might happen to be addressed; and they thought that the Porte could not in reason or in law insist upon the papers being delivered to their officer. Copies of this opinion and of the correspondence on the subject which was laid before Parliament are inclosed herewith. (Papers A and B.)

The course suggested by the Law Officers has since been followed in numerous cases where the Porte has objected to the circulation of newspapers through the British Post Office.

The communication from the Porte has usually taken the form of a note addressed to the several Embassies concerned, stating that the introduction of a certain newspaper into the Ottoman dominions has been forbidden, and requesting that orders may be given to the Post Offices of their respective countries not to distribute it.

In July 1881 Lord Granville, the Secretary of State for Foreign Affairs, suggested to the Postmaster-General that on the receipt of such requests Her Majesty's Ambassador should be authorized to order the stoppage of newspapers at the British Post Office on his own authority, but to report every such instance to Her Majesty's Government.

This suggestion was agreed to, and instructions were given to the British Post Office Agents in Turkey to act upon any orders which they might receive from Her Majesty's Ambassador on this subject. (Paper C inclosed.)

These instructions have remained in force up to the present time. But only newspapers passing by newspaper post, and consequently liable to be opened and examined under the ordinary Regulations, have hitherto been so stopped.

In May 1892, however, complaints were received from the Porte respecting the distribution through the British Post Office of a newspaper called the "Turquie Libre," which was secretly printed in this country on thin paper and forwarded in closed envelopes.

It was suggested by the Marquis of Salisbury (then Secretary of State for Foreign Affairs) to the Postmaster-General that as the Porte stated that the envelopes were easily to be recognized, instructions might be given to the Postmaster at Constantinople to hand over to the Turkish Post Office for distribution those envelopes which answered to the description given by the Turkish authorities.

The Postmaster-General, after consulting the Solicitor to the Post Office, replied that such a course would be very damaging to the credit of the British Post Office, and that in order lawfully to give orders for the detention of closed envelopes containing the publication in question, it would be necessary that he should be furnished with a warrant from the Secretary of State.

After a short interval the complaints of the Porte were renewed, and reference was made to Her Majesty's Ambassador at Constantinople, who reported that the envelopes could not be identified with any certainty. No further steps were therefore taken.

The material portions of this correspondence are inclosed herewith. (Papers D to J inclusive.)

Both on this occasion and in reply to an application made in December last for the stoppage of a pamphlet entitled "La Turquie sous Abdul Hamid," Sir Clare Ford (then Her Majesty's Ambassador) stated verbally that requests for stopping or tampering with closed envelopes could not be complied with. These statements were made as expressions of his personal view, and not as the result of instructions from Her Majesty's Government; but they received the Secretary of State's approval.

In September last a Circular *note verbale* was received from the Porte complaining of the introduction through the foreign Post Offices of articles liable to duty, and of obnoxious newspapers and publications, and proposing either that a Turkish official should be present at the opening and closing of the mail-bags, or that the mail-bags should be examined at the Turkish Custom-house on their arrival in the Ottoman dominions.

To this Her Majesty's Chargé d'Affaires was instructed to reply that Her Majesty's Government could not agree to any Turkish intervention beyond the procedure already adopted with regard to the Parcel Post, which seemed to offer every guarantee that could be required against the evasion of customs duties.

The present reference to you arises out of the following circumstances.

During the course of the last month serious remonstrances have been received from the Turkish Government respecting a paper called the "Hurriet," which is printed in England in the Turkish character, and forwarded through the British Post Office for distribution in Constantinople. The paper is written in a spirit of great hostility to the Turkish Government, and contains a number of personal attacks upon the Sultan, many of them of a libellous character, and such as would naturally cause great annoyance and might be regarded as incitements to sedition when levelled at an autocratic Sovereign, whose two immediate predecessors were both deposed, one being still, by many persons, believed to have been assassinated. Translated extracts from the "Hurriet" will be found among the inclosures to this letter. (Papers K, 1, 2, 3, and 4.)

The nature of the remonstrances received from the Turkish Ambassador at this Court on the subject of this paper will be gathered from a telegram sent to his Excellency by the Sultan's personal direction, and communicated by him to Lord

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Rosebery (Paper L), and by an account of representations made by Rustem Pasha in conversation at the Foreign Office (Paper M).

Urgent representations were at the same time made by the Grand Vizier and Minister for Foreign Affairs to Her Majesty's Ambassador at Constantinople, in consequence of which Sir P. Currie visited the British Post Office, and finding that the envelopes containing this newspaper were easily recognizable, addressed a written request to the Acting Postmaster to detain them.

The latter referred to the Postmaster-General for instructions, and was directed, in reply, to detain the paper, if *not* inclosed in letters.

Sir P. Currie then requested the Acting Postmaster to make a different arrangement as follows:—

That the closed envelopes believed to contain copies of the "Hurriet" and addressed to Turkish officials should be handed to the Turkish Post Office for delivery (such being the usual practice with ordinary letters so addressed), and that those addressed to local newspapers and to private firms or persons should be retained in the Postmaster's custody, the addressees being privately informed of their receipt, and requested if they wished to obtain them to send to the Post Office. That if the addressees called for them, the Postmaster should hand the envelopes to them and, ask them to be good enough to inform him if he was right in his belief that they contained the "Hurriet."

These requests will be found in Sir P. Currie's despatch No. 178 of the 18th April, as modified by his telegram of the 22nd April. (Papers S and T.)

The Postmaster-General objected to this measure as amounting to a detention of letters in contravention of his obligations under the Statutes and the declarations made by him and his officers; and stated that, in order to deal with the closed envelopes containing the "Hurriet" newspaper, he must be furnished with a warrant from a Secretary of State. (Paper W.)

Lord Kimberley considered himself justified under the circumstances in issuing such a warrant, which he has furnished in a letter to the Postmaster-General, explaining his grounds for that action. (Papers X and Y.)

The Postmaster-General has thereupon given instructions to the Acting Postmaster at Constantinople to detain any closed packets which by their appearance and other circumstances he has grounds for identifying as containing the "Hurriet," and to return them to the General Post Office. (Paper Z.)

In reply to a case submitted to them by the Solicitor to the Treasury at the instance of the Secretary of State for the Home Department, the late Law Officers of the Crown advised that the Acts 2 & 3 Vict., cap. 12, sec. 12, and 32 & 33 Vict., cap. 24, sec. 1, have been infringed by the omission of the printer of the newspaper to print thereon his name and address; that the paper was actually published in England within the legal meaning of publication, and that to knowingly publish the paper without the printer's name likewise constituted an offence under the Statutes. (Paper A^1.)

The English firm which had printed the "Hurriet" has engaged not to print any fresh issues, and it may be hoped that no further question in regard to this newspaper will arise.

But it is possible that at any moment some similar request may be received from the Turkish Government, under circumstances perhaps of greater difficulty, and Lord Kimberley thinks it very desirable that the Postmaster-General and he should be fortified with your opinion as to the course which they shall pursue, and the principles of law by which they should be governed.

The Solicitor to the Post Office has furnished the following statement of the bearing of the English Statute Law upon the matter:—

"By section 10 of 'The Post Office Management Act, 1837' (1 Vict., cap. 33), it is enacted that 'no person hereafter appointed shall be capable of holding the office of Postmaster-General, or of being an officer of the Post Office, unless such person shall have first made and subscribed before a Justice of the Peace the declaration contained in the Schedule annexed to the Act.'

"The declaration contained in the Schedule is to the following effect:—

"'I,   , do solemnly and sincerely declare that I will not wittingly, or willingly, open or delay, or cause or suffer to be opened or delayed, contrary to my duty, any letter or any thing sent by the post, which shall come into my hands, or custody, by reason of my employment relating to the Post Office, except by the consent of the person or persons to whom the same shall be directed, or by an express warrant in writing, under the hand of one of the Principal Secretaries of State, for that purpose, or except in such cases where the party or parties to whom such letter, or any thing sent by the post, shall be directed, and who is, or are, chargeable with the payment of the postage thereof, shall refuse or neglect to pay the same; and except such letters or any thing sent by

the post, as shall be returned for want of true directions, or when the party or parties to whom the same shall be directed cannot be found; and that I will not in any way embezzle any such letter or any thing sent by the post as aforesaid; and I make this solemn declaration conscientiously intending to fulfil and obey the same, and by virtue of the provisions of an Act passed in the first year of the reign of Her Majesty Queen Victoria, intituled "An Act for the Management and Regulation of the Post Office."

....

"'This declaration was made before me, at   in the   of   ,
the   day of   , 18   .'

....

"By section 25 of 'The Post Office Offences Act, 1837,' it is enacted that 'every person employed by or under the Post Office, who shall, contrary to his duty, open, or procure or suffer to be opened, a post letter, or shall wilfully detain, or delay, or procure, or suffer to be detained or delayed, a post letter, shall in England and Ireland be guilty of a misdemeanour, and in Scotland of a crime and offence: Provided that nothing contained in the section shall extend to the opening or detaining or delaying of a post letter returned for want of a true direction, or by reason that the person to whom the same was directed is dead or cannot be found, or has refused the same, or has refused or neglected to pay the postage thereon, nor to the opening or detaining or delaying of a post letter in obedience to an express warrant in writing under the hand (in Great Britain) of one of the Principal Secretaries of State, and in Ireland under the hand and seal of the Lord-Lieutenant of Ireland.'

"A 'post letter' is defined by 'The Post Office Protection Act, 1884,' section 19, to mean a postal packet as defined by the Act (that is, shortly, any missive sent by the post) from the time of its being delivered to a Post Office to the time of its being delivered to the person to whom it is addressed. And the expression used in the 25th section of the Post Office Offences Act—'every person employed by or under the Post Office'—is defined by section 47 of the same Act to mean every person employed in any business of the Post Office according to the interpretation given to 'officer of the Post Office,' and that expression is interpreted to include the Postmaster-General. Hence, the enactment applies to the Postmaster-General as well as to his officers.

"Having regard to these enactments, the Postmaster-General contends that he is bound to observe the inviolability of correspondence committed to his care wherever he is engaged in Post Office business, whether in the United Kingdom or elsewhere, and that every officer employed in the British Post Office at Constantinople is as firmly bound to observe the provisions of the Post Office Acts on this and on all other subjects as though he were performing his duties in the United Kingdom.

"In the Postmaster-General's view there is only one way in which the opening and detention of letters can be legally authorized, and that is by warrant of a Secretary of State.

"The power exercised by the Secretaries of State to open and detain letters conveyed by the post has existed from the earliest times, and seems to have been in its origin in the nature of a condition tacitly imposed by the Crown upon the conveyance by its officers and servants of the letters of subjects. In the Ordinance of the Protectorate passed in 1657 (Scobell, p. 511), which may be said to have established the General Post Office, it is recited that the erecting and settling of one General Post Office 'hath been and is the best means not only to maintain a certain and constant intercourse of trade and commerce betwixt all the said places to the great benefit of the people of these nations, but also to convey the public despatches, and to discover and prevent many dangerous and wicked designs which have been and are daily continued against the peace and welfare of this Commonwealth, the intelligence whereof cannot well be communicated but by letter of escript.' In subsequent documents relating to the Post Office, of the time of the Stuarts (though not in all of such documents), the right of the Secretaries of State to open and detain letters is referred to; and in the consolidating Statutes of 9 Anne, cap. 10, the right is expressly recognized, the penalty otherwise imposed for opening, detaining, or delaying letters being excused in the case of 'an express warrant in writing under the hand of one of the Principal Secretaries of State for every such opening, detaining, or delaying.'

"This Act remained in force until the passing of the several consolidating Post Office Acts of the first year of the present reign, from which quotations have already been made. It will thus be seen that, while the Crown has, since the first establishment of the Post Office, claimed a certain right of opening and detaining letters, that right has never been exercised by the Postmaster-General, but by one of the Principal Secretaries of State as directly representing the Crown.

"It will be observed that the enactments of 1837, to which reference has been made, extend not only to closed letters, but to every missive conveyed by the post.

"There is, however, a distinction.

"The Postal Union Convention (Article XVI (5)) reserves to the Government of every country of the Union the right to refuse to convey over its territory, or to deliver, articles enjoying the advantage of reduced rates of postage in regard to which the Laws, Ordinances, or Decrees which regulate the conditions of publication or circulation in such country have not been complied with.

"The articles referred to are, in fact, those which are sent by open post; and it may be that, by the clause in question, the Turkish Government would be justified in refusing to carry by open post newspapers which it considered prejudicial to the interests of its country,—although the Article seems to relate rather to the form of publication and the conditions of circulation than to the contents of the documents referred to.

"However this may be, the Article indicates that a distinction is to be drawn between closed letters and other mail matter, and, by reserving to each Government the right to stop the second description of mail-matter only implies that closed letters are to pass inviolate.

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"Article XXI of the Convention provides that, except where there is an express stipulation, the Convention does not justify any weakening of the Laws of any one of the contracting countries.

"The first Postal Union Convention was made at Berne in 1874, and the Post Office Act of 1875 (38 Vict., cap. 22) was passed to enable effect to be given to the provisions of the Convention. By this Act (section 2) power is conferred upon the Treasury by Warrant to make such Regulations as may seem to them necessary for carrying into effect any arrangement between Her Majesty and any foreign country with reference to the conveyance by post of any postal packets; and, by section 4, it is provided that all postal packets shall be posted, forwarded, conveyed, and delivered, subject to such Regulations, conditions, prohibitions, and restrictions respecting the time and mode of posting, and delivery, and of the payment of rates, postage, and other sums chargeable under the Act, or under any Warrant made under the Act, and respecting stamps, covers, forms, dimensions, maximum weights, inclosures, use of packets (other than letters) for making communications, and otherwise, as the Treasury may from time to time by Warrant, made on the representation of the Postmaster-General, direct. Any postal packet posted or sent in contravention of any Warrant may be detained by the Postmaster-General, opened and returned to the senders, or forwarded to its place of destination, charged in either case with such rates of postage as the Postmaster-General, with the consent of the Treasury, shall from time to time direct. (See 'Post Office Act, 1875,' section 4, and 'Post Office Duties) Act, 1847' (10 & 11 Vict., cap. 85), section 10.)

"Under the authority conferred upon the Treasury by this Act, a Treasury Warrant was made on the 30th June, 1892 ('The Foreign and Colonial Post Warrant, 1892'), by which it is provided, amongst other things (Article 19), that: 'There shall not be posted or conveyed or delivered by post under this Warrant any postal packet containing any article which, by the laws of the country or place in which the packet is posted, or to which the packet is addressed, it is unlawful to send by post. Any such packet, if posted or tendered for conveyance by post, may be detained, and either returned and given up to the sender thereof, or dealt with or disposed of in such other manner as may be authorized by the Postmaster-General.'

"Under this Warrant the Postmaster-General has considered that he is entitled, consistently with the provisions of the Acts of 1837, to stop a newspaper going by the open post when he has been duly informed by the Turkish Government that it is unlawful to send such paper by post in Turkey, the examination of open packets in the post being part of the ordinary duties of the Post Office. Similarly, if a closed letter accidentally becomes unsealed or open in the post, and is noticed by an official of the Post Office to contain a prohibited newspaper or other prohibited article, the Postmaster-General would be authorized to detain it.

"There are, indeed, various provisions of the Post Office Acts (see particularly section 20 of 'The Post Office Act, 1870,' 33 & 34 Vict., cap. 79, and section 4 of 'The Post Office (Protection) Act, 1884,' 47 & 48 Vict., cap. 76) prohibiting generally the conveyance by post of various articles.

"In accordance with the Act of 1884, the warrants relating both to the inland and to the foreign and colonial post prohibit the transmission of certain articles, and certain rules on the subject are published in the 'Post Office Guide.'

"But there is no authority in any of such enactments or Regulations to open any closed packet, and all the rules laid down must be read as subject to the qualification that the Postmaster-General becomes aware, either from the fact that the packet is sent by the open post, or, in the case of the letter post, from the statement of the sender or the accidental opening of the packet, that the forbidden articles are present.

"The Postmaster-General has always held that it is contrary to his duty and to the duty of any officer of the Post Office, under the enactments of 1837, to open any closed letter on the chance or suspicion of its containing a forbidden document, and that, speaking generally, he is not at liberty to open or detain any closed letter, except under the authority of a warrant of the Secretary of State.

"As supporting this view it may be useful to refer to the provisions of the Penny Postage Act (3 & 4 Vict., cap. 96) with reference to contraband goods. By section 65 of that Act the Postmaster-General or any of his officers is authorized to detain any post letter suspected to contain contraband goods, and to forward the same to the Commissioner of Customs, who, in the presence of the person to whom the same may be addressed, or, in his absence in the case of non-attendance after notice, may open and examine the same, and, if contraband goods are discovered, may retain the letter and its contents.

"It will be seen (1) that even for the protection of the Customs it required a statutory enactment to authorize the detention of a letter; and (2) that such enactment does not authorize the opening of the letter by the Postmaster-General, but by the Government Department assumed to be specially interested."

Accepting the above as a complete statement of the provisions of English Statute law applicable to the case, Lord Kimberley still entertains grave doubt whether the Statutes referred to and the declarations made by the Postmaster-General and his officers can be held to bind them to deliver in a foreign country (according to the usual course of the post) at the residence of the addressee a closed packet which is suspected to contain a publication contrary to the law of that country and calculated to disturb order and public security, and which on that ground the Postmaster-General and his officers have been formally requested not to deliver. The officers of the Postmaster-General in Turkey are under the same obligations as other foreign residents to respect the law and Police Regulations of that country, and are, moreover, in certain cases amenable to the Turkish Tribunals in respect of breaches of the criminal law of that country committed by them against Turkish subjects.

As Lord Kimberley understands the matter, every Statute must, as far as its language permits, be so interpreted and applied as not to be inconsistent with the comity of nations, and with the established rules and exceptions recognized by international law.

Parliament can no doubt legislate in respect of, and cast statutory duties upon, British subjects when beyond the actual limits of the Queen's dominions; but there is a general presumption of the strongest kind that the Legislature, when so doing, does not intend to make obligatory on such British subjects any act which would in any particular foreign country where it might be performed constitute a breach of the municipal law there prevailing.

In the case of the Ottoman dominions, moreover (as of other countries where Her Majesty possesses extra-territorial jurisdiction over British subjects), English law, both Statute and other, is administrable solely under the provisions of Orders in Council which in express terms recognize the general principles above adverted to, and provide that English law shall be applied, and that Her Majesty's jurisdiction shall be exercised according to the provisions of such Orders in Council, and not otherwise (see more particularly "Ottoman Order in Council, 1873," Articles 5 and 6—marked passages).

Under such circumstances it seems to his Lordship that omission to deliver such a packet does not constitute a breach of English law as applicable to British subjects in Turkey, and that notice to the addressee that it lies at the Post Office and can be opened there is a sufficient fulfilment of the Postmaster's statutory duties.

To the Postmaster-General it appears that his position is not governed by the considerations of law applicable to the status of private British subjects in foreign countries; that he is acting in Turkey not as an ordinary subject of the Crown, but as Her Majesty's Postmaster-General; and that, when acting in that capacity, he can only act subject to the Laws and Regulations applicable to the execution of his office. The assent of the Turkish Government to the establishment of a branch of the British Post Office at Constantinople necessarily carries with it, in the Postmaster-General's view, the right to conduct that Post Office in accordance with the Municipal Postal Laws of the United Kingdom.

Lord Kimberley, on the other hand, cannot help feeling doubts whether this last conclusion can be said to flow either necessarily or legitimately from the premisses, or whether it could be successfully maintained in diplomatic discussion. The consent of the Porte to the maintenance of the British Post Office at Constantinople is not recorded in any formal written document, and the Porte can at any time demand its withdrawal unless it be conducted on principles similar to those observed by the Post Offices of other countries.

Two further despatches have recently been received from Her Majesty's Ambassador, in one of which his Excellency explains his action in the present case; in the other he forwards a Memorandum of the course pursued by the French, Austrian, and Russian Post Offices in regard to newspapers forbidden by the Porte. (Papers B* and C*.)

Lord Kimberley thinks it highly expedient that nothing should be done to cause a departure from the present practice, by which all requests on the part of the Turkish Government with regard to the British Post Office are addressed to Her Majesty's Ambassador in the first instance, in order that he, and if necessary Her Majesty's Government, should have the opportunity of judging whether the request is a reasonable one before instructions are given to the Post Office.

Whether those instructions are given by the Ambassador, and subsequently approved by Her Majesty's Government, or whether they form the subject of a request from the Secretary of State to the Postmaster-General, and whether in the latter case the request is conveyed in a letter or in the more formal shape of a warrant, appear to Lord Kimberley to be matters of administrative detail, in regard to which the requirements of English law must, of course, take precedence of considerations of mere convenience.

But it might, under certain circumstances, prove embarrassing that there should be no alternative middle course between allowing forbidden publications to be distributed (according to the usual course of the post) in closed packets, and directing that such closed packets shall be stopped under warrant. And for obvious reasons, it is desirable to mark as far as is possible the fact that the detention or non-delivery of such packets is an act of compliance with the law of Turkey rather than a measure of State policy for the purpose of pleasing the Turkish Government; such compliance being, of course, an act of international comity, and not involving an admission that the Postmaster-General in the execution of his office is regulated by the law of Turkey.

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I am accordingly to request that you will take this letter and the accompanying papers into your consideration, and will favour Lord Kimberley with your opinion—

1. Whether the course hitherto pursued with regard to the detention of forbidden newspapers sent in open bands through the British Post Office has been right and proper.

2. Whether the course pursued in the present instance in regard to the detention under a warrant of the Secretary of State of closed packets which are believed on sufficient grounds to contain the "Hurriet" is correct, and in accordance with English law and constitutional practice.

3. Whether the Postmaster-General has been correctly advised that he and his officers cannot without a warrant from the Secretary of State refrain from delivering by messenger in Turkey (according to the usual course of the post) closed packets which they have reasonable grounds for believing to contain publications of a seditious or libellous character forbidden by the law of Turkey; whether, in fact, such a course constitutes an "opening, detaining, or delaying," which can only be resorted to in virtue of such a warrant.

4. Whether there is any middle course available between distributing such packets (according to the usual course of the post) and seizing them under a Secretary of State's warrant.

Lord Kimberley will also be glad to be favoured with any general observations and suggestions which you may have to offer on the matter.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Law Officers (Confidential No. 1301, p. 98)		April	26,	1862.
(B.)	Correspondence respecting the "British Star" newspaper.				
(C.)	Extracts of correspondence with General Post Office in 1881.				
(D.)	Sir C. Ford	(No. 155)	May	9,	1892.
(E.)	To General Post Office		May	17,	„
(F.)	General Post Office		June	3,	„
(G.)	To Sir C. Ford	(No. 193)	September	23,	„
(H.)	Ditto	(No. 215 A)	October	19,	„
(I.)	Sir C. Ford	(No. 350)	November	16,	„
(J.)	Ditto	(No. 59)	February	24,	1893.
(K.)	1. Extracts from the "Hurriet"		April	2,	1894.
	2. Ditto		April	12,	„
	3. Ditto		April	14,	„
	4. Ditto		April	17,	„
(L.)	Rustem Pasha		April	13,	„
(M.)	To Sir P. Currie	(130 A)	April	21,	„
(N.)	Sir P. Currie	(No. 48. Telegraphic)	April	16,	„
(O.)	General Post Office		April	19,	„
(P.)	To Sir P. Currie	(No. 22. Telegraphic)	April	20,	„
(Q.)	Sir P. Currie	(No. 52. Telegraphic)	April	21,	„
(R.)	To Sir P. Currie	(No. 24. Telegraphic)	April	21,	„
(S.)	Sir P. Currie	(No. 178)	April	18,	„
(T.)	Ditto	(No. 53. Telegraphic)	April	22,	„
(U.)	To General Post Office		April	25,	„
(V.)	General Post Office		April	25,	„
(W.)	Ditto		April	28,	„
(X.)	To Mr. A. Morley		April	28,	„
(Y.)	Ditto		April	28,	„
(Z.)	Mr. A. Morley		April	30,	„
(A*.)	Home Office		May	8,	„
(B*.)	Sir P. Currie	(No. 210)	May	7,	„
(C*.)	Ditto	(No. 212)	May	7,	„

Statutes to which reference is made in the statement of the Solicitor to the General Post Office.

Report.

We are of opinion—

1. That the course hitherto pursued with regard to the detention of forbidden newspapers sent in open bands through the British Post Office has been right and proper.

2. That the course pursued in the present instance in regard to the detention under a warrant of the Secretary of State of closed packets which are believed, on sufficient grounds, to contain the "Hurriet," is correct and in accordance with English law and constitutional practice.

The Turkish Government is entitled to object to the introduction, through a foreign Post Office, of matter contrary to the Turkish Law, and it would be a departure from international usage and propriety for a foreign Power to allow its Post Office within Turkey to be used for purposes contrary to the law of Turkey. A Secretary of State is empowered to prevent such a practice by warrant.

3. That the Postmaster-General has been correctly advised that in Constantinople he is acting as Her Majesty's Postmaster-General, and, in that capacity, can only act under the Laws and Regulations applicable to his office; but we are of opinion that, in the contention of the Postmaster-General, sufficient importance is not attached to the principle that the Municipal Law of the country ought to be respected.

We think that there is much ground for the opinion that all necessary powers are already given by the Treasury Warrant of the 30th June, 1892, and that such opening, detaining, and delaying, as is mentioned in question 3, might be justified under that warrant, as well as under a warrant from the Secretary of State, but to avoid any doubt on this point, we suggest that the course recommended in the next paragraph of this Report be adopted.

4. That there *is* a middle course available between distributing such packets, according to the usual course of the post, and seizing them under a Secretary of State's warrant.

It is competent to the Treasury under "The Post Office Act, 1875," sec. 4, to issue a warrant directing that all postal packets posted, forwarded, or conveyed for delivery in Turkey shall be delivered subject to the condition that, if the Postmaster-General or his officers believe they contain inclosures which it is unlawful to send by post in Turkey, the person to whom they are addressed shall open them in the presence of such officer, and satisfy him that they do not contain such prohibited matter.

We do not consider that there is any other observation or suggestion which we can usefully make.

(Signed) JOHN RIGBY.
R. T. REID.

Royal Courts of Justice,
July 31, 1894.

UNITED STATES.

No. 76.

The Law Officers of the Crown to the Earl of Rosebery.—(Received January 19.)

My Lord, *Royal Courts of Justice, January* 18, 1894.

Illegal seizure of "Howard Holbrook" by Newfoundland authorities. Claim of U.S. citizens Oakes and Foster.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 1st January, stating that he was directed by your Lordship to transmit to us the papers relating to the claim of Messrs. Oakes and Foster, citizens of the United States, on account of the illegal seizure of their fishing schooner, the "Howard Holbrook," by the Colonial authorities of Newfoundland.

That previous correspondence on this matter had been referred to our predecessors, and reported on by them on the 17th March, 1892.

That, upon receipt of their Report, the Governor of Newfoundland was informed that the Law Officers of the Crown had advised that the action of the Newfoundland authorities did entitle the owners and master of the "Howard Holbrook" to compensation, and he was requested again to bring the case before his Ministers, and urge upon them the desirability of admitting the liability of the Government of Newfoundland to make reasonable compensation, the amount of which might be left to be

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arranged diplomatically between Her Majesty's Government and the Government of the United States.

That Sir Terence O'Brien was further asked to furnish Her Majesty's Government with any criticisms which his Ministers might have to offer on the claim presented by Messrs. Oakes and Foster, and also with a statement of the amount which they would consider, in all the circumstances, adequate compensation for the loss sustained by the owners, and for the imprisonment of the master.

That after considerable delay a reply was received from the Government of Newfoundland, forwarding an extract from a letter from the Attorney-General of the Colony, to the effect that he adhered to the opinion he had already given as to the non-liability of the Government of Newfoundland for the claim preferred against them, and calling in question the damages alleged to have been sustained.

That to this letter your Lordship had taken very strong objection on the grounds explained in a letter to the Colonial Office on the 17th December, 1892.

That two despatches were accordingly addressed on the subject to the Governor of Newfoundland by the Secretary of State for the Colonies, of which copies were inclosed.

That in a letter from the Colonial Office, dated the 25th February, 1893, further explanations received from the Attorney-General of the Colony of Newfoundland in regard to the opinions he had expressed would be found.

That on the 20th May the Colonial Office had forwarded to the Foreign Office a despatch received from the Governor of Newfoundland, inclosing a Report made by Judge Prowse at the request of the Attorney-General of that Colony.

That in his Report, Judge Prowse refuted the statements made in the case, and showed reason for reducing the claim of the owners of the "Howard Holbrook" for compensation, which he considered should only be paid, if at all, under protest.

That the facts which had thus come to light, and to which attention had been particularly drawn in Judge Prowse's detailed Report, appeared to present certain portions of the case in an aspect somewhat different from that which it bore when originally submitted to our predecessors, though it might be doubted whether the new matter contained in these more recent papers would have caused them to modify the substance of their Report of the 17th March, 1892, or would lead us to dissent from its general tenour.

L.O.R. 1892. (Conf. 6347). p. 79.

That it appeared to your Lordship, as at present advised, that the Judgment of the Stipendiary Magistrate of which the claimants complained was very probably erroneous on grounds other and entirely distinct from those mentioned in the decision of the Court of Appeal reversing his Judgment, and that, therefore, it might not be necessary to consider with any very great minuteness the strictures, whether ill- or well-founded, which had been offered by Judge Prowse on that decision.

That at the same time, there was no reason to doubt that the action of the Stipendiary Magistrate with reference to the case was perfectly *bonâ fide*, and under those circumstances it would seem that, as matter of strict law, the decision of the Court of First Instance, even although it was admittedly erroneous in itself, and was also subsequently set aside upon appeal according to due and proper course of law, did not suffice to found any claim for compensation as of right from the country whose Tribunals had committed the error.

That such a decision might, however, very well afford ground upon which to base a moral claim, which Her Majesty's Government would be disposed to recognize, for reasonable compensation, as an act of grace.

That it would be observed that the Report of the late Law Officers in no way conflicts with this view, and, indeed, the opinion expressed by them, that it was "desirable that the amount of such compensation should be settled by the direct action of Her Majesty's Government without recourse to legal proceedings," tended to indicate that in their view also the action of the Newfoundland authorities gave the owners and master of the "Howard Holbrook" a moral claim to compensation as an act of grace, rather than a legal claim thereto as matter of right.

That your Lordship would be glad to know whether the views expressed in Mr. Bertie's letter met with our concurrence, and we were also requested, in taking the papers into our consideration, to favour your Lordship with our opinion generally upon the present aspect of the case, and as to the course to be now pursued with regard to it by Her Majesty's Government.

Mr. Bertie further requested us to furnish your Lordship with such more detailed observations and criticisms on the correspondence generally, and on Judge Prowse's Report in particular, as we thought might be of assistance to your Lordship in dealing with the matter.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That the offence with which the master of the "Howard Holbrook" ought to have been charged was having in his possession a quantity of bait fish for the purpose of exportation without a licence. (Section 1, subsections (2) and (5) of the Act of 1889, cap. 6.)

The information was for having more than allowed by the licence, and the conviction is for an offence in the latter form.

We are of opinion that the latter description of the offence was substantially correct, but Mr. Justice Little seems to have come to the conclusion that because a fee was charged for the licence (which was apparently unauthorized), and because there was no proclamation under Section 4 of the Act of 1889, cap. 6, that no offence against the Act was committed. In other words, that, under the licence in fact granted, the master might take any quantity of fish he liked, and for any purpose he liked, without infringing the Act.

We cannot agree in this view. But it is obvious that the Newfoundland authorities are themselves to blame for the complication which has arisen. If they had followed the 4th and 5th (amongst other) Sections of the Act of 1889, there would have been no difficulty, and the affidavit contemplated by Section 5 would have fixed the purpose for which the bait fish were required, and the proclamation under Section 4 would have fixed the quantities proper to be had for the purpose of exportation.

Mr. Justice Little further decided that the conviction was bad, because it adjudged penalties not authorized by the Statute. We think that in this respect Mr. Justice Little was right, and that the conviction was properly quashed.

Although, therefore, we are unable to agree in Mr. Justice Little's view of what may be called the merits of the case, we think the conviction by the Magistrate was in the respect indicated erroneous.

But as to the merits of Mr. Justice Little's Judgment, it is to be borne in mind that it stands as the Judgment of a Judge of the Superior Court, from which, as we understand, there is no appeal.

In these circumstances, although it is not to be taken that every unsuccessful prosecution entitles the person prosecuted to compensation, we do not desire, at this stage of the proceedings, to contravene the view of our predecessors, that the case is one in which it may be desirable to pay moderate compensation.

We think our predecessors in office had not before them the facts as fully as we have, and assuming those facts to be as set out in the Report of Judge Prowse, and in the accompanying papers, we think the conduct of the master of the "Howard Holbrook" highly reprehensible.

There seems to be no doubt that the bait was intended for exportation, that he knew that he was receiving a much larger quantity than the terms of the licence permitted—that he bribed an officer of the Government in order to obtain such quantity—and that he resorted to contrivance to conceal the fact.

Assuming that moderate compensation is to be given, we think that the criticisms of Judge Prowse upon the claim are well-founded, and that the figures he suggests would represent ample compensation.

We think it not improbable that our predecessors, if they had had all the facts before them, might have thought that no compensation should have been paid, and if the case came before us for the first time that would have been our own view; but having regard to the irregularities on the part of the Newfoundland authorities, we think the better course is that above suggested, but care should be taken not to admit that compensation is given as matter of right.

The amount paid for the licence ought to be returned.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

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List of Papers.

(A.)	Mr. Lincoln	April 13, 1891.
(B.)	Colonial Office	January 3, 1892.
(C.)	Ditto	February 8, „
(D.)	Ditto	February 10, „
(E.)	Ditto	March 1, „
(F.)	Ditto	March 15, „
(G.)	Law Officers. (Confidential No. 6347, p. 79)	March 17, „
(H.)	Colonial Office	April 25, „
(I.)	Ditto	December 6, „
(J.)	To ditto	December 17, „
(K.)	Colonial Office	January 5, 1893.
(L.)	Ditto	February 25, „
(M.)	Ditto	May 20, „

No. 77.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, March* 8, 1894.

Seizure of "Coquitlan" for breach of U.S. revenue laws.

I HAVE the honour to transmit to you, by direction of the Earl of Rosebery, the further papers noted in the accompanying list which relate to the seizure of the British ship "Coquitlan" at Port Etches in 1892, for an alleged breach of the United States' revenue laws.

The case has already received the consideration of yourselves or of your predecessors in office on four occasions, and the Reports then given on the questions raised are inclosed. (See Papers A, B, C, and D.) The papers which accompanied the references on each occasion are also sent herewith in case you should find it necessary further to consult any of them, and they have been placed for convenience of reference in a separate bag.

The last occasion upon which you reported on this subject was the 18th March, 1893, and upon the 24th April of the same year a note was presented by Her Majesty's Ambassador at Washington to the United States' Government, following generally the terms recommended in your Report. A copy of this note is inclosed in Sir J. Pauncefote's despatch No. 109 of the 4th May (Paper E).

On the 20th September the Colonial Office forwarded a Petition from the owners' solicitor, suggesting that if an adverse decision were given in the United States' Court, the United States' Government might be approached with a view to obtain the imposition of a personal penalty on the master in place of the forfeiture of the vessel.

Such a course was, however, considered inexpedient at that time, as it might have been construed as tantamount to an admission that the vessel had committed an offence cognizable in the United States' Courts; but Sir J. Pauncefote was authorized, in the event of the vessel being condemned and her forfeiture decreed, to apply for a mitigation of the penalty as desired by the owners, but without prejudice to the diplomatic claim for redress which had been already made.

The case meanwhile pursued its natural course, and was in due time tried at Sitka, in the district Court of Alaska, where Judgment was recorded against the vessel in November last, and the owners, in discharge of their obligation under the bail bonds into which they had entered, offered to deliver the vessel to the United States' authorities. This was reported to Lord Rosebery by the Secretary of State for the Colonies, and at his instance Her Majesty's Ambassador at Washington was informed of the facts, and instructed, by telegraph (Paper marked F), to endeavour to stop the sale of the vessel and to procure her return to her owners pending a diplomatic settlement of the question.

The owners were at the same time warned, through the Canadian Government, not to lose their right of appeal against the Judgment of the Court.

In reply to Sir J. Pauncefote, reported in his despatch No. 231 (Paper G), that he had, on receipt of the telegraphic instructions above referred to, reminded the United States' Government that he had received no reply to his communication of the 24th April, and had pressed strongly that the vessel should be delivered back to her owners pending the result of the diplomatic discussion. He had, moreover, added that there was no dispute about the facts, and that he felt sure Mr. Gresham would conclude after examination that there could be no dispute about the law. Mr. Gresham, on his part, had expressed regret at the delay which had taken place in answering the note of the 24th April, and had promised an early decision. He (Mr. Gresham) concurred in the desirability of preventing any action such as the sale of a ship, but thought it would be very satisfactory if the owners would appeal to the Supreme Court with a view of obtaining a Judgment which would accelerate the action of the Executive, and would be conclusive for the future in all cases of a similar kind.

A copy of the Judgment of the Court at Sitka is inclosed in the Colonial Office letter of the 21st December (Paper H).

It will be seen that the Decree for the forfeiture of the ship is based on the finding that she had violated certain provisions of the United States' Customs Act in transferring cargo within the 12-mile limit (so-called) of the coast without having reported or having paid customs duty at a port of entry; but it will be also seen that the Judgment admits that the transhipment of the skins, &c., took place outside the 3-mile limit.

Her Majesty's Government have from the outset protested against any claim on the part of the United States to bring foreign vessels within the jurisdiction of their municipal law by reason of anything done outside the limit of 3 miles from the coast. It therefore appears impossible for them to recognize the jurisdiction of the Supreme Court of the United States, to which an appeal would lie, in matters occurring beyond this limit.

Sir J. Pauncefote was instructed to speak to Mr. Gresham in this sense, and reported fully his action in so doing in his despatch No. 9 of the 15th January, 1894 (Paper I).

Sir J. Pauncefote represented the hardship of forcing the owners to continue costly and lengthy litigation to vindicate so well-established a principle of international law as the above in regard to maritime jurisdiction.

Mr. Gresham replied that it did not lie in his power to remove the case from the consideration of the Court of Appeal.

The international question would, he said, remain intact, and the appeal would proceed without prejudice to either country.

Mr. Gresham added, in a subsequent note, that the application of the owners to surrender the ship in discharge of that bond had been refused, and that they had prosecuted an appeal to the Circuit Court, which was now pending, and was set down for hearing in April next. He further stated that the United States' Attorney-General was unwilling to confess error upon the record, and thus terminate the judicial proceedings. Mr. Gresham therefore suggested that the international question should be allowed to rest until the determination of the appeal, when its consideration could be resumed.

Sir J. Pauncefote reported that he saw little prospect of shaking this decision.

Although the owners complained through the Canadian Government of the unnecessary expense of an appeal, steps were taken to warn them of the importance of preserving their right of appeal.

The Canadian Government reported, however, that the owners were not prepared to appeal on their own responsibility, and that the date for appeal expired on the 14th February.

It will be seen from the inclosure in the Colonial Office letter of the 17th instant (Paper J), that the owners did take the necessary steps to preserve their appeal, but expressed the hope that an understanding would be reached which would not necessitate the further continuance of costly litigation; and also that the Judgment would be stayed and the vessel released.

A despatch from the Governor-General of Canada, embodying the views of his Ministers on the subject at greater length, will be found in the Colonial Office letter of the 1st March (Paper L).

It will be further seen from that letter that the Canadian Government inquired whether Her Majesty's Government required the owners of the "Coquitlan" to exhaust the remedies provided by the United States' Courts.

Thence arises the first question upon which your opinion is solicited, viz., whether it is practicable or expedient that Her Majesty's Government should require the owners to proceed with the appeal.

In the second paragraph of the Colonial Office letter, it is pointed out that the position taken up by Her Majesty's Government on the advice of the Law Officers of the Crown was, as set forth in Sir J. Pauncefote's note to Mr. Gresham of the

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24th April last (Paper E), "that where a seizure takes place outside the 3-mile limit of a British vessel engaged in an attempt to break the revenue laws of another country they would not complain of the capture," that being the principle upon which, in the interests of the comity of nations, the Hovering Acts and similar legislation by other countries had been tacitly acquiesced in.

Lord Ripon gathers from the opinion expressed in your Report of the 18th March, that the provisions of the Hovering Acts are not to be regarded as a substantive part of municipal law binding on the ships of all nations coming within the specified area, but that their application is only to be recognized in cases where a vessel is engaged in proceedings preliminary or auxiliary to an offence to be consummated within the jurisdiction, and that a nation is under no obligation to recognize seizures of its vessels made in pursuance of such laws for acts begun and completed outside the 3-mile limit, and having no connection with or relation to anything done or to be done in the territory or within the acknowledged territorial jurisdiction of the nation making such seizure.

Lord Rosebery would be glad to learn whether this is a correct interpretation of your Report on this point.

The Judgment of the United States' Court in the case of the "Coquitlan" proceeds on the assumption that the provisions of the United States' Hovering Acts are substantially and entirely binding on foreign vessels, and admits, as already pointed out, that the alleged offence was committed between 3 and 7 miles from the shore, and that the goods transhipped were not intended to be landed, or dealt with in any way, within the territory or jurisdiction of the United States.

In these circumstances Lord Ripon, though, with a view of meeting the wishes of the United States, he would be glad if the owners would prosecute the appeal, sees no ground upon which Her Majesty's Government should require them to do so.

Lord Rosebery would desire to be informed whether you concur in the views expressed by Lord Ripon upon this point.

In the seventh paragraph of the Colonial Office letter, it is further pointed out that, as is admitted by Judge Truitt in his decision, "the United States at that time was asserting an absolute ownership over the fur-seals born and reared on the Pribyloff Islands, which composed the herd which the vessel involved in this case was hunting," and the action of the United States' authorities in seizing the "Coquitlan" would probably never have been taken but for their desire to maintain and prosecute that claim in every possible way by hampering the proceedings of the pelagic sealers who were infringing the alleged rights of the United States.

That question has, it is added, now been closed by the decision of the Behring Sea Arbitration Tribunal, and it appears to Lord Ripon somewhat ungracious on the part of the United States to refuse to come to a friendly settlement of this case until the owners have been put to the further expense of prosecuting the appeal to the Supreme Court, the decision of which can, it is admitted, have no effect on the international grounds upon which Her Majesty's Government maintain that the seizure was illegal, and which seem a proper subject for diplomatic discussion, and not within the competence of the Municipal Tribunal, which is bound to administer the law as it stands.

Upon this last point the attention of the Secretary of State has recently been drawn to a passage in the "American Law Review," vol. xxv, No. 4, July-August 1891, pp. 638 and 639, on "The Behring Sea Question and the American Supreme Court," in which the position appears to be correctly and clearly summarized (see pamphlet marked K).

The Secretary of State for the Colonies therefore suggests that Her Majesty's Ambassador at Washington should be instructed to make a further representation to the Government of the United States, pointing out that the decision of the appeal cannot in any way affect the grounds upon which Her Majesty's Government have from the first protested against the seizure of the vessel, and that in view of the connection of the original seizure with the now abandoned claim of the United States, it is inconsistent with the generosity which may be expected from a great Power like the United States to delay remedying an act of injustice, and to insist on those who have already suffered so heavily by that act maintaining further a costly and useless litigation.

Lord Rosebery would be glad to be favoured with your opinion as to the propriety of instructing Sir J. Pauncefote in this sense.

I am accordingly to request that you will take the papers transmitted herewith into your early consideration, and that you will favour Lord Rosebery with your opinion on the questions specially submitted in this letter, as well as with any observations of a more general nature which you may have to offer on the present aspect of the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Law Officers (Confidential No. 6347, p. 92)		December 13, 1892.
(B.)	To ditto		September 13, "
	Law Officers (Confidential No. 6347, p. 86)		September 7, "
(C.)	To ditto		August 25, "
	Law Officers (Confidential No. 6347, p. 84)		September 9, "
(D.)	Ditto		March 18, 1893.
(E.)	Sir J. Pauncefote	(No. 109)	May 4, "
(F.)	To ditto	(No. 45. Telegraphic)	December 1, "
(G.)	Sir J. Pauncefote	(No. 231)	December 5, "
(H.)	Colonial Office		December 21, "
(I.)	Sir J. Pauncefote	(No. 9)	January 15, 1894.
(J.)	Colonial Office		February 17, "
(K.)	"American Law Review"		July-August, 1891.
	Also Colonial Office, March 1 and 10 (sent subsequently).		

Report.

That if in this case the Judgment of condemnation had been founded only on the transhipment of cargo outside the 3-mile limit, we should have thought that no useful end could be obtained by requiring an appeal to be brought. We find, however, that condemnation has also been decreed for breach of a section (No. 3109), against which no objection can be brought on international grounds, and if that ground of condemnation can be supported, the question of jurisdiction, which has been the subject of diplomatic representation, would not arise. We think, therefore, that there is reasonable cause why the United States' Government should insist upon the owners of the "Coquitlan" proceeding with their appeal.

The interpretation put by Lord Ripon on our Report of the 18th March, 1893, is in accordance with our meaning.

(Signed) C. RUSSELL.
JOHN RIGBY.

Royal Courts of Justice,
March 16, 1894.

No. 78.

The Law Officers of the Crown to the Earl of Kimberley.—(Received April 14.)

My Lord, *Royal Courts of Justice, April 13, 1894.*

Claim of Mr. H. Paxton on United States through exclusion of "Wanderer" from Behring Sea in 1887 and 1889.

WE were honoured with your Lordship's commands signified in Sir Percy Anderson's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us the paper* relating to the claim of Mr. Henry Paxton, a Canadian British subject residing at Victoria, British Columbia, managing owner of the sealing-schooner "Wanderer," against the United States' authorities, for damages alleged to have been sustained by him through his abandonment in 1887 and 1889 of his voyages in pursuit of seals, under fear of seizure by the United States' cruizers if found within the waters of the Behring Sea.

That it appeared from the statement of claim annexed to the Colonial Office letter, that in the early part of the years 1887 and 1889 the owner fitted out his vessel for the season's sealing, and duly cleared at Her Majesty's Customs at the port of Victoria, British Columbia, for that purpose; that she pursued her voyage in and through the North Pacific Ocean towards Behring Sea, but that hearing of the seizures by the United States' revenue officers of other vessels in Behring Sea, and consequently fearing the seizure of his own vessel and cargo, and the arrest and imprisonment of himself and crew, he abandoned the venture and returned to the port of Victoria.

* Colonial Office, April 2, 1894.

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That the claim advanced was for 12,600 dollars for damages caused by the exclusion of the "Wanderer" from Behring Sea in the years 1887 and 1889.

That your Lordship was disposed to think that the United States' Government would probably, and perhaps rightly, decline to entertain the claim, but that in view of the possibility of other claims of a similar nature being advanced in other quarters, Sir Percy Anderson was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion as to whether the case was one in which compensation might properly be demanded by Her Majesty's Government from the Government of the United States on behalf of the claimant, and, if so, what amount might reasonably be claimed; and (2), if not, whether Her Majesty's Government should decline to support the claim in any way, even by presenting it to the Government of the United States.

In obedience to your Lordship's commands, we have considered the matter, and have the honour to

Report—

That the case is not one in which compensation may properly be demanded by Her Majesty's Government, and, in our opinion, Her Majesty's Government should decline to support it in any way.

We have, &c.
(Signed) C. RUSSELL.
JOHN RIGBY.

No. 79.

The Law Officers of the Crown to the Earl of Kimberley.—(*Received June* 23.)

"Coquitlan," Should an appeal be instituted at public cost?

My Lord, *Royal Courts of Justice, June* 22, 1894.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the case of the "Coquitlan," upon which the then Law Officers reported on the 16th March last.

That, in view of their opinion that there was reasonable cause why the United States' Government should insist upon the owners of the "Coquitlan" proceeding with the appeal, and of the fact that Her Majesty's Government could scarcely compel the owners to prosecute the appeal at their own expense, it was felt that some arrangement should be come to by which the owners might be relieved from further personal pecuniary risk with regard to it.

That the views of the Secretary of State for the Colonies were therefore requested on this point.

That the Marquis of Ripon had intimated his willingness, if the Lords Commissioners of Her Majesty's Treasury would consent to half the cost of the appeal being borne by Imperial funds, to urge the Canadian Government to pay the other moiety; and that this proposal was submitted to their Lordships in the inclosed letter of the 11th May.

That the Board of Treasury, however, in their letter of the 24th May, demurred to this proposal, and, on grounds which were fully set forth therein, expressed doubt as to the expediency of prosecuting the appeal.

That they suggested that the determination to appeal or not should depend on whether the Law Officers of the Crown held that there was a strong probability of success on the second of the two counts on which the vessel was condemned, viz., for a breach of section 3109 of the United States' Customs Act; and they considered that if there was, the owners of the "Coquitlan" might be expected to make the appeal at their own charge, while, if there was not, neither they nor Her Majesty's Government, nor the Government of the Dominion, would, so far as their Lordships could see, gain anything by the appeal.

That having regard to the views expressed by the Lords Commissioners of Her Majesty's Treasury, which were, moreover, shared by the Colonial Office, that the decision to appeal or not should depend on our opinion as to the probability of success upon the second count, your Lordship desired to re-submit the case to us with special reference to this paticular point.

That Mr. Bertie was therefore to request that we would take the papers into our consideration, and favour your Lordship with our opinion as to whether there was sufficient probability of success on the second count to warrant the prosecution of the appeal at the public cost, should the owners maintain their refusal to proceed with it at their own expense, and also with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have taken the matter into our consideration, and have the honour to

Report—

That, in our opinion, the conviction under section 3109 was not justified by the facts as known to us, and an appeal from the condemnation under that section, if Judgment could be obtained thereon separately, ought to succeed.

We think, however, that to obtain Judgment it would be necessary to appeal generally, and that it might be very difficult to obtain a separate Judgment as to the condemnation under clause 3109.

On the whole, we do not think that there is such sufficient probability of attaining the object of an appeal as would warrant the prosecution of the appeal at the public cost.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

List of Papers.

(A.)	Law Officers (Confidential No. 6347, pp. 92, 93) ..	December 13, 1892.
(B.)	To Law Officers	September 13, ,,
	Law Officers (Confidential No. 6347, pp. 86–88) ..	September 17, ,,
(C.)	To Law Officers	August 25, ,,
	Law Officers (Confidential No. 6347, pp. 84–86) ..	September 9, ,,
(D.)	Law Officers (Confidential No. 6508, pp. 88, 89) ..	March 18, 1893.
(E.)	Sir J. Pauncefote .. .. ..(No. 109)	.. ,,
(F.)	To Sir J. Pauncefote .. (No. 45. Telegraphic)	.. ,,
(G.)	Sir J. Pauncefote .. .. ..(No. 231)	.. ,,
(H.)	Colonial Office	December 21, ,,
(I.)	Sir J. Pauncefote .. .. .. (No. 9)	.. 1894.
(J.)	Colonial Office	February 17, ,,
(K.)	"American Law Review."	

No. 80.

The Law Officers of the Crown to the Earl of Kimberley.—(*Received June* 26.)

"Behring Sea Award Order in Council (No. 2), 1894."

My Lord, *Royal Courts of Justice, June* 26, 1894.

WE were honoured with your Lordship's commands signified in Mr. Bertie's letter of the 25th instant, stating that he was directed by your Lordship to transmit to us the accompanying draft of an Order in Council to be known as "The Behring Sea Award Order in Council (No. 2), 1894."

That Mr. Bertie was also to inclose a despatch from Sir Julian Pauncefote,* transmitting a copy of notes exchanged between his Excellency and the United States' Government for the purpose of recording the arrangements which had been made for giving effect during the present year to the Fishery Regulations prescribed by the Award of the Tribunal of Arbitration.

Mr. Bertie further requested that we would take the papers into our consideration, and favour your Lordship with our opinion whether the draft Order might be laid before the Queen in Council in its present shape for Her Majesty's approval.

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* Sir J. Pauncefote, No. 115, May 14, 1894.

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In obedience to your Lordship's commands, we have taken the matter into our consideration, and have the honour to

Report—

That, in our opinion, the draft Order as initialled by us may properly be laid before the Queen in Council for Her Majesty's approval.

We have, &c.
(Signed) JOHN RIGBY.
R. T. REID.

Annex.

BEHRING SEA AWARD ACT, 1894.

Draft Order in Council.

WHEREAS by "The Behring Sea Award Act, 1894," it is enacted that Her Majesty the Queen in Council may make Orders for carrying into effect the provisions of the Behring Sea Arbitration Award set out in the first Schedule to that Act, and therein referred to as the scheduled provisions:

And whereas by Article 3 of "The Behring Sea Award Order in Council, 1894," Her Majesty ordered that until arrangements for giving further effect to Articles 4 and 7 of the said scheduled provisions should have been made between Her Majesty and the Government of the United States, the provisions contained in that Article should have effect:

And whereas arrangements have been made for giving further effect to the said Articles, and for regulating during the present year the fishing for fur-seals in accordance with the said scheduled provisions; and it is expedient that effect should be given to those arrangements by an Order in Council under the said Act:

Now, therefore, &c.:—

1. On the application of the owner of any British sailing-vessel intended to be employed in fur-seal fishing under the provisions of the recited Act, a Secretary of State may, if satisfactory evidence as required by the said Article 7 has been given by such owner of the fitness of the men to be employed by him on the said vessel in the said fishing, grant a special licence in the form in the Schedule hereto, authorizing that vessel for the present year to fish for fur-seals during the period in the manner and in the waters in which fur-seal fishing is allowed by the recited Act; and the said special licence, when so granted, shall be carried on board the said vessel at all times while so employed.

2. Every British sailing-vessel provided with a special licence under this Order or the recited Order, or which, under the recited Order, is deemed to have been so provided, shall show under her national colours a flag, not less than 4 feet square, of two equal triangular pieces, yellow and black, joined from the right-hand upper corner of the fly to the left-hand lower corner of the luff, the part above and to the left to be black, and the part to the right and below to be yellow.

3. If, in the case of any vessel, there is any contravention of these Regulations, the Secretary of State, whether any penalty has been recovered under the recited Act or not, may revoke the special licence.

4. Article 3 of the recited Order is hereby repealed, without prejudice, however, to any authorization given thereunder.

5. This Order may be cited as "The Behring Sea Award Order in Council (No. 2), 1894," and the recited Order and this Order may together be cited as "The Behring Sea Award Orders in Council, 1894."

And the Right Honourable the Earl of Kimberley, K.G., and the Most Honourable the Marquis of Ripon, K.G., two of Her Majesty's Principal Secretaries of State, and the Lords of the Admiralty, are to give the necessary directions herein as to them respectively appertain.

(Initialled) J. R.
R. T. R.

SCHEDULE.

FORM OF SPECIAL LICENCE.

Behring Sea Award Act, 1894; *Behring Sea Award Orders in Council*, 1894.

Special Licence.

Whereas the British sailing-vessel is intended to be employed during the present year in fishing for fur-seals under the provisions of "The Behring Sea Award Act, 1894:"

And whereas *A.B.*, the owner [*or A.B. and others, owners*] of the said vessel, have given satisfactory evidence of the fitness of the men who are to be employed on board the said vessel in the said fishing:

Now, therefore, in pursuance of the above-mentioned Act and Orders in Council, I hereby authorize the said vessel for the present year to be employed in fur-seal fishing during the period of time in the manner and in the waters in which fur-seal fishing is allowed by the above-mentioned Act.

This special licence is subject to revocation in case of any contravention of the above-mentioned Act or Orders in Council.

Given under my hand, this day of , 1894.

(Signed) ,
Secretary of State.

No. 81.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 3, 1894.

Proposed Convention for settlement of Behring Sea claims of Brit. subjects.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers quoted in the accompanying list, which relate to a proposed Convention for the settlement of the Behring Sea claims brought forward by British subjects, which, by mutual arrangement between Her Majesty's Government and that of the United States, were to be satisfied as soon as the arrangements for giving effect to the Award of the Behring Sea Arbitration Tribunal had been completed.

This condition having been fulfilled, it was arranged that Her Majesty's Ambassador should conduct the negotiations for the Convention at Washington, and on the 19th June last he forwarded a rough draft of a Convention for the settlement of these claims (Paper A).

This draft was referred to Her Majesty's Secretary of State for the Colonies, who at once communicated by telegraph with the Canadian Government on the subject.

The result of these communications will be found in the letter from the Colonial Office of the 4th ultimo (Paper B), and from this communication it will be seen that the Canadian Government considered the draft Convention acceptable except as to the proposal for the deduction from the claims for the expenses of the Commission.

In the meanwhile, Mr. Gresham had prepared a counter-draft of Convention, based on the original draft of Sir Julian Pauncefote. This will be found inclosed in his Excellency's despatch No. 155 of the 17th ultimo (Paper C).

This counter-draft contains variations of a more or less important character. Alterations occur in the third and fourth recitals, which Sir J. Pauncefote thinks do not appear open to objection.

Article I varies the terms of the corresponding Article of Sir J. Pauncefote's draft, but not the substance.

Article III provides that no compensation shall be paid if it be proved that the vessel was wholly or in part the actual property of a citizen of the United States.

Sir J. Pauncefote criticizes these alterations at length in his despatch above referred to, and also deals with the United States' view with regard to the expenses of the Commission.

Further despatches from Her Majesty's Ambassador, Nos. 154, 159, and 161 of the 17th, 20th, and 24th ultimo, are also inclosed (Papers D, E, and F), explaining additional alterations which it has been found necessary to make in various Articles of the Convention.

On the 24th and 27th ultimo the Colonial Office (Papers G and H) forwarded telegrams from the Governor-General of Canada remonstrating against the proposed change in the fourth recital of the draft Convention, and also against the qualification which it is proposed to insert at the end of the IIIrd Article.

The whole correspondence having been referred to Her Majesty's Secretary of State for the Colonies, a letter was received from the Colonial Office on the 1st instant (Paper I) stating that, with regard to the modification of the fourth recital proposed in Mr. Gresham's counter-draft, Lord Ripon presumes that it is not the intention of the United States to raise any questions as to their liability beyond those distinctly reserved in the first paragraph of the Finding of Facts annexed to the decision of the Tribunal, viz., the amount of damages and the question of the nationality of the owner

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of the vessel, which were withdrawn from the Tribunal by consent. He thinks it would be well, however, to prevent any question being raised, that the points which are left to be determined by the Commission to be appointed under the proposed Convention should be distinctly specified, and he accordingly suggests that the reservations mentioned in the first paragraph of the Finding of Facts should be inserted in the Recital.

A copy of the Recital, with the suggested amendments underlined, is inclosed.

With regard to the further amendment suggested in this Recital and in Article I, the Colonial Office state that it appears to Lord Ripon that the word "subject" might exclude persons *bonâ fide* domiciled and carrying on business within the British Empire, but not naturalized British subjects, and he presumes that Lord Kimberley will agree with him that such persons are to some extent entitled to the protection of Great Britain, except possibly so far as the Power of which they are subjects is concerned. This position has constantly been taken up by the United States in the case of persons domiciled though not naturalized in that country, and Lord Ripon does not conceive that it is likely to be contested by them. The words "in Behring Sea" in this Recital and Article I would exclude the case of the "Pathfinder," referred to in the note to the Finding of Facts.

With regard to Article III of the counter-draft, Lord Ripon is of opinion that it is no part of the duty of Her Majesty's Government to obtain compensation for citizens of the United States, but he sees no reason why the whole of a claim should be rejected on the ground that a citizen of the United States may have been partially interested in the vessel or venture, and he suggests, therefore, that if the United States' Government cannot be induced to abandon altogether, as Sir J. Pauncefote thinks possible, the addition made by Mr. Gresham to Article III of the draft Convention, it should be modified as shown in the inclosed copy.

The papers inclosed in the penultimate paragraph of the letter from the Colonial Office are inclosed for convenience of reference (Paper J).

A telegram (Paper K) just received from Sir J. Pauncefote, recording a conversation with Mr. Gresham with regard to the amendments, is also inclosed.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Kimberley with your opinion as to whether the Convention, as amended, is such as can properly be concluded, and would provide for the consideration of all the claims which Her Majesty's Government are entitled to put forward in virtue of the decision of the Arbitration Tribunal and the Finding of Facts. His Lordship would also be glad to be favoured with any general observations which you may have to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

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(C.)	Sir J. Pauncefote	(No. 155)	July 17, „
(D.)	Ditto	(No. 154)	July 17, „
(E.)	Ditto	(No. 159)	July 20, „
(F.)	Ditto	(No. 161)	July 24, „
(G.)	Colonial Office		July 24, „
(H.)	Ditto		July 27, „
(I.)	Ditto		August 1, „
(J.)	Volume.		
(K.)	Sir J. Pauncefote	(No. 93. Telegraphic)	August 2, „

Report.

In our opinion, and having regard specially to the last telegram (K) from Sir Julian Pauncefote, it is not necessary or desirable to introduce into the Recital the words suggested in the draft sent to us and underlined, beginning: "*i.e., in so far as regards,*" and ending "*not considered by the Tribunal.*"

In regard to the words "*by British subjects in Behring Sea*" appearing in the draft of Recital, and the words "*of British subjects for injuries sustained by them in Behring Sea,*" we think these words ought to be omitted.

In our opinion no claims can be put forward before the Commission which are not of the class contemplated by the Treaty and the Award and findings of the Tribunal of Arbitration, and this is effected by the language of Sir Julian Pauncefote's original draft. It may be doubtful whether the words "by British subjects" and "of British subjects," objected to by Lord Ripon, would not limit the reference. The words "in Behring Sea" are also objectionable, because they would exclude such cases as the "Pathfinder," referred to in the Finding of Facts and other cases.

In regard to Article III, we understand from telegram (K) that Mr. Gresham is willing to have words, in accordance with the first paragraph of the Finding of Facts, substituted for those previously proposed by him, and to leave it to the Commission to say what ought to be done in regard to cases of vessels owned wholly or in part by citizens of the United States. We consider that the proposal of Mr. Gresham should be accepted.

We have appended words which appear to us to carry out Mr. Gresham's proposal as we understand it, and which would be substituted for the last part of Article III:—

"But the said Commissioners shall determine whether any and what compensation shall be awarded for the search, seizure, detention, or condemnation of any vessel, or of property on board thereof or appurtenant thereto, where such vessel was wholly or in part the actual property of a citizen of the United States."

(Signed) J. RIGBY.
R. T. REID.

August 10, 1894.

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CONFIDENTIAL.

(6796.)

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BY THE

LAW OFFICERS OF THE CROWN, &c.

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CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c., 1895.

AFRICA.

No. 1. [Colonial Office.]

[February 14, 1895.]

The Law Officers of the Crown to the Marquess of Ripon.

My Lord, *Royal Courts of Justice, February* 14, 1895.

Exercise of legal jurisdiction in protected territories adjacent to Gold Coast Colony.

WE were honoured with your Lordship's commands signified in Sir Robert Meade's letter of the 26th ultimo, stating that he was directed by your Lordship to ask our consideration of the accompanying correspondence relating to the exercise of legal jurisdiction in the protected territories adjacent to the Gold Coast Colony.

Sir Robert Meade also transmitted two Reports relating to the Protectorate of the Gambia, dated the 14th March and the 13th April, 1894, and requested that we would favour your Lordship with our opinion whether it would be proper for your Lordship to address to the Governor a despatch in the terms of the draft inclosed in his letter.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to

Report—

That, in our opinion, it would be proper for your Lordship to address to the Governor a despatch in the terms of the draft inclosed, and which we have initialled.

The legal position asserted in that draft appears to us to be sound at the present day, though it is a departure from some opinions of our predecessors. See Reports of Law Officers of the 11th December, 1884; 10th August, 1885; 21st April, 1886; 29th June, 1887; 20th April, 1888; and 30th April, 1891.

We believe it has been the view of Germany and France that the existence of a Protectorate in an uncivilized country imports the right to assume whatever jurisdiction over all persons may be needed for its effectual exercise. This view has been combated by Her Majesty's Government as late as 1888 in a despatch to the German Government, and the British contention appears to have been that in regard to natives the jurisdiction of the Protecting Power depended upon the express terms of the Treaty with the native Sovereign, and in regard to civilized foreigners on the consent of their own Sovereign.

We consider, however, that this country has within the last ten years been assimilating its practice to that of Germany and France, as pointed out by Mr. Hall ("Foreign Jurisdiction of the British Crown," Part III, cap. 3), and that the view of

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those nations is the true view. Accordingly we have thought it right, while agreeing in the terms of the inclosed despatch, to draw attention to the fact that it constitutes an acceptance of a legal doctrine not hitherto unequivocally accepted by Great Britain.

We have, &c.
(Signed) R. T. REID.
FRANK LOCKWOOD.

List of Papers.

February 10, 1893. Reply.
August 17, 1893. Reply.
February 14, 1894.
Order in Council, Matabeleland, August 6, 1874.
Gold Coast Order in Council.
Law Officers, Gambia, March 14 and April 18, 1894.
Draft to Governor.

Annex.

Draft of Despatch to Governor Sir B. Griffith.

(Confidential.)

Downing Street, January , 1895.

Sir,

I RECEIVED in due course Mr. Hodgson's Confidential despatch of the 14th February last on the subject of Her Majesty's jurisdiction in the protected territory of Kwahu. Similar questions were at the time under consideration with reference to other parts of Africa, notably to Matabeleland, in which the power of the Ruling Chief Lobengula had recently been broken by force of arms, and the death of that Chief had followed. I accordingly deferred the answer to Mr. Hodgson's despatch, which I regret has since unfortunately been overlooked.

2. The result of the events in Matabeleland was to leave that country without a native Ruler, the country was under Her Majesty's protection, it was in the hands of a British Company, and no authority existed except that of British officers; it was therefore necessary that Her Majesty should take measures to make her protection effective in the interests of all persons within the country, and for that purpose should provide by Order in Council for the administration of the country while not assuming the sovereignty of it. This has accordingly been done by Order in Council, dated the 18th July, 1894, of which a copy is inclosed for your information, and the administration of affairs is by it delegated to the British South Africa Company.

3. The principle which governs these cases is that the existence of a Protectorate in an uncivilized country carries with it a right on the part of the Protecting Power to exercise within that country such authority and jurisdiction, in short, such of the attributes of sovereignty as are required for the due discharge of the duties of a Protector both for the purpose not only of protecting the natives from the subjects of civilized Powers, and such subjects from the natives and from each other, but also for protecting the natives from the grosser forms of ill-treatment and oppression by their Rulers, as from the raids of slave-dealers and marauders. It then becomes a question of fact, what are the powers which in any particular case it is proper for the Protector to assert?

4. This principle has become more fully recognized during the recent development of affairs in Africa, and applying it to the question raised by the Chief Justice in the case transmitted in your Confidential despatch of the 10th February, 1893, I do not, on further consideration, feel satisfied with the answer which I returned in my Confidential despatch of the 30th May, 1893. It is true that the Treaty with Kwahu does not in express terms confer legal jurisdiction, but it creates a Protectorate, and one of the results of that Protectorate is that Her Majesty acquired the right of establishing Courts of Justice within its borders, and of administering justice so far as circumstances may render it desirable that she should do so.

5. As I pointed out in my Confidential despatch of the 19th October, 1893, the combined effect of the Order in Council of the 6th August, 1874, and of section 12 of the Supreme Court Ordinance of 1876, has been to vest in the Supreme Court all the civil and criminal jurisdiction exercisable by Her Majesty in the Protectorate; and it appears to me that it would have been more correct to answer the question of the Chief Justice by saying that the Supreme Court does possess civil and criminal jurisdiction in Kwahu. And, indeed, my despatch of the 19th October, 1893, pointed to the same conclusion. But the existence of this jurisdiction does not necessarily oust the jurisdiction of the Native Courts, though I should hope that the purer administration of the British Court will, in time, of itself supplant the methods of the Native Courts, of which Mr. Phillips draws so black a picture in his Report which Mr. Hodgson transmitted in his Confidential despatch of the 3rd February, 1894.

6. How far it may be judicious in any given cases for the Court to decline to exercise its jurisdiction is another matter. As regards the subjects of civilized States there can be no question, for no other Court is capable of dealing with them. As regards the natives, the exercise of jurisdiction by the Supreme Court, or by Commissioners under the Supreme Court Ordinance, must depend upon circumstances; but the policy of the Government and of the Courts should be to assert jurisdiction whenever it is possible to do so, and to encourage the natives in every way to seek redress in the British Courts. If, therefore, natives apply to a Court for summonses, they should, I consider, be granted, unless there are special circumstances which render such a course undesirable in any given case—as in the case of Abram *v.* Abankwa, where the King specially desired that the matter should be settled by native jurisdiction.

7. In the case of the murderer Esono, to which Mr. Hodgson refers in the despatch under acknowledgment, I feel no doubt that the case was properly tried in the Supreme Court; the accused was sent down by the King with a request that he might be tried, and, under such circumstances, the Court could hardly have refused to exercise its jurisdiction.

8. I agree in thinking that it would be desirable to extend the Native Jurisdiction Ordinance to Kwahu, if it were possible to do so with effect. But in the present condition of the country I do not feel satisfied that the King and his Chiefs would be willing to accept its provisions, especially those of section 18, which would have the effect of depriving them of their existing jurisdiction; and it is obviously undesirable to endeavour to apply that Ordinance to a territory before that territory is ready to receive it. You should, however, keep the subject in view, in the hope that circumstances may alter, and that its introduction may become practicable and effective.

9. In conclusion, I have to inform you that the draft of this despatch has been submitted to and approved by the Law Officers of the Crown.

I am, &c.

No. 2.

[April 8, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, March 27, 1895.

Claims of Captain Chaddock against Transvaal and Portuguese Govts. relative to his discovery of mouth of Limpopo.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, relating to certain claims which have been made by Captain G. A. Chaddock against the Transvaal and Portuguese Governments, as well as against the British South Africa Company, in connection with his alleged discovery of a channel admitting the access of deep-draught vessels across the bar at the mouth of the River Limpopo on the East Coast of Africa.

The claims are five in number, and will be found set forth at length on p. 17 of Inclosure No. 1 in Messrs. Layton and Springmann's letter of the 12th ultimo.

From the terms of the letter itself it appears that Claim No. 2, viz., that against the British South Africa Company, is likely to be amicably settled, and it is therefore unnecessary to refer further to it.

Claim No. 4 arises out of a verbal Concession alleged to have been granted by Omzeila, Chief of Gazaland, in April 1884. In the absence of any written evidence, Lord Kimberley is not disposed to discuss the question of its validity; consequently, Claim No. 5, which arises out of the alleged Concession, can equally be dismissed.

The claims numbered 1 and 3 remain to be dealt with.

With regard to the former, Captain Chaddock contends:—

(*a.*) That he was the discoverer of the penetrability of the Limpopo from the sea.

(*b.*) That he communicated this secret in the strictest confidence to the Transvaal Government.

(*c.*) That they, without either his knowledge or consent, revealed the secret to the Portuguese Government.

(*d.*) And lastly, that this secret was of great importance and benefit to both Governments.

The opinion of Dr. Tristram, Q.C., was taken by the claimant on these points, and will be found at p. 23 of Inclosure No. 1 in Messrs. Layton and Springmann's letter.

Captain Chaddock is advised that, being without a legal remedy to redress his wrong, he should apply to Her Majesty's Secretary of State for Foreign Affairs to take such steps as his Lordship may deem necessary with a view to inducing the Portuguese and Transvaal Governments to give him redress, and, failing their doing so, to take steps to secure the claim being submitted to arbitration.

Dr. Tristram's opinion in regard to the third item of claim, namely, that for a pecuniary recognition for the discovery of the access to the Limpopo, is given on pp. 25 and 26, and is to the effect that, though the facts do not in law entitle Captain Chaddock to compensation for his expenditure and meritorious services, yet that the principle which obtains among civilized nations of making considerable payments to

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discoverers when their discoveries have conduced to the material benefit of their country would apply to discoveries relating to rivers in like manner as to discoveries relating to known but unexplored regions.

I am to request that you will take the papers transmitted herewith into your consideration, and will favour Lord Kimberley with your opinion as to whether Captain Chaddock has successfully established his case under Claim No. 1 either against the Transvaal Government or the Portuguese Government, or both; and whether, if so, it should form a subject for diplomatic intervention on the part of Her Majesty's Government, or whether he should be left to seek his remedy in the ordinary Courts of Law of the countries in question.

I am further to inquire whether, in your opinion, Her Majesty's Government would be justified in appealing to the Portuguese Government in support of Captain Chaddock's claim under No. 3 to a reward for his discoveries on the Limpopo.

I am to inclose a Memorandum which will show the circumstances in which Captain Chaddock has already appealed to Her Majesty's Government in connection with other points arising out of his visit to the Limpopo, and the reasons for which it was decided that the support of Her Majesty's Government could not be afforded him; together with copies of two Treaties which bear on the subject, viz., the Additional Convention between Great Britain and Portugal for the prevention of the Slave Trade of the 28th July, 1817, and the Treaty between Great Britain and Portugal defining their respective spheres of influence in Africa of the 11th June, 1891.

In the first of these it will be seen that the territory possessed by the Crown of Portugal on the East Coast of Africa south of the Equator is recognized as comprising that lying between Cape Delgado and the Bay of Lourenço Marques. The Limpopo is situated within this territory.

In Article XII of the second Treaty—that of 1891—the sovereignty of Portugal over the Limpopo is expressly admitted.

I am to add that Lord Kimberley will be glad to be favoured with any observations which you may desire to offer, in addition to your opinion upon the points specifically submitted in this letter on the papers generally.

I am, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

Messrs. Layton and Springmann	February 12, 1895.
Memorandum	July 6, 1889.
Ditto	March 16, 1895
Additional Convention (Treaty No. 185)..	July 28, 1817
Treaty between Great Britain and Portugal (Treaty No. 875) ..	June 11, 1891.

Report.

1. In our opinion there is evidence that the Transvaal Government, contrary to their undertaking, disclosed to the Portuguese Government the secret which had been confided to them by Captain Chaddock.

We doubt whether, if that evidence were sifted, it would prove sufficient to maintain a claim for damages in a British Court, assuming that such Court had jurisdiction in the case; but, if reliable, it is a matter for the Transvaal Courts, who, according to Captain Chaddock's legal advisers in the Transvaal, have jurisdiction to determine it. We do not consider that the apprehension of injustice at the hands of these Courts warrants any diplomatic intervention on the part of Her Majesty's Government, and we think that Captain Chaddock should be left to his legal remedy in the Transvaal.

We do not see any ground of claim against the Portuguese Government for utilizing, if they did utilize, the information imparted to them by the Transvaal Government. It cannot be assumed that they were conscious parties to any breach of faith, and it was natural and legitimate on their part to take advantage of the passage which was disclosed to them.

2. That there is no claim of right on the part of a discoverer to a reward for his discovery.

Governments to whom the labours of a private person have proved beneficial may, and no doubt do at times, bestow rewards as a matter of favour and bounty. It appears probable that Captain Chaddock did make an useful discovery, but we do not consider that Her Majesty's Government would be justified in advancing any claim on his behalf against any Government, though, if it were thought fit, the merits of Captain Chaddock in this matter might be recommended to the favourable consideration of Portugal.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
April 8, 1895.

No. 3.

[June 7, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 23, 1895.

Navigation of Niger by French gun-boat "Ardent."

I HAVE the honour, by the direction of the Earl of Kimberley, to submit to you the following observations in regard to the visit of the French gun-vessel "Ardent," in December last, to the River Niger, where she still remains.

The position of the River Niger as regards freedom of navigation is laid down in the General Act of the Berlin Conference of the 26th February, 1885 (Paper A), to which Great Britain, France, and other European Powers, with the United States of America, were parties.

It is stated in the preamble of that Act that among the objects which the Powers had in view was the wish "to assure to all nations the advantages of free navigation on the two chief rivers of Africa flowing into the Atlantic Ocean." These rivers were the Congo and the Niger.

The General Act accordingly contains Acts of Navigation for these rivers. That for the Niger is thus described in Article 5 of the preamble to the General Act:—

"An Act of Navigation for the Niger, which, while likewise having regard to local circumstances, extends to this river and its affluents the same principles as set forth in Articles CVIII and CXVI of the Final Act of the Congress of Vienna" (see Paper B).

The Act of Navigation for the Niger is contained in Chapter V of the General Act, Articles XXVI to XXXIII inclusive.

Article XXVI commences by stating that "The navigation of the Niger, without excepting any of its branches and outlets, is and shall remain entirely free for the merchant-ships of all nations equally, whether with cargo or in ballast, for the transportation of goods and passengers. It shall be regulated by the provisions of this Act of Navigation, and by the Rules to be made in pursuance of this Act."

It will be observed that the stipulation is confined to merchant-vessels, and that no allusion is made to national ships.

Articles XXX and XXXI contain the acceptance by Great Britain and France, in their respective portions of the river, of the obligations imposed by the Act in regard to the maintenance of free navigation and the protection of traders.

The position of affairs in the River Niger at the present moment is given at length in the accompanying Memorandum by Sir C. Hill (Paper C), to which a map is attached.

It will, however, be sufficient for the purposes of this reference to state that Great Britain holds both banks of the whole of the lower course of the river, while France has territories on its upper banks, between which and the British Protectorate the navigation from the mouth is stopped by rapids; and has access, by an Agreement with Germany, of which no official recognition has yet been notified by this country, to the upper waters of the Benué, an affluent of the main river, at Bifara, where, however, no station has as yet been established. Bifara is only accessible by boats of very shallow draught.

On the 11th June, 1885, the accompanying Notice (Paper D) was circulated to the Parties to the Berlin Act, by which the Protectorate of Her Majesty was declared

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over the districts in the Gulf of Guinea therein referred to. They are shown in the map attached to Paper C.

The facts as to the "Ardent" are as follows:—

On the 6th December the Niger Company wrote to say that a French gun-boat, the "Ardent," had passed up the Forcados branch of the Niger and got stranded at Aboh (see map in Paper C).

On the following day Lord Dufferin was instructed, by telegraph, to ascertain from the French Government if the vessel's proceedings were authorized.

And on the 13th he reported that the Commander of the vessel had entered the Niger without permission, and would be severely blamed.

Instructions were sent that the vessel was to redescend the river, and on these terms the Niger Company consented to lend every assistance.

This was, however, refused by the officer in command, and it was not till he received definite orders from the senior officer of the "Mésange" that he consented to recognize the Company's officials. Meantime, Her Majesty's ship "Barrosa" proceeded to his assistance. It was the opinion of Commander Marx, R.N., that with the means at his disposal he could get the vessel into deep water; but the French officer refused to have the ship moved, alleging that he considered her safer as she lay, and the vessel remains where she was. It is, however, right to say that there has never been enough water to enable her to leave the river.

On the 23rd January Lord Dufferin reported that M. Faure had referred to the action of the Commander of the "Ardent" as not only unauthorized, but even contrary to discipline.

On the 10th February, 1895, Lord Dufferin conveyed the thanks of the French Government for the assistance rendered by Her Majesty's Government, and the Company has received the thanks of the French Government for their help.

Paper E consists of a Memorandum drawn up in this Office respecting the general principles of international law regarding the freedom of navigation of rivers by merchant-vessels, and also the right of national ships to avail themselves of stipulations for freedom of navigation.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour the Earl of Kimberley, at your earliest convenience, with your opinion as to the position which Her Majesty's Government would, from a legal standpoint, be justified in maintaining in case of a contention on the part of the French Government that the "Ardent" is entitled to enter the Niger without the assent of Great Britain as the Riverain Power.

I am, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.) General Act of Berlin Conference, 1885 (Treaty No. 757).	
(B.) Articles CVIII and CXVI of Congress of Vienna.	
(C.) Memorandum by Sir C. Hill (With map.)	May 6, 1895.
(D.) "London Gazette" Notice	June 5, "
(E.) Memorandum by Mr. Oakes	May 22, "

Report.

From a legal standpoint Her Majesty's Government would be entitled to maintain that the "Ardent," being a war-ship, is not at liberty to enter the Niger without the assent of Great Britain. Trading-vessels of foreign Powers may unquestionably navigate this river by virtue of the Berlin Act, but that Act is wholly limited to commercial navigation, and there is in our judgment no warrant in international law for a claim on the part of France to send war-ships into the rivers of another Power, even though those rivers be the only access by water to French possessions.

In this case there are two peculiar features. The first is that, as we understand the facts, it is impossible, because of the existence of rapids, for the "Ardent" to reach French possessions by way of the Niger, which would make any claim on the part of that vessel still more untenable. The second is that the riparian territories through which the Niger flows south of the French possessions are in part, if not wholly, under the Protectorate of Great Britain, and therefore not in a full sense British dominions. We do not, however, consider that this fact makes any difference for the purpose in hand. A Protectorate, especially in uncivilized countries, involves a right in the Protecting Power to exercise whatever military or naval authority may be needed for preventing foreign intrusion. And the Berlin Act, in Article XXX, recognizes in Great Britain a right to make conditions for the navigation of rivers in her protected territories, even as regards commerce.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
June 7, 1895.

No. 4.

[June 12, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, June* 4, 1895.

Proceedings of French vessel "Faji" in Niger.

IN connection with my letter of the 23rd ultimo with reference to the case of the "Ardent," I have the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying papers, which relate to the entrance into the Forcados branch of the River Niger of a steam-launch named the "Faji," and of the subsequent proceedings which have taken place with regard to her.

It appears from Inclosure 2 in the Niger Company's letter of the 22nd ultimo (Paper A) that the "Faji," together with a barge owned by Messrs. Witt and Busch, of Lagos, had been chartered by M. Weyer, Lieutenant of the "Ardent," to carry stores to that vessel in the Niger.

When Mr. McTaggart, the senior Executive officer of the Royal Niger Company, first sighted the "Faji" on the 17th March she was above the Company's guard-ship at Gana Gana, having passed it without calling. The officer on board the "Faji" was informed by Mr. McTaggart that it was necessary she should report herself to the guard-ship, and the "Faji" then turned round and anchored off the guard-ship, hoisting the French flag as she did so.

An officer from the guard-ship was sent on board the "Faji" to ask that the latter's clearance papers from Gana Gana might be sent to the guard-ship. Shortly afterwards M. Weyer came on board the guard-ship, and stated that he had no clearance papers, and had not cleared at Gana Gana. He refused to produce his invoices, but showed his charter-party with Messrs. Witt and Busch, and protested against being stopped, remarking that "the Niger was as free as the British Channel."

An officer and pilot were placed on board the "Faji" by Mr. McTaggart, and she was taken down to Gana Gana and anchored there.

A letter was written to M. Weyer by Mr. McTaggart giving him notice that, in accordance with the regulations of the Company, the "Faji" and barge were to remain in arrest at Gana Gana until their release was ordered.

From Inclosure 3 in Paper (A) it will be seen that, during the absence of Mr. McTaggart, Captain d'Agoult, the Commander of the "Ardent," brought a force down from that vessel, and in spite of written protests from the Customs authorities at Gana Gana, got up steam on the "Faji" and broke her arrest.

On being sighted below that station by Mr. McTaggart on his return on the night of the 3rd April, the "Faji" was hailed, but no reply was returned from her. At daylight Captain d'Agoult hove anchor on the "Faji," and proceeded on his way in spite of the protests of the Niger authorities, who, however, in consequence of their desire to avoid international complications, refrained from employing their superior force to stop her.

The reference which was addressed to you from this Department on the 23rd ultimo, relating to the case of the "Ardent," dealt with the rights of national ships belonging to Powers other than the Protecting Power in the riverain waters of a Protectorate, but the Memorandum which was therein inclosed deals also with the general question of the right of a merchant-vessel in a river open to freedom of navigation to disregard the Regulations of the Riverain Power.

As regards the special question of the Niger, I am to inclose, for your information, the Protocols of the Berlin Conference (Paper B).

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On p. 139 and the following pages is the Report of the Commission appointed by the Conference which examined the draft of the Act of Navigation of the Niger. The Report explains the principles on which that Act was drawn. I am to call special attention to the preamble on p. 139, to the remarks on Article II of the Congo Navigation Act on p. 140, and to the passages specially dealing with the Niger Act on pp. 149 to 151.

I am further to inclose Regulations of the Company (Paper C), which affect the question of the stoppage of the "Faji."

Regulation No. XI of 1886 refers to vessels entering at Akassa, which is near the mouth of the Nun branch, one of the two great outlet branches of the Niger. Regulation No. XXXVII, 1892, provides for the alternative of vessels entering and clearing at Gana Gana, near the mouth of the other great outlet known as the Forcados branch, up which, as has been stated, the "Faji" entered.

In regard to these Regulations, I am to inclose an extract from the French newspaper "Le Temps" (Paper D), in which, while the facts are in the main admitted, it is argued that the arrest of the vessel was inconsistent with the stipulations of the **XXVII**th Article of the Berlin Act that the navigation should not be exposed to any "relâche forcée."

In reference to this contention, which it is advisable to consider, as it may eventually be adopted by the French Government, I am to observe that the first paragraph of Article XXVII says that the navigation shall not be subjected to any restriction or charge ("redevance") based merely on the fact of navigation, and that the second paragraph provides that it shall not be subjected to any "obligation" on account of (among other causes) "relâche forcée."

I am to call attention to the fact that in the preamble to the Act it is stated that the principles applied to the navigation of the Niger are the same as those recorded in Articles 108 to 116 of the Final Act of the Vienna Congress of 1815 (see Paper (B), p. 151), and that Article 114 of that Act stipulates that there shall nowhere be established duties on account of "relâche forcée."

The inference would appear to be that "obligation" in the Berlin Act is synonymous with "droits" in the Final Act of Vienna, and that the only restriction imposed by either Act on the Riverain Power is that it may not impose duties for "relâche forcée" in one of its harbours or ports of entry. It should be observed that the words "relâche forcée" have been variously rendered in the English versions of the different Acts. At p. 152 of Paper (B) the quotation from the translation of Article 14 of the Vienna Act gives the meaning as "forced harbour duties." At p. 140 of the same paper the translation of the draft Article II of the Berlin Act, which was being dealt with by the Commission, is "entry in distress"; whilst in the translation at p. 311 of the Article as finally adopted in the General Act, the words are translated by "compulsory entry into port." The more correct interpretation is believed to be "entry in distress." It has been ascertained that the phrase is in common use in French charter-parties and in French policies of insurance, where it follows such words as "tempête, naufrage, échouement, abordage." Littré's "Dictionary" gives:—

"Relâche: Terme de marine, séjour momentané qu'on fait dans un port où l'on entre forcé par la tempête, par des avaries, ou par le besoin qu'a l'équipage de prendre du repos, de renouveler ses vivres ou de s'approvisionner d'eau."

I am to point out that in the present case of the "Faji" the right to freedom of transit, which has never been disputed by the Niger Company, and is provided for in its Regulation No. XL, was not raised, as neither the vessel nor its cargo were in transit.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour the Earl of Kimberley at your earliest convenience with your opinion (1) as to whether the officer in charge of the "Faji" was justified in disregarding the Regulations for the navigation of the river which have been issued by the Royal Niger Company; and (2) whether there is anything in those Regulations inconsistent with the engagements entered into by this country at the Berlin Conference either as regards vessels entering the river in transit or as regards those not in transit. I am also to invite your opinion (3) as to the action of the Commander of the "Ardent" in releasing the "Faji" by force; and (4) further to ask for any general observations which you may have to offer on the case.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Royal Niger Company	May 22, 1895.
(B.)	"Africa No. 4 (1885)" (Parliamentary 2951).	
(C.)	Regulations of Royal Niger Company.	
(D.)	"Temps" (in Lord Dufferin's No. 136).	
(E.)	Further letter from Royal Niger Company	May 27, „

Report.

1. In our opinion, the officer in charge of the "Faji" was not justified in disregarding the Regulations for the navigation of the river which have been issued by the Royal Niger Company.

The "Faji" was not entitled to any privileges beyond those common to trading vessels of all nations, and as such was bound to clear at Gana Gana and to produce invoices.

The fact that she was carrying stores to the "Ardent" did not enlarge her rights, for the "Ardent" was not entitled to enter the Niger without permission, and, even if such permission had been granted to the "Ardent," it would not have of itself conferred upon vessels chartered to supply her any exemption from compliance with the river Regulations. Compliance with these Regulations was necessary to enable the Niger Company's officers to ascertain her destination and character.

2. That we cannot perceive in those Regulations anything inconsistent with the engagements entered into by this country at the Berlin Conference, either as regards vessels entering the river in transit or as regards those not in transit.

We understand by the provision relating to "relâche forcée" that no vessel entering the Niger from stress of weather or other necessity shall pay any duty or impost for thus seeking refuge. This provision corresponds in substance and is closely similar in expression to Article 114 of the Vienna Act and Article XIV of the Berlin Act relating to the Congo.

We do not know why there is any difference in the wording, but the sense appears the same.

3. That the action of the Commander of the "Ardent" in releasing the "Faji" by force was unjustifiable. Even supposing that he might urge the plea of a necessity to obtain supplies (a necessity which could not have arisen but for his own illegal act in entering the river), there was no unconditional refusal by Mr. McTaggart to allow the "Faji" to proceed, but merely a demand for compliance with lawful Regulations, and it was the duty of the Commander of the "Ardent" to procure obedience to those Regulations instead of defying them. His action was wholly indefensible.

4. In the papers sent to us upon this occasion, it appears that vessels can navigate the Niger, or its affluents, to points beyond the British Protectorate. If that be so, the inference of fact, which we drew from the materials submitted to us when considering the case of the "Ardent," viz., that rapids would prevent her from ascending beyond the British Protectorate, may be an erroneous inference.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
June 12, 1895.

No. 5.

[September 26, 1895.]

Foreign Office to Law Officers of the Crown.

Gentlemen,
Foreign Office, September 11, 1895.

Extra-territorial jurisdiction in Congo Free State.

I HAVE the honour to transmit to you herewith, by direction of the Marquess of Salisbury, the accompanying papers which relate to the question of the exercise of Her Majesty's extra-territorial jurisdiction within the territories of the Congo Free State.

By the provisions of the Convention between this country and the Congo State of the 16th December, 1884, of which a copy is annexed (Inclosure A), Consular jurisdiction over the persons and property of British subjects was specifically reserved by Her

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Majesty's Government. In 1890, however, it was urged by the Congo Government that a complete system of criminal, civil, and commercial justice had been established, and was then in full working order, and it was asked that, under these circumstances, and with a view to obviate similar claims on the part of other Powers, Her Majesty's Government would not press their claims to the maintenance of extra-territorial jurisdiction.

Some discussion followed on the subject, which is alluded to in the inclosed Memorandum (Inclosure B), with the result that on the 23rd April, 1890, Her Majesty's Minister at Brussels was instructed to inform the Congo State Government that Her Majesty's Government had decided not to exercise extra-territorial rights, though they did not abandon their right to resort to them should circumstances render it, in their opinion, necessary to do so. The British Consul in the Congo was accordingly informed that no Order in Council would be issued "at present" under the Foreign Jurisdiction Acts providing for the exercise of British civil and criminal jurisdiction in the Congo State, and that he should confine himself to the exercise of ordinary Consular duties, unless he should receive instructions to the contrary.

In the course of last year Her Majesty's Government had reason to complain of the manner in which justice was administered in the Congo Free State. Natives of the British West African Colonies who had been engaged as labourers for service on the Congo Railway in the course of construction, had, on their arrival in the Congo, been compelled against their will to serve as soldiers, and sent into the interior on military expeditions. They were in more than one instance cruelly treated, and were unable to obtain redress.

Her Majesty's Chargé d'Affaires at Brussels was, in consequence, instructed to remind the State authorities verbally in a despatch, of which a copy is inclosed (Inclosure C), that the right of Her Majesty's Government to claim extra-territoriality for British subjects was not withdrawn, but suspended, and that complaints had been received of undue harshness on the part of local Tribunals, which might, if they gained publicity, give rise to pressure for the annulment of the existing arrangement.

The information recently received respecting the execution of the British subject Charles Stokes shows such grave acts of injustice that Her Majesty's Government feel that it will now be incumbent on them to cancel the arrangement made in 1890, by which jurisdiction over British subjects was provisionally conceded to the Tribunals of the Congo Free State.

I am therefore to request that you will take the papers submitted to you herewith into your consideration, and that you will favour Lord Salisbury with your opinion as to the terms in which notice should be given to the Government of the Congo Free State of the intention of Her Majesty to resume therein the exercise of her extra-territorial jurisdiction.

I am, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.) Convention (Treaty No. 754)	.. .. ..	December 16, 1884.
(B.) Memorandum by Mr. Streatfeild	.. .. ..	August 30, 1894.
(C.) To Mr. Adam	.. .. ..(No. 122. Africa)	September 25, "

Report.

In our opinion the notice to the Congo Government should refer to the terms of the Treaty of the 16th December, 1884, especially the Vth and VIth Articles, should state that Her Majesty's Government considers it expedient that the rights of extra-territorial jurisdiction thereby conferred should be brought into exercise, and should notify the Congo Government that Her Majesty's Government proposes now to take the steps necessary for this purpose.

We do not think it necessary to refer to the communications by which the exercise of these rights has been hitherto suspended.

(Signed) RICHARD E. WEBSTER.
R. B. FINLAY.

Royal Courts of Justice,
September 26, 1895.

AUSTRIA-HUNGARY.

No. 6.

[March 11, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, February* 26, 1895.

Draft Postal Convention with Austria-Hungary. Amendments of Treasury Solicitor.

I HAVE the honour to inform you, by direction of the Earl of Kimberley, that his Lordship consulted the Lords Commissioners of the Treasury as to the modifications which should be introduced into the draft Postal Convention between Great Britain and Austria-Hungary in order to carry out the suggestions contained in your Report of the 12th December last.

The correspondence between the two Departments will be found at pp. 39 and 40 of the inclosed print (Paper A), and I am to request that you will be so good as to inform Lord Kimberley whether you concur in the alterations in Articles I and VI which have been suggested by the Treasury Solicitor, and are shown in italics in the accompanying Annex.

I am, however, to state, with reference to the proposed modification of Article I, sub-Article 7 (*b*), that, in his Lordship's opinion, it would be advisable to follow the exact wording of section 3 (2) (*b*) of "The Mail Ships Act, 1891," as regards the security to be given by Austro-Hungarian ships in British waters, and to ask the Austro-Hungarian Government to suggest an alternative wording to meet the case of British ships in Austro-Hungarian waters.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Confidential Print.
(B.) "Mail Ships Act, 1891" (54 & 55 Vict., cap. 31)

Report.

We concur in the alterations in Articles I and VI which have been suggested by the Treasury Solicitor and are shown in italics in the accompanying Annex, subject to the following observations:—

1. *Article I* (6), *line* 3.—We would suggest the insertion of the word "respectively" after the word "Austria-Hungary."

2. *Article I* (7) [*b*].—We consider that your Lordship's view might be carried out with advantage.

The point of our previous criticism was that, unless some alternative wording were inserted to meet the case of British ships in Austro-Hungarian waters, the securities to be deposited in Austria-Hungary would have to be British Government securities, which might not be acceptable in the view of the former State.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
March 11, 1895.

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Annex.

Draft of proposed Postal Convention with Austria-Hungary, showing Modifications suggested by the Treasury Solicitor.

ARTICLE I.

1. THE packets employed by the Austro-Hungarian Postal Administration for the conveyance of mails, whether they be national vessels owned by the State or vessels belonging to Companies subsidized for the execution of postal service, shall not, when in British waters, *be liable to be arrested or detained by any arresting authority either for the purpose of founding jurisdiction in any Court of Admiralty or of enforcing the payment of any damages, fine, debt, or other claim or sum, or enforcing any forfeiture, whether arising from the misconduct of the master or any of the crew, or otherwise, and* ~~be diverted from their destination or be liable to seizure, embargo, or "Arrêt de Prince," and the same exemption shall be accorded to~~ similar mail-packets employed by the British Postal Administration if at any time in Austro-Hungarian waters *shall not be diverted from their destination or be liable to seizure, embargo, or "Arrêt de Prince."*

2. Passengers on such packets who may not desire to go on shore during the vessel's stay in a port of either State may not be on any account taken from on board, except in the manner provided in this Article.

3. The local authorities may claim the expulsion from on board of persons wanted in pursuance of a regular warrant for any crimes or offences who may have taken refuge or embarked in mail-boats, and, in case of necessity, searches may be carried out on board such vessels by the competent authorities. The individuals in question shall then be handed over to them.

4. It is, however, agreed that the authorities shall not proceed on board *at a port of either State where there is a Consulate or Vice-Consulate of the other State* unless they have previously given notice at least one hour before the search to the Consulate or Vice-Consulate, in order that the Consul or Vice-Consul or his delegate may be present at the searches in question. The letter giving notice shall be addressed to the Consul or Vice-Consul, and shall state the exact hour of the intended search, and if the agents neglect either to appear in person or to be represented, the proceedings shall go on in their absence.

5. The execution of such measures shall not delay the departure of the vessel for more than an hour after the time of departure fixed in the time-tables of the Company, which must be duly communicated by the respective Companies to the authorities of each port of call.

6. The present Article shall not apply to packets intrusted with a mail service, and belonging to Companies *or individuals* subsidized by either State, until *the High Court of the United Kingdom and a competent Court of Austria-Hungary have fixed the nature and amount of the security to be placed under the control of the respective Courts by the said Companies or individuals for the purposes of this Convention, and until* a bond has been entered into, once for all, by the said Companies *or individuals* to satisfy, after due hearing and definite decision, the legal consequences of any liability incurred either by the captains of their packets or by the Companies *or individuals* themselves.

7. The aforesaid bond must be guaranteed either—

(*a.*) By the personal security of a surety accompanied by an adequate real security given by the surety *to the amount fixed by the Court;* or

(*b.*) By the payment or transfer into Court of cash or of securities of the Government of *either State* ~~the United Kingdom~~. Such payment or transfer into Court is to abide the law ~~of the country~~ relating to it *of the country in which the payment or transfer is made, and to be to such amount as may be fixed by the Court.*

ARTICLE II.

The packets of the two Administrations shall be at liberty to take on board, or land at the ports of the two countries at which they touch, whether regularly or accidentally, specie and gold and silver bullion, as well as passengers, of whatever nation they may be, with their wearing apparel or baggage, on condition that the captains of those packets shall submit to the Sanitary, Police, and Customs Regulations of those ports concerning the arrival and departure of travellers and merchandize.

ARTICLE III.

The packets of the two Administrations may enter and leave the ports of the two States at any hour of the day or night. They may also, if they think proper, without anchoring, embark or disembark the mails and passengers, in the roads or at the entrance of the harbours, so long as they observe the Regulations referred to in the preceding Article.

ARTICLE IV.

Whenever a packet carrying mails shall be compelled to put into any port of either of the two States other than that at which such packet ought to touch, the Administration on whose territory the said mails shall be landed shall use the most certain and expeditious means of forwarding them to their destination.

ARTICLE V.

In case of war between the two nations, the packets of the two Administrations shall continue their navigation, without impediment or molestation, until a notification is made on the part of either of the two Governments of the discontinuance of postal communications, in which case they shall be permitted to return freely, and under special protection, to their respective ports.

ARTICLE VI.

The captains of the packets engaged in the conveyance of the respective mails of the two Administrations are forbidden to take charge of any letter not included in those mails, with the exception, however, of despatches of their Governments, *and of any letters which may be exempted by law from the exclusive privilege of conveyance vested in either Administration.* They must take care that no letters are conveyed illegally by the crews or passengers, and they must give information in the proper quarter of any infringement which may be committed in this respect.

ARTICLE VII.

The Post Offices of Great Britain and Austria-Hungary shall determine by mutual agreement, in accordance with the conditions laid down in the Postal Union Convention of Vienna of the 4th July, 1891, the matters of detail connected with the execution of the present Convention, as well as all other arrangements deemed necessary for regulating the postal relations between the two countries.

ARTICLE VIII.

The Postal Administrations of the two countries are authorized to determine, by mutual consent, the conditions of the conveyance, by Austro-Hungarian services, of the mails to and from British Colonies not comprised in the Postal Union, as well as the conditions of the conveyance, by British services, of the mails of Austro-Hungarian origin destined for those Colonies, or passing in transit through their territories.

The same Administrations may also fix, by mutual consent, the rates of postage applicable to correspondence exchanged between Austria-Hungary on one side, and British Colonies not comprised in the Postal Union on the other side.

ARTICLE IX.

The present Convention shall be carried into effect as soon as possible, and it shall continue in force until one of the two Contracting Parties shall have announced to the other, one year in advance, its intention to terminate it.

ARTICLE X.

The stipulations of the present Convention shall be applicable to all the Colonies and possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to—

India.
The Dominion of Canada.
Newfoundland.
The Cape.
Natal.
New South Wales.
Victoria.
Queensland.
Tasmania.
South Australia.
Western Australia.
New Zealand.

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Provided always that the stipulations of the present Convention shall be made applicable to any of the above-named Colonies or possessions on whose behalf notice to that effect shall have been given by Her Britannic Majesty's Representative at Vienna to the Government of Austria-Hungary within one year from the date of the signature of the present Convention.

ARTICLE XI.

The present Convention shall be ratified, and the ratifications shall be exchanged as soon as possible.

In witness whereof, the Undersigned have signed the present Convention, and have affixed thereto the seal of their arms.

Done at London, the day of .

BRAZIL.

No. 7.

[May 17, 1895.]

Foreign Office to the Law Officers of the Crown.

Vexatious quarantine on "Twickenham." Claim of Messrs. Watts and Co. against Brazil.

Gentlemen, *Foreign Office, April* 10, 1895.

I HAVE the honour, by direction of the Earl of Kimberley, to transmit to you the papers, noted on the accompanying list, respecting the claim put forward by Messrs. Watts, Watts, and Co. against the Brazilian Government on account of the treatment of the steam-ship "Twickenham."

The circumstances of the case are set out in the inclosure in the letter of the 13th ultimo from the above-mentioned firm, and are briefly as follows:—

The "Twickenham" left La Plata in the Argentine Republic on the 19th December last with a deck cargo of cattle for Rio de Janeiro, and arrived on the 25th of that month at the Brazilian quarantine station of Ilha Grande, where the quarantine authorities informed the master that the ship must perform eight days' quarantine. On the 30th, before the expiration of the eight days, a member of the crew was taken ill with symptoms of cholera, but recovered. On the 3rd January he is stated by the master to have had a "relapse," and to have died of "chills." Others of the crew appear to have been ailing with diarrhœaoid symptoms, and on the 17th January the cook died of cholera.

It thus appears that choleraic illness existed on board before the eight days quarantine had expired, and, in a country enforcing quarantine as a method of excluding all infection, the existence of the disease on board would be a valid reason for prolonging the duration of quarantine beyond the eight days originally imposed. This being so, it seems possible that no claim can with propriety be made on the Brazilian Government on account of the detention of the "Twickenham" beyond the 2nd January. The fact that no actual deaths from cholera had occurred up to that date would be immaterial, as the infection would be carried by the sick.

It appears, however, that the treatment of the "Twickenham" during the detention at the quarantine station, as set forth in the master's diary inclosed in the letter of the 13th ultimo from Messrs. Watts, Watts, and Co., was most inhuman, and may be held to be such as to warrant a claim being preferred on the Brazilian Government.

A quarantine station must certainly be considered as a place where ships detained can receive all necessary supplies, together with medical and other attention.

In the present case, however, no medical officer came on board the ship; no facilities were afforded for the treatment of the sick, either on board or in any hospital on shore; the cattle were not taken off the ship, and their presence on board for a prolonged period created most unhealthy conditions for the crew; from the 7th to the 14th January no food was supplied for the cattle, although the signal asking for food was flying all the time, and when the quarantine officials were, on two several occasions, asked to take a letter or telegram from the ship, they refused to do so, thus cutting her off from all communication with the consignees and others.

On the 27th January the cattle were taken off the ship after she had been at Ilha Grande thirty-four days.

I am to request you to take into consideration the papers transmitted with this letter, and to favour Lord Kimberley with your opinion as to whether any claim may and should be made against the Brazilian Government on behalf of Messrs. Watts, Watts, and Co., either (1) on account of the detention of the "Twickenham" beyond the period of eight days, or (2) on account of the treatment received at the quarantine station.

Should your answer to either question be in the affirmative, I am further to request you to favour his Lordship with an indication of the amount which should, in your opinion, be demanded, and of the basis of computation; and also with a statement of the grounds on which the claim may be most effectually urged on the Brazilian Government.

Finally, I am to ask that you will also favour Lord Kimberley with any general observations which may occur to you on the perusal of the papers now submitted, and which you think may be of assistance to his Lordship in dealing with the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Watts and Co. (2)	January 16, 1895.
To Mr. Greville	January 16, „
Watts and Co.	January 25, „
To Mr. Greville	January 25, „
Mr. Greville	January 25, „
Ditto	January 31, „
To Watts and Co.	January 31, „
Watts and Co.	February 1, „
Mr. Greville..	(No. 4. Commercial)
To Mr. Phipps	(No. 8. Commercial)
Watts and Co.	March 13, „
Memorandum	March 22, „

Report.

1. In our opinion, a claim should be made against the Brazilian Government on behalf of Messrs. Watts, Watts, and Co. on account of the detention of the "Twickenham," coupled with the treatment received at the quarantine station.

The statement of the captain is not very clear, but from all the documents we gather that this vessel was badly used.

2. That, under the circumstances, we consider the sum of 1,000*l.* would be a proper sum to claim. The case does not admit of a precise computation of damages. They cover the loss by detention of the ship, and compensation for the treatment of those on board. Probably 30*l.* a-day for twenty days would be a proper demurrage charge; the balance would represent compensation, which we presume would, if recovered, be distributable among the sufferers, or their relatives, at the discretion of Her Majesty's Government, for we do not suppose it would be desired to enable the owners to make a profit on the sufferings of the crew.

In naming this sum, we assume (what appears to be the case, though not explicitly stated) that the ship was not allowed to quit the port, or was unable to obtain the supplies necessary to enable her to quit it.

3. That we think the claim may be most effectually urged upon the ground that the treatment of this vessel was opposed to the practice of civilized nations, which, whether requiring quarantine or not, give medical relief and allow vessels to be supplied with necessary stores, as well as to communicate with the representatives of their country.

In this case, the health of her crew was still further endangered by a refusal to allow her to land her cargo of cattle.

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It is quite true that there was ground to suspect cholera, which, in a quarantine country, might justify some extension of the eight days detention, but it is reasonable to suppose that the chances of a choleraic outbreak were aggravated, and that detention prolonged by the usage to which the ship was exposed.

If the port authorities neglect the duties of humanity, and illness follows, it is fair to impute the illness, in part at all events, to the neglect, though it is of course impossible to demonstrate that the one was the consequence of the other. Otherwise conduct of the most reprehensible character would pass with complete impunity.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
May 17, 1895.

No. 8.

[October 24, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, October* 2, 1895.

British occupation of Trinidad Island.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, correspondence relating to the Island of Trinidad (South Atlantic), which was formally taken possession of in the name of Her Majesty, at the beginning of the present year, "as being uninhabited and not belonging to any Power."

I am also to inclose, for your consideration, in connection with this correspondence, the draft of a despatch which his Lordship proposes to address to Her Majesty's Minister at Rio de Janeiro, stating the grounds on which the annexation of the island by Her Majesty is justified and maintained.

I am to call your special attention to my Memorandum of the 5th August, 1895, which is the first paper in the collection, marked (A), and to the correspondence with the Portuguese Government in 1782 (pp. 18–22).

Lord Salisbury would be glad to be favoured, at your earliest convenience, with your opinion as to whether the doctrine and arguments contained in the draft despatch are tenable according to international law, or, if not, to what extent and in what respects you consider that they may advantageously be modified; and his Lordship would also be glad, at the same time, to be furnished with such general observations as you think may be useful to him in dealing with the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Papers printed for Cabinet.
(B.) General correspondence.
(C.) Draft to Mr. Phipps.

Report.

In our opinion the right of the British Government to Trinidad depends upon the fact that the island was unoccupied, and belonged to the territory of no State when possession was recently taken by the British Government.

It does not appear to us that much reliance can be placed upon the occupation of the island by Britain in the eighteenth century. On the remonstrance of Portugal the British force was withdrawn, and the island was garrisoned for a series of years by Portuguese troops. This would appear to have amounted to an admission by Great Britain of the Portuguese title to the island, followed by an effective occupation of the island by Portugal.

We would suggest that the passage on p. 7 of the draft despatch might, with advantage, be modified. The Brazilian case is not that the British title acquired in 1700 was lost by disuse, but that the British Government by their conduct in 1792 admitted that no title had been acquired by them.

The strength of the British case, in our opinion, rests, firstly, on the fact that there never has been any occupation of any sort of the island by Brazil, and that there is nothing to show that any title which Portugal had, passed to Brazil; and secondly, that the absence of any occupation by either Portugal or Brazil since 1795 is sufficient to show an abandonment of any territorial rights which existed before that date.

We would suggest that the first of these points should be brought out in the despatch.

There is, in our opinion, little to be added to the treatment of the second of these two points in the draft despatch. We would only observe that the passage cited from Vattel relates rather to the manner in which territory may be acquired than to the cessation of possession necessary to constitute abandonment of territory which has been acquired, and we would suggest that the citation of the passage from Hall should be made from the fourth edition, published this year, where the subject of abandonment is treated at pp. 120 and 121. The case of Santa Lucia, which is cited by Hall at p. 121, is very much in point, and perhaps reference might be made directly to that case in the despatch. The views stated in the despatch on this point appear to us to be in accordance with international law, and, having regard to the very great length of time since there was any occupation of the island, and its great distance from the coast of Brazil, it appears to us that there is strong ground for contending that it was abandoned. The occasional visits of Brazilian men-of-war count for nothing, as there were precisely similar visits by men-of-war of other nations. The alleged proposal to survey the island was never carried out, and the alleged Concessions were never acted upon. The question is not, in our opinion, merely whether the Portuguese or Brazilian Government expressly formed the intention of abandoning the island, but whether their conduct was not such that abandonment must be presumed to have taken place so as to confer a title on the British Government by occupation.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Law Officers' Department,
October 24, 1895.

Annex 1.

Draft of Despatch to Mr. Phipps, as submitted to Law Officers, and showing Amendments suggested by them.

(No. .)

Sir, *Foreign Office, November* , 1895.

THE interview I had with the Brazilian Minister on the 16th August led me to hope that a friendly solution of the difficulty which had arisen between Great Britain and Brazil in respect to the Island of Trinidad would not be difficult to find. The object of Her Majesty's Government in taking possession of the island was to facilitate the telegraphic communication of the world, and if that object could be equally well assured in any other manner they were willing to allow formal rights, which in other respects were of little or no practical value to fall into abeyance. But your despatch No. 140 of the 15th September holds out little hope that, in their present mood, the Brazilian Government will be willing to come to any arrangement on these terms.

It may be well, therefore, that I should state to you, for your guidance in any further conversations which may take place upon the question, the view which Her Majesty's Government take of their title to the Island of Trinidad.

It was represented to Her Majesty's late advisers that a Bill had been proposed by the Brazilian Government enabling them to take over compulsorily the cables laid along the Brazilian coast by the Western and Brazilian Telegraph Company. The Brazilian Government already raises a large contribution upon the messages which pass to the other States of South America over the cables which lie in the territorial waters along their coasts. This burden upon telegraphic communication would be capable of very considerable aggravation if the cables were compulsorily taken over by the Government. It was therefore proposed by the Telegraph Construction Company to make an alternative line from the Cape de Verde Islands by Ascension to Monte Video, which would bring the rest of South America into connection with Europe without passing through Brazil. But in order to lay such a cable it was necessary to use as a landing-place the uninhabited Island of Trinidad, situated some 700 miles from the Brazilian coast.

It was accordingly taken possession of under the orders of my predecessor in January last by Commander Foley, "as being uninhabited and not belonging to any Power;" and every proper formality was observed for the purpose of duly asserting the sovereign rights in the island which were vested from that time forth in Her Britannic Majesty.

The previous history of the island shows that for brief periods it has been occupied for scientific or for military purposes. It is believed to have been discovered by the pilot, Martin Vaz, in 1503; but there is no record of the fact of its discovery, nor of its having been taken

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possession of in the name of any power. In 1700 Dr. Halley visited it for astronomical purposes, and formally took possession of it in the name of His Britannic Majesty. In 1781 we find it occupied by an English force apparently for purposes connected with the war with Spain. We have records that the Portuguese Government objected to this occupation in 1782, claiming the island as their own. It was consequently evacuated under the orders of Lord Grantham, who apparently did not claim any British right over the island, but admitted that "it was contrary to Treaty that the coasts should be used for the purpose to which objection was taken." Later on in 1785 a small Portuguese garrison was found there by La Pérouse, and appears to have remained till 1795. Since that date the island has not been occupied by Portugal or Brazil, or any other Power, and it has remained for a century quite uninhabited. In 1825 the independence of Brazil was recognized under Treaty by Portugal; but the Island of Trinidad is not mentioned in that Treaty as part of the territory to be severed from Portugal. It is said, however, to have been referred to since that time as a dependency of Brazil in certain public documents.

The claim which is now made to the island by the Republic of Brazil depends on the validity which is held to attach to a mere paper occupation of the island divested of any pretension to actual use or habitation.

* ~~It is worthy of note that whatever view may be taken of this question of public law the title of Brazil will appear equally infirm in either case. If it be held that when possession has once been formally taken of territory no extent of subsequent disuse can invalidate the title that has been acquired, then the right of Great Britain under the annexation proclaimed by Dr. Halley in 1700 is still unassailable; for there is certainly no record of possession having been taken of the island by any Power at any earlier date. If, on the other hand, it is held that a title once made can be invalidated by disuse, then though the virtue of Dr. Halley's annexation may have expired at the time of the Portuguese occupation of 1782, the century of disuse which has followed the retirement of the Portuguese in 1795 has obliterated any rights which at that date Portugal may have acquired.~~

It should be borne in mind in discussing this question that Her Majesty's late Government did not found their right to annex the island upon the occupation of it by Dr. Halley or upon the priority of his title to the title subsequently acquired by the Portuguese.

The annexation directed by the Earl of Kimberley was, under his instructions, based by Commander Foley solely upon the fact that the island was "uninhabited and not belonging to any Power." Any title which may have existed at any previous period had been effaced by long disuse, and the island was at the disposal of any Power which might think fit to take it. All discussions which turn upon the character and intention of the various occupations of which the island was the subject during the eighteenth century are in a great measure irrelevant to the present controversy, and do not affect the claims on which Her Majesty's Government have acted. Whether the occupation of the island by Great Britain and Portugal during the last century did or did not confer upon them, or either of them, a valid sovereignty at the time, there is no doubt that it has been uninhabited, unoccupied, and ungoverned for 100 years previous to the present year, and therefore any sovereignty to which it may have been subject in the last century has lapsed.

The language of jurists is clear that a mere paper occupation, devoid of all effective character, will not preserve a claim to sovereignty over an indefinite number of years; and modern writers speak more emphatically in that sense than their predecessors.

The following passage from the fourth edition of Hall's "International Law" lays down the doctrine upon the subject which is generally accepted in the present day:—

"When an occupied territory is definitively abandoned, either voluntarily or in consequence of expulsion by savages or by a Power which does not attempt to set up a title for itself by conquest, the right to its possession is lost, and it remains open to occupation by other States than that which originally occupied it. But when occupation has not only been duly effected, but has been maintained for some time, abandonment is not immediately supposed to be definitive. If it has been voluntary, the title of the occupant may be kept alive by acts, such as the assertion of claim by inscriptions, which would be insufficient to confirm the mere act of taking possession; and even where the abandonment is complete, an intention to return must be presumed during a reasonable time. If it has been involuntary, the question whether the absence of the possessors shall or shall not extinguish their title depends upon whether the circumstances attendant upon and following the withdrawal suggest the intention, or give grounds for reasonable hope, of return. Where intention in this case is relied upon, it is evident that, as abandonment was caused by the superior strength of others who might interfere with return, a stronger proof of effective intention must be afforded them on an occasion of voluntary abandonment, and that the effect of a mere claim, based upon the former possession, if valid at all, will soon cease."

The most recent International Act bearing upon this subject—the Act of Berlin in 1885—formally requires from every Power claiming any portion of the coast of Africa that it shall govern effectively the territory which it claims. But apart from these broad considerations of general law, the case of Trinidad is marked by a very special feature. It is an island which could not support any considerable community of men, if it could support any; and by its situation and the character of its coast, it would be useless either for naval or military purposes. But from the progress of knowledge and enterprise in our time it has derived a novel and unique value. It is the only spot of the earth which can be used as a landing-place for a telegraphic cable south of the equator, crossing the Atlantic from the old world to the new. A telegraph wire laid direct over so long a distance without a break, as from Ascension to Monte Video, would need to be of a size which would make the enterprise on financial, if not on technical, grounds impracticable. Where by natural conditions the commodity and interests of vast populations depend upon a spot of the earth's surface being put to the use for which it has a special and singular aptitude, it is straining the right of sovereignty very far to say that the owners of this spot of earth shall have a right to forbid its use, and to withdraw it from the service of mankind.

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* We think that this passage should be omitted or materially modified.—R. E. W., R. B. F.

It is true that without the help of Trinidad telegrams can avoid the monopoly of Brazil by taking a long and costly circuit through the United States. The injury threatened by the effort of Brazil to bar the use of the island as a telegraphic landing-place is certainly lessened by this consideration, but it still is grave enough to weigh heavily with Her Majesty's Government when they are asked to promote it by abandoning the possession to which on other grounds they believe this country to have a legitimate right.

Her Majesty's Government have made no claim with regard to the Island of Trinidad except to be allowed to devote it to the furtherance of communication between the two continents, in the manner for which by a happy accident of nature it is specially fitted. They have offered to surrender it to Brazil for every other purpose, and to withdraw any claims possessed by this country, if its free application to telegraphic purposes can be secured. The Brazilian Government profess to be prevented from granting any lease upon these terms by an Agreement concluded with the Western Telegraph Company in 1893. As they have by a recent Act of the Chambers and the Senate taken power to purchase compulsorily the rights of this very Company, the obstacle to the erection of a telegraphic station on the island does not seem to be insuperable. A more cogent objection is to be found in the fact that any cables which might be laid through Trinidad would destroy the monopoly of telegraphic communication with Argentina, Chile, Uruguay, and Paraguay, which Brazil practically enjoys.

We can see no consideration of justice or expediency which should induce us to promote the telegraphic policy of Brazil by surrendering the just title of Great Britain in this case. But, as the validity of that title, however clearly established in our view, is strongly resisted by the Government of Brazil, and as the circumstances attaching to its possession are in some respects unusual, Her Majesty's Government are willing, in deference to the wishes of an ally with whom they have long had many ties of commerce and of friendship, to submit the question of title to Arbitration, if the two Governments can agree upon a satisfactory Arbiter.

Annex 2.

Despatch from the Marquess of Salisbury to Mr. Phipps, as finally settled.

(No. 92.)

Foreign Office, November 18, 1895.

Sir,

THE interview I had with the Brazilian Minister on the 16th August led me to hope that a friendly solution of the difficulty which had arisen between Great Britain and Brazil in respect to the Island of Trinidad would not be difficult to find. The object of Her Majesty's Government in taking possession of the island was to facilitate the telegraphic communication of the world, and if that object could be equally well assured in any other manner, they were willing to allow formal rights, which in other respects were of little or no practical value, to fall into abeyance. But the communications I have received from you since that time hold out little hope that, in their present mood, the Brazilian Government will be willing to come to any arrangement on these terms.

It may be well, therefore, that I should state to you, for your guidance in any further conversations which may take place upon the question, the view which Her Majesty's Government take of their title to the Island of Trinidad.

It was represented to Her Majesty's late Advisers that a Bill had been proposed by the Brazilian Government, enabling them to take over compulsorily the cables laid along the Brazilian coast by the Western and Brazilian Telegraph Company. The Brazilian Government would thus have practically exclusive control over the messages which pass to the other States of South America. It was therefore proposed by the Telegraph Construction Company to make an alternative line from the Cape de Verde Islands by Ascension to Monte Video, which would bring the rest of South America into connection with Europe without passing through Brazil. But in order to lay such a cable it was necessary to use as a landing-place the uninhabited Island of Trinidad, situated some 700 miles from the Brazilian coast.

It was accordingly taken possession of under the orders of my predecessor in January last by Commander Foley, "as being uninhabited, and not belonging to any Power;" and every proper formality was observed for the purpose of duly asserting the sovereign rights in the island, which were vested from that time forth in Her Britannic Majesty.

The previous history of the island shows that for brief periods it has been occupied for scientific or for military purposes. It is believed to have been discovered by the pilot, Martin Vaz, in 1503; but there is no record of the fact of its discovery, nor of its having been taken possession of in the name of any Power. In 1700 Dr. Halley visited it for astronomical purposes, and formally took possession of it in the name of His Britannic Majesty. In 1781 we find it occupied by an English force, apparently for purposes connected with the war with Spain. We have records that the Portuguese Government objected to this occupation in 1782, claiming the island as their own, and it was, consequently, evacuated, under the orders of Lord Grantham, who apparently did not claim any British right over the island, but admitted that "it was contrary to Treaty that the coasts should be used for the purpose to which objection was taken." Later on, in 1785, a Portuguese garrison of 200 men was found there by La Pérouse, and appears

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to have remained till 1795. Since that date the island has not been occupied by Portugal or Brazil, or any other Power, and it has remained for a century quite uninhabited. In 1825 the independence of Brazil was recognized under Treaty by Portugal, but the Island of Trinidad is not mentioned in that Treaty as part of the territory to be severed from Portugal. It is said, however to have been referred to both before and since that time as a dependency of Brazil in certain public documents.

The claim which is now made to the island by the Republic of Brazil depends on the validity which is held to attach to a mere paper occupation of the island, divested of any pretension to actual use or habitation.

It should be borne in mind, in discussing this question, that Her Majesty's late Government did not found their right to annex the island upon the occupation of it by Dr. Halley, or upon the priority of his title to the title subsequently acquired by the Portuguese. The annexation directed by the Earl of Kimberley was, under his instructions, based by Commander Foley solely upon the fact that the island was "uninhabited, and not belonging to any Power." It was held that any title which may have existed at any previous period had been effaced by long disuse, and the island was at the disposal of any Power which might think fit to take it. All discussions which turn upon the character and intention of the various occupations of which the island was the subject during the eighteenth century are in a great measure irrelevant to the present controversy, and do not affect the claims on which Her Majesty's Government have acted. Whether the occupation of the island by Great Britain and Portugal during the last century did or did not confer upon them, or either of them, a valid sovereignty at the time, there is no doubt that it has been uninhabited, unoccupied, and ungoverned for 100 years previous to the present year, and therefore any sovereignty to which it may have been subject in the last century was looked upon as having lapsed.

The language of jurists is clear that a mere paper occupation, devoid of all effective character, will not preserve a claim to sovereignty over an indefinite number of years, and modern writers speak more emphatically in that sense than their predecessors.

The case most closely analogous to that of Trinidad is the case of the Island of Santa Lucia. It was certainly in the effective occupation of French colonists in the year 1667, if not to a later date. In the year 1713 the Signatories of the Treaty of Utrecht decided that it was a "neutral," or unoccupied, island. The interval which must elapse before continued omission to exercise the rights of ownership can be held to constitute the abandonment of a right previously established will, of course, differ widely, according to the circumstances of each case. But in proportion as the facilities for communication have been extended, the significance of such omissions has been increased, and the lapse of time within which they must be held to denote abandonment has rather tended to diminish. Mr. Hall (4th edition, p. 120) observes:—

> "When occupation has not only been duly effected, but has been maintained for some time, abandonment is not immediately supposed to be definitive. If it has been voluntary, the title of the occupant may be kept alive by acts such as the assertion of the claim by inscriptions, which would be insufficient to confirm the mere act of taking possession; and even when the abandonment is complete, an intention to return must be presumed during a reasonable time."

It is impossible to contend that there was any ground for presuming an intention to return; and the period of a century which has elapsed since the Portuguese garrison was entirely withdrawn, and with it all the inhabitants of the island, must be taken to exceed "a reasonable time."

The most recent International Act bearing upon this subject—the Act of Berlin in 1885—formally requires from every Power claiming any portion of the coast of Africa, that it shall govern effectively the territory which it claims; but this provision can only be quoted in evidence of the tendency of international opinion, as islands are specifically excluded from its operation.

But apart from these broad considerations of general law, the case of Trinidad is marked by a very special feature. It is an island which could not support any considerable community of men, and, by its situation and the character of its coast, it would be of little utility in the present day either for naval or military purposes. But from the progress of knowledge and enterprise in our time, it has derived a novel and unique value. It is the only spot of the earth which can be used as a landing-place for a telegraphic cable, south of the Equator, crossing the Atlantic from the Old World to the New. A telegraphic wire laid direct over so long a distance, without a break, as from Ascension to Monte Video, would need to be of a diameter which would make the enterprise, on financial if not on technical grounds, impracticable. Where, by natural conditions, the commodity and interests of vast populations depend upon a spot of the earth's surface being put to the use for which it has a special and singular aptitude, it is straining the right of sovereignty very far to say that the owners of this spot of earth shall have the right to declare that, under no conditions, shall it be put to that use, and to withdraw it from the service of mankind.

It is true that, without the help of Trinidad, telegrams can avoid the monopoly of Brazil by taking a long and costly circuit through the United States. The injury threatened by the effort of Brazil to bar the use of the island as a telegraphic landing-place is certainly lessened by this consideration, but it still is grave enough to weigh heavily with Her Majesty's Government when they are asked to assist in inflicting it by abandoning the possession to which, on other grounds, they believe this country to have a legitimate right.

Her Majesty's Government have made no claim with regard to the use of the Island of Trinidad except to be allowed to devote it to the furtherance of communication between the two continents, in the manner for which by a happy accident of nature it is specially fitted. They have offered to surrender it to Brazil for every other purpose, and to withdraw any claims possessed by this country, if its free application to telegraphic purposes can be secured. The Brazilian Government profess to be prevented from granting any lease upon these terms by an agreement concluded with the Western Telegraph Company in 1893. As they have by a recent Act of the Chambers and the Senate taken power to purchase compulsorily the rights of this very Company, the obstacle to the erection of a telegraphic station on the island does not seem to be insuperable.

We can see no consideration of justice or expediency which should induce us to promote the telegraphic policy of Brazil by surrendering the just title of Great Britain in this case. But, as the validity of that title was strongly contested by the Government of Brazil as soon as its occupation came to their knowledge, and as the circumstances attaching to its possession are in some respects unusual, Her Majesty's Government are willing, in deference to the wishes of an ally with whom they have long had many ties of commerce and of friendship, to submit the question of title to Arbitration, if the two Governments can agree upon a satisfactory Arbiter.

I am, &c.
(Signed) SALISBURY.

CHILE.

No. 9.

[September 27, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, September 21, 1895.

Claim of Nitrate Railways Company against Chile for losses during civil war.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the inclosed correspondence respecting the claim of the Nitrate Railways Company against the Chilean Government for losses incurred during the civil war in that country.

The Company requested (Paper A) that their claim might be presented to the Tribunal of Arbitration now sitting at Santiago to adjudicate on the other British claims of a similar nature. But they had been informed that the Government of Chile would maintain that, as they had engaged to submit to the laws of the country, without power to have recourse to any diplomatic remedy, they were debarred from the right to be considered as British claimants.

It was decided (Paper B) to instruct the British Agent to present the claim to the Arbitrators on the ground that, although the Commission was constituted by diplomatic negotiation, the reference of the claim to arbitration was not such a diplomatic remedy as was contemplated by the proviso in the original Concession.

The British Representative on the Tribunal has now telegraphed (Paper C) to say that the President of the Commission favours the view held by the Chilean Government, but that he is anxious that the point should be submitted to the Law Officers of the Crown.

I am to request that you will favour Lord Salisbury with your opinion as to whether the Nitrate Railways Company have forfeited their rights to be dealt with as other British claimants before the Arbitration Tribunal.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Budd, Johnstone, and Jecks		December 12, 1894.
(B.) To Mr. J. G. Kennedy	(No. 1)	January 1, 1895.
(C.) Mr. A. St. John..	(No. 2. Telegraphic)	September 18, „
(D.) Memorandum		„ 19, „

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Report.

In our opinion, the Nitrate Railways Company have *not* forfeited their rights to be dealt with as other British claimants before the Arbitration Tribunal.

The clause in the Concession which is invoked by the Chilean Government barred the right of the transferees of the Concession to bring diplomatic pressure to bear on the Chilean Government in respect of the Concession and its performance.

The Tribunal of Arbitration was set up to deal with injuries to the property of foreigners during the war, and we do not think that recourse to it is a diplomatic remedy such as is barred by the Concession.

(Signed) RICHARD E. WEBSTER.
R. B. FINLAY.

Royal Courts of Justice,
September 27, 1895.

No. 10.

[November 26, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 19, 1895.

Gentlemen,

Claim of Nitrate Railways Co. against Chile.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to the claim of the Nitrate Railways Company against the Government of Chile for losses incurred during the civil war in that country.

It will be in your recollection that on the 21st September last you reported that for the reason which you set forth the Company had not forfeited their rights to be dealt with as other British claimants before the Arbitration Tribunal.

This opinion was duly communicated to the British Representative on the Commission, who now telegraphs (Paper C) that the claim has been dismissed for want of jurisdiction, and that the majority of the Tribunal held that one of the clauses in the Concession bars the Company's right to have recourse to diplomatic remedy, and therefore to an appeal to a Tribunal constituted for the purpose of dealing with claims supported by Her Majesty's Legation.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion as to whether, in the circumstances of the case, Her Majesty's Government are now entitled to officially support the Company's claim by direct representation to the Chilean Government.

His Lordship would also be glad to be favoured with any general observations which you may have to offer on the case.

Your opinion of the 21st September last, together with the documents on which it was founded, is inclosed for convenience of reference.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Messrs. Budd, Johnstone, and Jecks		October	28, 1895.
(B.)	To Mr. A. St. John	(Telegraphic)	October	31, „
(C.)	Mr. A. St. John	(Telegraphic)	November	12, „

Report.

In our opinion Her Majesty's Government are now entitled to support the Company's claim by direct representation to the Chilean Government.

We adhere to the opinion formerly expressed by us as to the effect of the clause in the Concession which was cited as barring the right of the Company to the relief claimed, and have nothing to add upon this head.

The further contention which has been suggested, to the effect that the Company are not British subjects for the purposes of this Arbitration, appears to us to be untenable. A Company registered in London, and the capital of which is largely held by British subjects, must, in our opinion, be regarded as a British subject for this purpose.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 26, 1895.

CHINA.

No. 11.

[January 29, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 25, 1895.

Gentlemen,

Loss of "Kow-shing." Claim on China for compensation

WITH reference to the opinion expressed in your Report of the 4th ultimo, that, so far as China is concerned, the facts in connection with the destruction of the "Kow-shing" disclose a liability on the part of China to make good the losses caused thereby to British subjects and property, I have the honour to request that you will inform his Lordship whether you consider, in all the circumstances of the case, that Her Majesty's Government will be justified in making a claim on the Chinese Government, or in supporting any reasonable claim made by the Indo-China Navigation Company on that Government.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

In our opinion Her Majesty's Government would be justified by international law in making a claim upon the Chinese Government, or in supporting any reasonable claim that may be made by the Indo-Chinese Navigation Company on the Chinese Government in respect of the losses caused by the destruction of the "Kow-shing."

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
January 29, 1895.

No. 12.

[January 30, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 16, 1895.

Gentlemen,

Seizure and detention of British steam-ship "Pathan" by Chinese. Claim for compensati

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the Papers noted in the accompanying list, which relate to the seizure of the British steam-ship "Pathan" by the Chinese man-of-war "Namshin," on the ground of her having on board contraband of war destined for Japan.

The first intimation of this occurrence was received in a letter (Paper A) from Messrs. Gellatly, Hankey, Sewell, and Co., Managing Agents of the Mogul Steam-

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ship Company, stating that they had chartered the "Pathan" to Messrs Barber and Co., of New York, to carry a cargo of "lawful merchandize" from New York to Aden, Singapore, Hong Kong, Shanghae, and two ports in Japan.

She sailed from New York on the 28th July, and after touching at Aden and Singapore proceeded to Hong Kong, leaving on the 13th September for Shanghae, on her way to which latter port she was, while on the high seas, stopped and seized.

The circumstances connected with her seizure and detention, the manner in which she was searched, the steps taken for her release, and the claim for compensation preferred by the owners are given in the inclosed despatches from Mr. O'Conor, Her Majesty's Minister at Peking, and letters from Messrs. Gellatly and Co.

It appears that on the afternoon of the 20th September, while near Foochow, on the direct route from Hong Kong to Shanghae, the "Pathan" was stopped by the Chinese man-of-war "Namshin" and two other vessels.

The ship's papers, manifest, and register, were examined, and two cases of revolvers, one case of cartridges, and 200 barrels of rosin, being found on the manifest destined for Japanese ports, she was ordered to follow the "Namshin" to Kelung, an officer and twenty-six armed men being placed on board.

The master pressed for permission to go to Foochow, the nearest port, or to proceed on his voyage to Shanghae, but was refused.

The "Pathan" reached Kelung on the following day with the Chinese ships, and by order of the authorities was compelled to moor at the entrance of the harbour in a dangerous position, doing so, however, under protest.

Soon after her arrival 150 armed men were sent on board, and on the 23rd, without the master's consent, a number of men with some officers from the "Namshin" began taking cargo out of the hold, passing it up on deck, breaking open cases though it was raining at the time, and tearing and damaging the goods, the officers apparently exercising no control over their men.

On the 24th about 300 men, sailors, soldiers, and coolies, came on board with some officials and asked that a derrick should be put up, which was done. The same proceedings were continued, cases were burst open in all directions, even those containing kerosene oil being smashed and their contents emptied among the other cargo. The master shut off steam in the course of the day and rendered no further assistance in conducting the search, which was leading to the ruin of the cargo.

On the 25th the searchers, while tearing out the Shanghae cargo, discovered two rollers which were supposed to be parts of shell though in reality they were a portion of the plant for the Shanghae cotton mill. On this day the ship was in danger of capsizing so great was the weight of cargo piled up on deck.

The boxes of revolvers and cartridges were found on the 26th and the search was stopped. The Captain of the "Namshin" told the master that the ship would now be released, but in consequence apparently of the imaginary discovery of shell this intention was altered, and the vessel was brought into the inner anchorage.

During the 27th, 28th, and 29th the crew of the "Pathan" worked at putting the cargo back into the hold, but it was impossible to store it properly owing to the tiers having been broken. It had also suffered much in consequence of heavy rains, as it had been impossible to protect it.

No one came on board on the 30th, but on the following day, the 1st October, the Commissioner of Customs with three Mandarins visited the ship, and declared that she must be searched and the whole cargo discharged. Several officers of the "Namshin" boarded on the 2nd with a body of sailors, also a force of armed soldiers and a number of coolies. The process of taking out the cargo, carried on in the same fashion, was recommenced and carried on until the afternoon of the 3rd, when orders came for it to be replaced.

The master agreed, on the 3rd, to proceed to Shanghae with a Customs officer on board, and also agreed to sign, subject to the approval of the Acting Consul at Tamsui, a bond requiring him to take his ship to Shanghae, and, on arrival, to report to the Consul and enter at the Custom-house. It does not, however, appear from the log whether this bond, or any other, was actually signed.

On the 4th and 5th October, gangs of coolies replaced the cargo, some of which had been placed on a steamer lying alongside. This steamer, owing to the heavy swell which was running, caused some damage to the "Pathan," which subsequently at 2 P.M. on the latter day left for Shanghae with the Customs officer on board.

It is necessary to mention that the master protested energetically at each step of the proceedings, but without any effect; that every obstacle was placed in the way of his communicating with the agents of his Company, and that the Chinese authorities refused to allow Mr. Hopkins, the Acting British Consul at Tamsui, to telegraph to Her Majesty's Minister at Peking.

Mr. O'Conor, on learning what had occurred, instructed Mr. Hopkins not to resist the confiscation of any goods that were clearly contraband, but to press for the release of the ship under a bond to proceed to Shanghae for investigation. He also strongly urged the Chinese Government to give orders in this sense, adding that the Consul-General at Shanghae must assist at the investigation (Paper B).

The Chinese Ministers having referred to the matter during a visit which Mr. O'Conor paid to the Tsung-li Yamên, he explained what had taken place, and afterwards in a written communication he impressed upon the Ministers the gravity of the case, the serious liability which China had incurred, and the probability of a heavy claim for compensation (Paper C).

On the 23rd October Mr. O'Conor (Paper D) forwarded despatches from Mr. Hannen, Her Majesty's Consul-General at Shanghae, reporting on the case, and forwarding an abstract of the ship's manifest. Mr. O'Conor states that the revolvers and cartridges were consigned to different foreign firms at Kobe and Yokohama, and that they were the property of, and consigned to, subjects of neutral Powers.

Mr. Hannen puts their value at about 27*l*., while he estimates the general cargo to have been worth about 113,000*l*.

The manifest shows that there was also on board a considerable quantity of railway material for Japan.

On the arrival of the "Pathan" at Shanghae, Mr. Hannen formally notified the Taotai that he would hold the Chinese authorities responsible for all loss and damage resulting from the arrest and detention of the vessel, as well as for any future damages.

The Taotai, however, refused to admit that the ship had been unlawfully detained, or that the Chinese Government could be held responsible for any damages (Paper E).

In a further despatch (Paper F) Mr. O'Conor forwarded a copy of a note from the Tsung-li Yamên in which the Ministers attempted a defence of the treatment of the vessel and an assertion of the rights of China to deal with seizures, although no Chinese Prize Courts had been established. As this note contained statements which it was desirable at once to controvert, Mr. O'Conor replied in a letter, of which he incloses a copy, explaining the whole case and strongly insisting on the main points.

Messrs. Gellatly and Co. (Paper G) state that their agents at Shanghae have made a claim on the Chinese Government of 30,000 taels, say 4,310*l*., for the demurrage and expenses, and they urge that the claim should be supported by Her Majesty's Government. They also point out that, in addition, they have actually incurred large liabilities at Kelung and Shanghae for extra labour, &c., and add that in the claim as put forward no demand has been made for the loss of homeward freight or other consequential damages, for which they consider the Chinese Government should be responsible.

In a subsequent letter (Paper H) they furnish a statement placing their loss at not less than 5,500*l*. They also inclose a telegram from their Shanghae agents reporting that the Taotai has repudiated the claim, and they state that in these circumstances they do not think they can be asked to let the offer of settlement for 30,000 taels stand.

A perusal of the Papers show that it is not disputed that the "Pathan" had, so far as the "Namshin" was concerned, an ultimate enemy destination, although she was immediately bound to Shanghae, a Chinese port.

It is also not disputed that she had on board a small quantity of what in the then circumstances had become contraband of war.

The "Namshin," therefore, had a right to stop this neutral vessel on the high seas, and further a right, at the risk of being eventually cast in costs and damages, to take her in for adjudication by a competent Prize Court on the ground that she was carrying contraband. But the Chinese Government have not established Prize Courts, and it is a grave question whether they should not be informed that they cannot be allowed to exercise their right under the law of nations of stopping neutral British vessels on the high seas if they will not establish as a corollary to the exercise of that right the only Tribunals which are recognized by the law of nations as entitled to determine all questions arising out of the stoppage and seizure of neutral ships by belligerents upon the high seas.

In this case, however, even if Prize Courts had been established, the treatment of the "Pathan" from the time of her stoppage to the time of her release seems to have been improper and unjustifiable. Instead of taking her to Foochow or Shanghae, the

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Chinese authorities diverted her out of her course to Kelung, endangered the safety of the ship by the orders given to the master, broke bulk—which they had no right to do at all—destroyed a good deal of the cargo, and put the vessel to delay and inconvenience on her voyage, which was absolutely unnecessary.

I am to request that you will take these papers into your consideration, and that you will favour Lord Kimberley with your opinion as to whether the case is one in which Her Majesty's Government ought to support a reasonable claim for compensation from the Chinese Government on the part of the owners of the vessel, and, if so, upon what special grounds such a claim may most suitably be put forward.

I am further to request that you will be good enough to add any general observations which you may have to offer upon the case, and especially as to whether the Chinese can be allowed to exercise the right of stopping neutral British vessels on the high seas unless they establish the only Tribunals recognized as competent to deal with such seizures.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Gellatly, Sewell, and Co.		September 26, 1894.
(B.)	Mr. O'Conor	(No. 9. Treaty)	September 30, „
(C.)	Ditto	(No. 10. Treaty)	October 18, „
(D.)	Ditto	(No. 11. Treaty)	October 23, „
(E.)	Ditto	(No. 12. Treaty)	November 5, „
(F.)	Ditto	(No. 13. Treaty)	November 8, „
(G.)	Gellatly, Sewell, and Co.		November 23, „
(H.)	Ditto		December 13, „

Report.

Assuming the facts are as stated in the Memorandum, we are of opinion that, though this vessel did carry a small parcel of contraband, the case is one in which Her Majesty's Government may properly support a reasonable claim for compensation on the part of the owners of the vessel, and that it may most suitably be put forward upon the ground of the vessel being taken to a port unreasonably out of the ship's course, and of her detention without either proceeding, or the intention to institute proceedings in any Prize Court. There is no trace of any judicial proceeding.

The fact that the vessel was exposed to danger from having to anchor in an improper place, of her being crowded by persons in an improperly conducted search, and the fact of communication being unlawfully intercepted, are legitimate grounds of strong complaint, though they do not appear in this particular case to have increased the loss to the ship herself, which we understand to be the matter referred to us.

Compensation for damage to the ship may also properly be claimed if it resulted from careless treatment on the part of the Chinese.

A belligerent may visit and search a neutral vessel, and if contraband is on board for an enemy destination, as was the case here, may bring in the vessel for adjudication, but the captors must proceed without unnecessary disturbance or violence, with due consideration of the neutral's interests in choice of port, and with good dispatch. Compensation is payable for breach of these rules, and they seem to have been disregarded in this instance.

The fact that the Chinese Government has not established Prize Courts does not, in our opinion, disentitle the Chinese war-ships to exercise the right of visit and search upon the high seas, for that right may be necessary to enable them to ascertain the nationality of a vessel; and if the vessel visited should prove to be an enemy vessel it is within the right of the belligerent to make prize of, or even destroy, her on the spot. We therefore do not consider that the right to visit and search can be denied to China. As soon, however, as it appears that the vessel visited is a neutral vessel, any breach of neutrality on her part can be determined only by a Prize Court properly constituted.

If the Chinese Government were to announce its absolute refusal to establish Prize Courts, Her Majesty's Government would, in our opinion, be at liberty to prohibit the detention of any British ship as soon as her nationality had been made clear, upon the ground that such detention could under no circumstances lead to any lawful result, except her unconditional release after a period of purposeless delay.

But we do not consider that it would be a safe proceeding at present to prevent British vessels from being taken into port by Chinese war-ships merely on the ground that no Prize Courts have as yet been established, because it would always be open to China to establish such Courts in time to deal with the case of any ship that might be brought in, and if prevented from bringing in a vessel they might allege (and it would be difficult to disprove the statement) that their intention was to establish a Prize Court, and to bring her in for a lawful adjudication.

(Signed) R. T. REID,
FRANK LOCKWOOD.

Royal Courts of Justice,
January 30, 1895.

COLOMBIA.

No. 13.

[May 6, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, March* 11, 1895.

Messrs. Punchard and Co.'s contract with Governor of Antioquia for construction of railway.

I AM directed by the Earl of Kimberley to transmit to you the papers noted in the accompanying list, which relate to contracts signed in 1892 between the Governor of Antioquia, a Department of the Republic of Colombia, and the accredited agent of Messrs. Punchard and Co., of Cannon Street, London, for the construction of a railway from Puerto Berrio to Medellin.

In the course of the past three years this matter has formed the subject of a voluminous correspondence between this Department, the London firm, Her Majesty's Minister at Bogotá, and the Colombian Chargé d'Affaires in London; but without troubling you with the examination of all these documents, it may be sufficient to invite your consideration of those only which seem to have a direct bearing on the present position of the case.

I am, accordingly, first to call your attention to the printed papers which stand at the head of the list of inclosures, and which contain the contracts referred to, and the approval thereof, subject to certain modifications, by the National Government (see Document A).

The course of events which followed the conclusion of these contracts is set forth in the diary of the Company's Manager (see Document A *), and in a Memorandum drawn up in this Department on the 1st December last (see Document B), both of which are inclosed.

With reference to paragraph 11 of the Memorandum, it will be seen that in the earlier stages of the dispute the Antioquian authorities set up the contention that as the contracts were obtained by means of bribery, the instruments themselves were *ipso facto* rendered null and void, and that therefore the provisions which they contained for arbitration—in case of disputes arising—had no binding effect. The view of an eminent Colombian jurist on this point is quoted in the same paragraph of the Memorandum. A copy of it in full is inclosed (see Document C) in Mr. Jenner's despatch No. 3, Commercial, of the 7th March, 1894, and it is especially important as bearing on other points at issue, and on the general provisions of Colombian law. But as regards the particular point above referred to, it is important to note that the charges of bribery are merely allegations which have not as yet been established in any manner, and that Mr. Jenner, in his telegram of the 21st February (No. 4) (see Document D), refers to the general bribery charges as being long ago exploded in Colombia. Furthermore, the Colombian Government, by a Decree dated the 22nd May, 1894 (see Document E), made the necessary provision for the constitution of an Arbitration

Court in accordance with their laws. A copy of this Decree is inclosed in Mr. Jenner's despatch No. 21, Commercial, of the 26th May, 1894 (see Document F), and I am to invite your particular attention to the observations contained therein.

The divergence which is alleged to exist between the law of Colombia and the terms of the contract, in regard to arbitration is noticed in paragraph 9 of the Foreign Office Memorandum (see Document B).

The matter is further referred to in M. Enguerra's legal opinion (inclosed in Mr. Jenner's despatch of the 7th March, 1894 (see Document C), in Messrs. Punchard's letter of the 23rd November (see Document G), and in the correspondence with M. Mendez (see Documents H, I, K, L, and M), the Colombian Chargé d'Affaires at this Court, all of which are inclosed, and to which your attention is invited.

Down to the present date the action of Her Majesty's Government has been restricted to exercising all the pressure that was possible, through the dipolmatic channel, to induce the Colombian Government to constitute the Arbitration Court contemplated by the contract to which they had signified approval, and the principle of which is admitted by their Decree of the 22nd May, 1894 (see Document E).

These efforts have, however, not been attended with success, and the present situation is summed up in Mr. Jenner's telegram of the 3rd instant, copy of which is inclosed. (See Document N.)

The first question which arises is whether a denial of justice may be held to have taken place. On this point I am to invite your consideration of the observations contained in paragraph 12 of the Foreign Office Memorandum (see Document B), and to the extract from M. Enguerra's opinion referred to therein.

Every effort has been made by Her Majesty's Gnvernment to secure the constitution of a proper Court of Arbitration to decide upon Messrs. Punchard's claims. To this it appears that they are clearly entitled by their Contract. Their property has been forcibly expropriated without any judicial proceedings, and it would seem that some period must be determined beyond which the constitution of the Court of Arbitration can be no longer delayed without its further postponement constituting a denial of justice to the claimants.

I am accordingly to request you to take these papers into consideration, and to favour Lord Kimberley with your opinion as to whether under all the circumstances a denial of justice may be said to have taken place, and, if so, whether Her Majesty's Government would be justified in preferring a direct claim on the Government of Colombia, should they not have either constituted the Arbitration Court, or agreed to constitute such a tribunal by a date to be determined, on the ground that the Contract has been broken without valid reasons, and that the Contractors have a right to be indemnified for all expenditure and loss thereby incurred, and for loss of their concession, or on any other, and if so what, additional or more appropriate grounds.

Lord Kimberley would at the same time be glad to be favoured with any further observations which you may desire to offer generally upon the papers now submitted to you.

The remaining papers in this case are sent in a separate cover, in case you may wish to refer to them.

I have, &c.
(Signed) EDWARD GREY.

List of Papers.

(A.)	Contracts, &c.		
(A*.)	Diary of events by Mr. Spencer.		
(B.)	Memorandum (Mr. Maycock)		December 1, 1894.
	Messrs. Punchard and Co.		November 15, 1893.
(C.)	In Mr. Jenner	(No. 3)	March 7, 1894.
	Ditto	(No. 19)	May 10, „
(D.)	Mr. Jenner	(Telegraphic)	February 21, 1895.
(E.) (F.)	In Mr. Jenner..	(No. 21)	May 26, 1894.
(G.)	Messrs. Punchard and Co.		November 23, „
(H.)	To M. Mendez		November 2, „
(I.)	M. Mendez		November 5, „
(K.)	Ditto		November 6,
(L.)	Ditto		November 22, „
(M.)	To ditto		December 18, „
(N.)	Mr. Jenner	(Telegraphic)	March 3, 1895.

Report.

In view of the pendency of inquiries in Colombia as to the charge that the Contract was procured by bribery, we think it would be advisable to wait a reasonable time for the result of those inquiries. There is certainly ground for suspicion that such bribery took place, and we consider that Her Majesty's Government are also entitled to a full explanation of the letter of Mr. Spencer of the 20th February, 1895, before deciding on their course. It does not follow that there should be no redress even if there had been bribery, but that circumstance would greatly affect the case.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
May 6, 1895.

No. 14.

[December 13, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 6, 1895.

Status in Colombia of trading firm of Enrique Cortes and Co.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying letter from Messrs. Harries, Wilkinson, and Raikes (Paper A), respecting the status in Colombia of the Trading Corporation of Enrique Cortes and Co.

This Corporation is stated to be an English Limited Company registered under the Companies Acts in 1883. It has registered offices in London, where it carries on business, and has correspondents in Colombia and other South American States. The principal members of the Company are stated to be Colombian citizens, and the shares are mainly, if not entirely, held by persons who are not British subjects.

Messrs. Harries, Wilkinson, and Raikes desire to be informed whether, in these circumstances, if civil war should break out, or there should be other disturbance of public order, British protection would be extended to Messrs. Enrique Cortes and Co., and to their property abroad, if it should be seized or destroyed.

L.O.R. 1872 (Conf. 4098), p. 172.

L.O.R. 1891 (Conf. 6207), p. 21.

It will be seen from the accompanying Memorandum and Minutes thereon (Paper B), that in 1872 the Law Officers of the Crown were of opinion that firms established in Turkey were entitled to British protection if the members of the firm were British subjects, but not otherwise (see Report of the 15th October, 1872 (Paper C)), and that the status of foreign Companies incorporated under English law was considered by the Law Officers in 1891 in connection with the operation of the most-favoured-nation Article in the Treaty between Great Britain and the Argentine Republic (see Report of the 16th March, 1891 (Paper D)).

These Reports, however, do not exactly meet the point raised by Messrs. Harries, Wilkinson, and Raikes; and I am accordingly to request that you will take the matter into your consideration, and that you will favour Lord Salisbury with your opinion whether Her Majesty's Government may properly protect Messrs. Enrique Cortes and Co., either individually, or as a firm or Company, in the circumstances mentioned in Messrs. Harries, Wilkinson, and Raikes' letter.

I am also to request that you will be so good as to advise his Lordship as to the reply which should be returned to Messrs. Harries, Wilkinson, and Raikes, and that you will favour him with any general observations which you may wish to offer, after consideration of the inclosed papers.

I have, &c.
(Signed) GEORGE N. CURZON.

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List of Papers.

(A.)	Messrs. Harries, Wilkinson, and Raikes	November 21, 1895
(B.)	Memorandum by Mr. Oakes, and Minutes	„ 27, 29, „
(C.)	Law Officers' opinion (Confidential 4098, p. 172) ..	October 15, 1872
(D.)	Ditto (Confidential 6207, p. 21) ..	March 16, 1891
(E.)	Memorandum by Sir J. Pauncefote (referred to in B) .	October 20, 1883

Report.

In our opinion the principle ought *not* to be recognized that foreigners, by registering themselves here as a Limited Company, are entitled to claim from Her Majesty's Government the protection afforded to British subjects in foreign countries.

We think that, in each case, the substance of the matter must be looked at, and the nature of the business which is being in fact carried on by the Company.

No hard and fast line can, in our judgment, be laid down as to the amount of British interest which would entitle a Company to British protection.

We advise that Messrs. Harries, Wilkinson, and Raikes should be informed that Her Majesty's Government cannot undertake in any way to protect the commercial operations or property of their clients, and that the proposed purchases must be made, if at all, entirely on their own responsibility.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 13, 1895.

[EGYPT. *See* TURKEY.]

FRANCE.

No. 15.

[January 22, 1895.]

Foreign Office to the Law Officers of the Crown

Foreign Office, December 4, 1894.

Gentlemen,

Irregular marriages at Paris Consulate.

I HAVE the honour, by direction of the Earl of Kimberley, to transmit to you a statement extracted from the Marriage Register Book of Her Majesty's Consul at Paris, showing the circumstances under which certain marriages purport to have been solemnized at Her Majesty's Consulate in accordance with the law of England relating to marriages abroad.

Two of the marriages were solemnized while the Foreign Marriage Acts, 1849 to 1891, were in force; the rest took place at dates subsequent to the repeal of those enactments, and to the coming into operation of "The Foreign Marriage Act, 1892."

I am also to inclose samples of the three forms in which marriages at a Consulate should be entered in the Consular Marriage Register according to (1) whether the ceremony is performed by the Consul, or (2) in his presence according to the rites of the Church of England, or (3) of any other religious community.

During the whole period covered by these extracts from the Consular Marriage Register, Mr. Falconer Atlee held the Queen's Commission as Her Majesty's Consul at Paris, and until the 30th January, 1892, he also held a written authority to solemnize and register marriages, given by a Secretary of State, in pursuance of section 19 of "The Consular Marriage Act, 1849," when, therefore, the first two marriages of questionable validity were solemnized (viz., on the 19th and 28th January, 1892, respectively), such authority, if any, as was possessed for the purpose by the officer who purported to solemnize them, was derived from that written authority, subject to the provisions of the Foreign Marriage Acts, 1849 to 1891.

As indicated in the note attached to the inclosed statement, Mr. Bowden, the officer in question, was British Vice-Consul at Paris, but, though he signed the register as "Acting Consul," the Consul for whom he purported to be acting was not absent from his post (if absent at all) with the sanction of the Secretary of State, nor was Mr. Bowden's assumed appointment as "Acting Consul" approved or otherwise confirmed by the Secretary of State.

The exercise of Consular functions by a Consul and his Acting Consul contemporaneously is incompatible not only with the rules of the Consular Service, but with the sense and meaning of the latter appointment, which is made for the purpose of replacing a Consul when absent from his post on leave, or unable to discharge his duties from any other cause. An Acting Consul cannot be appointed for the purpose of discharging one or more of the various duties of the Consul to the exclusion of the rest; he must discharge all, or none, of these duties in place of the Consul for whom he acts. In the present case, although the facts cannot now be absolutely ascertained, there is some reason to believe that Mr. Consul Atlee may have been discharging other Consular functions at the very time when various other persons purported, according to the Consular Marriage Registers, to have respectively solemnized, as Acting Consuls, certain marriages at the Paris Consulate.

According to section 3 of "The Consular Marriage Act, 1868," "every person *acting, or* legally authorized to act, in the place of a British Consul, such Consul being duly authorized to solemnize and register marriages . . . , shall be deemed to be a British Consul duly authorized for all the purposes of the said recited Act," *i.e.*, "The Consular Marriage Act, 1849."

Further, section 7 (1) of "The Foreign Marriage Act, 1891," provides that "where a marriage purports to have been solemnized and registered in pursuance of the Foreign Marriage Acts, or any of them . . . . . in a British Consulate . . . . , it shall not be necessary in support of the marriage to give any proof of the authority of the marriage officer, within the meaning of this Act, by or before whom the marriage was solemnized and registered, nor shall any evidence to prove his want of authority, whether by reason of his not being a duly authorized officer, or of any prohibitions or restrictions under the Marriage Regulations or otherwise, be given in any legal proceedings touching the validity of the marriage."

The statutory and other conditions under which the remaining marriages of questionable validity were solemnized were, generally speaking, similar to those above set forth.

The Foreign Marriage Acts, 1849 to 1891, had, however, been repealed, and replaced by "The Foreign Marriage Act, 1892." In pursuance of section 11, sub-section (2) (*b*), and sub-section (3) of the latter Act, a marriage warrant of the Secretary of State, dated the 30th January, 1892, authorized to be a marriage officer the holder of the office of British Consul at Paris, referring to the office without designating the name of any particular person holding the office, so that while the warrant is in force, the person for the time being holding or acting in such office shall, as provided by the said section 11, sub-section (3), be a marriage officer.

In addition to Mr. Vice-Consul Bowden, who resigned his appointment early this year, the persons who purport to have solemnized these marriages are Mr. G. Austin Taylor, the British Pro-Consul at Paris, and Mr. George Falconer Atlee, the Consul's son, after he had succeeded Mr. Bowden as British Vice-Consul at Paris.

The circumstances under which each of these officers signed as Acting Consul were similar to those which attended the first two cases.

Section 13, sub-section (2) of the Act of 1892, which corresponds to section 7 (1) of "The Foreign Marriage Act, 1891," provides that "where a marriage purports to have been solemnized and registered under this Act in the official house of a British . . . . Consul . . . , it shall not be necessary in support of the marriage to give any proof of the authority of the marriage officer by or before whom the marriage was solemnized and registered, nor shall any evidence to prove his want of authority, whether by reason of his not being a duly authorized marriage officer, or of any prohibitions or restrictions under the marriage regulations or otherwise, be given in any legal proceeding touching the validity of the marriage."

Reference to the inclosed statement will show that errors were also committed in the marriage entries. The words "rites and ceremonies" are not applicable to the civil form of marriage, and should have been erased; other mistakes of minor importance occur.

These irregularities, as well as those of a graver nature, which cast in doubt the authority of the person acting as marriage officer, are primarily to be ascribed to the declining health, which recently resulted in the death, of Mr. Atlee, Her Majesty's Consul at Paris. They have only recently come to the notice of the Secretary of State.

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There is good reason to believe that Mr. Consul Atlee's subordinates, who were officers of little experience, acted on each occasion under his orders, given on a misinterpretation of the Acts of Parliament affecting the matter.

Deeply as these irregularities are to be deplored, Lord Kimberley conceives that the very wide provisions of the law which have been quoted above were devised to meet, and do in fact cover, such cases as have occurred at Paris, where the *bona fides* of all parties concerned is unimpeachable.

I am accordingly to request that you will be so good as to take the matter into your consideration, and to favour his Lordship with your opinion generally on the subject, and particularly as to whether any of the marriages described is invalid, and, if so, which, and for what reason.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

In our opinion, each and all of the marriages described would be regarded as valid in any of Her Majesty's Courts.

The method by which this result would be arrived at is, however, circuitous.

Unquestionably, the law has been greatly neglected and disobeyed in the case of each of these marriages, and the Acts under which they purported to be celebrated do not, in terms or directly, confer a married status upon these persons. But, by rendering unnecessary any evidence that the required authority had been conferred upon the individuals acting as marriage officers, and forbidding the admission of evidence to contradict such authority, these Acts do, in effect, prevent all of Her Majesty's Courts from hearing evidence which would invalidate the marriages. And we think, on the whole, that these Regulations as to evidence would have the effect of indirectly validating these marriages, whatever the issue might be in that Court of Her Majesty before whom the question might arise.

Having regard, however, to the peculiar basis upon which the validity of these marriages rests even in Her Majesty's Courts, and also to the fact that foreign Courts, upon whom British laws of evidence are not binding, might, for the defects of formality, declare that the status of married persons had not been acquired under the British Statutes, and thus refuse to recognize these marriages, we submit for your Lordship's consideration whether it is not advisable to confirm these marriages by an Act of Parliament.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
January 22, 1895.

N.B.—The advisability of passing an Act to confirm these marriages was subsequently considered, and the Lord Chancellor and the Parliamentary Counsel were consulted upon the matter. It was, however, eventually decided that it was neither expedient nor necessary to legislate on the subject.

W. E. D.

April 23, 1895.

No. 16.

[February 12, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, February* 8, 1895.

Franco-Malagasy hostilities. As to issue of Neutrality Proclamation and bearing of Foreign Enlistment Act.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying notices of questions in the House of Commons (Papers A and B) in regard to the existing state of affairs between France and Madagascar.

It is unnecessary for the present purpose to consider the causes which have led to the present misunderstanding between the two countries. It will, however, be seen from the accompanying Papers (C, D, and E) that shots have been exchanged between the French and the Hovas, that the Hova forts at Tamatave and Majunga have been bombarded by French war-ships, and that those places are now occupied by French troops.

It should perhaps be mentioned that the Protectorate of France over the Island of Madagascar was recognized by Great Britain on the 5th August, 1890 (see Paper F). It is not, however, thought that this fact can, from any point of view, materially affect the legal aspect of the questions which are now submitted to you, or the bearing of the provisions of the Foreign Enlistment Act upon them, since it is not open to question that in the case of an insurrectionary or civil war within the limits of a foreign friendly State the provisions of the enactment apply to both Parties so soon as the insurgents have been accorded belligerent rights or recognition.

In the present case, moreover, Madagascar, though under the Protectorate of France, is not an integral part of the territories of the French Republic, and the definition of a "foreign State," which is contained in section 30 of the Act, would appear clearly to apply to it.

On the 3rd instant Her Majesty's Ambassador at Paris forwarded to Lord Kimberley an extract from the "Journal Officiel" containing an account of a discussion in the Chamber of Deputies respecting a concession made to an English shipping firm for a transport of a portion of the war material destined for the campaign in Madagascar (Paper G). Information respecting the concession in question will be found in the statement made by the French Minister of War in answer to the interpellation addressed to him by M. Breton (Inclosure in Paper G).

As regards the question of the transport of war material, I am to call your attention to a Report by the then Law Officers, dated the 14th October, 1870 (Paper H), with reference to a contention of the then German Ambassador that international law requires a neutral to prevent the exportation of contraband of war. The Law Officers stated that "no such general rule is laid down by any writer of authority on international law, but the contrary is asserted by all those to whom reference is usually made."

L.O.R. 1870 (Conf. 3660), p. 130.

It will be seen, however, that one of the questions to be asked in the House of Commons (Paper B) relates not only to the transport in British vessels of materials of war, but to that of French troops, "for the purpose of fighting the Malagasies," and on this latter point I am to refer you to a Report by the Law Officers dated the 7th December, 1877 (Paper I), as to the bearing of the Foreign Enlistment Act in the case of British ships hired by a foreign State for the conveyance of troops dispatched to suppress a rebellion. The Law Officers were of opinion "that the granting of the use of a ship to convey troops is clearly an accepting of an engagement (see section 4 of 'The Foreign Enlistment Act, 1870') in the military or naval service (see section 30 of the same Act for the meaning of these words)."

L.O.R. 1870 (Conf. 4216), p. 47.

A similar question arose in December 1893, when Her Majesty's Minister at Rio de Janeiro asked for instructions as to whether the embarkation in British vessels of Brazilian Government troops to attack the insurgents should be permitted (Paper J). Mr. Wyndham was then "authorized to give warning that any British vessels carrying troops will do so at their own risk, and will not be protected against the consequences" (Paper K). A warning to this effect was duly issued (Paper L).

I am to request that you will take the inclosed papers into your immediate consideration, and that you will favour Lord Kimberley with your opinion on the following points:—

1. Whether the time has come for the issue by the Queen of a Proclamation of Neutrality in the war between France and Madagascar.
2. Whether the Foreign Englistment Act applies in any of the contingencies indicated in the questions to be asked by Mr. Henniker Heaton, M.P., and Sir Henry Howorth, M.P., and if so, in which of those contingencies, and to what extent.
3. Whether the Foreign Enlistment Act applies in the matter of the contract made by the French Government with an English firm for the conveyance to Madagascar of war materials which appear to include gun-boats in sections to be put together on arrival at Majunga.

Lord Kimberley would also be glad to be favoured with any general observations which you may have to offer upon the legal points involved.

I have, &c.
(Signed) FRANCIS BERTIE.

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List of Papers.

(A.) Mr. Henniker Heaton, question in House of Commons.		
(B.) Sir Henry Howorth, question in House of Commons.		
(C.) Acting Consul Sauzier	(No. 77)	December 21, 1894
(D.) Acting Consul Sauzier	(No. 3)	January 4, 1895
(E.) Mr. Berkeley	(Telegraphic)	February 3, „
(F.) Anglo-French Declaration (Treaty No. 856)		August 5, 1890
(G.) Lord Dufferin	(No. 36. Africa)	August 3, „
(H.) Law Officers Report (Confidential No. 3660, p. 130) ..		October 14, 1870
(I.) Law Officers Report (Confidential No. 4216, p. 47) ..		December 7, 1877
(J.) Mr. Wyndham .. .. .. (With Minutes by Sir E. Hertslet and Sir T. Sanderson.)	(Telegraphic)	December 4, 1893
(K.) To Mr. Wyndham	(Telegraphic)	December 6, „
(L.) Mr. Wyndham	(Telegraphic)	January 18, 1894
(M.) "The Foreign Enlistment Act, 1870" (33 & 34 Vict., cap. 90).		

Report.

In our opinion there exists a state of hostilities between France and Madagascar which may involve the exercise of belligerent rights towards British trade, and therefore if Her Majesty's Government think fit, they would be at liberty to issue a Proclamation of Neutrality.

Such a Proclamation, however, besides its primary use as a notification to British traders that their commerce is affected by the risks incidental to a foreign war, would also be a recognition of Madagascar as belligerent. Recognition by a neutral of belligerency between a protected State and a protecting State, especially where the former is semi-civilized, might be interpreted as an unfriendly act towards the latter, unless clearly required by the legitimate interests of neutral commerce.

If France proposes to exercise the rights of a belligerent (for example in regard to contraband), she could not justly object to a Proclamation of Neutrality, for the very exercise of these rights in unjustifiable, except in case of war. If France disclaims an intention to exercise these rights (which is very improbable), such a Proclamation would appear gratuitous and premature. We consider that the legitimate interests of British commerce afford the test by which the propriety of a Proclamation of Neutrality should in law be judged. Beyond that, of course, lie considerations of policy into which we do not enter.

2. In our opinion "The Foreign Enlistment Act, 1870," does not affect the mere carrying of munitions of war or other contraband.

The Foreign Enlistment Act does, in our opinion, make punishable such a proceeding as dispatching, or allowing to be dispatched, a vessel from British dominions with intent, either that it should be used as a store ship, to carry munitions of war, or that it should be used as a transport to convey French troops to the seat of war. In such cases the vessel is exclusively appropriated to the service of a belligerent. Section 8, subsection 4, coupled with the interpretation clause s. 30 of that Statute, lead us to this conclusion. Nevertheless, we consider that such proceedings, though punishable by municipal law under the Act of 1870, if done without the licence of Her Majesty, are not an infraction of international law. The Foreign Enlistment Act is no measure of the international obligations of Great Britain. It goes far beyond them, and its extreme stringency is presumably designed to arm Her Majesty's Government with power to interpose in possible contingencies which it would be difficult to anticipate, or even from considerations of policy, which might make exceptional restraints upon neutral commerce desirable in a particular case. It has never been authoritatively admitted, not even in the three rules of the Washington Treaty (which of themselves have not become of international authority), that a neutral Government is bound to prevent neutral ships from simply acting as transports or store ships for a belligerent, subject always to the risk of capture and condemnation. And we think it would be an extension of the duties of neutral Governments if any such obligation were admitted.

3. As already stated, we consider that the Foreign Enlistment Act applies in such case, subject to the observations already made.

4. We do not think there is any further observation we can make with advantage on the legal points involved.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
February 12, 1895.

No. 17.

[March 8, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 27, 1895.

Gentlemen,

Franco-Malagasy hostilities. As to bearing of Foreign Enlistment Act.

THE Earl of Kimberley has had under his consideration your Report of the 12th instant in regard to the existing situation between France and Madagascar. You state that, in your opinion, there exists a state of hostilities which may involve the exercise of belligerent rights toward British trade, and that "The Foreign Enlistment Act, 1870," makes punishable such a proceeding as dispatching, or allowing to be dispatched, a vessel from the British dominions with intent either that it should be used as a store ship to carry munitions of war, or that it should be used as a transport to convey French troops to the seat of war.

It has, however, been argued (and, in Lord Kimberley's opinion, with some force), that it is open to question whether the Foreign Enlistment Act in any respect applies to the hostilities between France and Madagascar, or, in other words, whether Madagascar is a friendly "foreign State" within the meaning of that Statute.

I have the honour to inclose a copy of the Treaty of Peace and Friendship between France and Madagascar of the 17th December, 1885 (Paper A), and to call your attention to Article I, which stipulates as follows:—

"Le Gouvernement de la République représentera Madagascar dans toutes ses relations extérieures. Les Malgaches à l'étranger seront placés sous la protection de la France."

Article 1 of the second Declaration between Great Britain and France, signed at London the 5th August, 1890 (Paper B), provides that "the Government of Her Britannic Majesty recognizes the Protectorate of France over the Island of Madagascar with its consequences, especially as regards the exequatur of British Consuls and Agents, which must be applied for through the intermediary of the French Resident-General."

Great Britain has thus recognized the Protectorate of France over Madagascar, so that the case under consideration must be dealt with on the basis that hostilities are being carried on by a Protecting Power, recognized by Great Britain, against a country over which she has a Protectorate.

It is conceived that from the relation of protector and protected in the case of two countries there result these consequences:—

1. That all Powers, other than the Protecting Power, are excluded from interference in the internal affairs of the protected country, and from asserting by force directly against the Government of the protected State any claims for redress they may have against it.

2. That the Protecting State, whilst justified in insisting that other Powers shall not forcibly obtain redress from the protected State, is bound herself to see that such redress is made, and in order to perform this international obligation, may have to employ force against the protected State. It follows from this argument that for purely international purposes the protected State may have ceased to be a State. No international right can be asserted against her. If she commits any international wrongs the shield of the Protecting Power is interposed between her and the aggrieved State, whilst her obligation to answer for these wrongs is assumed by the Protecting Power. It is presumed that if any interternational wrong is committed against the protected Power redress would be sought only through the medium of the Protecting Power. In what sense, then, can the protected country be said to remain a State from the international point of view? It would seem that for international purposes her position is the same as if she had been incorporated into the dominions of the protecting country.

This portion of the subject has been treated at some length by the late Mr. W. E. Hall in the last edition of his work on "International Law" (3rd edition, 1890), pp. 127 *et seq.*

Protectorates of the nature of the one in question have received a large extension in recent years. The consequences which flow from the nexus of protecting and protected States, whilst they have become of much greater importance, are, on the other hand, necessarily ill-defined. But it seems to follow logically, and by close analogy from the generally-admitted results of the nexus, that the protected Power may well be held not to be a "State" within the purview of such an enactment as the

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Foreign Enlistment Act; and any other view might involve this country not infrequently in considerable embarrassment. If Madagascar could only claim redress from a foreign Power through France it would seem a *reductio ad absurdum* to hold that the provisions of the Foreign Enlistment Act are applicable.

On the other hand, it is argued that the Treaty between France and Madagascar of 1885, whatever may be its proper meaning and intent, must be held to have lapsed as between those two Powers on the outbreak of hostilities. It is, moreover, pointed out that "The Foreign Enlistment Act, 1870," applies to any friendly "foreign State" as defined in that enactment, viz.:—

"Any foreign Prince, Colony, province, or part of any province or people, or any person or persons exercising, or assuming to exercise, the powers of government in or over any foreign country, Colony, province, or part of any province or people."

This definition was evidently taken from section 2 of the Act 59 Geo. III, cap 69 (Paper C), which was repealed by "The Foreign Enlistment Act, 1870" (Paper D).

It remains to consider any precedents which appear to be relevant to the matter under review, and in this connection I am specially to call your attention to the following papers:—

1. The Queen's Proclamation of Neutrality in the contest between the Government of the United States of America and certain States styling themselves the Confederate States of America, 13th May, 1861 (Paper E).

L.O.R. 1877 (Conf. 4216), p. 47.

2. Report by the then Law Officers of the Crown, dated the 7th December, 1877, as to the bearing of "The Foreign Enlistment Act, 1870," on the conveyance of troops in a British vessel for the suppression of a rebellion in Peru (Paper F).

It is assumed, however, that the antepenultimate paragraph of this Report, which states that "the use of a ship to convey troops belonging to a friendly Power would, under sections 4 and 30, be, in our opinion, an offence against 'The Foreign Enlistment Act, 1870,'" must be read *secundum subjectam materiam*, and was scarcely intended by the then Law Officers to be of universal application. It would seem that the term "rebels" was probably meant only to cover such "rebels" as by establishing a more or less stable Government, and by obtaining general recognition as belligerents, might fairly be said to have constituted themselves into a separate "State" within the meaning of that expression as generally employed.

L.O.R. 1889 (Conf. 5356), p. 12.

3. Report by the then Law Officers of the Crown, dated the 7th June, 1889, stating that, in their opinion, the Damara region, although a Protectorate of the German Government, is not part of the dominions of that State within the meaning of section 11 of the Foreign Enlistment Act, but that it is a friendly foreign State within the meaning of section 11, taken together with section 30 of the Act (Paper G).

I am to inclose copies of the replies given by Sir Edward Grey in the House of Commons (Papers H, I, J, K), and the draft of a letter addressed to Baron de Courcel on the 15th February, 1895 (Paper L), as showing how the matter stands at the present moment between the Government of Her Majesty and that of the French Republic.

I am also to inclose an extract from the "Times" newspaper of the 22nd instant, containing a letter from Professor Holland, and I am to call your attention to the arguments contained in the 2nd and 3rd paragraphs (Paper M).

I am to request that you will favour Lord Kimberley, at your earliest convenience, with your opinion on the following points:—

Generally—

1. Whether a protected State, with which and with whose Protecting State Her Majesty is at peace, is a friendly foreign State within the meaning of "The Foreign Enlistment Act, 1870."

(*a*.) When such protected State is at peace with the Protecting State.

(*b*.) When a state of hostilities is recognized by Her Majesty's Government to exist between such protected and protecting State.

Particularly—

2. Whether, having regard to the mutual relations of Great Britain, France, and Madagascar, your general answer to question 1 applies in terms to the situation now existing between those three Powers; and, if not, in what respects and to what extent it will require qualification.

I have, &c.

(Signed) H. PERCY ANDERSON.

List of Papers.

(A.) Treaty between France and Madagascar (Parliamentary No. 3036)	December	17, 1885.
(B.) Declarations between Great Britain and France (Treaty No. 856) ..	August	5, 1890.
(C.) "Foreign Enlistment Act. 1819" (59 Geo. III, cap. 69).		
(D.) Ditto 1870 (33 & 34 Vict., cap. 90).		
(E.) Proclamation of Neutrality	May	30, 1861.
(F.) Law Officers' Report (Confidential No. 3660, p. 130)	December	7, 1877.
(G.) Ditto .. .. (Confidential No 5956, p 12)	June	7, 1889.
(H.) Question and Answer in House of Commons (Mr. Henniker Heaton)	February	7, 1895.
(I.) Ditto (Mr. Spicer) ..	"	7, "
(J.) Questions and Answers, ditto	"	19, "
(K.) Question and Answer, ditto (Mr. Bowles) ..	"	21, "
(L.) To Baron de Courcel	"	15, "
(M.) Extract from the "Times" (Professor Holland) ..	"	22 "
(N.) Law Officers Report	"	12 "
(N².) Memorandum by Mr. Davidson, Q.C.	"	18 "

Report.

1. In our opinion, a protected State with which, and with whose Protecting State, Her Majesty is at peace, may be a friendly State within the meaning of the Foreign Enlistment Act.

(*a*.) When such protected State is at peace with the Protecting State, as when under section 11 of the Foreign Enlistment Act, it is sought to prevent a filibustering expedition against such protected State, though it is unnecessary to determine, for the present purpose, whether, in such a case, the "dominions" to be attacked should be regarded as dominions of the protecting or of the protected State.

(*b*.) When a state of hostilities exists between two such States, and they are recognized by Her Majesty's Government as belligerents, the Foreign Enlistment Act would apply to either.

That Act, being merely machinery for carrying out the international obligations of Her Majesty's Government, there is no duty upon Her Majesty to use that Act until those international obligations arise.

2. We consider that, in the present mutual relations of Great Britain, France, and Madagascar, Her Majesty's Government is not bound to enforce the provisions of the Foreign Enlistment Act. At present the state of hostilities which exists has not touched British interests, nor assumed proportions different either in degree or quality from hostilities in which Great Britain has been engaged, and of which foreign nations have not taken any public notice.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
March 8, 1895.

No. 18.

[April 26, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 16, 1895.

Gentlemen,

Franco-Malagasy hostilities. Treatment by French of Brit. subjects in Malagasy army.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying letter from the Intelligence Division of the War Office (Paper A), inclosing a Report by Captain à Court, from which it appears that he had heard the opinion expressed by military officers in France that the French military authorities in Madagascar would be justified in treating as "condottieri" the British subjects who have taken service with the Hovas, and, if captured, in at once shooting them.

In Lord Kimberley's opinion, the French authorities would have no right to treat recognized combatants in a barbarous manner which is contrary to the usages of civilized warfare, or to punish them, when taken prisoners in open fight, with the fate reserved for spies and cowards, or renegades and deserters. If the matter could be treated purely as a seditious conspiracy or riotous outbreak directed against the established Government of the country, then, possibly, the ringleaders, whether they

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happened to be British subjects or Hovas, being taken with arms in their hands, might be shot without Her Majesty's Government being called on to take any action.

The hostilities in Madagascar have, however, assumed proportions far beyond anything of this kind; and it would appear, moreover, from Captain à Court's Report that the French authorities propose to discriminate between combatants of British and those of Hova nationality, and to shoot only the former.

I am to inclose a despatch from the Acting British Consul at Tamatave (Paper B) respecting the employment of Colonel Shervinton and other British subjects in the military service of Madagascar; and, in connection with the general situation, I am to call your attention to your Reports of the 12th February, 1895 (Paper C), and of the 8th March, 1895 (Paper D).

The threat used has not been made authoritatively by the French Government, but it is possible that it may represent the views of the officers in command of the expedition. I am therefore to request that you will take the inclosed papers into your consideration, and that you will favour Lord Kimberley with your opinion—

1. Whether the French authorities are entitled to discriminate between British subjects serving in the armed forces of the Malagasy Government and Hovas in the like service, to the prejudice of the former.

2. Whether the French authorities are entitled to shoot British subjects serving in the Hova forces whom they may take prisoners in open fight during the pendency of the present hostilities in Madagascar.

3. Whether it is open to, or desirable for, Her Majesty's Government to take any, and, if so, what, action on Captain à Court's Report to the War Office, either by communication with the French Government or otherwise.

His Lordship would also be glad to be favoured with any general observations which you may wish to offer on the papers now submitted to you.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Intelligence Division (with Minutes)		March 27, 1895.
(B.)	Consul Sauzier (with Minutes)	(No. 68)	November 22, 1894.
(C.)	Law Officers' Report		February 12, 1895.
(D.)	Ditto		March 8, ,,
(E.)	Minutes, inclosing Admiralty letter of		July 17, 1893.
(F.)	Law Officers' Report, referred to in Minutes marked (E), and in Minute on letter from Intelligence Division (A). (Confidential No. 4370, p. 45)		July 2, 1875.

Report.

1. In our opinion, the French authorities are *not* entitled to discriminate between British subjects serving in the armed forces of the Malagasy Government and Hovas in the like service, to the prejudice of the former.

2. That the French authorities are *not* entitled to shoot British subjects serving in the Hova forces whom they may take prisoners in open fight during the pendency of the present hostilities in Madagascar. We assume that the British subjects in question are regularly incorporated in the regular forces of the Hovas.

3. That it is open to, and, in our opinion, desirable, for Her Majesty's Government to communicate with the French Government upon the subject in such manner as Her Majesty's Government may think fit with a view of preventing what, in our opinion, would be a violation of international law.

4. If the fighting now in progress between the French and the Hovas were merely a civil brawl, or a local popular tumult, the French might legitimately treat persons who take part in it as rioters and murderers. Or, if British subjects took part in hostilities against the French without being incorporated in any regular forces, they might be treated as private individuals unwarrantably engaged in lawless warfare, as the "Francs-Tireurs" were treated by the Germans (though in that case the German proceedings were perhaps of doubtful legality). But, as we have already stated in previous Reports to your Lordship, we are of opinion that a state of war does exist between France and Madagascar. Her Majesty's Government, as a neutral Power, have not thought fit to recognize belligerency, because there was no occasion for it in the interests of Great Britain, just as during the many wars between Great Britain and various native States other European Powers issued no such Proclamation. But the duties imposed upon belligerents by international law are in no sense dependent upon, and have no relation to the action of, neutral Powers which is dictated by their own policy and interests. If a state of war exists as distinguished from a civil broil, the authorized soldiers of one belligerent when captured by the other belligerent must be treated as prisoners of war to whatever nationality they belong, subject always to the risk of such reprisals as are recognized by international law, in case the Government they serve has itself violated that law.

We do not understand the opinion of the Law Officers of the 2nd July, 1875, to refer to this subject at all, but to the right of a foreign country to exercise its military law in respect of all British subjects who enter its military service.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
April 26, 1895.

No. 19.

[September 16, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, September 7, 1895.

Act of Canadian Parliament for execution of Treaty with France respecting Franco-Canadian trade.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, which relate to the Act passed by the Parliament of Canada for the due execution of the Treaty between Great Britain and France respecting trade between the latter country and Canada.

It appeared, on examination of the Canadian Act inclosed in the letter from the Colonial Office of the 27th November, 1894, that the reduction of import duties payable on the importation into Canada of the articles mentioned in the Schedule to the Act would be confined to goods of French origin, and that the Canadian Government could not without further legislation extend the benefit of the reductions of duty provided by the Treaty to the produce of countries entitled to those reductions under most-favoured-nation clauses applying to Canada, nor extend the benefits in question to the produce of the United Kingdom or of other British Colonies.

In order to meet these objections, a second Canadian Act was drafted, copy of which will be found in the Colonial Office letter of the 6th June last (p. 82 of the Confidential Print). Certain Minutes on this Act, together with suggestions by the late Attorney-General, will be found at pp. 80-82 of the Confidential Print. The points on which this second Act seemed insufficient are stated in Lord Ripon's telegram to the Governor-General of Canada which is printed at p. 83 of the Confidential Print as an inclosure in the Colonial Office letter of the 6th June.

A third Canadian Act has now been passed with the view of extending to the United Kingdom and other British Colonies, and also to countries having most-favoured-nation clauses in their Treaties with Great Britain operative in Canada and referring to import duties, the reductions of duty granted to French produce by the above-mentioned Treaty respecting trade between Canada and France. This Act will be found in the Colonial Office letter of the 20th ultimo.

I have the honour to request you to take these papers into your consideration, and to favour Lord Salisbury with your opinion as to whether this last-mentioned Act is sufficient for the purposes stated, and, if not, as to the amendments which should be introduced into it.

I am also to ask you to favour his Lordship with any observations which may occur to you in considering these papers, and which you may think of use to his Lordship in dealing with this case.

I am to add that the insufficiency of the two first Acts received from Canada, and the consequent necessity for further legislation, has caused the ratification of the Treaty to be delayed far beyond the time usually allowed for the purpose, and I am therefore to request that you will favour Lord Salisbury with your Report at your earliest convenience.

I have, &c.
(Signed) FRANCIS BERTIE.

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List of Papers.

Confidential Print: Colonial Commercial Relations, 1894–95 (Confidential No. 6650).
Marquess of Dufferin, No. 76 A, Commercial, March 3, 1893, containing a copy of the Treaty.
Colonial Office, November 27, 1894, containing a copy of the Canadian Act for executing the Treaty: No. 23 in Print.
Colonial Office, June 6, 1895, containing the first Canadian Act drafted for extending the benefits of the Treaty to the United Kingdom, other British Colonies, and certain foreign countries: p. 82 of the Print.
Minutès thereon: pp. 80–82 of Print.
Statement of the objections to the Act: telegram to the Governor-General of Canada, June 8, 1895: p. 83 of Print.
Colonial Office letter of August 20, 1895, containing the second Canadian Act for the above-mentioned purposes.

Report.

We are of opinion that the Canadian Act referred to in the Colonial Office letter of the 20th August, 1895, is sufficient for the purposes stated, and that no further amendments are necessary.

(Signed) RICHARD E. WEBSTER.
R. B. FINLAY.

Royal Courts of Justice,
September 16, 1895.

No. 20.

[**September 30, 1895.**]

Foreign Office to Law Officers of the Crown.

Supplementary Convention to amend Anglo-French Extradition Treaty of 1876.

Gentlemen, *Foreign Office, September* 17, 1895.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers respecting a proposed Supplementary Convention between Great Britain and France, to amend the Extradition Treaty of the 14th August, 1876, in regard to the procedure to be adopted in this country in the case of persons whose extradition may be applied for by the French Government.

The object of the proposed Convention is to give effect, as regards France, to "The Extradition Act, 1895" (Paper A), which enables the Secretary of State in certain circumstances to direct that an extradition case may be heard by a Magistrate elsewhere than at Bow Street.

I am to request that you will take the inclosed papers into your consideration, and that you will inform Lord Salisbury whether, in your opinion, the draft Convention, as amended in red ink (Inclosure in Paper G), may, in its present shape, properly be submitted to the French Government.

His Lordship would also be glad to be favoured with any general observations which you may wish to offer on the subject of the proposed Convention.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	"Extradition Act, 1895" (58 & 59 Vict., cap. 33).			
(B.)	Home Office		July	12, 1895.
(C.)	To Marquess of Dufferin	(No. 29. Treaty)	July	22, „
(D.)	To Mr. Howard	(No. 33. Treaty)	August	20, „
(E.)	Mr. Howard	(No. 32. Treaty)	August	24, „
(F.)	Ditto	(No. 34. Treaty)	August	26, „
(G.)	To Home Office		August	30, „
(H.)	Home Office		September	12, „
(I.)	Anglo-French Extradition Treaty, 1876 (Treaty No. 619).			

Report.

As altered and initialled by us, the draft Convention may, in our opinion, properly be submitted to the French Government.

(Signed) RICHARD E. WEBSTER.
R. B. FINLAY.

Royal Courts of Justice,
September 30, 1895.

Annex.

Draft Convention between Great Britain and France, amending Articles VII and IX of the Extradition Treaty of August 14, 1876.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and the President of the French Republic, being desirous to amend Articles VII and IX of the Treaty between Great Britain and France of the 14th August, 1876, for the mutual extradition of fugitive criminals, have named as their respective Plenipotentiaries for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India,

And the President of the French Republic,

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The text of ~~the third paragraph of Sub-Article A of~~ Article VII of the Extradition Treaty of the 14th August, 1876, is amended by the substitution of the words "a Magistrate" for the words "the Police Magistrate who issued the warrant or some other Police Magistrate in London," *in the first sentence of the third paragraph of Sub-Article (A), and by the omission of the word "Police" in the second sentence of the said paragraph and in Sub-Articles (B) and (D).*

ARTICLE II.

The text of Article IX of the aforesaid Treaty is amended by the ~~omission~~ *substitution* of the words ~~in London~~ *"a Magistrate" for the words "a Police Magistrate in London."*

ARTICLE III.

The present Convention shall be ratified, and the ratifications shall be exchanged at Paris as soon as possible.

It shall come into force ten days after its publication in the manner prescribed by law in the respective countries, and shall have the same force and duration as the Treaty to which it relates.

In witness whereof, &c.

(Initialled) R. E. W.
R. B. F.

[Council Office.] No. 21.

[February 26, 1895.]

The Law Officers of the Crown to Council Office.

"Rules Publication Act, 1893." Operation of.

Sir, *Royal Courts of Justice, February* 26, 1895.

WE were favoured with your letter of the 18th October last, stating that you were directed by the Lord President of the Council to transmit to us a copy of Regulations made by the Treasury, with the concurrence of the Lord Chancellor and the Speaker of the House of Commons, in pursuance of "The Rules Publication Act, 1893."

That, difficulties having arisen in the administration of the Act, the Lord President directed a letter to be addressed to the Treasury on the subject.

That you were to transmit to us a copy of the letter from your Office to the Treasury, together with a copy of the reply received from the Treasury, and that you were to request that we would be pleased to inform the Lord President whether, in our opinion, the "Rule-making authority," in the case of Orders in Council, was the Privy Council or the Department preparing the draft of the Order which required the confirmation of Her Majesty in Council.

That you were to transmit to us a list of Orders in Council (and copies of the Orders) which might come within the provisions of section 1 of the Rules Publication Act, and that you were to request, should we be of opinion that the Privy Council was the Rule-making authority in the case of those and similar Orders, that we would be pleased to inform the Lord President what Orders in Council did come within those provisions, and, further, in cases in which urgency was pleaded under section 2 of the Act by a Department forwarding a draft Order for submission to Her Majesty in Council, what course of procedure should be adopted.

We were also favoured with your letter of the 8th November last, stating that you were directed by the Lord President of the Council to transmit to us, for our consideration, a letter which had been received from the Colonial Office as to whether a proposed Order in Council under "The Foreign Jurisdiction Act, 1890," to amend "The Cyprus Extradition Order in Council, 1881," would, if approved by Her Majesty, be a "statutory Rule" within the meaning of section 1 of the Rules Publication Act.

We have also to acknowledge the receipt of your letter of the 24th December last, transmitting, for our information, a Memorandum furnished by Mr. Gray to the Foreign Office respecting the applicability of "The Rules Publication Act, 1893," to Orders in Council under the Foreign Jurisdiction Act and other classes of Orders in Council.

We have taken the papers into our consideration, and have the honour to

Report—

1. That, in our opinion, the Privy Council is the Rule-making authority whenever the Order requires the confirmation of Her Majesty in Council, whether or not the draft of the Order be prepared by any other Department. The test appears to be, what is the authority whose decision converts into law what was previously a proposal?

2. We are of opinion that an Order in Council cannot of itself be properly called a statutory Rule, but it may contain a statutory Rule, that is to say, a "Rule, Regulation, or Bye-law."

If such Rule, Regulation, or Bye-law complies with the provision of section 1, sub-section 4, of the Rules Publication Act, then the Order in Council containing it must be dealt with as provided by section 1 of that Act, otherwise not.

3. In our opinion, in the case of urgency, the provision of section 2 of that Act should be followed, but we consider it would be contrary to the spirit and intention of the Act, though perhaps within its language, if provisional Rules were to be perpetuated. The Act means that provisional Rules are only for cases of urgency, and are to be supplemented by regular Rules.

4. We do not consider that the proposed Order in Council under "The Foreign Jurisdiction Act, 1890," to amend the Cyprus Extradition Order, would be, or required to be, treated as a statutory Rule within the meaning of section 1 of the Rules Publication Act, because it is not directed by an Act of Parliament that such Order, or any Rules contained in it, shall be laid before Parliament within the provision of section 1, sub-section 4, of that Act.

We are, &c.
(Signed) R. T. REID.
FRANK LOCKWOOD.

Annex 1.

The Attorney-General to Colonel Fellows.

Dear Colonel Fellows, *House of Commons, February* 27, 1895.

IN regard to your question to the Solicitor-General, it is certainly provided that any Order in Council under "The Foreign Jurisdiction Act, 1890," must be laid before Parliament, and that must of course be done.

But we do not consider that the Order in Council is a "statutory Rule," and it does not, in our opinion, come within section 1, sub-section 4, of the Rules Publication Act.

And, therefore, though it must be laid before Parliament, it should not, in our view, be treated as a statutory Rule.

The Solicitor-General agrees with this.

Yours truly,
(Signed) R. T. REID.

Annex 2.

Memorandum by Mr. Gray.

I HAVE, on Mr. Davidson's instructions, prepared a draft Order in Council, applying "The Colonial Prisoners' Removal Act, 1884," to the Ottoman dominions.

The Act does not deal with the removal of a prisoner from one part of a British possession to another. It is therefore necessary to apply the Act separately to Egypt and to the rest of the Ottoman dominions, as if each area were a British possession.

Mr. Davidson also invites me to state my views as to the applicability of "The Rules Publication Act, 1893," to Orders in Council under the Foreign Jurisdiction Act.

The expression "statutory Rules" is by section 4 defined as meaning "Rules, Regulations, or Bye-laws" under any Act of Parliament "which are made by . . . . Her Majesty in Council, &c.;" but the Act does not define what is to be included in the words "Rules, Regulations, or Bye-laws."

I take the words, in their ordinary acceptation as used in legislation, to mean minor provisions necessary to give effect to a major law, and made under delegated powers. But all enactments made under delegated authority are not necessarily Rules. To use the terms adopted by Mr. Whitley Stokes in his classification of the Indian Codes, law is either "substantive" or "adjective," and the superior Legislature may delegate powers of making either substantive or adjective law. "Rules, &c." would seem to refer to law of an adjective character, and to a portion only of that department of law.

The distinction which I have endeavoured to draw would seem to have been present to the minds of the Legislature in passing the Act now in question; for section 3 (4) enables the Treasury by Regulation to "determine the classes of cases in which the exercise of a statutory power by any Rule-making authority constitutes or does not constitute the making of a statutory Rule" within the meaning of that section.

The distinction may also, with respect to Orders in Council, be traced in other recent Acts. For example, sections 1 and 8 (1) of "The Mail-Ships Act, 1891," provide for the application of the Act by Order in Council, while section 8 (3) provides for Rules, also by Order in Council.

The same distinction appears in "The Colonial Courts of Admiralty Act, 1890."

"The Interpretation Act, 1889," though it does not govern the Act of 1893 to the extent of supplying the meaning of the words "Rules, Regulations, or Bye-laws," may be cited. Sections 31, 33 (3), 36 (2), and 37 of that Act appear to show that the words "Rules, Regulations, or Bye-laws" do not cover the same ground as "Order in Council." The exclusion of "Order in Council" in section 33 (3) makes it somewhat difficult to argue that that sub-section, which mentions only "Rules, Regulations, or Bye-laws," includes every Order in Council, though I am inclined to think it would apply to Rules made by an Order in Council.

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As, therefore, the Act itself shows that every exercise of a statutory power is not a Rule, and as there is a tolerably well-defined class of Orders in Council to which the Act can apply [*e.g.*, Orders under the Mail-Ships Act, section 8 (3), or under the Colonial Courts of Admiralty Act, section 13, or regulating judicial procedure under the Foreign Jurisdiction Act], I am inclined to think that Orders conferring jurisdiction, creating a Court, or otherwise making substantive enactments, are not within the operation of the Act.

It may be an anomaly, on the construction here suggested, that an Order conferring jurisdiction is not within the Act, while an Order making Rules for the exercise of that jurisdiction falls within it; if so, it is an anomaly created by Parliament. It is also an anomaly, on the other construction, that an Order giving a Secretary of State power to make Rules is within the Act, and that the Rules when so made are not within it. Such Rules would seem not to be within the purview of section 1 (4).

The object of section 1 seems to be that "public bodies" may have an opportunity of seeing and considering statutory Rules in their draft state; but I do not know of any "public body" (an expression not defined in the Act) concerned in the exercise of powers under the Foreign Jurisdiction Act. I hardly think these words apply to those Societies who from time to time favour the Foreign Office with an expression of their views.

(Signed) A. GRAY.

Temple, December 4, 1894.

No. 22.

[March 18, 1895.]

Foreign Office to the Law Officers of the Crown.

Registration of *lex loci* marriages by Consular officers. Order in Council.

Gentlemen,

Foreign Office, February 23, 1895.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying papers respecting an Order in Council which it is proposed to issue, restricting the authority to register *lex loci* marriages to such Consular officers (not being marriage officers) as may from time to time be authorized for the purpose by the Secretary of State.

I am to call your attention to the Memoranda by Sir Edward Hertslet, Mr. Cockerell, and Mr. Davidson, Q.C. (Paper B), and to the letter from this Department to the Registrar-General of the 9th January, 1895 (Paper C), which explains the reasons that render it, in Lord Kimberley's opinion, undesirable that Consular officers who are not marriage officers should be allowed, without special authority, to register *lex loci* marriages.

I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Kimberley with your opinion whether the draft Order in Council (Paper F) may, in its present shape, properly be submitted to the Queen in Council for Her Majesty's approval.

I have, &c.

(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Sir A. Nicolson	(Telegraphic)	December 17, 1894
(B.)	Minutes { Sir E. Hertslet, Mr. Cockerell, Mr. Davidson }		{ " 18, " January 9, 1895
(C.)	To Registrar-General		" 9, "
(D.)	Registrar-General		" 9, "
(E.)	Mr. A. Gray		" 11, "
(F.)	Draft Order in Council		February 15, "

Report.

We have considered the draft Order which accompanied Sir H. Percy Anderson's letter, and, thinking that its purport might be misunderstood in view of the language of the Order in Council of 1892, we have communicated with Mr. Gray, who has been good enough to suggest an alternative draft Order in a simpler form, which we have initialled, and which, in our opinion, may properly be submitted for the approval of Her Majesty in Council.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
March 18, 1895.

Annex.

WHEREAS, by "The Foreign Marriage Act, 1892," Her Majesty the Queen in Council is authorized to make Regulations for the purposes therein specified;

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred by the said Act or otherwise enabling her in this behalf, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows :—

1. A British Consul, or person authorized to act as British Consul, shall not, under the provisions of section 18 of "The Foreign Marriage Act, 1892," or Article 8 of "The Foreign Marriages Order in Council, 1892," register any marriages solemnized in accordance with the local law of a foreign country, unless he is a marriage officer, or is, for the time being, authorized by a Secretary of State to register such marriages; and no Consular officer shall be required to attend at the solemnization of any marriage so solemnized unless he is by, or in pursuance of, this Order authorized to register such marriage.

2. This Order may be cited as "The Foreign Marriages Order in Council, 1895."

And the Right Honourable the Earl of Kimberley, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

(Initialled) R. T. R.
F. L.

No. 23. [Council Office.]

[April 2, 1895.]

The Law Officers of the Crown to the Council Office.

Rules Publication Act. Application to Extradition Orders in Council.

Sir,

Royal Courts of Justice, April 2, 1895.

WE were favoured with your letter of the 12th ultimo, with reference to our Report of the 26th ultimo, respecting the application of "The Rules Publication Act, 1893," to Orders in Council, stating that you were directed by the Lord President of the Council to transmit to us the accompanying copy of a letter from the Foreign Office,* which raised the question as to whether Orders in Council under the Extradition Acts, 1870 and 1873, for giving effect to Extradition Treaties, came within the provisions of section 1 of the Rules Publication Act.

That you were also to transmit to us an example of the Orders in Council referred to by the Foreign Office,† as well as a copy of "The Cyprus Extradition Order in Council, 1895,"‡ which was the subject of the latter portion of our Report, and that you were to request us to favour the Lord President with our opinion on the question raised by the Foreign Office.

In compliance with the request contained in your letter, we have the honour to

Report—

That, in our opinion, Orders in Council under the Extradition Acts, 1870 and 1873, are not "Statutory Rules" within the meaning of "The Rules Publication Act, 1893." They cannot, we think, be regarded as Rules, Regulations, or Bye-laws.

We are, &c.

(Signed) R. T. REID.
FRANK LOCKWOOD.

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* March 9, 1895.   † April 30, 1894 (Roumania).   ‡ March 8, 1895.

[Council Office.]

No. 24.

[April 29, 1895.]

The Law Officers of the Crown to Council Office.

Application of Rules Publication Act to Foreign Marriages O. in C.

Sir, *Royal Courts of Justice, April* 29, 1895.

WE were favoured with your letter of the 17th instant, stating that, with reference to previous correspondence on the subject of the application of "The Rules Publication Act, 1893," to Orders in Council made under various Acts, you were directed by the Lord President of the Council to transmit to us the accompanying draft of a proposed Order in Council, to be entitled "The Foreign Marriages Order in Council, 1895," which had been received from the Foreign Office, together with a letter from that Department, in reply to a letter from your Office inquiring if, in the opinion of the Secretary of State, the Order in Council proposed to be made came within the provisions of the Rules Publication Act.

That you were to request us to favour his Lordship with our opinion whether the draft Order in Council above mentioned came within the provisions of the 1st section of "The Rules Publication Act, 1893."

We have taken the matter into our consideration, and, in compliance with the request contained in your letter, have the honour to

Report—

That, in our opinion, the draft Order in Council to be entitled "The Foreign Marriages Order in Council, 1895," contains a Statutory Rule, and thus comes within the provisions of section 1 of "The Rules Publication Act, 1893." It embodies a Regulation which is subsidiary to "The Foreign Marriages Act, 1892," and which supplies a supplementary detail for carrying out the designed objects of that Act.

We think it may be of advantage to offer a further comment upon the somewhat difficult construction of "The Rules Publication Act, 1893."

A "Statutory Rule" is defined to be a "Rule, Regulation, or Bye-law."

Rules, Regulations, and Bye-laws, in our opinion, mean provisions subsidiary to an Act of Parliament which supply supplementary details for carrying out its designed objects. These three words are not mutually exclusive, but all three are used presumably because some Acts of Parliament authorize the making of "Rules," others authorize the making of "Regulations," and others authorize the making of "Bye-laws."

An Order in Council which directs that an Act of Parliament shall come into operation (*e.g.*, under "The Extradition Act, 1870," section 2) does not appear to us to be, or to contain, a Statutory Rule at all.

It is not subsidiary or supplementary to an Act of Parliament, but summons into activity the powers of an Act theretofore dormant.

And even where such an Order in Council under the Extradition Act is accompanied by limitations, restrictions, conditions, exceptions, or qualifications (under section 2), it does not appear to us to be, or to contain, a Statutory Rule, For such an Order in Council, if it applies the Act at all, must apply the whole Act. It cannot add to, or subtract from, the Act, though it may exclude particular areas, particular individuals, or make the operation of the Order itself dependent upon conditions of time, or place, or upon any contingency, such, for example, as consents in any case of the Sovereign or Minister of either State.

We do not, however, consider that the term "Statutory Rule" is limited to Rules, Regulations, or Bye-laws which apply only within the United Kingdom. This would be inconsistent with the generality of the language used in "The Rules Publication Act, 1893," and especially in the definition clause (section 4), of which the first part is limited to the United Kingdom, while the second part extends to every Secretary of State, including the Foreign and Colonial Secretary.

Doubtful cases will no doubt arise, as the distinctions are somewhat fine, but in each case we think the question will have to be decided by the test we have indicated.

We are, &c.
(Signed) R. T. REID.
FRANK LOCKWOOD.

No. 25.

[September 10, 1895.]

Foreign Office to the Law Officers of the Crown.

Proposed Guernsey Law relative to foreigners.

Gentlemen, *Foreign Office, August* 27, 1895.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers respecting a Projet de Loi, entitled, "Loi relative aux Personnes de Nationalité étrangère," which has recently been approved by the States of Guernsey, and for which Her Majesty's sanction is requested by the Lieutenant-Governor of that island.

The proposed Law (Inclosure 3 in Paper A) enacts that aliens presenting themselves for registration shall be required to pay certain specified fees, the amount paid to be returned to such persons who may leave the island within a year without having become chargeable to the authorities or been expelled from Guernsey.

Many Treaties have been concluded between Great Britain and foreign Powers placing foreigners, in regard to taxation, in the same position as natives.

In the inclosed Return (Paper B) the Articles giving national treatment in this matter have been marked for convenience of reference, and I am to call your particular attention to the following stipulations in the Treaties with Colombia and Equator:—

"The subjects and citizens of each of the Contracting Parties . . . . . . shall not be subject, in respect of their persons or property, or in respect of passports, licences for residence or establishment, nor in respect of their commerce or industry, to any taxes, whether general or local, nor to imposts or obligations of any kind whatever, other or greater than those which are or may be imposed upon native subjects or citizens."

Other countries become entitled to privileges in the matter of taxation through the operation of the most-favoured-nation Article. Article I, for example, of the Convention between Great Britain and France of the 28th February, 1882, provides as follows: "In all that relates to . . . . the payment of taxes or other impositions, and the enjoyment of all legal rights and privileges, ... British subjects in France or in Algeria, and French in the United Kingdom, shall enjoy the treatment of the most favoured nation" (Paper C).

I am to request that you will take the matter into your consideration, and that you will inform Lord Salisbury whether, in your opinion, the provisions of the inclosed Law are contrary to existing Treaty stipulations between this country and foreign Powers. His Lordship would also be glad to be favoured with any general observations which you may wish to offer, after perusal of the inclosed papers.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Home Office	August 14, 1895.
(B.)	Return of national treatment clauses in Navigation Treaties with foreign Powers (Parliamentary No. 3203).	
(C.)	Commercial Treaty with France (Treaty No. 695) ..	February 28, 1882.

Report.

We are of opinion that the provisions of the Projet de Loi entitled, "Loi relative aux Personnes de Nationalité étrangère" *are* contrary to existing Treaty stipulations. They are contrary to the provisions of Article XIV (4) of the Treaty of the 16th February, 1866, with the United States of Colombia, and of Article XV (4) of the Treaty of the 18th October, 1880, with the Republic of the Equator, and consequently contrary also to Treaty with every country which is entitled to the treatment of the most favoured nation.

(Signed) RICHARD E. WEBSTER.
R. B. FINLAY.

Royal Courts of Justice,
September 10, 1895.

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Annex.

Petition.

To the Queen's most Excellent Majesty in Council.

The humble Petition of the States of the Island of Guernsey,

Sheweth:

THAT for some time past a considerable number of alien immigrants have left their homes and taken up their residence in this island;

That their number appears to be annually increasing;

That in many instances they become chargeable to the authorities of this island soon after their arrival, owing to extreme poverty;

That, in consequence, the States' exchequer is being burthened annually to the extent of several hundreds of pounds for the relief and removal of such pauper immigrants;

That with a view to provide, as far as is possible, a remedy to this evil, the Royal Court, on the 11th day of May, 1895, adopted a Projet de Loi, intituled "Loi relative aux Personnes de Nationalité étrangère," and requested the Bailiff to submit the same to the consideration of the States;

That at a meeting of the States, holden before John Le Mottée, Esquire, Lieutenant Bailiff, on the 19th day of June, 1895, the States approved of the said Projet de Loi with a slight modification, with a view to its being transmitted for the sanction of your Most Excellent Majesty in Council;

Wherefore, your petitioners most humbly pray that your Majesty may be graciously pleased to grant your Royal sanction unto the above Projet de Loi, intituled "Loi relative aux Personnes de Nationalité étrangère," as set out in the Schedule hereunto annexed, and to declare it to be your Majesty's Royal will and pleasure that the same shall have force of law within your Majesty's Island of Guernsey.

And your petitioners, as in duty bound, will ever pray.

In the name and on behalf of the States:
(Signed) TH. GODFREY CAREY,
Bailiff of Guernsey.

Guernsey, August 3, 1895.

Schedule referred to in the foregoing Petition.

Loi relative aux Personnes de Nationalité étrangère.

Les personnes de nationalité étrangère qui se présenteront au bureau des États pour s'y faire enregistrer, aux fins des Ordonnances de la Cour Royale qui les y obligent seront tenues de verser entre les mains du Trésorier des États les sommes suivantes, savoir :—

	Fr.
(*a.*) Un homme non-marié ou une femme sans enfants	10
(*b.*) Un homme marié	15
(*c.*) Un homme ou une femme ayant des enfants mineurs..	20

Les montants ainsi versés seront portés au crédit des États et formeront un fonds qui aidera à couvrir les frais et débours pour le soulagement temporaire et le rapatriement des personnes de nationalité étrangère tombant à charge aux États; toutefois les dits montants seront remboursés aux étrangers qui quitteront l'île avant l'expiration d'une année depuis leur arrivée sans être tombés entre-temps à la charge des États, ou sans avoir été renvoyés de l'île par acte de Cour.

2. Toute personne de nationalité étrangère qui manquera de verser le susdit montant lorsqu'elle se présentera au bureau des États pour s'y faire enregistrer, sera censée ne s'être pas présentée pour le dit objet et sera sujette d'être rapatriée par le bateau qui l'aura apportée, sauf à elle d'en appeler devant la Cour.

No. 26.

[October 17, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 21, 1895.

Gentlemen,

Proposed Guernsey Law relative to foreigners.

THE Marquess of Salisbury has had under his consideration your Report of the 10th instant on the Law relative to persons of foreign nationality which has recently been approved by the States of Guernsey.

His Lordship understands that, although the Law has been drafted in general terms, its provisions are mainly directed against French immigration into the island, an evil which would appear from the Petition to the Queen in Council from the Government of Guernsey (Inclosure in Paper A) to be assuming serious dimensions.

The Law could not, of course, be made applicable to natives of countries with whom Great Britain has concluded Treaties containing provisions similar to those in the Treaties with Colombia and Equator, to which your attention has already been drawn. This difficulty might possibly be overcome by the addition of a proviso to the following effect at the end of the Law:—

"Aucune disposition de cette Loi n'affectera les droits et privilèges accordés par les Traités aux sujets ou citoyens d'un État étranger."

France, however, has no privileges as regards taxation or licences for residence other than those which she may claim through the operation of the most-favoured-nation Article in the Convention between Great Britain and France of the 28th February, 1882 (Paper C); and in this connection I am to call your attention to the accompanying correspondence (Papers D to I) respecting the claim of British Consuls in Russia to exemption from house tax in that country. It will be seen that, although there is an Article in the Treaty between Great Britain and Russia of the 12th January, 1859 (Paper J, see Article XV), granting to the Consuls of the two countries "whatever privileges, exemptions, and immunities are or shall be granted to Consuls of the most favoured nation," Her Majesty's Government have abstained from claiming on behalf of British Consuls in Russia the exemption from payment of house tax enjoyed by French Consuls in that country under the provisions of the Treaty between Russia and France. Her Majesty's Government did not think that they would be justified in demanding, under the most-favoured-nation Article, that British Consuls in Russia should be exempted from payment of the tax when Russian Consuls in Great Britain are not exempted from the payment of a similar impost.

I am to call your attention to a French Law passed in 1893 (Paper K) respecting the conditions imposed on foreigners residing in France, and I am to request that you will favour Lord Salisbury with your opinion whether, having regard to the provisions of that Law, Her Majesty in Council may sanction the proposed Guernsey Law (with the addition of the proviso suggested) without giving to France the right to object.

Lord Salisbury would at the same time be glad to be favoured with any general observations which you may wish to offer after perusal of the inclosed papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Home Office	August	14, 1895
(B.)	Law Officers' Report	September	10, „
(C.)	Commercial Convention with France (Treaty No. 695) ..	February	28, 1882.
(D.)	Consul Wagstaff (Riga) .. .. (No. 10. Treaty)	March	6, 1894.
(E.)	To Consul Wagstaff .. .. (No. 1. Treaty)	March	14, „
(F.)	Mr. Howard .. .. .. (No. 2. Consular)	April	9, „
(G.)	To Mr. Howard .. .. .. (No. 9. Treaty)	April	21, „
(H.)	Mr. Howard .. .. .. (No. 16. Treaty)	May	24, „
(I)	To Mr. Howard .. .. .. (No. 10. Treaty)	June	4, „
(J.)	Treaty of Commerce with Russia (Treaty No. 427) ..	January	12, 1859.
(K.)	Law respecting the residence of foreigners in France ..	August	8, 1893.

Report.

Assuming the proposed addition to be made, the proposed Law would not be open to objection upon its face; but the effect would, in our opinion, be that the Law would not apply to Frenchmen.

We must point out that there are serious objections to such a Law.

The question will not in all probability be raised by the French Government, or the Government of any country, but by the individual sought to be taxed, and as long as the Treaties exist containing such clauses as those in favour of Equator and Colombia the difficulty will continue.

In our judgment, the French law as to the sojourn of foreigners, or our own conduct in regard to Russia, has no bearing on the question before us.

(Signed) RICHARD E. WEBSTER.
R. B. FINLAY.

Royal Courts of Justice,
October 17, 1895.

GERMANY.

No. 27.

[January 29, 1895.]

Foreign Office to the Law Officers of the Crown.

German (Dependencies) Extradition Treaty O. in C.

Gentlemen, *Foreign Office, January* 18, 1895.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, a draft of an Order in Council, applying the Extradition Acts, 1870 and 1873, in the case of a Treaty between Great Britain and Germany, signed at London the 5th May, 1894, for the extradition of criminals between the territories of Her Majesty and certain dependencies of Germany specified in the Treaty.

I inclose letters from the Home, Colonial, and India Offices, to which Departments the draft Order in Council was submitted, and I am to request that you will favour Lord Kimberley with your opinion whether the draft Order may, in its present shape, properly be laid before the Queen in Council for Her Majesty's approval.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Draft Order in Council.	
(B.)	Colonial Office	December 11, 1894.
(C.)	Home Office	December 13, „
(D.)	India Office	January 15, 1895.

Report.

As initialled by us, the draft Order in question may, in our opinion, properly be submitted to the Queen in Council for Her Majesty's approval.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
January 29, 1895.

Annex.

WHEREAS by the Extradition Acts, 1870 and 1873, it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient; and that if, by any law made after the passing of the Act of 1870 by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying the said Acts in the case of any foreign State, or by any subsequent Order, suspend the operation within any such British possession of the said Acts, or of any part thereof, so far as it relates to such foreign State, and so long as such Law continues in force there and no longer:

And whereas by an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," provision is made for carrying into effect within the Dominion the surrender of fugitive criminals:

And whereas by an Order of Her Majesty the Queen in Council, dated the 17th day of November, 1888, it was directed that the operation of the Extradition Acts, 1870 and 1873, should be suspended within the Dominion of Canada so long as the provision of the said Act of the Parliament of Canada of 1886 should continue in force and no longer:

And whereas a Treaty was concluded on the 5th day of May, 1894, between Her Majesty and His Majesty the German Emperor, King of Prussia, for the mutual extradition of fugitive criminals between the territories of Her Majesty and certain Dependencies of Germany, which Treaty is in the terms following:—

[Here follows the Treaty signed on the 5th May, 1894.]

And whereas the ratifications of the said Treaty were exchanged at London on the 3rd day of December, 1894:

Now, therefore, Her Majesty, by and with the advice of her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the 3rd day of February, 1895, the said Acts shall apply in the case of the said Treaty with His Majesty the German Emperor, King of Prussia, and of the Dependencies of Germany referred to therein.

Provided always, and it is hereby further ordered, that the operation of the said Extradition Acts, 1870 and 1873, shall be suspended within the Dominion of Canada so far as relates to the said Dependencies of Germany, and to the said Treaty, and so long as the provisions of the Canadian Act aforesaid of 1886 continue in force, and no longer.

R. T. R.
F. L.

No. 28.

[February 15, 1895.]

Foreign Office to the Law Officers of the Crown.

Nationality of Mrs. Pietzcker, British subject by birth, but widow of a German who had lost his nationality and acquired no other.

Gentlemen, *Foreign Office, February* 2, 1895.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying papers respecting an application for a British passport which has been made to Her Majesty's Consul-General at Hamburg by a Mrs. A. M. Pietzcker.

The applicant, who is now a widow, was born in England. She married, in 1875, Mr. Pietzcker, a native of Germany, who before his death forfeited his German nationality in contemplation of German law, and acquired no other national status.

Mrs. Pietzcker's national status, in contemplation of English law, depends upon the construction of section 10 (1) of "The Naturalization Act, 1870" (33 Vict., cap. 14), which runs as follows: "A married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject."

It is open to doubt whether the late Mr. Pietzcker had actually forfeited his German nationality at the time of his marriage, or only at a subsequent date. The cardinal point of principle involved in the case is, however, whether, according to the correct construction of the English Statute, a married woman is to be deemed a person of no nationality because her husband is of none, or whether she is to be deemed a person of that nationality which (*a*) she possessed at the time when she became the wife of a husband of no nationality, or which (*b*) she possessed through her husband at the time when he became of no nationality.

I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Kimberley with your opinion:—

1. As to which of the alternative constructions of the Statute suggested above is correct;

2. As to whether a British passport may properly be issued to Mrs. Pietzcker; and

3. With any general observations which you may wish to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Acting Consul-General Pogson	(No. 4. Treaty)	December 13, 1894.
	(And Minutes.)		„ 27, „
(B.)	To Home Office		January 14, 1895
(C.)	Home Office	(No. 1. Treaty)	„ 17, „
(D.)	To Consul-General Dundas	(No. 1. Treaty)	„ 29, „
(E.)	Consul-General Dundas		
(F.)	"Naturalization Act, 1870" (33 Vict., cap. 14)		

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Report.

1. In our opinion, if a British subject marries a man who at the time of the marriage has no nationality, she retains her British nationality. If after the marriage her husband acquires a nationality, the wife also acquires that nationality, and as often as the husband acquires a fresh nationality the wife also acquires the same. And once the wife has, through her husband, acquired any alien nationality she becomes a statutory alien, and if the husband loses that nationality the wife does not by that loss regain her British nationality. We consider that this is the effect of section 10, sub-sections 1 and 2 of "The Naturalization Act, 1870," operating upon the previous common law, though the Act is obscurely worded.

2. In view of the opinion we have already expressed as to the law, the answer to this question depends upon a point of fact, viz., did Mr. Pietzcker possess any nationality at any time during his married life? As this point of fact is left uncertain we cannot answer the question. But we suggest, for the consideration of your Lordship, that you might think it advisable to exercise your powers under that part of section 7 of "The Naturalization Act, 1870," which relates to the granting of special certificates to "any person with respect to whose nationality as a British subject a doubt exists." Such a special certificate may, in our opinion, be granted without compliance with the conditions as to residence and intention required for ordinary certificates under the earlier part of the same section.

3. We do not consider that we can usefully add any further observations.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
February 15, 1895.

No. 29.

[April 2, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, March* 16, 1895.

Naturalization of Mrs. Pietzcker. As to grant of special certificate.

I HAVE the honour to inform you, by direction of the Earl of Kimberley, that on the receipt of your Report of the 15th ultimo, respecting Mrs. Pietzcker's application for a British passport, a letter was addressed by this Department to the Home Office (Paper H), inquiring whether, in the circumstances of the case, Mr. Secretary Asquith was willing to issue a special certificate of naturalization to Mrs. Pietzcker under the provisions of section 7 of "The Naturalization Act, 1870."

I am to inclose the letter received in reply from the Home Office (Paper I), from which it will be seen that the then Law Officers of the Crown expressed an opinion on the 24th July, 1880 (p. 20 of Paper J), that the same conditions with respect to residence and service were applicable in the case of a special certificate as in the case of other certificates.

According to that opinion, the Secretary of State would have at present no power to grant a special certificate to Mrs. Pietzcker, and, in these circumstances I am to request that you will be so good as to inform Lord Kimberley whether you adhere to, or desire in any way to modify, the opinion expressed in your Report of the 15th ultimo, that a special certificate may be granted without compliance with the conditions as to residence and intention required for ordinary certificates under the earlier part of section 7 of the Naturalization Act.

I am to add that the Foreign Office was not in possession of a copy of the Report of the 24th July, 1880, when your Report of the 15th ultimo, with reference to Mrs. Pietzcker's case, first reached the Department, and had no knowledge, until the communication from the Home Office of the 4th instant was received, that your predecessors had on this particular point reported in 1880 to that Department in an opposite sense.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Acting Consul-General Pogson (And Minutes.)	(No. 4. Treaty)	December 13, 1894.
(B.)	To Home Office		December 27, "
(C.)	Home Office		January 14, 1895.
(D.)	To Consul-General Dundas	(No. 1. Treaty)	January 17, "
(E.)	Consul-General Dundas	(No. 1. Treaty)	January 29, "
(F.)	"Naturalization Act, 1870" (33 Vict., cap. 14).		
(G.)	Law Officers' Report		February 15, "
(H.)	To Home Office		February 21, "
(I.)	Home Office		March 4, "
(J.)	Home Office. Reprint of Law Officers' Reports on Naturalization.		

Report.

We have reconsidered that paragraph of our recent Report to your Lordship which, as we now learn, is in conflict with an opinion given by our predecessors on the 24th July, 1880, and notwithstanding the great authority of that opinion, we still adhere to our former view, for the following reasons:—

There are four classes of persons who may apply for certificates under sections 7 and 8 of "The Naturalization Act, 1870." In the case of three out of these four classes (viz., aliens applying for the first time, aliens who have been previously naturalized, and statutory aliens), the words of the Statute explicitly, and in each case separately, require, as a qualification for a certificate, a compliance with certain specified conditions.

In the case of the fourth class, viz., persons with respect to whose nationality as British subjects a doubt exists, the words of the Statute do not contain any reference to these specified conditions, an omission which can hardly be regarded as accidental.

But the words of the Statute do in this case prescribe that the Secretary of State is to grant a special certificate "in manner aforesaid." We do not consider that these last-mentioned words are to be taken as equivalent to the explicit requirements of compliance with specified conditions which are to be found repeated in each of the other three cases. We can perceive no reason for using language in the one case different from the language used in the three other cases, unless it was intended that the effect also of the language should be different. We think that when the Statute says the Secretary of State may grant a special certificate "in manner aforesaid," these words relate to his manner of grant only, and not to the qualifications of the persons who may ask him to make the grant. He is to be satisfied with the evidence adduced (viz., of the existence of a doubt as to the nationality), he is to exercise a discretion with or without assigning a reason, and with a view to the public good, and without appeal.

The difference in the language applied by the Statute to these several classes of persons may aptly correspond with a difference in their situation. In the cases of those who are and always have been aliens, or who were born aliens, but have been naturalized with inferior privileges, or who have already discarded British nationality, the Legislature might have seen a special reason for exacting conditions of past residence, or of service under the Crown, and of intention to continue such residence or service, before granting or restoring the full privileges accorded by the Act of 1870. All these persons either undoubtedly are or undoubtedly have been aliens, whereas, in the case of persons claiming British nationality as a right, whose title is yet open to doubt, it may reasonably have been considered unnecessary to impose such conditions before quieting doubts as to the right. It is possible, and indeed probable, that they never have been aliens at all.

Under these circumstances we remain of opinion that a special certificate may be granted under section 7 of the Act of 1870, without compliance with the conditions as to residence and intention required for ordinary certificates under the earlier part of the same section.

(Signed) R. T. REID,
FRANK LOCKWOOD.

Royal Courts of Justice,
April 2, 1895.

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HAITI.

No. 30.

[July 2, 1895.]

Foreign Office to the Law Officers of the Crown.

Claims on Govt. of Haïti on account of loss of "May Reed" and ill-treatment of her master and crew.

Gentlemen,

Foreign Office, June 4, 1895.

I HAVE the honour, by direction of the Earl of Kimberley, to transmit to you the papers noted on the accompanying list, which relate to the claims made on the Government of Haïti by the owner, the master, and two members of the crew of the schooner "May Reed."

The papers in the case do not include any statement showing the view taken of it by the Haïtian authorities, beyond the record of the trial of the master and the two seamen before the Court of First Instance at Cap Haïtien (see Document C); but a report on the case has now been received from Her Majesty's Consul-General in Haïti (see Document C 2, Mr. Tweedy's No. 8), which puts a somewhat different complexion on the occurrence. The information contained in the statements made by the master and the seamen (see Documents H and M) is, however, confirmed by other statements (see Documents C and A) sent home from Jamaica.

The facts of the case appear to be shortly as follows:—

The "May Reed" was a British ship of 12·71 tons, owned by Mr. C. R. Hinson (see Documents D and G), and she arrived at Cap Haïtien on the 8th August last; on the 18th of that month (see Documents H and M) the master and two of the crew were arrested on a charge of smuggling; they were tried on the 25th October (see Document B); no witnesses were called, but the Court, relying as would seem on the Customs documents showing that the articles alleged to have been smuggled had been duly declared, and on a letter from the Chief Financial Administrator of the district stating that the Customs officials had taken due cognizance of the articles in question three days before the men were arrested, acquitted the prisoners. An appeal was lodged against this decision; the grounds of the appeal do not appear, neither is it clear that the appeal was ever heard. On the 30th January last (or, according to the seamen, on the 29th), after the men had been in prison 166 days, they were told that they were free (see Document H).

In the meantime, the remaining members of the crew, being unable to manage the schooner, and having no resources, had returned home, and the vessel had gone to the bottom of the sea (see Documents E and H).

The men state (see Documents H and M) that they were confined in a cell some 12 feet square, absolutely unprovided with any sanitary arrangements whatsoever, and that there were frequently as many as twenty-two other prisoners in it. There were neither beds nor bedding. They were constantly short of water, and had to rely on the kindness of friends for their food. Medical assistance was refused to them, although the two seamen suffered from fever, and the master from fever, diarrhœa, and dysentery.

The cell in which the men were confined is described (see Documents C and A) by other persons as "extremely close and filthy," "a miserable dirty place," and one of the persons in question stated that he would not go back to see the men on account of the vermin.

It will be observed that, according to the statement made by the master, the men were offered their liberty if they would ask for pardon and renounce all claim to compensation (see Document H).

The papers contain a certificate by a Government medical officer of Grand Turk (see Document K) as to the extent to which the master's health suffered by the treatment to which he was subjected, and it is presumable, and is also said by them to have been the case (see Document M), that the seamen suffered much in health. The medical officer states that the master will certainly never be able to resume his calling as a ship-master.

The claims put forward are as follows:—

By the owner of the "May Reed" (see Document F)—	Dollars.
For the loss of that vessel	25,000
Hire of the "Pandora" for ascertaining the particulars of the loss of the "May Reed"	150
Loss of the use of the "May Reed" during the detention of the master ..	830
By the master of the "May Reed" (see Document L)—	£
For illegal arrest and cruel treatment during detention	1,660
For injury to health	1,000
Privations of his family during his detention	200
For sundry expenses	1,000
By the two seamen of the "May Reed" (see Document N)—	
For illegal arrest, cruel treatment during detention, injury to health, &c., each	5,000

The usual earnings of the men and the vessel are not stated in the papers, but the value of the "May Reed" is put by the Commissioner of the Turks Islands at between 100*l*. and 150*l*., and the hire of such a boat as the "Pandora" for the journey from Turks Islands to Cap Haïtien and back at between 5*l*. and 10*l*. (see Document D).

I have the honour to request you to take these papers into your consideration, and to favour Lord Kimberley with your opinion as to whether Her Majesty's Government can properly make a claim on the Government of Haïti for compensation for the owner, the master, and the two seamen of the "May Reed" in consequence of the action of the servants of that Government as set forth in the papers.

2. If so, whether the sums respectively demanded by the claimants are reasonable, or if in any case the sum specified should be, in your opinion, unreasonable and excessive, what amount might in such case properly be demanded in substitution by Her Majesty's Government.

3. And, lastly, I am to ask you to favour his Lordship with any further observations which may suggest themselves to you, and which you may think will be of assistance to his Lordship in dealing with this case.

I am, &c.

(Signed) H. PERCY ANDERSON.

List of Papers.

Colonial Office		January 29, 1895.
To Consul-General Cohen ..	(Commercial. Telegraphic)	January 31, „
Consul-General Cohen	(Telegraphic)	February 4, „
Colonial Office		May 20, „
Mr. Tweedy	(No 8)	April 30, „

Report.

In our opinion, Her Majesty's Government can properly make a claim on the Government of Haïti for compensation for the owner, the master, and the two seamen of the "May Reed" in consequence of the action of the servants of that Government.

Originally the master was to blame in not manifesting a small part of his cargo, but the penalties were waived, and an undertaking accepted to pay duties on these goods. Even if the penalties had not been waived, the treatment of the three men would have been wholly inexcusable, especially in the case of the two seamen.

In fact, they were acquitted of breach of the law, and the attempted removal of these goods from one house to another which gave occasion to their arrest appears to have been lawful and innocent.

As regards all three, their protracted detention before trial, and their subsequent detention until payment of the duties, were unjustifiable. The filthy and unsanitary condition of the prison, and the refusal of proper food and of medical relief, if we are to accept the apparently reliable statements contained in the papers before us, expose the Government of Haïti to a charge of wilful cruelty of a serious kind.

The loss of the vessel appears to have been the consequence of the unwarrantable imprisonment of the master and two of the crew.

2. We consider this is a bad case of oppression, for which smart compensation should be paid, but the sums claimed appear to be excessive. We think 260*l*. is

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sufficient for the loss of the vessel, and 1,000*l.* for the master and 500*l.* for each of the crew would be a proper compensation.

3. We desire to add that the conduct of Gardiner in not paying the duties till the 30th January seems somewhat unintelligible; but whether he was to blame or not, we do not consider that his neglect would justify the imprisonment of the three men, or in any way excuse the Haïtian Government for their treatment of the prisoners.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
July 2, 1895.

HONDURAS.

No. 31.

[July 1, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 6, 1895.

Detention of "Lottie May" at Ruatan and imprisonment of her master, E. S. Bodden. Claim for compensation.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list which relate to a claim for compensation on account of the detention of the British schooner "Lottie May," at Ruatan Island, Spanish Honduras, and the imprisonment of her master, E. S. Bodden.

The master's account of what occurred is as follows (see Paper A):—

The "Lottie May" arrived at Ruatan Island in July, 1892, at a time when a rebellion was in progress, the northern mainland ports of the Republic being in the hands of the rebels.

After selling his cargo Mr. Bodden asked for a clearance for the north of the island, which was refused by the Acting Commandant of the port.

He then applied for a clearance for Grand Cayman, a British possession. This the Acting Commandant also refused, saying that he would not grant a clearance for any port. The master then said that he would go to Truxillo to report himself to Her Majesty's Consul, whereupon the Acting Commandant declared that if he left Ruatan without permission he would sink his ship.

The master then returned to his ship. Some time after, five armed men came on board with a message to him from the Acting Commandant to follow them on shore.

Bodden complied, and on landing was arrested and put into prison, where he was kept for six days.

On the second day, in consequence of the unhealthiness of his place of incarceration, he was taken ill, but no notice was taken of his request for medical assistance. On the sixth day he was liberated, returned on board, and left Ruatan.

The mate and a seaman of the "Lottie May" deposed to the arrest, but were ignorant of what happened on shore at the time of the application for a clearance (Inclosure in Paper B).

The matter was referred to Mr. Gosling, Her Majesty's Minister in Central America, for a Report, and on the 23rd February, 1893 (Paper C, Inclosure 5), he represented it to the Honduranean Government, asking for an investigation and pecuniary satisfaction, if the facts, which were alleged, should turn out to be true.

The master claimed 2,300*l.* compensation, and the owners 1,134*l.*, but Mr. Gosling appears only to have advanced the latter claim.

In reply (Paper C, Inclosure 2), the Honduranean Government refused to entertain the claim, stating that the facts precluded them from making an analysis of the case, and that the proceedings of the authorities could not be otherwise than approved by them, since (1) clearance was requested for places occupied by parties who had risen in arms against the order of things legally established in the country, and not for the north of the Island of Ruatan, as alleged; and (2) during the continuance of a state of siege.

Certified copies of the evidence which the Honduranean Government had caused to be taken were furnished with their reply (Paper C, Inclosure 4), including that of the Acting Commandant Fuentes, who had refused the clearances.

The Acting Commandant states that he was given strict orders not to allow any vessel to sail for any place during six days with a view to preventing the transmission of information to the enemy who were in possession of Truxillo and La Ceiba, ports in the north of Honduras, that the master of the "Lottie May" first asked for a clearance for the north coast of the island (not, it is observed, for the north coast of the mainland of Honduras, as stated by the Foreign Minister), that this was refused, and that the master then asked for a clearance for Truxillo, which was also refused, that Bodden then became irritated and used offensive language about the Honduranean flag, and said he would leave with or without a clearance, in consequence of which he was put under arrest.

The other witnesses, Reyes, Yates, and Rivera, state that the clearance was refused because the port for which it was requested was in the hands of the enemy. They make no mention of a clearance having been requested for the north of the island or for Grand Cayman, but the master's statement that he first applied for a clearance for the north of the island (of Ruatan) is borne out by that of the Acting Commandant, and it is clear that the orders given were to refuse all clearances from Ruatan for whatever destination.

As regards the arrest, the evidence communicated by the Minister for Foreign Affairs shows that it was made to prevent the master's departure without a clearance.

The Acting Commandant, Reyes, and Rivera all state this in so many words. Yates alone suggests that it was due to Bodden's use of offensive language about the Honduranean flag.

It is presumed that the Minister for Foreign Affairs was making allusion to this in his reply when he said that the nature of the evidence forbade his analysing it, and thereby adopted the theory advanced by Yates.

Inquiries were therefore made through the Colonial Office as to whether Bodden really had used the language attributed to him, and Bodden formally denied having done so (Paper B), adding that no mention was made of this matter at the time of the arrest, which he was given to understand was due to a wish to prevent his leaving for Truxillo.

The character of Yates, on whose evidence alone the charge was made, does not bear scrutiny (Paper D).

The Honduranean reply not being considered satisfactory, Mr. Gosling was instructed to make a further emphatic representation on the subject, and to ask for some adequate compensation (Paper E).

A further reply was received on the 14th January last, reiterating the refusal to entertain the claim, on the same grounds, namely, that the authorities acted rightly in refusing the clearance, as the Republic was at the time in a state of siege, and the ports for which clearance was asked were in the hands of the enemy (Paper F).

The Honduranean Government, therefore, claim the right to refuse clearances for whatever destination from their ports when the Republic is in a state of siege.

I am to request that you will take the papers transmitted herewith into your consideration, and favour Lord Kimberley with your opinion as to whether the existence of a state of siege entitled the Government of Honduras to instruct their authorities at Ruatan to refuse a clearance for the "Lottie May" to proceed—

1. To the northern portions of the Island of Ruatan, which were not in the hands of the rebels.
2. To Truxillo, or any other port in the possession or under the control of the Honduranean rebels.
3. To Grand Cayman, a British possession, or to any other non-Honduranean port.
4. Also as to whether the Honduranean Government were justified in arresting Mr. Bodden in order to prevent him or the vessel of which he was master from leaving Ruatan; and
5. Generally on the case.

I am, &c.
(Signed) FRANCIS BERTIE.

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List of Papers.

(A.)	Colonial Office		September 26, 1892.
(B.)	Ditto		February 12, 1894.
(C.)	Mr. Gosling	(No. 118)	September 6, 1893.
(D.)	Ditto	(No. 119)	September 9, „
(E.)	To Mr. Gosling	(No. 14)	March 13, 1894.
(F.)	Mr. Gosling	(No. 246)	December 18, „

Report.

We think it will be more convenient to state our opinion upon the law before applying it to the points put to us in the first question.

We consider that the existence of a state of war, or of a state of siege, does not as a rule warrant any Power in detaining the ships of a friendly nation. No higher rights can be claimed by a *de jure* Government in conflict with insurgents than belong to one Power at war with another, and in such a situation neutral commerce cannot in general be interrupted except when an effective blockade is in force, or the vessel detained has violated the laws of neutrality. But there may be exceptional instances in which a fair case of military necessity would excuse a belligerent Power for detaining an innocent neutral ship even though there be no blockade. For example, had the British Commander at Alexandria thought it necessary to detain, and detained, all the vessels at that port for a short time in order to prevent his intended descent upon the Suez Canal from being divulged to the enemy, foreign nations could not have complained. But in that event, we think compensation would have been payable, and certainly the utmost care would have been imperative to make the detention as short and as little onerous as possible. Other necessities of a like kind may readily be imagined.

1, 2, 3. To apply this view of the law to the present facts, we are of opinion that the Government at Honduras, if they had a fair case of military necessity, would have been justified in refusing clearance for any port. We can suppose that such a case existed in regard to ports in the occupation of insurgents, though the reasons do not appear in the papers before us, but so far as we can see there was no such case as regards ports in the north of the island, and still less as regards British ports. And in any case we think compensation was payable for the detention.

4. That the Government of Honduras was not justified in arresting Mr. Bodden in order to prevent him, or the vessel, from leaving Ruatan. If they were entitled to stop the ship (a point already dealt with) they were bound to exercise a right of so exceptional a character in the most considerate way, and it might have been done more effectually without the arrest of the master.

5. That the arrest of Mr. Bodden was not in fact, as we collect from the documents, based upon any contumelious language which he may have used. We think it is not established that he did use such language, and even if he did, he ought not to have been punished by summary arrest without trial, especially as it appears from the evidence of Mr. Yates (who alone speaks to this point) that the language was not used in the presence of the Commandant who inflicted the punishment, nor established by any legal proceedings. The character of the imprisonment and the disregard of requests for medical aid are aggravating circumstances.

We desire to add that the claims made both by the owners and Mr. Bodden appear to us to be extravagant, and even preposterous in amount.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
July 1, 1895.

ITALY.

No. 32.

[July 2, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 1, 1895.

Gentlemen,

Proposed Extradition Treaty with Italy.

I HAVE the honour, by direction of the Earl of Kimberley, to transmit to you the draft of a Treaty of Extradition which it is proposed by Her Majesty's Government to conclude with the Italian Government in place of the Treaty of the 5th February, 1873, which was negotiated before the passing of "The Extradition Act, 1873," and which has been found to be in many respects defective.

I am also to inclose letters from the Colonial, India, and Home Offices, to which Departments the draft has been submitted for observations, together with previous printed correspondence, showing the circumstances under which the Treaty has been negotiated; and I am to call your special attention to the amendments which have been introduced in Articles II, III, VII and XVII of the Treaty of 1873, to Article XII (providing for provisional arrest), to Article XIV, and to the Protocol relative to the extradition of persons accused of crimes punishable with death.

I am to request that you will take these papers into your consideration, and favour Lord Kimberley with your opinion whether the proposed Treaty may properly be submitted to the Government of Italy for their consideration in its present draft shape.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Draft Extradition Treaty.	
(B.)	Treaty of February 5, 1873 (Treaty No. 548).	
(C.)	Home Office	April 17, 1895.
(D.)	India Office	April 11, „
(E.)	Colonial Office	March 28, „
(F.)	Previous correspondence in print.	

Report.

In our opinion, the proposed Treaty may properly be submitted to the Government of Italy for their consideration in its present draft shape. We think it right, however, to add the following suggestions for your Lordship's consideration:—

1. In Article II (1) a conspiracy to commit manslaughter would in English law be a conspiracy to commit murder, and the 1st schedule to "The Extradition Act, 1870," only includes conspiracies to commit murder.

2. Article II (4).—It seems to us that the introduction of counterfeit foreign coins into Great Britain, provided they are gold or silver, is an extradition crime according to British law (see schedule to Extradition Act of 1873, making an offence under 24 & 25 Vict., cap. 99, an extradition offence). Section 19 of that Act deals with the introduction of counterfeit foreign gold and silver coin.

Instead of "use of an article," it would be better to retain the former words "uttering of the thing." "Uttering" is a word known to English criminal law, and is to be found in the 1st schedule to "The Extradition Act, 1870."

The words at the end of this Article, "even if the truth has not been materially altered or falsified," appear to us to be dangerous. An alteration of a document where the truth has not been materially altered would not be a crime in England if we

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rightly understand what the Italian Government desire. We would suggest that some further explanation might be asked as to this.

3. Article XI.—We think the word "Minister" should be substituted for the word "Department" (see section 16 of "The Extradition Act, 1870").

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
July 2, 1895.

Annex.

Draft Treaty between Her Majesty and the King of Italy for the Mutual Surrender of Fugitive Criminals.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Majesty the King of Italy, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India,

And His Majesty the King of Italy,

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other reciprocally any persons who, being accused or convicted of any of the crimes specified in the Article following, committed within the territory of either of the said parties, shall be found within the territory of the other, in the manner and under the conditions determined in the present Treaty.

ARTICLE II.

The crimes for which the extradition is agreed to are the following:—

1. Murder, or manslaughter, and attempt or conspiracy to commit those crimes.
2. Maliciously wounding, or inflicting grievous bodily harm.
3. Assaulting a Magistrate, or peace, or public officer.
4. Counterfeiting or altering money, and uttering or bringing into circulation counterfeit or altered money. Importation into Great Britain of British, or into Italy of Italian counterfeit coin, or coin which has been tampered with. Forgery, counterfeiting or altering, or use of an article or document forged or counterfeited or altered, including false declarations or registrations, even if the truth has not been materially altered or falsified.
5. Larceny, embezzlement, or unlawful abstraction or appropriation.
6. Malicious injury to property, if the offence be indictable.
7. Obtaining money, valuable security, or goods by false pretences.
8. Receiving any chattel, money, valuable security, or other property, knowing the same to have been stolen, embezzled, or unlawfully obtained.
9. Fraudulent bankruptcy.
10. Fraud, abstraction, or unlawful appropriation, by a bailee, banker, agent, factor, trustee, director, or member, or officer of any public or private Company or house of commerce.
11. Perjury and subornation of perjury.
12. Rape.
13. Carnal knowledge of a girl under the age of 16.
14. Indecent assault, accompanied with violence or menace, or committed in a public place, or upon a girl under 16 years of age.
15. Administering drugs, or using instruments with intent to procure the miscarriage of women.

16. Abduction.
17. Child stealing, kidnapping, and false imprisonment.
18. Exposing or abandoning a child under 12 years of age.
19. Bigamy.
20. Burglary and housebreaking, including, *inter alia*, the crimes designated by the Italian Penal Code as entry by night, or even by day, with fracture or escalade, or by means of false key or other instrument, into the dwelling of another person with intent to commit a crime.
21. Arson.
22. Robbery with violence.
23. Any malicious act done with intent to endanger the safety of any person travelling or being upon a railway.
24. Threats by letter or otherwise, with intent to extort money or anything else.
25. Piracy, according to international law, when the pirate, a subject of neither of the High Contracting Parties, has committed depredations on the coasts, or on the high seas, to the injury of subjects of the requiring Party, or when, being a subject of the requiring Party, and having committed acts of piracy to the injury of a third State, he may be within the territory of the other Party; and provided that he have not been already subjected to trial for the offence.
26. Sinking or destroying, or attempting to sink or destroy, a vessel at sea.
27. Assaults on board a ship on the high seas with intent to kill or to do grievous bodily harm.
28. Revolt or conspiracy by two or more persons on board a ship on the high seas against the authority of the master.
29. Dealing in slaves in such a manner as to constitute an offence against the law of both States.

Accomplices before or after the fact in any of these crimes shall, moreover, also be delivered up, provided their complicity be punishable by the laws of both the Contracting Parties.

Extradition may also be granted, at the discretion of the State to which application is made, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III.

The British Government reserves to itself the power to grant or to refuse, at its pleasure, the surrender of British subjects who have committed in Italian territory crimes for which extradition would be granted; and the Italian Government, on its part, undertakes to proceed against its own subjects for crimes committed by them on British territory in all cases which, from its own point of view, it considers sufficiently grave to warrant such proceedings.

ARTICLE IV.

In any case where an individual convicted or accused shall have obtained naturalization in either of the two Contracting States after the commission of the crime, such naturalization shall not prevent the search for, arrest, and delivery of the individual. The extradition may, however, be refused if five years have elapsed from the grant of naturalization, and the individual have been domiciled from the grant thereof, in the State to which the application is made.

ARTICLE V.

No accused or convicted person shall be given up if the offence for which he is claimed is political; or if he proves that the demand for his surrender has been made with the intention of trying and punishing him for a political offence.

ARTICLE VI.

The extradition shall not be granted if, since the commission of the crime, the commencement of proceedings, or the conviction, such a length of time have elapsed as to bar the penal prosecution or the punishment, according to the laws of the State to which application is made.

ARTICLE VII.

The accused or convicted person who has been given up shall not, until he has been liberated, or has had an opportunity of returning to the country in which he was living, be imprisoned in the State to which he has been given up, for any crime unless it be a crime of like nature to that in respect of which extradition was granted, and a crime proved by the evidence on which the claim for extradition was based, and be not a crime for which by this Treaty no extradition can be granted.

This does not apply to offences committed after the extradition.

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ARTICLE VIII.

If the individual claimed be under prosecution or in custody for a crime committed in the country where he has taken refuge, his surrender may be deferred until the law has taken its course.

In case he should be proceeded against or detained in such country on account of obligations contracted with private individuals, or any other civil claim, his surrender shall nevertheless take place, the injured party retaining his right to prosecute his claims against him before the competent authority.

ARTICLE IX.

The requisitions for extradition shall be made, respectively, by means of the Diplomatic Agents of the High Contracting Parties.

The demand for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State applying for the extradition, and by such proof as, according to the law of the place where the fugitive is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person convicted, it must be accompanied by the sentence of condemnation of the competent Court of the State applying for the extradition.

The demand for extradition must not be founded upon a sentence *in contumaciam.*

ARTICLE X.

If the demand for extradition be made according to the foregoing stipulations, the competent authorities of the State, to which the requisition is made, shall proceed to arrest the fugitive.

The prisoner shall be taken before the competent Magistrate, who shall examine him and make the preliminary investigations of the affair, in the same manner as if the arrest had taken place for a crime committed in the same country.

ARTICLE XI.

In the examinations to be made in conformity with the preceding stipulations, the authorities of the State to which the application is made shall admit, as entirely valid evidence, the documents and depositions taken on oath in the other State, or copies of them, and likewise the warrants and sentences issued there; provided that such documents and depositions are signed or certified by a Judge, Magistrate, or other officer of such State, and are authenticated by the oath of some witness, or stamped with the official seal of the Department of Justice or some other Department of State.

ARTICLE XII.

A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction: provided, however, that in the United Kingdom the accused shall in such case be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in Italy as in the United Kingdom, if within the term of thirty days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XIII.

If, within two months from the arrest of the accused, or within such further time as the State to which application is made, or the proper Tribunal thereof shall direct, sufficient evidence be not produced for his extradition, he shall be liberated.

ARTICLE XIV.

The extradition shall take place only if the evidence be found sufficient, according to the Laws of the State applied to, either to justify the committal of the prisoner for trial, in case the

crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XV.

If the prisoner be not given up and taken away within two months from his apprehension, or from the decision of the Court upon the demand for a writ of *habeas corpus* in the United Kingdom, he shall be set at liberty, unless sufficient cause be shown for the delay.

ARTICLE XVI.

If the individual claimed by one of the two Contracting Parties, in conformity with the present Treaty, should be also claimed by another or by other States on account of crimes committed in their territories, his surrender shall, in preference, be granted according to priority of demand, unless an agreement be made between the Governments which make the requisition, either on account of the gravity of the crimes committed, or for any other reason.

ARTICLE XVII.

All money and articles found in the possession of the prisoner at the time of his arrest shall be seized, in order to be delivered up with him. All money and articles in the legal possession of the prisoner, though actually in the hands of another person, shall also be delivered up, if, after the apprehension of the accused, they come into the hands of the authorities. Such delivery shall not be limited to the property or articles obtained by the crime for which he is surrendered, but shall include everything that may serve as evidence of the crime; and it shall take place even when the extradition, after having been ordered, cannot take effect, either on account of the escape or the death of the delinquent.

ARTICLE XVIII.

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XIX.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of the two High Contracting Parties.

The requisition for the surrender of a person accused or condemned, who has taken refuge in any such Colony or possession of either party, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular officer of the other residing in such Colony or possession; or, if the accused or condemned person has escaped from a Colony or foreign possession of the party on whose behalf the requisition is made, the requisition shall be made by the Governor or chief authority of such Colony or possession.

Such requisitions may be disposed of in accordance, as far as possible, with the stipulations of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the extradition, or to refer the matter to their own Government.

Her Britannic Majesty shall nevertheless be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender to His Italian Majesty of criminals who may have taken refuge in such Colonies or possessions, always in conformity, so far as possible, with the provisions of the present Treaty.

Finally, it is agreed that this stipulation does not apply to the Island of Malta, the Ordinance of the Maltese Government of the 21st February, 1863, remaining in full force.

ARTICLE XX.

The High Contracting Parties declare that the present stipulations apply as well to persons accused or convicted, whose crimes, on account of which the extradition is demanded, may have been committed previously, as to those whose crimes may be committed subsequently to the date of this Treaty.

ARTICLE XXI.

From the day when the present Treaty shall come into force the Treaty of Extradition between the two countries of the 5th February, 1873, shall cease to have effect.

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ARTICLE XXII.

The present Treaty shall come into operation ten days after its publication according to the forms prescribed by the laws of the High Contracting Parties.

Either party may at any time put an end to this Treaty, which, however, shall remain in force for six months after the notice for its termination.

This Treaty shall be ratified, and the ratifications shall be exchanged at Rome within six weeks, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed in duplicate, in English and Italian, the present Treaty, and have affixed thereto their respective seals.

Done at , the day of , in the year of Our Lord one thousand eight hundred and ninety- .

Protocol.

On proceeding to the signature of the Treaty of Extradition concluded this day, the undersigned Plenipotentiaries of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and of His Majesty the King of Italy, have agreed upon the following declaration:—

The Italian Government may, in its absolute discretion, refuse to deliver up any person charged with a crime punishable with death.

This Protocol shall have the same force and the same duration as the Treaty of Extradition signed to-day.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at , the day of , in the year of Our Lord one thousand eight hundred and ninety- .

JAPAN.

No. 33.

[February 11, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 5, 1895.

Right of Japanese to search British vessel "Gaelic" at Yokohama.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relates to the visitation and search of the British steam-ship "Gaelic" by the Japanese naval authorities at Yokohama in November last.

The "Gaelic" is a British steamer belonging to the Oriental and Occidental Steam-ship Company, and is one of a Line of steamers running under the management of an American Company and conveying passengers and the United States' mails between San Francisco and Hong Kong, calling only at Japanese ports *en route.* She arrived at Yokohama from San Francisco on the 2nd November. On the afternoon of the 4th, while still lying in the harbour, she was surrounded by Japanese vessels of war, and she was boarded the next morning by an officer of the Japanese navy, accompanied by other naval officers, an interpreter, and a body of police and Customs officers, and subjected to a search ostensibly for contraband of war. A demand was also made, but not persisted in, that the lower hold should be discharged. The master having made a preliminary protest against the search on the ground that he had no contraband articles on board, eventually submitted to it as an exercise of force, and afforded the boarding officer every facility.

On the afternoon of the same day, the 5th, the master was imformed by the naval authorities that he was at liberty to proceed, and the vessel left the port at about 3·45 P.M. (Paper A).

From what subsequently occurred (Papers B and C) it appears that the real object of the Japanese authorities was not to search for contraband of war, but to effect the arrest of three passengers supposed to be on board the "Gaelic," two said to be citizens of the United States and one a Chinese subject, on the ground that the former had entered into a Contract with the Chinese Government for the supply of torpedoes or explosives for the destruction of vessels by means of a new plan, and that the Chinaman, who was stated to have been connected with the Chinese Legation at Washington, had been concerned in the engagement of the Americans.

These persons, who arrived in the "Gaelic" from San Francisco, had left her at Yokohama and gone on board the French steamer "Sydney," one of the vessels of the Messageries Maritimes, which left Yokohama on the 3rd November bound for Shanghae, calling at Kobé and Nagasaki. On the 5th, while the "Sydney" was at Kobé, she was visited and searched, the three passengers were arrested, taken on shore and held as prisoners of war, the vessel being then allowed to proceed on her voyage. A number of incriminating documents were seized at the same time.

The Americans were detained until the 11th, when, on signing a paper purporting to be an engagement on their part that if released they would not enter the service of the Chinese Government during the continuance of the war, they were given 500 dollars each and set at liberty. The Chinese suspect was sent to Hiroshima.

The circumstances connected with the proceedings of the Japanese authorities in the case of the "Gaelic" are dealt with in a Memorandum drawn up by Mr. Wilkinson, Crown Advocate at Shanghae and Acting Judge of Her Majesty's Court for Japan (Inclosure 1 in Paper D). In view of the considerations which he sets forth, he states as his opinion:—

1. That the "Gaelic," being bound from a neutral port to a neutral port, was not liable to seizure for having on board the three passengers referred to, even if they were in the military or naval service of China.

2. That the forcible removal of such passengers from the "Gaelic" would have been unlawful.

3. That if the object of the visitation and search of the "Gaelic" was the removal of those passengers, it was from the beginning unlawful.

4. That there is sufficient evidence to justify Her Majesty's Government in treating the search as having that object.

5. That such search for such object is a matter of serious complaint on the part of Her Majesty's Government.

6. That the gravity of the complaint depends largely, though not exclusively, on the correctness of the two propositions:—

(*a.*) That the neutral destination of the vessel is conclusive as to the destination of the goods and persons on board; and

(*b.*) That the immunity which a British vessel enjoys while in Japanese waters by virtue of the Treaty from visitation or search by the Japanese authorities is not abrogated by the state of war, further than to allow the exercise of the ordinary belligerent rights recognized by international law, and that no person or thing is subject to arrest or seizure by the Japanese authorities on board a British ship in Japanese waters, if the presence of such person or thing on board such vessel would not render her liable to seizure on the high seas, unless such person or thing should become by reason of their presence in Japanese waters a source of danger beyond what they would be if on the high seas.

7. That it is therefore expedient that the views of Her Majesty's Government on these propositions should be ascertained before making any complaint, which would have the effect of opening up a controversy as to their correctness.

8. That the display of force at the search of the "Gaelic" was more than was necessary under any of the circumstances here considered, but that, if the visitation and search were on any grounds admissible, an excessive display of force as distinguished from an excessive use of it is a matter rather for friendly representation than for serious complaint.

9. That such of the three men, if any, as were in the military or naval service of China became contraband while on board the "Sydney" on her voyage to Shanghae and rendered liable to seizure as a merchant-vessel, but that she would not as a man-of-war be so liable.

10. That the Japanese authorities in claiming not to seize the vessel and to proceed

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to adjudication, but to seize persons on board and remove them against the protests of the French authorities, acted unlawfully whether the vessel is to be considered as a merchant-vessel or as a man-of-war.

As far as the general questions under consideration are concerned, there is a very important distinction between the cases of the "Gaelic" and the "Sydney," although both were neutral vessels, for the "Gaelic" had a neutral destination, while the "Sydney" had a hostile destination, the ultimate destination of the "Gaelic" being Hong Kong, while the ultimate destination of the "Sydney" was Shanghae.

This might doubtless have affected the decision of the Prize Court had either vessel been visited and searched on the high seas and been subsequently brought in for adjudication on the ground that she had contraband goods or persons on board. Still even in the case of the "Sydney" a Japanese cruiser stopping her on the high seas would have had no right forcibly to take off the three persons who were charged to be contraband and to deal with them without the intervention of a Prize Court.

The principal difficulty, however, which the case involves is whether the rights of the Japanese in their own territorial waters are no greater than they would be on the high seas, and whether in any matters directly connected with the waging of war Her Majesty's Government should concede to Japan, Treaties notwithstanding, every right which would be conceded to a European belligerent, and not claim to interpose ex-territorial privileges, so as to deprive Japan of rights in connection with war which she would enjoy if she were a European Power, which states, at any rate for the limited purpose of waging war, she has been recognized as possessing.

If the contrary view were maintained, Her Majesty's Government would be bound to object to the search of the "Gaelic," or to any such search at all, as involving a breach of Treaty obligation, and a violation of the immunity possessed by a British ship in the waters of Japan, and also of the immunity of the persons on board.

A Memorandum by Sir E. Hertslet, attached to a telegram from Mr. Trench of the 8th November (Paper E), shows how far the matter is affected by the Treaties now in force between Great Britain and Japan.

Her Majesty's Government are natually not concerned to argue the case of the "Sydney," which is the affair of the French Government, though the views of that Government are not unimportant in considering what line of action should be taken. It seems clear from Mr. Trench's telegram of the 14th November (Paper F), that the French Government do not intend to raise questions of the kind involved in Mr. Wilkinson's Memorandum, and indeed they have apparently admitted that they would not object to such a search as that which took place on the "Sydney" if the action of the authorities—presumably in carrying out the search—were unobjectionable.

The question raised in Mr. Wilkinson's note (Inclosure 2 in Paper D) as to the destination of vessels being conclusive with regard to the destination of goods, despatches, and persons was dealt with by telegraph (Papers G, H, I).

Mr. Trench inquires whether, if occasion arose, he should contend that the neutral destination of the vessel is conclusive as to the destination of all goods and persons on board. He was informed, in reply, that he might do so, and maintain the doctrine set forth in Professor Holland's "Manual of Naval Prize Law," 1888, section 73, the view taken being that, in order to render goods which are in their essence contraband of war, liable to seizure and condemnation as such, they must be taken *in delicto*, that is, in the actual prosecution of a voyage to an enemy's port.

In a further Memorandum (Inclosure 3 in Paper D) Mr. Wilkinson calls attention to the action of the Japanese authorities in the matter of the "Gaelic" as affecting the safety of the British reserved merchant cruizers, the three steamers of the Canadian Pacific Railway Company, the "Empress of India," "Empress of China," and "Empress of Japan," which call at Yokohama, Kobé, Nagasaki, and Shanghae on their way from Vancouver to Hong Kong, and on their way back.

Mr. Trench suggested for consideration in a telegram of the 6th November (Paper G) whether these three steamers of the Empress Line should not discontinue calling at Shanghae, and he was told (Paper H) that the course he proposed seemed judicious, but that it was a matter for the consideration of the Company.

It would certainly appear safer that the steamers should discontinue calling at Shanghae unless the Japanese Government are prepared to give an undertaking not to interfere with them so long as they conduct themselves with strict neutrality. No doubt the subsidy which Her Majesty's Government pay to secure their services in time of war entitles them to express a stronger opinion to the Company than would otherwise be desirable, and gives them a *locus standi* in the matter, but whether Her Majesty's Government should make any suggestion to the Company, or address any inquiry to the Japanese Government is a matter of policy. It seems, however, out of the question for Her Majesty's Government to give these vessels the status of national ships while allowing them to carry cargo and engage in passenger and goods traffic. If this were done, the Japanese Government would have an undeniable right to object.

I have also the honour to transmit to you a despatch from Mr. Playfair, Her Majesty's Consul at Ningpo (Paper K), inclosing one to Her Majesty's Minister at Peking, in which he reported as follows:—

A Japanese travelling in the garb of a Buddhist priest by the British steam-ship "Moning" was arrested after landing at Ningpo on suspicion of being a spy. His story was that he had come to persuade a Japanese priest, who resided at Pootro, to return home. A doubtful circumstance was that the priest failed to recognize the new comer, but this was explained by the statement that the latter was acquainted with the priest's parents, but not with the priest himself.

Both were placed under surveillance and repeatedly interrogated, but nothing was discovered to confirm the supicion of espionage.

The United States' Consul interested himself in the case, and received an assurance that the priest, at any rate, should not suffer ill-treatment, but intelligence had been received and published in the local newspapers without contradiction, that both the alleged spy and the priest, against whom there was no charge whatever, had been executed at Hangchow.

Mr. Playfair went on to state that there was actually under consideration a form of guarantee to be given by a British firm, under which their steamers should be allowed to enter the river. Among the stipulations was one to the effect that on arrival the steamers should lie-to to be boarded and searched for suspicious passengers, and that, should any such be found, they should, with the consent of Her Majesty's Consul, be removed for trial by the military authorities.

Mr. Playfair considered that the fate of any persons pointed out as open to suspicion was so plainly foreshadowed that he could not conceive any instance in which it would be the duty of Her Majesty's Consul to comply with the requisition of the Chinese authorities.

This case has an important bearing on that of the "Gaelic." Should it eventually be decided, as a matter of policy, to allow the Japanese to board and search neutral British merchant-vessels within Japanese waters for suspected belligerents, it would be difficult not to accord equal treatment to the Chinese, subject of course to the proviso, to be secured, perhaps, by special pledges, that nothing must be done to such suspected belligerents which would violate in any way the conventions of international law, or the usages of humanity, as these are recognized by civilized nations.

I am to request that you will take these papers into your consideration, and that you will favour Lord Kimberley with your opinion—

1. Whether, in all the circumstances, the proceedings of the Japanese authorities in the case of the "Gaelic" were or were not justifiable, and in either case to indicate generally the the grounds for your opinion.

2. If the proceedings were not justifiable, whether Her Majesty's Government ought to protest, and, if so, on what special grounds.

Lord Kimberley will also be glad if you will offer such observations on Mr. Wilkinson's Memoranda as you consider may be of assistance to him in dealing practically with the matters raised therein.

I have, &c.
(Signed) EDWARD GREY.

List of Papers.

(A.)	Mr. Trench	(No 162)	November 8, 1894.
(B.)	Ditto	(No. 163)	November 8, ,,
(C.)	Ditto	(No. 167)	November 15, ,,
(D.)	Ditto	(No. 164)	November 9, ,,
(E.)	Ditto	(No. 85. Telegraphic)	November 8, ,,
(F.)	Ditto	(No. 91. Telegraphic)	November 14, ,,
(G.)	Ditto	(No. 84. Telegraphic)	November 6, ,,
(H.)	To ditto	(No. 81)	November 16, ,,
(I.)	Ditto	(No. 95)	November 22, ,,
(K.)	Consul Playfair	(No. 7)	November 7, ,,
	Professor Holland's Manual.		

Report.

1. IN all the circumstances, we consider that the proceedings of the Japanese authorities in the case of the "Gaelic" were justifiable.

There does not appear to have been any grievance of a practical kind in the manner of visit and search, though the display of force was in excess of actual necessity.

We do not consider that the Treaty rights of Great Britain operate to prevent Japan from boarding British vessels in time of war for the purpose of ascertaining if the duties of neutrality are violated.

Regarding Japan as invested with full belligerent rights, we think her officers were entitled to visit and search the "Gaelic" within a Japanese port to see if she was conveying persons in the military service of China; and that, had they been on board, the Japanese would have been entitled to seize them as prisoners of war. Such persons might be seized on Japanese land, and we do not see that they can be protected by the neutral flag when within a Japanese port.

A different question would arise if the Japanese claimed to seize goods, contraband in their nature, on a neutral vessel when touching at a Japanese port on a voyage from a neutral port to a neutral destination.

The right of a belligerent to confiscate such goods, through her Prize Courts, has been asserted and acted upon by the United States' Courts, if the real ulterior destination of the goods was hostile.

This doctrine has not been accepted by Great Britain, though we are not aware that its exercise by the United States in the case of neutral British ships was objected to by Her Majesty's Government during the American civil war. We think it would be difficult to maintain that the neutral destination of a vessel protects her contraband cargo if it should appear that the shipment to the neutral port of destination was really in fraud of belligerent rights; as, for example, if a cargo of munitions of war manifestly intended for China were shipped to the adjacent port of Hong Kong, in order to be securely handed over to the Chinese. Such a doctrine would enable China to be replenished with war material by sea without any opportunity being afforded for Japan intercepting it by virtue of her naval superiority.

We consider it would be still more difficult to maintain that Japan would not be entitled, at all events, to try that question before her Prize Courts, and, as a preliminary, to bring in the neutral vessel and her cargo for adjudication, leaving the neutral Government free to refuse to be bound by the decision, and to take such action thereon as might seem advisable.

2. We do not see any cause for protest.

3. We do not think there is anything we could say with advantage in regard to Mr. Wilkinson's Memorandum beyond the criticisms on its substance which we have already made.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
February 11, 1895.

No. 34.

[May 18, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, May 9, 1895.

Employment of "Tosa Maru" ("Islam") in transport of Japanese troops.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying further papers respecting the Japanese vessel "Islam," whose detention at Glasgow, in pursuance of warrants issued under the Foreign Enlistment Act, formed the subject of your Reports of the 14th, 24th, and 25th August, 1894 (Papers A, B, and C).

L.O.R. 1894 (Conf. 6641), pp. 66, 71, 72.

On the 26th August, 1894, the Japanese Minister at this Court addressed a note to his Lordship (Paper D), in which he gave an undertaking, on behalf of the Japanese Government, that the steamer "Islam," the property of the Nippon Yusen Gaisha Company, would, if released, not be employed in His Imperial Majesty's war or transport service, but would be exclusively employed in the ordinary mercantile carrying trade of the said Company.

Viscount Aoki then went on to state that as under this guarantee there could be no further reasons for the detention of the "Islam" under the provisions of the Foreign Enlistment Act, he begged to express the hope that Lord Kimberley would have no difficulty in ordering her release and restitution to the representative of her legitimate owners.

Viscount Aoki was informed on the following day (Paper E) that "Her Majesty's Government, fully relying on this guarantee on the part of the Japanese Government, have issued instructions to release the vessel from the detention imposed on her by the warrants recently issued . . . . in pursuance of the provisions of the Foreign Enlistment Act."

On the 27th March, 1895, Her Majesty's Representative at Tôkiô reported (Paper F) that the vessel in question, whose name had been altered from the "Islam" to the "Tosa Maru," was engaged in the transport of Japanese troops (the Colonial Militia of the Hokkaido) to Aomori, a port in the main island, and the terminus of the Nippon Railway Company.

The war between China and Japan is now at an end, the ratifications of the Treaty of Peace having been exchanged on the 8th instant.

I am, however, to request that you will take the inclosed papers into your consideration, and that you will favour Lord Kimberley with your opinion whether the employment of the "Tosa Maru" to transport troops, in the circumstances reported in Mr. Lowther's despatch (Paper F), is a violation of the undertaking on the faith and strength of which Her Majesty's Government handed over the vessel in question in August last to the Japanese Government.

If you should think that there has been a violation of the undertaking given by the Japanese Minister, Lord Kimberley would be glad to be favoured with your opinion whether it would be proper for Her Majesty's Government to take any, and, if so, what, action in the matter. His Lordship would at the same time be glad to be furnished with any general observations which you may wish to offer after considering the inclosed papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Law Officers' Report	(Confidential No. 6641, p. 66)	August 14, 1894.
(B.)	Ditto	(Confidential No. 6641, p. 71)	August 24, ,,
(C.)	Ditto	(Confidential No. 6641, p. 72)	August 25, ,,
(D.)	Viscount Aoki	.. ..	August 26, ,,
(E.)	To ditto..	.. ..	August 27, ,,
(F.)	Mr. Lowther	.. .. (No. 104)	March 27, 1895.

Report.

In our opinion, the employment of the "Tosa Maru" (late "Islam") to transport troops, in the circumstances reported in Mr. Lowther's despatch, unless capable of some explanation not disclosed to us, is a violation of the undertaking on the faith and strength of which Her Majesty's Government handed over the vessel in question, in August last, to the Japanese Government.

She has been requisitioned for employment in "His Imperial Majesty's transport service," and has not been "exclusively engaged in the ordinary mercantile carrying trade" of the Nippon Yusen Gaisha Company, and this has occurred before the conclusion of peace.

We think it would be proper for Her Majesty's Government to make this breach of the undertaking a subject of remonstrance to the Japanese Government. The step taken in releasing the "Islam" upon the undertaking of Viscount Aoki was, in any event, a concession very valuable to the Japanese Government, as has since appeared. It indirectly augmented the transport fleet available for the use of that Government by setting free for military and naval purposes some other ship or ships of the Company.

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Even if the undertaking had been strictly observed, the release of this vessel, though lawful, might expose Her Majesty's Government to complaints from China. But, in violating that undertaking, the Japanese Government have laid Her Majesty's Government open to a direct remonstrance from a friendly Power, which, in other circumstances, might have been accompanied by a claim for compensation.

(Signed) R. T. REID,
FRANK LOCKWOOD.

Royal Courts of Justice,
May 18, 1895.

No. 35.

[June 19, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, June* 12, 1895.

Japanese attempt to obtain monopoly of railways, &c. in Corea.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list which relate to endeavours on the part of the Japanese to obtain a monopoly of railway, telegraph, and other enterprises in Corea.

Mr. Hillier, Her Majesty's Consul-General in Corea, in a despatch, dated the 22nd March (Paper A), reported that concessions which the King of Corea was being pressed to grant amounted in effect to a monopoly of railway construction for fifty years, absolute control of the telegraph lines for twenty-five years, and the management of a postal system for five years. In addition, consent was to be given to the investigation of the mineral resources of the country by Japanese experts, with a view to the arrangement of exclusive mining concessions at a later date.

The King was urged to accede to these demands without delay, in order to prevent Great Britain and Russia from obtaining a firmer footing in Corea after the conclusion of peace between China and Japan, by the acquisition of commercial and other concessions.

Sir Nicholas O'Conor, Her Majesty's Minister at Peking, commenting on this despatch, stated (Paper B) that he had requested Mr. Hillier to use his best efforts to prevent, for the moment, the conclusion of any Agreement of this kind.

Sir N. O'Conor observed also that it was a serious matter to see British capital excluded from its legitimate application in a country which had just been declared independent, and with which Great Britain has a Commercial Treaty, and he asked for instructions in regard to the attitude to be taken by Mr. Hillier in this important question.

A copy of the Treaty of Friendship and Commerce between Her Majesty and His Majesty the King of Corea, signed the 26th November, 1883, is inclosed (Paper C).

Article X stipulated "that the Government, public officers, and subjects of Her Britannic Majesty" should, from the day on which the Treaty came into operation, "participate in all privileges, immunities, and advantages" . . . . . which should then have been granted or might "thereafter be granted by His Majesty the King of Corea to the Government, public officers, or subjects of any other Power."

I am to request that you will take these papers into your consideration, and that you will favour Lord Kimberley with your opinion as to whether the concessions enumerated in Mr. Hillier's despatch are "privileges, immunities, and advantages" within the meaning of the Article above quoted, the grant of which would constitute a violation of the provisions of the Treaty, and justify a protest on the part of Her Majesty's Government.

Lord Kimberley would be glad, at the same time, to be favoured with such general observations on the papers submitted as you may desire to offer.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Inclosure 1 in Mr. Hillier's No. 11.
(B.) Mr. O'Conor's No. 121.
(C.) Treaty between Great Britain and Corea, November 26, 1883 (Treaty No. 728).

Report.

In our opinion, the concessions enumerated in Mr. Hillier's despatch are "privileges, immunities," or "advantages" within the meaning of the Article quoted, the grant of which would constitute a violation of the provisions of the Treaty, and justify a protest on the part of Her Majesty's Government.

The Article in question is intended to provide for competition by British subjects on equal terms with subjects of any other Power in supplying the commercial and industrial wants of Corea. It includes, but is not confined to, the commonest cases, namely, cases of import and export duties. If Corea stipulated that Japanese subjects should have contracts for railway construction at 10 per cent. higher prices than British subjects, that would be a manifest infraction; and we think it is equally an infraction to exclude British subjects altogether from the competition. The same observation applies to the contemplated exclusive mining concessions.

In regard to the proposed grants relating to the telegraph and postal services, we consider that if what is designed be "a monopoly of telegraph and postal arrangements," as described in Mr. Hillier's letter of the 22nd March, it would fall under the observation we have already made. But we notice that later in the same despatch he describes what is demanded by Japan as "absolute control of the telegraph lines for twenty-five years and the management of a postal system for five years." This may mean simply that Japan is to have control of these two services, and does not necessarily exclude the employment of British subjects, or the acceptance of British contracts incidental to them. If that be the true demand of Japan, we do not think its concession would be an infraction of the Article. It would be no violation of the Treaty for Corea to grant to Japan, from reasons of policy, a directory power over a part of her internal administration if no stipulation were made to exclude or limit the fair competition of British subjects in any industrial enterprises which that administration might involve.

We consider, however, that the real meaning of what is being done is probably that stated in the earlier part of Mr. Hillier's letter, and in that view we have answered the whole of your Lordship's question in the affirmative.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
June 19, 1895.

NETHERLANDS.

No. 36.

[January 29, 1895.]

The Law Officers of the Crown to the Earl of Kimberley.—(Received January 30.)

Royal Courts of Justice, January 29, 1895.

My Lord,

Draft Extradition Treaty with Netherlands. Revised amendments

WE were honoured with your Lordship's commands signified in Mr. Bertie's note of the 22nd instant, stating that, with reference to our Report of the 14th December, 1894, on the draft Extradition Treaty now under negotiation between this country and the Netherlands, he was directed by your Lordship to transmit to us copy of a letter which was addressed to the Home Office on the 22nd December last, expressing your Lordship's views on the contemplated amendments in the draft Treaty, together with the reply of that Department, and the previous correspondence, as noted in the list annexed.

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That we were requested to inform your Lordship whether we concurred in the submission of the draft to the Netherland Government, with the revised amendments as now proposed.

In obedience to your Lordship's commands, we have the honour to

Report—

That, though we do not see any reason to qualify our opinion as to the advisability of the amendments we previously suggested, it does not appear to us that the difference is of really great importance, and we therefore concur in the submission of the draft to the Netherland Government, with the revised amendments as now proposed.

We have, &c.
(Signed) R. T. REID,
FRANK LOCKWOOD.

List of Papers.

(A.)	Law Officers' Report on draft Treaty (Confidential No. 6641, p. 95), with proof of Treaty annexed.	December 14, 1894.
(B.)	Memorandum (Mr. Robertson)	December 17, „
(C.)	To Home Office	December 22, „
(D.)	Home Office	January 17, 1895.
(E.)	Print of Correspondence (Confidential No.).	

Annex 1.

Foreign Office to Home Office.

Foreign Office, December 22, 1894.

Sir,

I AM directed by the Earl of Kimberley to request that you will inform Mr. Secretary Asquith that, on the receipt of your letter of the 26th October last, his Lordship thought it advisable to consult the Law Officers of the Crown as to whether, in their opinion, the draft of the proposed new Extradition Treaty between Great Britain and the Netherlands, as amended since the date of the Report by the late Law Officers in 1893, might properly be submitted to the Netherland Government.

Copies of the reference to the Law Officers and of their Report are inclosed herein, and I am to request that you will submit for Mr. Asquith's consideration the following observations on the suggestions made by the Law Officers:—

1. Article II. Attempts against the life or liberty of the Sovereign or his heir, &c.

The proposed wording, and the addition to the list of crimes, under No. 1, were adopted to meet the renewed request of the Netherland Government that such "attempts" might be specifically inserted in the Treaty, under that head, instead of being dealt with "generically," and the provision in this form complies directly with the wish of the Netherland Government on a point to which they attach considerable importance, whilst it involves no ambiguity. On the other hand, the provision proposed by the Law Officers for insertion towards the end of the Article refers to "each and all of the aforesaid crimes" as being, conceivably, "directed against the Sovereign or his heir," a wording which might, apparently, include the whole of the preceding list, comprising, *e.g.*, "piracy," "crimes against bankruptcy law," "fraud by a bailee," &c.

In these circumstances, Lord Kimberley is disposed to adhere to the wording as originally drafted.

Article VII. Insertion of phrase "during one month."

The words to which objection is made were inserted at the request of the Netherland Government, and they have been informed that they are accepted. In fact, Her Majesty's Government are not in a position to refuse the provision, seeing that a similar limit is laid down in Article VII of the existing Treaty of the 19th June, 1874.

The words used in "The Extradition Act, 1870" (section 19), are "an opportunity of returning," and this has been interpreted by the Order in Council carrying into effect the Treaty of 1874 as allowing a limit of a month. This could not be modified without the denunciation of the existing Treaty, and it seems almost certain that the Netherland Government would refuse to accept the omission now proposed by the Law Officers, as the limit is imposed by Netherland Law.

Article XI. "The term of twenty days" is a maximum limit, and the phrase is used in this sense in most of the Treaties now in force between Great Britain and foreign Powers. The alternative proposed might lead to some confusion, as it would enable a Magistrate in either country to fix a longer time than twenty days for the production of documents, and would also empower him to make the limit so short as to be useless for the purpose required.

Article XII. Minister "of State." The words "of State" should be inserted as proposed.

Article XVIII. Lord Kimberley would propose to insert the words "for the purpose of this Article" after the word "shall" in the last paragraph, as suggested, and to allow the rest of the Article to stand.

I am, however, in the first instance, to request that his Lordship may be favoured with any observations which Mr. Secretary Asquith may wish to make on the suggested amendments in the draft Treaty.

I am, &c.,
(Signed) FRANCIS BERTIE.

Annex 2.

Home Office to Foreign Office.

Whitehall, January 17, 1895.

Sir,

WITH reference to your letter of the 22nd ultimo, I am directed by the Secretary of State to acquaint you that he concurs in the proposals of the Earl of Kimberley with regard to the suggested amendments of the proposed new Extradition Treaty between Great Britain and the Netherlands.

I am, &c.,
(Signed) HENRY CUNYNGHAME.

NICARAGUA.

No. 37.

[January 31, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 19, 1895.

Gentlemen,

Proceedings of Nicaraguan Government in Mosquito Reserve.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to the proceedings of the Nicaraguan Government in the Mosquito Reserve.

A Treaty between Her Majesty and the Republic of Nicaragua was signed at Managua on the 28th January, 1860 (Paper A), relative to the Mosquito Indians. By Article I it was agreed to recognize as belonging to and under the sovereignty of Nicaragua the country hitherto occupied or claimed by the Mosquito Indians within the frontier of that Republic, the British Protectorate thus ceasing. A district was assigned to the Mosquito Indians (Article II), within which it was provided (Article III) that they should enjoy the right of governing according to their own customs and according to any Regulations from time to time adopted by them, not inconsistent with the sovereign rights of the Republic of Nicaragua, themselves, and all persons residing within such district. Subject to the above-mentioned reserve, the Republic of Nicaragua agreed to respect, and not to interfere with, such customs and Regulations so established, or to be established, within the said district. It was understood, however (Article IV), that nothing in the Treaty should be construed to prevent the Mosquito Indians, at any future time, from agreeing to absolute incorporation into the Republic of Nicaragua.

Differences having arisen as to the interpretation of the Treaty (see Paper B, p. 1), the points at issue were referred to the arbitration of the Emperor of Austria. His Imperial Majesty's Award (Paper B, p. 12) confirmed the views held by Her Majesty's Government. The "Report" on which the Award was founded is at p. 22 of Paper (B).

I am to call your special attention to Article I of the Award, which is in the following terms:—

"The sovereignty of the Republic of Nicaragua, which was recognized by Articles I and II of the Treaty of Managua of the 28th January, 1860, is not full and

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unlimited with regard to the territory assigned to the Mosquito Indians, but is limited by the self-government conceded to the Mosquito Indians in Article III of this Treaty."

A question relative to the right of the Government of the Mosquito Reservation to levy port dues at Bluefields, which involved the general question of the right of this country to intervene in disputes between Nicaragua and the Mosquito Indians, was in 1893 referred to the then Law Officers of the Crown, who stated, in concluding their Report (Paper C), that, in their opinion, "Her Majesty's Government *may* properly intervene to secure the observance of the Treaty stipulations by Nicaragua, but they are *not bound* to do so, and the extent to which, as a matter of policy, such intervention ought to be resorted to must be determined by Her Majesty's Government as the circumstances arise."

L. O. R. 1893 (Conf. 6508), p. 48.

In accordance with the opinion expressed in the Report, a despatch was addressed to Her Majesty's Ambassador at Washington and to Her Majesty's Minister in Central America (Paper D) intended for their guidance in case, contrary to the wish of Her Majesty's Government, discussion of the question should be reopened. In this despatch it was explained as the view of Her Majesty's Government that they have the right to remonstrate against any palpable disregard or violation of the engagements taken by the Government of Nicaragua towards the Mosquito Indians in the Treaty of Managua, but that no wish existed to use that right in a vexatious manner, to make it a pretext for exercising a virtual protection over the Indians, or to encourage the Mosquito Government in resistance to reasonable claims or proposals of the Government of Nicaragua.

At the beginning of last year war broke out between the Republics of Nicaragua and Honduras in consequence of the Nicaraguans supporting General Bonilla, who was heading a revolution against the President of Honduras.

Only one action of an unimportant character took place in the neighbourhood of the Mosquito territory, and all the heavy fighting occurred close to Tegucicalpa, the capital of Honduras.*

Early in February, however, Nicaraguan soldiers were sent to Bluefields, the principal town of the Reserve, in order, as it was alleged, to protect it from an invasion. Shortly afterwards a further detachment arrived, the town was seized, and martial law proclaimed by General Lacayo, the Nicaraguan Commissioner.

The subsequent events in the Reserve are given in Memoranda prepared in this Department, and dated the 2nd and 30th October, 1894 (Papers E and F).

It was not until the 22nd November that the explanations repeatedly demanded from the Nicaraguan Government were received in a note from Señor Barrios. This communication (for translation of note and inclosures see Paper G) forwarded a volume in Spanish giving, as described by Señor Barrios, "the documents relative to the Bluefields rebellion and the expulsion of certain British subjects to which that rebellion led," and the Report of the Nicaraguan Commissioner in the Reserve, Dr. Don José Madriz, "in which the justice of the proceedings of the Nicaraguan Government is set forth clearly and with abundant proofs."

The documents communicated by the Nicaraguan Government are analyzed and arranged according to the points to which they refer in a Memorandum dated the 11th instant (Paper H).

Since the date of the Memorandum of the 30th October events of importance have occurred in the Reserve:—

1. Decrees have been issued by the Nicaraguan Commissioner relative to municipal, political, and fiscal administration and other matters (Papers J, K, and L).

Her Majesty's Minister was instructed to give formal notice to the Nicaraguan Government that Her Majesty's Government could not, under existing circumstances, accept these Decrees as valid or as affecting the rights of British subjects (Paper M).

2. The new Constitution has been promulgated, and the Municipality installed with public ceremonies (Paper N).

3. The territory of the Mosquito Reserve has been formally incorporated into the Republic, the Nicaraguan Government announcing this to be according to the desire expressed at a freely constituted Convention of the Mosquito Indians (Paper O). The wishes of the Indians with regard to incorporation have not reached Her Majesty's Government through any other than Nicaraguan sources.

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* This is taken from a Report by Captain Curzon-Howe, inclosed in letter from Admiralty of March 24, 1894.

I am to request that you will take these papers into your consideration at your earliest convenience, and that you will favour Lord Kimberley with your opinion—

1. Whether the Nicaraguan Government, in taking possession of the territory of the Mosquito Reserve, and in assuming the administration of the district, have acted within the rights conferred upon them by the Treaty of Managua, and defined by the Award of the Emperor of Austria.

2. If not, whether Her Majesty's Government would be justified in intervening and in declaring that until a further understanding has been arrived at they must consider the proceedings of the Nicaraguan Government as null and void.

3. Whether in any case Her Majesty's Government can claim compensation for the arrest, imprisonment, and expulsion of Mr. Hatch and other British subjects, and for the material losses which they and other British subjects may have suffered through the action of the Nicaraguan authorities.

Lord Kimberley will be glad if you will also favour him with any general observations as to the course which in your opinion Her Majesty's Government should pursue.

I have, &c.
(Signed) EDWARD GREY.

List of Papers.

(A.)	Treaty of Managua (Treaty 441)		1860.
(B.)	Arbitration of Emperor of Austria.		
(C.)	Law Officers' Report (Confidential 6508, p. 48)		July 11, 1893.
(D.)	To Sir J. Pauncefote	(No. 2)	January 5, 1894.
	To Mr. Gosling	(No. 3)	January 5, „
(E.)	Memorandum respecting Mosquito Reserve		October 2, „
(F.)	Ditto		October 30, „
(G.)	Note from Señor Barrios		November 22, „
(H.)	Documents communicated by Nicaraguan Government, arranged in Memorandum		January 11, 1895.
(I.) (K.) (L.)	Decrees issued by Nicaraguan Commissioner.		
(M.)	To Mr. Gosling	(No. 39. Telegraphic)	November 17, 1894.
(N.)	New Constitution.		
(O.)	Señor Barrios		January 16, 1895.

Report.

The answer to this question must depend upon the view that may be taken of the facts. Your Lordship has better opportunities than we can have for judging of the veracity of the many persons whose communications have been collected and submitted to us. In so far as we are able to judge we have arrived at the following conclusion:—

We think it doubtful whether the Nicaraguan troops did in the first instance occupy the territory for *bonâ fide* military purposes in a time of war. We consider their proceedings after the war with Honduras was ended, were not required to maintain sovereignty, but were designed to subvert the Mosquito Government. And we are not satisfied that the ultimate and final change of government was effected with the real consent of the Mosquito Indians.

Under these circumstances we are of opinion that the Nicaraguan Government in taking possession of the territory of the Mosquito Reserve, and in assuming the administration of the district have not acted within the rights conferred upon them by the Treaty of Managua and defined by the award of the Emperor of Austria.

2. That, subject to the general observations at the conclusion of this Report, we are of opinion that Her Majesty's Government would be justified in intervening and declaring that until a further understanding has been arrived at, they must consider the proceedings of the Nicaraguan Government as null and void.

3. That in our opinion Her Majesty's subjects in Mosquito territory were not entitled to interfere in the political disturbances or riots that took place in 1894, nor were they entitled to set up the Mosquito Government. It was not their province either to interpret or to enforce the Treaty rights of Great Britain. If the Nicaraguan Government were violating those rights the remedy lay wholly with Her Majesty's

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Government. Therefore we consider that any British subjects who took part in such proceedings, unless their action was merely temporary and necessary for self-protection, in a time of anarchy, might legitimately be arrested and expelled by the Nicaraguan Government. In the case of any of Her Majesty's subjects who have been arrested and expelled, though innocent, of any interference in the proceedings referred to, we consider that under the circumstances Her Majesty's Government can claim compensation.

We regret that it is impossible for us to particularize what persons have and what persons have not disentitled themselves to compensation, inasmuch as the statements are wholly contradictory, and we cannot pronounce where the truth lies. Her Majesty's Government may think it advisable to take up the position that no sufficient evidence to justify the course adopted by Nicaragua has been produced, and that unless satisfactory proof is given of the complicity of the British subjects in the disorders of July 1894, Her Majesty's Government will claim compensation on behalf of the persons in question.

Generally, we desire to add, it appears to us that underlying the whole question is the objection felt by Nicaragua to allowing foreigners pactically to govern the Reserve under colour of the Treaty of Managua, and this has led Nicaragua to seize the opportunity of destroying the Mosquito Government and banishing its members. Obviously the Treaty of Managua contemplated the reservation of the Mosquito territory for the residence and self-government of the Mosquito Indians themselves; and if it be true that this territory has of late been practically controlled by and governed by foreigners, it seems to us that the implied conditions under which that Treaty was made have been materially altered since 1860. Though we do not regard the Treaty as abrogated, we think that the altered conditions may be properly considered by Her Majesty's Government in making any demand upon Nicaragua for compliance with its terms.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
January 31, 1895.

No. 38.

[June 7, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 18, 1895.

Nicaraguan loan. Rights of Nicaraguan railway bondholders and French "Société d'Armes Portatives."

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, a note from the French Ambassador at this Court (Paper A), supporting the protest of a French Company, the "Société d'Armes Portatives," against any measures which may be taken by this country against Nicaragua which would affect the security given by the Nicaraguan Government to the above-mentioned Company by a contract, dated the 10th September, 1894.

The allusion which the French Ambassador makes to Lord Dufferin's communication of the 25th February last refers to a representation which his Lordship was instructed to make with regard to the forcible measures taken by France against the Dominican Government, and its object was to deal by anticipation with the demand which it seemed probable would shortly be made, that French claims should be preferred to those of other foreigners by the exclusive assignment to them of the tax of 1½ per cent. levied on import duties, which, by a Dominican law, had been set aside for the payment *pro ratâ* of recognized foreign debits.

The contract between the French Company and the Nicaraguan Government is for the supply to the latter of arms, gunpowder, munitions of war, &c., to the value of about 33,000*l.*, and the security for payment is the proceeds of an export duty on coffee, which has been duly imposed, and which begins to take effect in the first half of the current year.

But part of the security given by the Government of Nicaragua for the railway loan, which is held in this country, is a first charge on the Nicaraguan Customs duties, and, in the course of the negotiations of the Bondholders' Committee with M. Barrios, the Nicaraguan Representative, the Committee offered to recommend the bondholders to accept a reduction of interest from 6 per cent. to 4 per cent., provided that the reduced rate of interest were secured by a special tax of 1 dollar (gold) on each bag of coffee exported, the proceeds of this tax to be applied to interest and amortization.

With a view to the elucidation of this matter, the Council of Foreign Bondholders were asked whether such an export duty as that recently imposed on coffee was covered by the assignment of customs duties given to the railway bondholders as security for their advances, and from their reply (Paper B) it will be seen that they assert that the prospectus of the loan, copy of which is inclosed (Paper C), distinctly states that the entire customs duties are hypothecated as security for the loan, and that the condition of the "General Bond," the terms of which are given at the foot of the prospectus (see Paper C), also declares that there is assigned a first charge or hypothecation on such part of the customs revenues, collected according to the law, sufficient to cover the deficiency of the railway revenues, if any.

In these circumstances, Lord Kimberley would be glad to learn whether, in your opinion, he would be justified in addressing a note to Baron de Courcel, informing him that the Nicaraguan Railways 6 per Cent. Mortgage Bondholders have by contract with the Nicaraguan Government (Paper C, "General Bond"), dated the 17th December, 1886, a first charge or hypothecation on such part of the customs revenues, collected according to the law, sufficient to cover the deficiency of the railway revenues, if any, and that, as the Nicaraguan Government are in default on those bonds, the English Company's claim for arrears of interest, &c., now due, has priority over the contract communicated by the French Government.

Lord Kimberley would also propose, subject to any observations which you may be good enough to offer, to address a note to M. Medina, the Salvadorian Representative in this country, who is in charge of Nicaraguan interests, calling attention to the default, the security given, and its subsequent assignment for another purpose, and stating that Her Majesty's Government must protest against any diversion of the security until the Nicaraguan Government have satisfied the claims of the railway bondholders, or have come to some arrangement with those creditors.

His Lordship will at the same time be glad to be favoured with such general observations on the papers submitted as you consider will be useful to him in dealing with the questions which are raised in them.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Baron de Courcel	.. ..	May 4, 1895.
(B.) Reply of Railway Bondholders	.. ..	May 16, „
(C.) Prospectus and "General Bond."		

Report.

1. In our opinion, your Lordship would be justified in addressing a note to Baron de Courcel, informing him that the Nicaraguan Railways 6 per Cent. Mortgage Bondholders have, by contract with the Nicaraguan Government, dated the 17th December, 1886, a first charge on such part of the customs revenues, collected according to the law, sufficient to cover the deficiency of the railway revenues, if any, and that, as the Nicaraguan Government are in default on these bonds, the English Company's claims for arrears of interest, &c., now due, have priority over the contract communicated by the French Government.

Under English municipal law, and the laws, we believe, of all civilized nations, charges of equal validity have priority according to date, unless the earlier charges be postponed for non-compliance with some prescribed rule, or by reason of the conduct of the parties owning them, which is not here suggested. The point, therefore, hinges upon whether the bonds of the 17th December, 1886, are secured upon all customs revenues which may be raised by the Nicaraguan law during the currency of the bonds, or are merely secured upon such customs revenues, or their equivalents, as were in fact leviable by the law in force at the date of the bonds being issued.

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We consider that the former is the proper interpretation. It is as though a man borrowed money, repayable by annual instalments, upon the security of his annual income from a particular class of work. Whatever might be his increase of income from work of that class would be appropriated to that security.

2. In our opinion, the course proposed might properly be adopted.

(Signed) R. T. REID,
FRANK LOCKWOOD.

Royal Courts of Justice,
June 7, 1895.

PACIFIC ISLANDS.

No. 39.

[July 5, 1895.]

Foreign Office to the Law Officers of the Crown.

(A.)

Gentlemen, *Foreign Office, May* 11, 1895.

Trial of British subjects in connection with rising in Hawaii. Question of martial law.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to the proceedings taken by the Hawaiian Government against British subjects for alleged complicity in the recent rising in Hawaii.

It will be seen from the despatch from Mr. Hawes, Her Majesty's Commissioner and Consul-General at Honolulu, No. 3 of the 11th January (Paper B), that a rising of the Royalist party in Hawaii, which had been for some time anticipated, occurred on the 6th January last.

The plans of the insurgents became known to the Government, by whom such prompt measures were taken that the movement was at once crushed without any serious conflict or loss of life on either side: and within four days after the rising took place, the rebellion, so far as active operations on the part of the revolutionists were concerned, was practically at an end—the leaders being prisoners in the hands of the Government.

On the morning of the 7th January martial law was proclaimed, arrests were then freely made, a large proportion of the persons arrested being British subjects. Many of these arrests were avowedly of a "precautionary" nature only.

In view of the serious nature of the charges against the political prisoners and of the important legal questions which might arise, Mr. Hawes was authorized to retain counsel to advise him on points on which he might have doubts.

Throughout this time a very objectionable and hostile attitude was, according to Mr. Hawes, shown by the police towards the British portion of the community, respectable persons being frequently threatened with arrest without any ostensible cause.

Protests against the action of the authorities were made, on behalf of their respective nationals, by both the British and American Representatives, who, while not contesting the right under martial law to arrest on suspicion, maintained that the prisoners were entitled to have their cases inquired into without delay.

On the 16th January, as will be seen from Mr. Hawes' further despatches No. 5 of the 31st January, and No. 9 of the 17th February (Papers L and R), a Military Commission was convened by order of the President of Hawaii, who also holds the rank of Commander-in-chief, for the trial of such prisoners as might be brought before it on the charges and specifications to be presented by the Judge Advocate.

The Commission, which was composed of the Judge of the Circuit Court, who received a Colonel's Commission to enable him to preside, of five Hawaiian regimental military officers, and of an Aide-de-camp on the General Staff as Judge Advocate, commenced its sittings on the 17th January.

The prisoners declared themselves satisfied with the personnel of the Commission, and were permitted to employ counsel, who, as is hereafter shown, objected to its jurisdiction.

The proceedings appear to have been conducted publicly and in an orderly manner.

Among the prisoners tried were the following British subjects:—

W. H. Greig, a British Polynesian from Fanning Island, who was accused of active participation in the revolt "as a leader and lieutenant in the field," and tried on a charge of treason.

He entered no plea, on the advice of his counsel, and was regarded as pleading "Not Guilty."

The evidence of his active complicity was clear, and he was sentenced to 20 years' hard labour and 10,000 dollars fine, as reported in Mr. Hawes' telegram No. 6 of the 23rd February (Paper Q).

The only account yet received of the proceedings in Greig's case is contained in the press reports inclosed in Mr. Hawes' despatch No. 9 of the 17th February (Paper R), pp. 4, 5, 6. These reports do not, however, appear to be absolutely reliable, as it is observed that in the case of T. B. Walker, hereafter mentioned, there are discrepancies as to his pleadings to the several charges and specifications between the press report and the official record furnished by the Hawaiian Government.

W. K. Rickard, who had been a member of the Legislature under the Monarchy, was, it appears, a ringleader in the conspiracy, and was designated to hold the office of "Marshal" under the prospective Royalist Government, commissions having been signed by the ex-Queen Liliuokalani for her Cabinet, and other officers, in anticipation of her restoration, at the end of December last.

He was tried on the following charges:—

Charge 1. Treason, by engaging in open rebellion against the Government of Hawaii.

Specification 1. Active rebellion by force and arms.

Specification 2. Procuring and providing munitions of war.

Specification 3. Organizing and establishing a military force.

Charge 2. Treason, by aiding and abetting others in the commission of the acts above specified.

He pleaded "Not Guilty" on both charges, but was proved to have taken a leading part in the landing of arms and ammunition for the use of the insurgents, and in the drafting of a new Constitution, Proclamations, and Commissions for the prospective Government.

He was found guilty on both charges and on all the counts specified, and was condemned to death by hanging. The sentence was, however, commuted to thirty-five years' imprisonment with hard labour in one of the prisons of Hawaii, and a fine of 10,000 dollars; Rickard to be imprisoned until payment of such fine, the imprisonment to date from the 25th January, 1895.

Similar indictments were brought against T. B. Walker, a bricklayer by trade, who also appears to have been a ringleader in the present movement and to have been tried some time back for complicity in a former revolutionary attempt. He pleaded "Not Guilty" to both charges, but was found guilty on all but the third specification of the first charge, viz., of participation in the organizing and establishing a military force, and to the corresponding specifications of the second charge, viz., aiding and abetting others to do so.

He was sentenced to imprisonment for life, commuted to thirty years' imprisonment, in an Hawaiian gaol with hard labour and a fine of 5,000 dollars, and to be imprisoned until such fine be paid.

This sentence was confirmed by the President of the Republic.

Two American citizens were associated with Rickard and Walker in the above charges. It is noticeable that the latter was voluntarily sworn as a witness for the prosecution, and that in his evidence he admitted having known beforehand that an uprising was contemplated, and to having assisted in the preparation of bombs for use in connection with that event.

Objection was taken by the counsel for the defence both in the cases of the British subjects and of the American citizens who were charged, to the jurisdiction of the Commission upon the following grounds:—

1. That no military or other law exists in the Hawaiian Islands under which a Military Commission is authorized to try any person for a statutory crime.

2. That under the proclamation of martial law the general authority of the Courts of the Republic created by the Constitution, have authority to conduct all

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business which comes properly before them, and have the sole authority to try persons accused of offences such as are specified in the charges before the Commission.

These objections were, however, overruled by the Court (*vide* p. 9 of the Official Record, in Mr. Hawes' No. 13 Paper W).

Upon the sentences being communicated to Mr. Hawes, he addressed a strong representation to the President urging that in the case of Rickard and any other British subjects tried by the Commission a reprieve might be granted of sufficient length to enable him to transmit to Her Majesty's Government a record of the trial and proceedings, and to afford an opportunity for their friendly intercession on behalf of the condemned. A similar request was made by the United States' Representative in the case of the death sentence passed on an American citizen.

Instructions were telegraphed to the British and United States' Representatives by their respective Governments to demand delay in execution of death sentences under specified circumstances. The telegraphic instructions will be found in Paper (F).

Copies of the Official Records of these cases were furnished to Mr. Hawes by the Hawaiian Government, and form inclosures in his despatch No. 13 of the 5th March (Paper W).

In connection with these cases it must be observed that the Hawaiian Government have advanced claims to consider both Rickard and Walker as Hawaiian citizens, on the ground of their having signed the oath of allegiance to the Monarchical Government during the reigns of the late King Kalakaua and his successor respectively. It is not, however, clear that they voluntarily and knowingly became naturalized in a foreign country, within the meaning of section 6 of the Naturalization Act of 1870, and thus lost their British nationality. They are only shown to have taken the oath of allegiance, and they assert that they took that oath on the express assurance that it would not affect their nationality. Mr. Hawes has therefore been instructed to represent that Her Majesty's Government cannot, as at present advised, admit that their Hawaiian nationality has been established.

The fact that in Hawaii an oath of this description may be taken without nationality of origin being thereby prejudicially affected is moreover supported by the terms of the new Constitution of the Republic of Hawaii, where it is laid down in section 2 of Article 17 that a person "who shall take an oath to support this Constitution . . . . shall be entitled to all the privileges of citizenship, without thereby prejudicing his native citizenship or allegiance."*

The correspondence which has passed on this point is sent in a separate bundle for convenience of reference (marked Papers, Treaty, A, B, C, D, E).

Independently of the question of nationality, the question arises whether the objections to the jurisdiction of the Court, raised in these cases, are justified and should be supported; and, further, in the event of the competency of the Court being admitted, whether the sentences are so unduly severe in character as to warrant Her Majesty's Government in making a representation to the Hawaiian Government with a view to their reduction.

In addition to the above, a British subject, Mr. V. V. Ashford, a member of a firm of attorneys in Honolulu, was tried before the Military Commission on a charge of misprision of treason.

In view of the delay anticipated in obtaining an official copy of the record of proceedings in this case, Mr. Hawes arranged for a special copy to be prepared. This forms the inclosure to his despatch No. 12 of the 23rd February (Paper V).

The charge against Ashford was that while owing allegiance to the Republic of Hawaii he had knowledge of the intended rising, and of the arrangements for the landing of arms and ammunition for the use of the rebels, but that he concealed the same, and did not disclose it to the proper Hawaiian authorities.

The evidence relied on by the prosecution consisted chiefly of that of one Nowlein, who had himself been engaged in the revolution, but turned informer to save his own life. Nowlein's evidence goes to show, and this is not denied, that he had several interviews with the accused at times closely preceding the rising. At one of these he states that "he laid the whole plan before V. V. Ashford," the defence being that some of the interviews were accidental, and that the others were only of a professional nature.

No charge was, however, made by Ashford for the advice alleged to have been given, nor was any entry made in his books with a view to making such a charge.

The brother of the accused—C. W. Ashford—was also implicated in these interviews.

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* *Cf.* certificate granted to Charles E. Dunwell and quoted in Reference (A) of to-day's date, p. 2.

V. V. Ashford declined to plead, and a plea of "Not Guilty" was entered by the President's direction. His brother, C. W. Ashford, above-mentioned, also a lawyer, was not allowed to act as his counsel, but he was ably defended by Mr. Neumann, the counsel for the defence in the other cases already mentioned.

Objection was taken in his, as in the previous cases, to the jurisdiction of the Court, it being contended that neither the proclamation of martial law nor the suspension of the writ of *habeas corpus* had suspended the Constitution or the law; that the fact of a military organization existing in Hawaii under the Commander-in-chiefship of the President, had not abrogated any of the civil rights of its citizens.

It was further contended that the form of trial was illegal, the accused not having been furnished within the time prescribed by law with copies of the charge and specifications; that misprision of treason is a statutory offence not triable by a Military Commission, and that the offence, if committed at all, had been committed and completed before martial law had been proclaimed.

These objections were overruled on the ground of special provisions existing in the Constitution of Hawaii, of which a copy is inclosed in Mr. Hawes' despatch No. 15 of the 7th March (Paper X), (Article 31), which goes in this respect beyond the Constitution of the United States, and empowers "the President or one of the Cabinet Ministers" in certain cases (of rebellion, &c.), "to suspend the privilege of the writ of *habeas corpus*, or to place the whole or any part of the Republic under martial law."

It was held that the contention that the Constitution was suspended was untenable—that it was the Constitution itself which specially provides that certain of its provisions, *i.e.*, those for civil Tribunals, &c., shall prevail "unless martial law is declared," and that under the Constitution alone martial law legally and Constitutionally existed.

With regard to the last objection raised, it was held that martial law, though not retroactive, provides for the punishment of offences which led up to the declaration of martial law.

The arguments in regard to the competency and jurisdiction of the Court are given very fully in the proceedings of the 10th day of the Session of the Commission, inclosed in Mr. Hawes' No. 12 of the 23rd February (Paper V), when the objections were raised by counsel in a previous case (that of one Bowler), and it is stated in a marginal note that "the objections made in Bowler's trial and the arguments, were reserved for this trial of Mr. V. V. Ashford."

The differences in respect to martial law and Military Tribunals between the law of England, the law of the United States, and the law of Hawaii, are dwelt upon at considerable length—the precedents in the cases of the trial of Mr. Jefferson Davis for high treason before a Civil Court, though a prisoner of war taken at the crisis of hostilities, and of the trial of the assassins of President Lincoln before a Military Tribunal for a civil offence are cited and discussed.

The papers yet received in this case are incomplete, and do not contain the summing-up of the case, nor any address by the counsel for the defence, or by the Judge Advocate.

Mr. Hawes has, however, subsequently reported by telegraph (see his telegram No. 6 of the 23rd February, Paper Q), that the sentence passed upon V. V. Ashford was one year's imprisonment and 1,000 dollars fine.

A later despatch from Mr. Hawes, which throws indirect light on the case, is also inclosed (No. 16 of the 7th March. Paper X). It contains a statement, with supplemental statement and exhibits by V. V. Ashford's brother, Mr. C. W. Ashford, who was, it appears, arrested with his brother on the 8th January. He was not brought up for trial, but was kept in prison till the 22nd February, when he was released on condition that he should leave the country. His case, together with the cases of other British subjects who have been subjected to imprisonment in connection with the revolution, but not brought to trial, will form the subject of a separate reference.

He complains that his brother, V. V. Ashford, is forced to wear the dress of the worst class of criminals, and that it was only after Mr. Hawes' representations that he was allowed to see his own doctor.

V. V. Ashford has, it appears, been suffering from partial paralysis for some months, and it will be seen from Mr. Hawes' later despatch, No. 23 of the 13th April (Paper CC), just received, that, in view of the critical state of Mr. Ashford's health, the Hawaiian Government have now offered him his pardon on condition that "he leaves the country, never to return." This offer has, it is understood, been declined by Mr. Ashford, who finds it impossible to leave Hawaii without winding up his

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business affairs, while the Government refuse to release him except on condition of immediate departure.

The question then arises whether the special objections raised in the case of V. V. Ashford should be supported, and whether the facts, so far as they are at present known to Her Majesty's Government, would warrant them in making any representation to the Hawaiian Government, with a view either to the reduction of his sentence or to a claim for compensation being presented on his behalf, as is urged by his brother. In the latter case his Lordship would be glad to be informed of the grounds on which such a claim against the Hawaiian Government could most properly be based, and of the approximate sum which it would be reasonable for Her Majesty's Government to demand as compensation.

It will be seen from the correspondence which has passed with Her Majesty's Ambassador at Washington, and which will be found among the papers sent, that it has been the wish of Her Majesty's Government to take, if possible, a course similar to that of the United States with respect to the points of principle involved, of which the most important appears to be the applicability or non-applicability of military or martial law to such cases as those at present in question, and the consequent jurisdiction of the Military Commission to deal with them.

The Government of the United States have not yet, however, received full reports, which they are awaiting, and are therefore unable to reply to the inquiries of Her Majesty's Government on the subject.

The general views, however, of the United States' Government, which are for the most part in consonance with those which Her Majesty's Government are disposed to take, will be gathered from the instructions from time to time furnished to the United States' Minister in Hawaii, which have been confidentially communicated to Her Majesty's Ambassador at Washington, and of which copies are inclosed in Sir J. Pauncefote's despatch No. 117, Secret, of the 19th April (Paper AA).

From a later telegram just received from Sir J. Pauncefote, dated the 2nd May (Paper BB), it appears that affidavits of American citizens, disclosing ill-treatment of the same nature as that inflicted on British subjects, have been received at Washington, and it is thought by his Excellency highly probable that the United States' Government will exact reparation for these proceedings.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Kimberley with your opinion on the questions specially submitted in this letter, as well as with any general observations which you may have to offer on the several cases.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

Paper	(A.)	Mr. Hawes	(No. 1. Telegraphic)	January	10, 1895.
		Ditto	(No. 2. Telegraphic)	January	10, „
„	(B.)	Ditto	(No. 3. Confidential)	January	11, „
„	(C.)	Ditto	(No. 3. Telegraphic)	January	18, „
„	(D.)	To Sir J. Pauncefote	(Telegraphic)	February	7, „
„	(E.)	Sir J. Pauncefote	(Telegraphic)	February	8, „
„	(F.)	To Mr. Hawes	(Telegraphic)	February	9, „
„	(G.)	Sir J. Pauncefote	(No. 43)	February	8, „
„	(H.)	Mr. Hawes	(No. 4)	January	30, „
„	(I.)	Ditto	(No. 4. Telegraphic)	January	30, „
„	(K.)	Sir J. Pauncefote	(No. 47)	February	12, „
„	(L.)	Mr. Hawes	(No. 5)	January	31, „
„	(M.)	Ditto	(No. 6)	February	2, „
„	(N.)	Ditto	(No. 7)	February	7, „
„	(O.)	Ditto	(No. 5. Telegraphic)	February	17, „
„	(P.)	To Mr. Hawes	(Telegraphic)	March	1, „
„	(Q.)	Mr. Hawes	(No. 6. Telegraphic)	February	23, „
„	(R.)	Ditto	(No. 9)	February	17, „
„	(S.)	Ditto	(No. 10)	February	20, „
„	(T.)	Sir J. Pauncefote	(No. 81)	March	8, „
„	(U.)	To Sir J. Pauncefote	(No. 54)	March	23, „
„	(V.)	Mr. Hawes	(No. 12)	February	23, „
„	(W.)	Ditto	(No. 13)	March	5, „
„	(X.)	Ditto	(No. 15)	March	7, „
„	(Y.)	Ditto	(No. 16)	March	7, „

List of Papers (continued.)

Paper	(Z)	Sir J. Pauncefote	(No. 116)	April	19, 1895.
„	(AA.)	Ditto	(No. 117)	April	19, „
„	(BB.)	Ditto	(Telegraphic)	May	2, „
„	(CC.)	Mr. Hawes	(No. 23)	April	13, „
Treaty	(A.)	Mr. Hawes	(No. 1. Treaty)	January	2, „
„	(B.)	To Mr. Hawes	(No. 1. Treaty)	February	1, „
„	(C.)	Mr. Hawes	(No. 2. Treaty)	February	23, „
„	(D.)	To Mr. Hawes	(No 2. Treaty)	April	3, „
„	(E.)	Mr. Hawes	(No. 3. Treaty)	March	20, „

Report.

In our opinion, Her Majesty's Government could not require of the Hawaiian Government a compliance with English methods and doctrines in their application of martial law under the provisions of the Constitution of Hawaii. What martial law is, and under what restrictions, and in respect of what offences it can be exercised, has not been fully ascertained even by English law, though it has repeatedly been discussed by English Judges, and has led to differences of opinion among them.

We think that Her Majesty's Government cannot demand more of the Hawaiian Government than that martial law should not be capriciously or unreasonably invoked against British subjects, and that the trial should be conducted fairly and before a fair Tribunal, considering that the Hawaiian Constitution authorizes the adoption of martial law at the discretion of the Minister, who must judge of its necessity.

We are of opinion, so far as we can perceive from the papers before us, that the trial of Greig, Walker, and Rickard was a fair trial, and that the circumstances were such as reasonably warranted recourse to martial law under the terms of the Hawaiian Constitution. Greig and Walker gave evidence, and admitted their guilt. Rickard was convicted upon evidence which, if believed, as it may reasonably have been, was sufficient to justify conviction. As regards these persons, we think the only ground of representation is the extreme severity of the sentence, and upon that point we think that Her Majesty's Government might properly make representations.

In regard to Ashford, we cannot from anything before us say that the trial was unfairly conducted, but we consider the conclusion arrived at was not a proper conclusion, having regard to the evidence. Nothing can be more unsafe or improper than to convict a man upon the unsupported testimony of accomplices, especially where, as in this case, the chief accomplice gave evidence admittedly to save his own life. We think that in the case of Ashford, Her Majesty's Government might properly make representations on this ground. We do not think this is a case for claiming compensation, for it was an error on the part of a lawful Court, and Ashford refused to accept freedom on condition of quitting the country.

Upon the point of nationality, we do not think that the Hawaiian nationality of any of the four persons convicted has been established.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
July 5, 1895.

No. 40.

[July 5, 1895.]

Foreign Office to the Law Officers of the Crown.

(B.)

Foreign Office, May 11, 1895.

Gentlemen,

Imprisonment without trial of British subjects in connection with rising in Hawaii.

WITH reference to my letter marked (A) of to-day's date, in regard to the proceedings taken by the Hawaiian Government against British subjects for complicity in the recent rising, I have the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to the cases of British subjects who have suffered arrest and detention, under the powers conferred on the Executive by the proclamation of martial law, without having been brought to trial.

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The general characteristics of these cases will be gathered from the annexed tabular statement marked Paper (A), from which it will be seen that the British subjects in question were arrested on suspicion of complicity in the revolution; that they were subjected to more or less prolonged detention in prison, extending from thirteen to fifty-four days; that they suffered from harsh treatment and bad food while so detained; and that they were induced under threat of the production of incriminatory evidence against them and by undue pressure either to leave the country or to promise to do so.

A specimen of the form of agreement which many of the prisoners were induced to sign in order to obtain their release, has been since received, and forms an inclosure in Mr. Hawes' despatch No. 22 of the 12th April (Paper N).

It would appear from Mr. Hawes' despatch No. 14 of the 7th March (Paper F) that many persons have been arrested and held in custody from thirty to sixty days merely on the ground of their known Royalist sympathies; and that pressure has been put upon them by the Hawaiian authorities to leave the country. No account of the cases of many of these persons has yet been received, but the sworn statements made before the British Vice-Consul, and inclosed by Mr. Hawes, are probably fair examples of this class of case

The first case reported by Mr. Hawes is that of J. B. Johnstone, which forms the subject of his despatch No. 8, Confidential, of the 7th February (Paper B). Johnstone was arrested on the 7th January, and deported to Victoria, British Columbia, without trial on the 2nd February under martial law.

An American citizen and German subject were similarly treated at the same time.

No intimation had been given to the Representatives of the countries interested, nor had any charges been served on the prisoners; and the facts of their detention and removal were only brought to the knowledge of Mr. Hawes by one of them shouting out to him for assistance as he was passing, while they were being conveyed on board ship.

Mr. Hawes ascertained from the Hawaiian Government on inquiry that Johnstone had been employed by the Police Department as a spy, and that they had proof that he had worked on the side of the enemy: that he had not been tried, but that the Government were exercising the arbitrary power which they possessed under martial law, and were prepared to abide by the consequences of their action.

Mr. Hawes intimated that he should be compelled to make a formal protest against so unusual a proceeding, but refrained from active interference on behalf of Johnstone on ascertaining from him privately that he could not face a trial, and that he thought it safer in his own interest to leave the country at once.

The American citizen and the German subject similarly arrested were also deported, notwithstanding the strong objections of the United States' and German Representatives, inasmuch as the prisoners maintained their innocence and their desire to stand their trial. Formal protests were therefore entered in these cases by the United States' Minister and the German Consul-General respectively.

A further statement of Johnstone's case (Paper B 2) has now been received from him through Mr. Maxwell, M.P.

This statement contains no evidence of cruel usage or sufferings beyond imprisonment and expulsion, and does not appear to strengthen the case, as previously reported by Mr. Hawes.

It makes, however, no admission of Johnstone's unwillingness to stand his trial, but states that he was astounded by Mr. Hawes saying (a statement not reported by Mr. Hawes, and most highly improbable) that his conduct in not volunteering to take up arms for the Government on the night of the outbreak convinced him that his (Johnstone's) intention was to support the rebels.

Such an intention Johnstone distinctly disclaims, and he states that he can produce witnesses to prove that he had, on the contrary, resolved to take up arms for the Government on the 7th January, a few hours previous to his arrest.

The next case reported is that of Charles E. Dunwell, a hack-driver, a native of Jamaica, the facts of which are detailed in Mr. Hawes' despatch No. 11 of the 23rd February (Paper C), and this account is supported by a sworn statement on the part of the accused, who was still under detention at that date after the lapse of forty-five days, and without prospect of trial.

The points which call for special notice in this case, and to which the attention of the Hawaiian Government has been particularly drawn by Mr. Hawes, are the manner in which the arrest was carried out: in that Dunwell was not permitted to dress or even put on his shoes before being removed from his bed to prison: the threats used to him by the Judge Advocate of the Military Commission to induce him to give evidence incriminating Mr. V. V. Ashford: the harshness of his treatment while in prison: and the inattention shown to his repeated requests to be allowed to see the British Consul-General.

The reply of the Hawaiian Government, in the first instance, to Mr. Hawes' representations merely stated that the prisoner was held for complicity in the insurrection against the Government, the extent of which the Government was then endeavouring to ascertain, and that "whether the charge against him will be treason, conspiracy, or misprision of treason cannot be stated till the case is reached." This answer appeared to Lord Kimberley to be insufficient, as it contained no assurance that the charge of ill-treatment in prison would be investigated.

Mr. Hawes was therefore instructed to claim a strict investigation and the punishment of any persons who might be found responsible, if the facts were substantiated. (See telegram to Mr. Hawes of the 21st March, and despatch No. 12 of the 25th March, Papers D and E.)

A full reply has since, however, been received from the Hawaiian Minister for Foreign Affairs, who incloses a Report by the Attorney-General after investigation of the case. (See Mr. Hawes' despatch No. 17 of the 4th April, 1895.)

Dunwell's statements are therein denied, in so far as he claims that he was prevented from communicating with Mr. Hawes, and that he was not permitted to dress himself when arrested. Dunwell's statements have, however, been repeated by him on oath in a further sworn statement recently received, which forms an inclosure in Mr. Hawes' subsequent despatch No. 21 of the 12th April (Paper M).

In that statement Dunwell incloses copy of the oath to support the Constitution, Laws, and Government of Hawaii which he signed on the 25th July, 1894. In the certificate granted on the strength of this oath it is expressly stated that Dunwell is entitled to all the privileges of Hawaiian citzenship without thereby prejudicing his native citizenship or allegiance.

It was contended, in the reply of the Hawaiian Government to Mr. Hawes respecting the Dunwell case, that they held information of his complicity in the insurrection which amply justified his arrest: that his confinement in a dark cell was justified by his making wilfully false statements, and by his contumacy in refusing to give evidence: that the right of the Judge Advocate or a Military Commander to information in the possession of a prisoner would probably be admitted: that the Judge Advocate, in making his investigations, was exercising functions partly military and partly judicial: and that, in view of the armed insurrection then in progress, which threatened not only the peace of the community, but the very existence of all government, his action in the matter was justified as the act of a regularly commissioned officer of a Sovereign State done during a period of martial law in the suppression of rebellion.

It is pointed out that Dunwell might, in the land of his birth, under similar circumstances, have been subjected to much harsher treatment, and a precedent for similar action is cited in the case of the proceedings under martial law in Jamaica under Governor Eyre, and the decision in the case of Phillips *v.* Eyre decided in the Exchequer Chamber on error from the Court of Queen's Bench in 1870 is quoted in support of this view.

It was pleaded by the defendant in that case (see Law Reports, 6 Queen's Bench Cases, p. 1) that he was the Captain-General and Governor of Jamaica: that a revolution existed: that the acts complained of were reasonably done in good faith to put an end to the rebellion, and were made legal by a subsequent Act of Indemnity.

The analogy between the cases is somewhat increased by the fact that the Hawaiian Government have themselves now introduced and passed an Act of Indemnity to relieve the President or any person acting under his authority from the consequences of acts done by them during the continuance of martial law; but the Hawaiian Government would seem to have lost sight of the distinction between treatment which a Government may be at liberty to apply to its own subjects, and that which is justified in the case of subjects of foreign and friendly Powers.

The texts of this Indemnity Act and of the subsidiary Acts, which were subsequently passed to extend and complete the scope of the principal Act, will be found as an inclosure to Mr. Hawes' despatch No. 18 of the 4th April (Paper I), who thus describes them :—

Act 20, entitled "An Act relating to Martial Law, trials by Military Commission,

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and the liability of Officers of the Government and others for Acts done in suppressing Rebellion," in a preamble, recites the fact of a rebellion having arisen, its suppression, and the necessity of indemnifying those who assisted in suppressing it. It then enacts and declares in effect that all acts done by any one in connection with any event leading to the arrest or imprisonment of any person was done within the Constitutional authority of the President, and such acts are confirmed.

Act 22 repeals a former Law in regard to bringing suits against the Hawaiian Government in order to pave the way for the enactment of Act 24, "An Act to prevent the bringing of Actions against Officers of the Government or others for Acts done in suppressing Rebellion."

This Act, which is practically a rider to "Indemnity Act No. 20," prevents any suit being brought against the Government for redress for acts committed by the Government under the authority granted to the President by Act 20. A mere declaration by the President that such acts were committed by his authority is thus a difficulty or even a complete bar to any claim.

These preceding Acts are followed by Act 26, "An Act to provide for the Judicial Investigation of Claims against the Hawaiian Government." This Act passes to the exclusive jurisdiction of the Supreme Court, without the intervention of a jury, the hearing and determination of all claims against the Government, and in its provisions supplies certain legal and technical defects in Acts 20 and 24. Its decision is final.

The provisions of the three several Acts referred to would appear to be such in detail that even if the Supreme Court desired to render justice it would be impracticable for them to do so under Acts 20 and 24.

Mr. Hawes understands that several British subjects who intended to make claims for damages for illegal imprisonment and consequent injury to their business are now deterred from doing so, as they feel it will be practically impossible for them to obtain any satisfaction or redress through the Courts of the Republic, but that they propose now to appeal to Her Majesty's Government for protection.

The purpose of these acts would seem to be to deprive those whose liberties and civil rights have been invaded during the recent political disturbances of their legal remedies, and to bar all claims for compensation arising therefrom.

It is pointed out by Mr. Hawes that this class of legislation would seem to be expressly prohibited by Article 71 of the Constitution of Hawaii (of which a copy is annexed to Paper X, inclosed in my letter marked (A) of like date), as that Article declares that, "except as herein provided, no retrospective law shall ever be enacted."

It also seems opposed to the provisions of Articles 8, 10, and 11, which provide for security of life, liberty, and property, and freedom from search and arrest, &c., without due process of law.

The question would seem, therefore, to arise, and the reply to it is one which must affect the whole class of cases now submitted, first, whether the acts in question are a violation of the Hawaiian Constitution, and, in the second place, whether they are of a nature to which Her Majesty's Government would be justified in taking objection under international law on the ground that they limit and restrict the rights to satisfaction and redress in the Courts of the Republic, to which British subjects are entitled.

The eight cases reported in Mr. Hawes' despatch No. 14 of the 7th March (Paper F), viz., those of James Brown, Lewis J. Levey, C. Bailey, F. H. Redward, M. C. Bailey, T. W. Rawlins, A. McDowall, F. Harrison, are, as has been already observed, of similar character, and are in each case supported by depositions sworn before the British Vice-Consul.

Special attention may be called to the case of James Brown, whose statements as to the nature of the treatment he received in prison, and to the methods adopted by the Judge Advocate of the Military Commission to obtain evidence from him, are instructive, and corroborate the similar statements made by Dunwell.

The case of Lewis Levey is noticeable for the length of his detention—thirty-seven days—for his formal protest that the agreement which he signed to obtain his release was made after repeated pressure and under "restraint": for his claim of 50,000 dollars compensation in view of his loss of occupation and damage to his business as an auctioneer and general merchant of thirteen years standing in Honolulu, by his being forced to agree to leave the country at an age (58) when he cannot hope to establish himself in business with success in a new country.

The case of C. Bailey is similar, and his arrest appears to be connected with that of Levey, whom it was sought to induce, through his means, to leave the country. He signed the agreement at length, after having previously refused to do so in the presence of Mr. Hawes, at the urgent instance of his wife. He makes no claim for compensation.

The case of F. H. Redward, the reason of whose arrest was, he was informed, "for conspiracy," is noticeable for his declaration to the Hawaiian Marshal that he was ready to stand his trial, and would not sign the agreement to leave the country, which he afterwards signed on receiving the assurance that he would probably be able to return in a short time.

He states that, in order to leave Hawaii, he has had to sell his property at a heavy loss.

He was detained in prison from the 7th January to the 12th February.

In the case of M. C. Bailey, the complainant was detained in prison some three weeks, and finally signed the agreement "under duress, and to get relieved from a hopeless Tribunal."

It will be seen from the later despatch from Mr. Hawes, No. 19 of the 4th April (Paper K), that Mr. M. C. Bailey has since made a further sworn statement in respect to his case, which shows the arbitrary methods adopted by the Marshal of the Republic in dealing with him.

He was, it now appears, detained to suit the convenience of the Government, after accepting their terms of release, and engaging his passage, until Mr. Levey also agreed to go, and was then compelled to leave the country, the Government, however, declining to pay his passage.

He had entered into an engagement, prior to his arrest on the 12th February, to work as a collector and outside agent at a salary of 100 dollars a-month for five years, dating from the 1st March, 1895, with a half share of the profits on all the business he brought to the firm.

This agreement was cancelled in consequence of his arrest, and he claims 25,000 dollars damages for loss thereby.

Thomas W. Rawlins, a resident in Honolulu of twenty years' standing, was arrested on the 8th January, and detained in prison for four weeks till the 5th February. He was informed by the authorities that he was "arrested for conspiracy," that the Government had the necessary evidence required to hang him, and he was therefore advised to accept the offer of leaving the country without being tried by court-martial.

On the latter date he was released by "order of the Cabinet, on his own recognizances to appear when called upon," but he states that he was, even at the date of his declaration (4th March), "still practically under arrest, being unable to leave the city."

He states that it was his intention to leave the country for California on important private business early in January, but that owing to his arrest his business plans have been entirely upset, that he has suffered heavy pecuniary loss, that he has undergone severe mental strain and worry, and that he has sustained permanent injury to his health.

He wishes to know "whether he can be guaranteed that quiet possession of life and property which he has hitherto enjoyed, and to which he is entitled, and whether, as a British subject, he can obtain any redress for the insult and injury which he and his family have suffered at the hands of the Hawaiian Republic."

No specific damages are, however, claimed.

Arthur McDowall was arrested on the 7th January and detained until the 15th February, when he was practically deported. He was subjected to repeated pressure to induce him to leave the country, and at length, as the result of bad food and confinement in a dark cell, and much harsh treatment in prison, consented to do so on the 23rd of that month. He was unable to obtain any information, in reply to his repeated inquiries, as to the charge upon which he was detained.

His sworn statement is most clear and categorical that "he had nothing whatever to do with the rebellion in any form or shape, had no arms or ammunition, nor did he assist any one in getting arms or ammunition, nor had he any knowledge of arms or ammunition being brought to the country for revolutionary purposes, nor any knowledge there was to be a revolution, nor even any reason to suspect the same."

No claim for compensation is put forward.

Mr. Frederick Harrison, arrested on the 9th January, and detained till the 23rd February, was informed on inquiry that "there was no charge made against him." Repeated overtures were made to him to leave the country, and he was told by an Agent of the Government that "they had evidence against him, and would no doubt confiscate all his property."

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The form of agreement which he was at length induced to sign was, so far as he can recollect, to the following effect:—

"I, Frederick Harrison, having been detained in Oahu prison for complicity in the insurrection against the Hawaiian Government, agree to leave the country on the steamer 'Miowera' about the 4th March during my lifetime, never to return unless by permission of the Minister for Foreign Affairs, and approved by the Marshal."

He states that, as it seemed probable after five weeks imprisonment that he would be detained indefinitely or brought before a Military Tribunal before which he had no chance of a fair trial, he consented, "under pressure and intimidation," to accept the terms offered for his release.

He further states that he had resided seventeen years in Hawaii, and had an established business which he had had to sacrifice with other property, and contracts which were in progress at the time of his arrest. This, he says, has proved a severe loss to himself and his family.

The next case reported by Mr. Hawes is in some respects the most important, and that supported by the fullest details, viz., that of C. W. Ashford, brother of V. V. Ashford, whose trial is referred to in my other letter, marked (A), of to-day's date.

C. W. Ashford is himself a lawyer, and has drawn up his own statement of his case, which is inclosed in Mr. Hawes' despatch No. 16 of the 7th March (Paper G).

The statement declares that he and his brother were in no way concerned in the Royalist rising, but that they had been watched by Government spies ever since 1893, their only offence being that they had ventured to criticize the new Administration.

Mr. C. W. Ashford was, it appears, arrested and imprisoned on the 8th January, and kept in confinement until the 23rd February, when "under duress he accepted a proposition of the Hawaiian Government for his release on condition that he should leave the country."

His statement enters at considerable length into the question of the jurisdiction of the Military Commission, and its competency to try cases of misprision of treason. The arguments on this head will, however, have doubtless already been considered in connection with the case of V. V. Ashford, to which they are more directly applicable, as C. W. Ashford was not himself brought to trial.

Mr. Ashford complains that his private correspondence was intercepted and read while he was in prison: that while there he was subjected to solitary confinement: and he concludes by appealing to Her Majesty's Government to obtain compensation from the Hawaiian Government for the pecuniary and other injury which he has sustained at their hands. He further states that since his release he has again been watched by Government spies.

The last case at present reported is that of G. Carson Kenyon, whose sworn declaration is inclosed in Mr. Hawes' despatch No. 19 of the 4th April (Paper I).

Mr. Kenyon, who was employed on the staff of the "Bulletin" newspaper, and who holds letters of denization from the late King and from the Republic of Hawaii, was arrested with others on the 12th January, but handcuffed and treated with rather exceptional severity; repeated endeavours were made to induce him to sign an admission of his complicity in the revolution and to accept his release on condition of leaving the country.

These offers he rejected, but on the 25th February was unconditionally released without any explanation.

Mr. Hawes states, however, that he has since been compelled to leave the country.

Mr. Kenyon complains of his treatment while in prison, of his letters being tampered with, and of his house having been repeatedly searched in his absence, and of his aunt, with whom he lived, having been subjected to assault and personal ill-treatment.

Two further complaints of a similar nature have since been received through Mr. Hawes (see his despatches Nos. 20 and 21 of the 11th and 12th April respectively, Papers L and M), both of which are supported by sworn statements.

The first is that of James B. Grant, who was arrested on the 29th January, and released on the 28th February without any charge having been preferred against him. He complains of harsh treatment and of the loss of employment which he had expected to obtain. His arrest and detention are attributed to his intimacy with the Ashfords. He makes no specific claim for damages.

The second is that of Edward B. Thomas, an architect and contractor, who was arrested on the 7th January, and who, after fifty-four days' detention in prison without trial, was, on the 1st March, released unconditionally and without explanation.

He claims, on account of losses on open contracts, and detriment to his business from his imprisonment, 25,000*l.* compensation.

The following questions would therefore seem to arise:—

1. Whether Her Majesty's Government would in all, or any, and, if so, in which of the cases now submitted, be justified in protesting against the arrest and detention of these British subjects, and their practical, and in some instances, forcible expulsion from the country without charge or trial.

2. Whether, in the event of the answer to the previous question being in the affirmative, Her Majesty's Government would be justified in insisting upon the withdrawal of the restrictions placed upon the return of these British subjects to Hawaii, or, failing this, whether claims for compensation should be presented on account of the losses and injuries sustained by them.

And thirdly, if the latter alternative be adopted, what approximate sum might in each case be fairly demanded of the Hawaiian Government in view of the special circumstances and respective positions of the several sufferers?

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Kimberley with your opinion on the questions specially submitted in this letter, as well as with any general observations which you may have to offer upon the various cases and claims.

I am, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Tabular Statement.				
(B.)	Mr. Hawes	(No. 8)	February	7,	1895.
(B 2.)	Mr. Johnstone		April	,	„
(C.)	Mr. Hawes	(No. 11)	February	23,	„
(D.)	To Mr. Hawes	(Telegraphic)	March	21,	„
(E.)	Ditto	(No. 12)	February	23,	„
(F.)	Mr. Hawes	(No. 14)	March	7,	„
(G.)	Ditto	(No. 16)	March	7,	„
(H.)	Ditto	(No. 17)	March	7,	„
(I.)	Ditto	(No. 18)	April	4,	„
(K.)	Ditto	(No. 19)	April	4,	„
(L.)	Ditto	(No. 20)	April	11,	„
(M.)	Ditto	(No. 21)	April	12,	„
(N.)	Ditto	(No 22)	April	12,	„

TABULAR Statement of cases of British Subjects imprisoned without being brought to Trial.

Name and Position.	Date of Arrest.	How disposed of.	Observations.	Reported in Mr. Hawes' Despatch—
J. B. Johnstone, employed under the Police Department as a spy	January 7, 1895	Forcibly deported on 2nd February	Admitted to be unable to face trial, so no formal interference made, but Mr. Hawes recorded protest	No. 8, February 7, 1895.
Charles E Dunwell, hack-driver, a Jamaican, of Irish extraction	„ 8, „	Released on his own recognizances	Representation made to Hawaiian Government, and full report on case promised, and received later in .. .. .. Hawaiian Government upholding action of their authorities and challenging Dunwell's statements. Their defence is again traversed in a further sworn statement by Dunwell .. .. Dunwell claims 10,000*l.* compensation. He admits having signed oath to Hawaiian Constitution on the 25th July, 1894, thus acquiring Hawaiian citizenship, but explicitly without prejudice to his native allegiance. Dunwell incloses copy of this certificate of nationality	„ 11, „ 23, „ „ 17, March 7, „ „ 21, April 12, „
James Brown, hack-driver ..	„ 9, „	Released "a few days later" than 7th February	Signed an agreement to leave the country under pressure .. N.B.—A copy of the form of agreement signed by political prisoners in such cases is inclosed in a later despatch from Mr. Hawes	„ 14, March 7, „ „ 22, April 12, „
Lewis J. Levey, in business as an auctioneer and general merchant	„ 9, „	Released "on 37th day of his imprisonment"	Signed an agreement to leave the country under pressure. Claims 50,000 dollars damages	„ 14, March 7, „
C. Bailey	February 12, „	Released "before 25th February"	Signed agreement to leave the country. Makes no claim ..	„ 14, „ 7, „
Fred. H. Redward	January 7, „	Released on 12th February ..	Signed agreement. Had to sell property at great loss. No claim	„ 14, „ 7, „
M. C. Bailey, had signed contract to act as "collector and outside agent"	February 12, „	Released on or before 4th March	Signed agreement "as there was no hope of fair trial." Claims 25,000 dollars for loss of business and salary	„ 14, „ 7, „ and „ 19, April 4, „
Thomas W. Rawlins	January 8, „	Released on his own recognizances 5th February	Claims redress for pecuniary loss and injury to health. States that "he is still practically under arrest, and unable to leave the country"	„ 14, March 7, „
Arthur McDowall	„ 7, „	Consented to leave country on 23rd February	Suffered much from harsh treatment and bad food, and was at last practically deported	„ 14, „ 7, „
Fred. K. Harrison, established in business	January 9, 1895	Consented to leave country on 4th March	Signed agreement never to return. Has had to sacrifice business and contracts at a heavy loss. Has since been compelled to leave the country	No. 14, March 7, 1895. and (?)
C. W. Ashford, a lawyer ..	„ 8, „	Released on his own recognizances, 23rd February	Agreed to leave the country. Asks compensation for loss and injury sustained	No. 16, March 7, „
G. Carson Kenyon	„ 12, „	Released on 25th February. Compelled to leave the country	Harshly treated on arrest. Much pressure used to get him to sign agreement, but was finally released without explanation. He holds letters of denization from both the late King and the present Government	„ 19, April 4, „
James B. Grant	„ 29, „	Released 28th February ..	Without any charge having been preferred against him. Complains of harsh treatment. Lost chance of employment owing to detention, which seems due to his intimacy with the Ashfords. Sends sworn statement. No specific claim	„ 20, „ 11, „
Edward B. Thomas, of Liverpool, architect, builder, and contractor	„ 7, „	Released on 1st March, after fifty-four days' imprisonment without trial or any conditions imposed	Claims on account of business losses on open contracts, &c., due to his long imprisonment, 25,000*l.* compensation	„ 21, „ 12, „

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Report.

In our opinion, there is no ground for protest or claim in the case of Mr. J. B. Johnstone, whose confession to the Consul-General that he could not face a trial appears to be an admission of guilt.

In regard to the other persons, we consider that, upon the materials before us, there is a case for protest and for a claim for compensation. We desire, however, to observe that the information submitted to us is far from full, in some cases no indication being given even of the status or occupation of the person injured. Nor are we acquainted in general with the contention of the Hawaiian Government as to the cause of arrest, or their answer to the accusation of cruel treatment. What they say might, of course, put an entirely different complexion upon the affair.

We consider that, in face of an attempted insurrection, the Hawaiian Government were entitled to have recourse to martial law under their Constitution. But as between nations all law, whether martial law or ordinary law, must be administered towards foreigners with reasonable justice. The proclamation of martial law would justify summary proceedings by a Military instead of a Civil Court. But nothing can justify the imprisonment of foreigners without trial for periods ranging between a fortnight and six weeks, with a view to extorting evidence by punishment, or the threats of punishment. And this appears to have been done in the case of some of the persons in regard to whom we are requested to report.

Further, we consider that any country is, in international law, entitled to require a foreigner to quit its territory, though to do so suddenly, and without real grounds, after allowing him to establish himself and acquire pecuniary interests which are sacrificed by his expulsion, is a high-handed act of an unfriendly character. But nothing can justify the imprisonment of a foreigner without trial, where there easily might be a trial, for the purpose of compelling him to sign an agreement voluntarily to quit the island. And where this is done, and business loss follows, we think that the business loss, as well as the imprisonment, should be taken into account in measuring the claim for compensation in regard to what is one entire transaction.

We do not feel that, upon the materials before us, we can estimate in the case of each person the amount of compensation which should be claimed. Broadly speaking, we should say that in the case of a person of humble position, imprisoned for a month without cruelty or hardship, a sum of 100*l*. should be claimed; and in the case of cruelty or hardship, the claim might be doubled or trebled as the case should demand, and any loss of business during imprisonment should be included.

A higher sum should be claimed for persons of a better position, because they would suffer more, and where they have been compelled by imprisonment to agree to quit the country and have lost all their business, something like two years' profits would be the measure of the claim. It appears to us that upon this point the Consul-General on the spot might be able to supply the necessary information.

We also consider that it might be advisable to be informed of the views of the Hawaiian Government as to the rights and wrongs of these proceedings before finally determining either the right to, or the amount of, compensation in each particular case.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
July 5, 1895.

No. 41.

[November 19, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November* 2, 1895.

Claim of C. Dunwell against Hawaiian Govt. for illegal arrest and imprisonment.

I HAVE the honour to transmit to you herewith, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to the case of a British subject named Dunwell, who, upon the occasion of the recent rising in Hawaii, together with other British subjects, suffered arrest and detention under the powers conferred on the Executive by the proclamation of martial law, without having been brought to trial.

Papers relative to these cases were laid before your predecessors in office, by direction of the then Secretary of State for Foreign Affairs, on the 11th May last, and your attention is specially called to their Report (B) of the 5th July, dealing generally with the questions involved.

Her Majesty's Agent and Consul-General in the Sandwich Islands was duly instructed in the sense of that Report, and it will be seen that he now forwards a brief from Dunwell's counsel, setting forth answers to the explanations offered by the Hawaiian Government in this case, which explanations will be found in Mr. Hawes' despatch No. 17 of the 4th April last.

In obedience to his instructions he also furnishes an estimate of the amount of compensation to which, in his opinion, Dunwell is fairly entitled, and he puts it at 1,700*l*.

Subject to your opinion, it appears to Lord Salisbury that the case is one in which substantial compensation may properly be demanded.

As regards the amount of such compensation, I am to submit the following observations:—

Dunwell appears to have been a cab-driver, of good character, earning 25 to 30 dollars a-week, or from 5*l*. to 6*l*. in English money.

As money in Hawaii is estimated by Mr. Hawes to represent not more than one-third of its value in England, the claimant is apparently in the position, for the purposes of assessing compensation on the basis proposed by your predecessors, of a person earning 2*l*. a-week, or 8*l*. a-month, by a somewhat precarious calling.

If, therefore, Her Majesty's Government put forward a claim at the rate of 100*l*. per month of twenty-eight days for the period during which Dunwell was imprisoned, and then treble the amount thus arrived at so as to compensate Dunwell in respect of the less value of money in Hawaii, this would seem to be fairly liberal treatment. Dunwell could only have earned 8*l*. per month had he been at liberty to pursue his calling, and 92*l*. per month seems not an illiberal compensation for a man in his position in respect of the indirect loss and of the injury to his feelings which he sustained through his arrest and unjustifiable detention without trial.

On the whole, Lord Salisbury is disposed to think that a round sum of 600*l*. might be demanded, as the man was imprisoned for nearly two lunar months, viz., fifty-one days.

But, before coming to any decision, his Lordship would be glad to learn whether, in your opinion, the claim is one which may now properly be pressed upon the Government of Hawaii; and, if so, whether the amount suggested is adequate, insufficient, or excessive, having regard to all the circumstances of the case.

I am therefore to request that you will take the papers transmitted herewith into consideration, and that you will favour Lord Salisbury with your opinion on the questions submitted in this letter, and with any general observations you may have to offer on the case.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

To Law Officers (with Inclosures)		May	11,	1895.
Law Officers (B)		July	5,	„
To Mr. Hawes	(No. 21)	July	12,	„
Mr. Hawes	(No. 39)	September	7,	„

Report.

In our opinion, the claim is one which may now properly be pressed upon the Government of Hawaii.

The amount suggested, 600*l*., is, in our opinion, having regard to all the circumstances of the case, fairly adequate.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 19, 1895.

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PERSIA.

No. 42.

[January 22, 1895.]

Foreign Office to the Law Officers of the Crown.

Right of Persian Bank Mining Rights Corporation to refer claims against Persia to arbitration.

Gentlemen, *Foreign Office, December* 20, 1894.

I HAD the honour, by direction of the Earl of Kimberley, to submit on the 1st May last, for the consideration of your immediate predecessors in office, papers relative to the question of the right of the Persian Bank Mining Rights Corporation to refer to arbitration their claims against the Persian Government.

The reference to the then Law Officers of the Crown fully described the grounds upon which the Corporation founded their claim to arbitration, summarized the correspondence which had passed on the subject, and explained the reasons which made Lord Kimberley hesitate to adopt the contention advanced on behalf of the Corporation.

The Law Officers were requested to take the papers into their consideration and favour his Lordship with their opinion (1) as to whether Her Majesty's Government would be legally justified in giving their support to the claim to arbitration put forward by the Corporation; and (2) generally upon the case.

The papers which accompanied my previous letter are transmitted herewith, in a separate cover, for convenience of reference.

L. O. R. 1894 (Conf. 6641), p. 97.

On the 11th May the Law Officers reported that, in their opinion, Her Majesty's Government would *not* be legally justified in giving their support to the claim for arbitration put forward by the Corporation (Inclosure 1).

On the receipt of this opinion a letter was addressed to the Corporation (Inclosure 2) stating that, after careful consideration of the matter, in consultation with the Law Officers of the Crown, Lord Kimberley was of opinion that Her Majesty's Government would not be justified in giving their support to the claim.

On the 26th July the Corporation wrote (Inclosure 3) complaining that the grounds on which the Law Officers had based their opinion were withheld from them, and asking that the matter might be reconsidered, and if the Law Officers still held that the Corporation could not by itself alone assert and maintain the right to arbitration, whether this defect could not be remedied by joining the Imperial Bank of Persia as plaintiffs in the claim. They suggested that, otherwise, they might be forced to consider favourably an offer made by a Russian capitalist for the purchase of the concession of the mining rights.

A reply was sent to this communication on the 11th August (Inclosure 4) to the effect that, if the Bank of Persia associated itself in the demand for arbitration and would state the grounds on which it considered itself entitled to make the claim, Lord Kimberley would be willing again to consult the Law Officers as to whether the claim could be properly sustained; as regarded the transfer of their Concession to a Russian firm, they were told that his Lordship must leave the Directors to take whatever course they thought best for their own interests, subject to its receiving the Shah's sanction.

The Corporation wrote again on the 17th instant (Inclosure 5) and forwarded a copy of the Agreement of sale between the Imperial Bank of Persia and the Corporation, on which is indorsed a declaration under the common seal of the Bank (which has also been indorsed on the original Agreement) to the effect that the right to arbitration under clause 10 of the Concession referred to in the Agreement, and Article 8 of Appendix 4 thereto, was one of the rights and privileges sold and transferred by the Agreement, and in respect of which consideration was paid, and that the Agreement was made with the assent of the Shah. The letter states that by this declaration the Bank of Persia has associated itself in the demand for arbitration, and requests that the question may be reconsidered and again referred to the Law Officers.

They inclose also a copy of a letter to the Persian Minister in London, notifying the intention of the Corporation to appoint an Arbitrator forthwith.

I have the honour to request that you will take the papers now submitted into your consideration, and favour Lord Kimberley with your opinion whether their contents are of such a nature as to induce you in any way to dissent from the view expressed in their Report of the 11th May last by the then Law Officers of the Crown.

I am further to request that, if your answer to the preceding question should be in the affirmative, and you should be of opinion that, under present circumstances, the claim is one which Her Majesty's Government ought to press upon the Government of Persia, you will be good enough to indicate upon what grounds the demand of the Corporation can most advantageously and properly be supported.

I have, &c.

(Signed) T. H. SANDERSON.

List of Papers.

1.	Law Officers' Report (Conf. 6641, p. 97)	May	11, 1894.
2.	To Sir Lepel Griffin	May	18, „
3.	Persian Bank Mining Rights Corporation	July	26, „
4.	To Sir L. Griffin	August	11, „
5.	Persian Bank Mining Rights Corporation	December	17, „

Papers with previous reference to Law Officers in separate bundle.

Report.

In our opinion the contents of the papers now submitted to us are not of such a nature as to induce us in any way to dissent from the view expressed in their Report of the 11th May last by the then Law Officers of the Crown.

We consider that Article X of the first Concession and Article VIII of the second Concession provide for arbitration only in case of disputes between the Bank and His Imperial Majesty the Shah of Persia. The same Concessions authorize the assignment of certain rights which they confer, but do not authorize the Bank to impart to others its right to claim arbitration It is alleged in the indorsement on the Agreement of the 17th April, 1890, that His Imperial Majesty has assented to that Agreement between the Bank and the Corporation, and also that the right to claim arbitration was one of the rights assigned by that Agreement. That Agreement does not contain any assignment of such right, and it is not stated that His Imperial Majesty has assented to the interpretation placed upon the Agreement in the indorsement referred to. We consider that His Imperial Majesty has agreed to arbitrate with the Bank, but with no other person or Corporation, so far as the materials before us show, and that therefore the Corporation cannot legally claim arbitration.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
January 22, 1895.

No. 43.

[June 12, 1895.]

Foreign Office to the Law Officers of the Crown.

Draft Order in Council amending "Persian Coast and Islands Order in Council, 1889."

Gentlemen, *Foreign Office, May* 14, 1895.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying papers respecting a difficulty which has been experienced at Bushire in carrying into effect Article 33 (1) of "The Persian Coast and Islands Order in Council, 1889" (Paper A).

Article 33 (1) of the Order in Council in question requires that every civil suit in which a British subject is a defendant and a Persian subject is a plaintiff shall be heard by a Court established under the Order. To this procedure the Persian Agent for Foreign Affairs at Bushire has strongly objected (see Inclosure in Paper B), on the

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ground that he has no official cognizance of any Order in Council, and that a compliance with the provisions of Article 33 (1) would be an innovation in which he has no authority to acquiesce.

The Government of India have suggested that, in order to obviate this difficulty, either the Order in Council should be amended, or the formal sanction of the Persian Government obtained to the exercise of Her Majesty's jurisdiction in the cases in question.

Lord Kimberley thinks that it would be more convenient to amend the Order in Council of 1889 than to enter into correspondence on the subject with the Persian Government; and Mr. Albert Gray has, under his Lordship's instructions, drafted an Order in Council for the purpose (Paper C). In the draft Order, Mr. Gray has dealt not only with the point at issue, but with Article 34 of the Order in Council of 1889, which, for the reasons stated in his letter of the 9th January last (Paper D), seemed to him also to require amendment.

The terms of the proposed Order in Council, as drafted by Mr. Gray, have been approved by the Secretary of State for India (Paper F).

I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Kimberley with your opinion whether the draft Order in Council (Paper C) may, in its present shape, properly be laid before the Queen in Council for Her Majesty's approval. His Lordship would, at the same time, be glad to be furnished with any observations which you may wish to offer after considering the inclosed papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	"Persian Coasts and Islands Order in Council, 1889" (Confidential No. 5865*).	
(B.)	India Office	December 4, 1894.
(C.)	Draft Order in Council.	
(D.)	Mr. A. Gray	January 9, 1895.
(E.)	To India Office	January 16, „
(F.)	India Office	May 7, „

Report.

As initialled by us, the draft Order in Council may, in our opinion, properly be submitted to Her Majesty for approval.

(Signed) R. T. REID,
FRANK LOCKWOOD.

Royal Courts of Justice,
June 12, 1895.

Annex.

WHEREAS by Treaty, grant, usage, sufferance and other lawful means, Her Majesty has jurisdiction in that portion of the coast and islands of the Persian Gulf and Gulf of Oman which is within the dominions of the Shah of Persia:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise, in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. "The Persian Coast and Islands Order in Council, 1889," is hereby amended as follows:

(1.) Article 33 is repealed.

(2.) In Article 34 the words "not being the subject of a Mahommedan Power" are repealed, and that Article shall be read and construed as if the words "Persian subject or" had been inserted before "foreigner," whenever that word occurs.

2. This Order may be cited as "The Persian Coast and Islands Order in Council, 1895."

And the Right Honourable the Earl of Kimberley, K.G., and the Right Honourable H. H. Fowler are to give the necessary directions herein as to them may respectively appertain.

(Initialled) R. T. R.
F. L.

PORTUGAL.

No. 44.

[May 2, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, April* 12, 1895.

Cohen and Co.'s claim against Portugal on account of detention of goods at Beira.

I HAVE the honour to transmit to you herewith, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to a claim advanced by Messrs. A. Cohen and Co. against the Portuguese Government on account of the detention of their goods at Beira by the Portuguese authorities in 1891.

L. O. R. 1892 (Conf. 6347), p. 59.

I am to observe that the claim in question formed, in September 1892, the subject of a reference to your predecessors in office, who favoured Lord Rosebery with their views on the papers then submitted to them in a Report dated the 25th October, 1892.

The facts of the case are briefly as follows:—

Messrs. A. Cohen and Co., British subjects, trading at Beira in the Portuguese possessions on the East Coast of Africa, shipped from Cape Town, per the steam-ship "Norseman," a stock of goods for the purpose of opening a store at a place some distance inland from Beira.

L. O. R. 1891 (Conf. 6207), p. 19.

The "Norseman" was one of the vessels under the command of Sir John Willoughby which were stopped at Beira under circumstances fully set forth in the reference to the then Law Officers of the Crown of the 29th May, 1891, and accompanying documents, as to which they reported on the 6th July of that year.

Your immediate predecessors reported on the 25th October, 1892, that, in their opinion, Her Majesty's Government was entitled to demand, on behalf of Messrs. Cohen and Co., compensation from the Government of Portugal in respect of the acts complained of, but that the greater part of the items forming a total claim of 5,000*l.* could not be supported, and they recommended that a demand for compensation should be made to the extent of 1,000*l.* only.

Her Majesty's Chargé d'Affaires at Lisbon was thereupon instructed to prefer a claim for this amount on behalf of Messrs. Cohen and Co. The Portuguese Government replied, declining to entertain the claim on the grounds set forth in Senhor Hintze Ribeiro's note of the 18th August, 1893 (inclosure in Sir H. MacDonell's despatch No. 32, Africa, of the 23rd August, 1893, marked A).

His Excellency maintained that, so far from suffering any loss by the action of the Portuguese authorities, Messrs. Cohen had actually benefited thereby, for if, as might be inferred, their merchandize had been transhipped directly from the "Norseman" to one of the launches attached to Sir John Willoughby's expedition, which was endeavouring to proceed up the Pungwe River without the permission of the Portuguese authorities, and without obtaining clearance at the custom-house, the merchandize in question ought certainly to have been detained, whereas, in consequence of the friendly and tolerant attitude adopted by the Portuguese Government in the matter, the proceedings were suspended and the vessel and merchandize released.

Having regard to this reply, and in view of the inference drawn by the Portuguese Minister for Foreign Affairs from the facts as stated in the claim put forward on Messrs. Cohen's behalf, it was considered desirable to ascertain more precisely:—

1. On board what lighters the goods were shipped when seized, and the date of seizure.

2. The date of their release (in order to ascertain the length of detention for which compensation is claimed).

3. Whether payment of the customs dues upon the goods in question was tendered to the Portuguese authorities on behalf of Messrs. Cohen, and, if so, by whom it was proffered.

A letter was accordingly addressed to the Colonial Office on the 17th October, 1893 (see paper marked B), requesting that information on these points might be procured from Messrs. Cohen.

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The result of these inquiries is contained in the sworn affidavit of Mr. Shire Alston, who was an acting partner in the firm of Messrs. Cohen and Co. in 1891, and was himself present on board the "Norseman" at Beira (see inclosure in Colonial Office letter of the 5th March, 1895, marked C).

According to this statement the goods were transhipped directly from the "Norseman" into two lighters belonging to, or hired by, Messrs. F. Johnson and Co., landing and transport agents at Beira, with whom arrangements had been made for the transport up the Pungwe River, and there can be no justification for the inference suggested by the Portuguese Government that they (Messrs. Cohen and Co.) were in any way connected with the British South Africa Company's expedition under Sir J. Willoughby.

That the goods were seized on the lighters on the 15th April, 1891, and the date on which Messrs Cohen resumed possession was the 12th May, 1891, though, as explained in Mr. Alston's statement, the goods may actually have been released earlier.

That payment of customs duties was tendered by Mr. Dorrbecker, Interpreter and Customs Agent, Beira, who acted on behalf and in the presence of Mr. Alston.

I am to request that you will take the papers submitted herewith into your consideration, and that you will favour Lord Kimberley with your opinion as to whether a further representation in support of Messrs. Cohen's claim should be put forward by Her Majesty's Government to that of Portugal, and, if so, on what special grounds such claim can in your view most advantageously be supported.

His Lordship would also be glad to be favoured with any general observations which you may desire to offer on the case.

The Reports of your predecessors referred to above, dated respectively the 6th July, 1891, and 25th October, 1892 (see papers marked D and E), are inclosed for convenience of reference.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Sir H. MacDonell	(No. 32. Africa)	August	23, 1893.
(B.)	To Colonial Office		October	17, ,,
(C.)	Colonial Office		March	5, 1895.
(D.)	Law Officers (Confidential No. 6207, p. 19)		July	6, 1891.
(E.)	Ditto (Confidential No. 6347, p. 59)		October	25, 1892.

Report.

In our opinion, a further representation in favour of Messrs. Cohen's claim should be put forward by Her Majesty's Government.

We consider that the claim may most advantageously be placed upon the ground that Messrs. Cohen, after tendering, as they did, the proper duties, were entitled to send their merchandize up the river, and employed lighters belonging to Messrs. Frank Johnson and Co. (Limited) to take their merchandize from the "Norseman," but that it was seized on the lighters on the 15th April, 1891, by the Portuguese authorities, and, owing to the violent demonstrations against British subjects by Portuguese soldiers, Messrs. Cohen's representatives were obliged to leave Beira until their safety could be insured, and it was not until the 12th May, 1891, that they could return.

We desire to observe that, in their claim, Messrs. Cohen do not appear wholly consistent. In their agent's letter of the 30th November, 1891, they claim damages for reshipping and carrying back their goods to Natal, and subsequently reshipping them again and carrying them back to Beira, when the impediment to trade was withdrawn.

Mr. Alston's statutory declaration, on the other hand, states that the goods remained at Beira from the 15th April to the 12th May, 1891, and that on the latter date they were released, and protection afforded by the British Government. We do not perceive the necessity of taking them back to Natal. These two statements may be reconcilable, but we think it right to direct attention to them as the apparent inconsistency may have a bearing on the amount of damages that can legitimately be claimed by Messrs. Cohen.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
May 2, 1895.

No. 45.

[June 18, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 25, 1895.

Collision between "City of Mecca" and "Insulano." Claims arising out of.

Gentlemen,

I HAVE the honour, by direction of the Earl of Kimberley, to transmit to you the papers noted in the accompanying list, which relate to certain claims arising out of a collision which occurred in 1875 between the British steamer "City of Mecca" and the Portuguese steamer "Insulano."

This case, in its various aspects, has on numerous occasions engaged the attention of your predecessors in office, and of the Earl of Selborne when Lord Chancellor, who have had under their consideration the jurisdiction claimed in the several Judgments of the Portuguese Courts seized of the matter; the interpretation and application adopted in those Judgments of the rules of the road at sea; and the question of referring to international arbitration the differences of opinion which have arisen between the Governments of Great Britain and of Portugal on the various points raised.

The case is, however, now submitted to you with special reference to the letters and statement addressed to Lord Kimberley by Mr. Dunlop, who prays that if Portugal continues to refuse redress and arbitration, and if Her Majesty's Government are indisposed to compel that country to pay compensation for the loss sustained by the enforcement in France, or elsewhere, of the Portuguese Judgments, they will themselves bear the loss already incurred and the expense of compromising the claims still outstanding under the Judgments in question.

Mr. Dunlop's "Statement," which will be found in the printed book inclosed herewith, contains so full a reference to the several Judgments and other papers on which he relies in support of his prayer that it is thought that for the purposes of the present letter no further explanation of the case will be required.

The papers referred to by Mr. Dunlop will be found in the accompanying volumes of correspondence laid before Parliament and of Confidential Foreign Office Print at the several places indicated in Parts 1 and 2 of the list which is subjoined and marked.

Further correspondence in manuscript, as marked in Part 3 of the list, is also inclosed; while the various Reports of your predecessors and Minutes by the Lord Chancellor, which are enumerated by Part 4 of the list, have been collected for convenience of reference in a separate wrapper.

I have the honour to request you to favour Lord Kimberley with your advice as to the answer which should be returned to Mr. Dunlop's prayer and more particularly on the following two points, viz.:—

1. Can any further representations usefully and with propriety be addressed to the Portuguese Government on the subject; having in view the lapse of time which has occurred since any communications were last exchanged between the two Governments in regard to this case?

2. Having regard to all the circumstances of the case, are there, in your opinion, any sufficient grounds either of a legal or of an equitable nature for favourably entertaining the request of the applicants to be reimbursed for their losses out of English public funds?

I am further to request that you will favour Lord Kimberley with any observations which may, in your opinion, be of assistance to his Lordship in dealing with the case generally.

I have, &c.
(Signed) E. GREY.

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List of Papers.

(1.) The correspondence laid before Parliament :—
Commercial No. 46 (1882). March 25, 1875, to October 18, 1882 (Parliamentary No. 2672).
,, No. 13 (1883). December 17, 1882, to April 19, 1883 (,, No. 2673).
,, No. 7 (1884). May 19, 1883, to August 22, 1883 (,, No. 2787).
These volumes contain the papers referred to by Mr. Dunlop in his letters and Statement

(2.) The correspondence as printed confidentially for the use of the Foreign Office :—
Confidential No. 4243. 1877 to 1880.
,, No. 4781. 1880 to 1882. (Contained in a bound volume, 19, Nos. 4742 to 4788.)
,, No. 4782. 1882 to 1883.
,, No. 5153. 1884.

(3.) The subsequent correspondence in MS., namely :—

To the Lord Chancellor	November	27, 1884.
Lord Chancellor	December	1, ,,
To the Law Officers..	December	31, ,,
(No reply was received to this letter.)		
Mr. Baird, M.P.	July	29, 1889.
To Messrs. Smith and Son	August	8, ,,
Mr. Baird, M.P.	August	15, ,,
To Mr. Baird, M.P.	August	20, ,,
Messrs. Robertson and Co.	March	20, 1894.
Ditto	March	21, ,,
To Messrs. Robertson and Co..	March	27, ,,
To Lord Dufferin .. (No. 40. Commercial)	March	27, ,,
Messrs. Robertson and Co.	March	29, ,,
Ditto	April	5, ,,
To Messrs. Robertson and Co..	April	7, ,,
Messrs. Smith and Sons	April	16, ,,
Mr. Dunlop	January	12, 1895.
To Mr. Dunlop (bound in brown morocco) ..	January	19, ,,
Mr. Dunlop	April	4, ,,

Separate copies of the Reports by the Law Officers and of the Minutes by the Lord Chancellor are sent tied together in a wrapper.

(4.) The Reports and Minutes will be found in their places in the printed Confidential correspondence at the undermentioned pages :—

Law Officers	May	28, 1879.	Part I,	p. 47.
Ditto	October	6, ,,	,,	p. 73.
Ditto	December	4, ,,	,,	p. 118.
Ditto	July	8, 1880.	Part II.	p. 4.
Lord Chancellor	July	25, ,,	,,	p. 113.
Ditto	November	30, ,,	,,	p. 32*.
Law Officers	April	8, 1881.	,,	p. 87.
Ditto	April	8, ,,	,,	p. 88.
Lord Chancellor	April	21, ,,	,,	p. 91.
Ditto	May	30, ,,	,,	p. 97.
Law Officers	September	10, ,,	,,	p. 98.
Lord Chancellor	September	12, 1882.	,,	p. 147.
Law Officers	July	25, ,,	,,	p. 146.
Ditto	April	3, 1883.	Part III.	p. 21.
Ditto	June	24, 1884.	Part IV.	p. 5.
Ditto	October	29, ,,	,,	p. 7.
Lord Chancellor	December	1, 1884.	In MS.	See above.

Report.

1. In our opinion, there was a miscarriage of justice in the Portuguese Courts, which appears to us to deserve the disapprobation which has long ago been expressed by Her Majesty's Government and by the Law Officers of the Crown.

Though twelve years have elapsed since Her Majesty's Government made their last representation to Portugal on this subject, we think the right of diplomatic remonstrance still exists, if Her Majesty's Government think it advisable to renew it.

But we desire to refer your Lordship to the strong opinions expressed upon this subject by Lord Selborne in his Minute of the 1st December, 1884, and to state our view that those opinions are still applicable.

2. We are not aware of any case in which Her Majesty's Government have compensated a British subject for losses due to an erroneous legal decision in a foreign country. We consider that the precedent would be very dangerous, and we do not think such a course could be recommended.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
June 18, 1895.

No. 46.

[November 27, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, October* 11, 1895.

Claims arising out of collision between "City of "Mecca" and "Insulano."

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanied lists (marked A and B), which relate to certain claims arising out of a collision which occurred in 1875 between the British steamer "City of Mecca" and the Portuguese steamer "Insulano."

The papers enumerated in the list (A) comprise those which accompanied a reference to your predecessors on the 25th April last. List (B) includes a printed copy of the above-mentioned reference of the 25th April last, and the Report (dated the 18th June) of the late Law Officers in reply thereto; a letter which, upon its receipt, was, by the Earl of Kimberley's directions, addressed to Mr. Dunlop, and a copy of a question and answer in the House of Commons on the 3rd ultimo, and two further communications from Mr. Dunlop, dated the 23rd and 25th ultimo.

I have the honour to request that you will be good enough to take these papers into your consideration, and inform Lord Salisbury—

(1.) Whether you concur in the opinion expressed by your predecessors in their Report of the 18th of last June.

(2.) Whether, in your opinion, a representation to the French Government on all or any (and if so on which) of the grounds suggested by Mr. Dunlop in his letter of the 25th September might with propriety be made.

His Lordship would further be glad to be favoured with any observations or suggestions upon the present position and aspect of the case which, in your opinion, may be of assistance to him in dealing with the matter.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)

(1.) The correspondence laid before Parliament :—
Commercial No. 46 (1882). March 25, 1875, to October 18, 1882. (Parliamentary No. 2672.)
,, No. 13 (1883). December 17, 1882, to April 19, 1883. (Parliamentary No. 2673.)
,, No. 7 (1884). May 19, 1883, to August 22, 1883. (Parliamentary No. 2787.)
These volumes contain the papers referred to by Mr. Dunlop in his letters and Statement.

(2.) The correspondence as printed confidentially for the use of the Foreign Office :—
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,, No. 4781. 1880 to 1882. (Contained in a bound volume, 19, Nos. 4742 to 4788.)
,, No. 4782. 1882 to 1883.
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(3.) The subsequent correspondence in MS., namely :—

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Lord Chancellor	December	1, ,,
To the Law Officers	December	31, ,,
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To Messrs. Smith and Son	August	8, ,,
Mr. Baird, M.P.	August	15, ,,
To Mr. Baird, M.P.	August	20, ,,
Messrs. Robertson and Co.	March	20, 1894.
Ditto	March	21, ,,
To Messrs. Robertson and Co.	March	27, ,,
To Lord Dufferin .. (No. 40. Commercial)	March	27, ,,
Messrs. Robertson and Co.	March	29, ,,
Ditto	April	5, ,,
To Messrs. Robertson and Co.	April	7, ,,
Messrs. Smith and Sons	April	16, ,,
Mr. Dunlop (bound in brown morocco)	January	12, 1895.
To Mr. Dunlop ,, ,, ...	January	19, ,,
Mr. Dunlop	April	4, ,,

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(4.) The Reports and Minutes will be found in their places in the printed Confidential correspondence at the undermentioned pages:—

Law Officers	May 28, 1879.	Part I.	p. 47.
Ditto	October 6, „	„	p. 73.
Ditto	December 4, „	„	p. 118.
Ditto	July 8, 1880.	Part II,	p. 4.
Lord Chancellor	July 25, „	„	p. 113.
Ditto	November 30, „	„	p. 32*.
Law Officers	April 8, 1881.	„	p. 87.
Ditto	April 8, „	„	p. 88.
Lord Chancellor	April 21, „	„	p. 91.
Ditto	May 30, „	„	p. 97.
Law Officers	September 10, „	„	p. 98.
Lord Chancellor	September 12, 1882.	„	p. 147.
Law Officers	July 25, „	„	p. 146.
Ditto	April 3, 1883.	Part III.	p. 21.
Ditto	June 24, 1884.	Part IV.	p. 5.
Ditto	October 29, „	„	p. 7.
Lord Chancellor	December 1, 1884.	In MS.	See above.

(B.)

To Law Officers	April 25, 1895.
Law Officers	June 18, „
To Mr. Dunlop	June 25, „
Question and Answer in House of Commons	September 3, „
Mr. Dunlop	September 23, „
Ditto	September 25, „

Report.

(1.) We concur in the opinion expressed by our predecessors in their Report of the 18th of last June.

(2.) In our opinion it would *not* be proper to make a representation to the French Government on any of the grounds suggested by Mr. Dunlop in his letter of the 25th September last.

The French Courts do not enforce the Portuguese judgments as of course, but only if on examination they find these judgments correct. It would appear that this examination was, in the case of the Judgment of the Court of Appeal at Rouen, of a perfunctory nature, not based upon a proper appreciation of the facts of the case. It is for Mr. Dunlop's French advisers to inform him whether in the present proceedings a proper investigation of the case cannot be obtained by reason of the previous French judgment. But, even if this be so, a mistaken conclusion in point of fact by a court of law is hardly a subject for diplomatic representation. It is quite clear that the French Court did not proceed upon any erroneous construction of the Navigation Rules.

The only ground for diplomatic representation would be if the French Courts were improperly usurping jurisdiction over the property of British subjects. In respect of the original collision, or the Portuguese judgment, the French Courts would have no jurisdiction; but the proceedings are based on the fact that the defendants had property in France, viz., the vessels, and that these have been arrested.

If the French law admits of such an arrest at the suit of one foreigner against another, the plaintiff being Portuguese and the defendants British, we cannot say that there is any principle of international law which would justify a diplomatic representation to the effect that such an exercise of jurisdiction in respect of, and to the extent of, the personal property in France is unjustifiable.

We do not see how this case can, with propriety, be reopened by diplomatic action.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 27, 1895.

RUSSIA.

No. 47.

[August 10, 1895.]

Foreign Office to the Attorney-General.

Sir,

Foreign Office, July 18, 1895.

Seizure of British sealers by Russian cruisers in Behring Sea in 1892.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers relative to the seizure of certain British sealing-vessels in Behring Sea by Russian cruisers during the sealing season of 1892.

L. O. R. 1892 (Conf. 6347), p. 60 A.

L. O. R. 1893 (Conf. 6508), p. 62.

The previous Reports of the Law Officers of the Crown dated the 23rd November, 1892, and the 3rd November, 1893, with the papers which were then referred to them, are annexed for convenience of reference in the packets marked (A) and (B) respectively.

With regard to the Report of the 3rd November, 1893, I am to state that the Russian Government have furnished copies of the Protocols relating to the seizures of the "Vancouver Belle" and "Carmolite," copies of the sentences of confiscation and extracts from the Reports of the Russian naval officers. These will be found in the inclosures in Sir F. Lascelles' despatch No. 23 of the 26th January last (Paper E (2)).

The views of the Russian Government with regard to the seizures are given in the Report of the Special Commission and in the note from M. Chichkine inclosed in the late Sir R. Morier's despatch No. 161 of the 12th June, 1893 (Paper D), which has already been submitted to the Law Officers.

M. Chichkine informed Her Majesty's Ambassador that the Imperial Government would not refuse to proceed to an assessment of the indemnity to be paid to the owners of the schooners "Ariel" and "Willie McGowan," but stated that the Commissioners recognized the legality of the seizures of the "Maria," "Rosie Olsen," "Carmolite," and "Vancouver Belle."

The correspondence which has passed between this Department and the Colonial Office as to the amount at which the two former claims should be assessed is inclosed (Papers L, M, N), and a summary has been prepared showing the various estimates arrived at and the arguments on which they are founded (Paper O).

It will be seen that the principal questions for decision are:—

L. O. R. 1888 (Conf. 5785), p. 81.

1. Whether any claim should be made for loss of catch. On this point the opinion given by the Law Officers in March 1888 is quoted in the letter from the Colonial Office of the 27th June, 1895 (Paper N), and the remarks of Sir J. Pauncefote are also referred to (Paper I).

2. Whether, if such a demand be not made, the loss of interest on the capital invested may not be added.

3. For what period the prospective losses should be calculated. It will be observed that the owners of the "Ariel" claim for the loss of each successive season since 1892.

4. Whether interest should be charged on the amounts claimed, and, if so, for what period.

The full claims received from the owners amount to 44,016 dollars for the "Ariel," and to 35,409 dollars for the "Willie McGowan," including estimates for the loss of the season next after the capture (1893).

The latest forms of claim received from the Colonial Office are much reduced in amount. Interest at 7 per cent. from the dates of seizure to the date at which the Russian Government admitted their liability has, however, to be added to the alternative Tables submitted.

Lord Salisbury requests that you will take the points mentioned above into your consideration, as well as the items claimed for the values of the schooners, their boats, guns, and other appurtenances, and favour him with your opinion as to what claims should be presented to the Russian Government in respect of the "Ariel" and "Willie McGowan."

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The claims of the other schooners have not been admitted in principle by the Russian Government.

In accordance with the suggestion made in November 1893 by the then Law Officers a statement has been drawn up with regard to each of these vessels, which, as finally revised, will be found in the Colonial Office letter of the 10th April (Paper L).

The "Maria" was seized by the orders of the Governor of the Commander Islands, M. Grebnitzky, who was on board the Russian steamer "Kotik" at a distance of 7 miles from Copper Island, on the ground that her boats had been hunting for seals within Russian territorial waters. The master denied this and declined to sign the act of arrest drawn up to that effect. There are, it is believed, no rookeries on the east side of Copper Island where the vessel was seized, and there was therefore no special inducement to send the boats into territorial waters. The Russian account states that before the schooner was arrested two boats belonging to her were seized at a distance of 1½ miles from the shore; the latest Canadian affidavit positively denies that the boats were captured before the schooner had been seized (see Paper H).

The claim of the owners of the "Maria" amounts to 29,450 dollars, and there is a further claim of 11,368 dollars for the loss of the season of 1893. The reduced claim suggested by Mr. Anderson is 17,567 dollars (see Paper E (1)). Mr. Anderson observes that the claim for outfit, boats, &c., is absurdly exaggerated.

The "Rosie Olsen" was also seized by the "Kotik." The Russian account states that the schooner had been seen in territorial waters, but having caught sight of the smoke of the pursuing vessel, she succeeded in gaining the open sea after having given the signal of recall to her boats. Nevertheless, four of her boats were seized in territorial waters, after which the schooner herself was seized. It appeared from her log-bok that she had been hunting for thirteen days in the neighbourhood of Copper Island, and had sent her boats into territorial waters. The Canadian account is that the vessel was boarded about 38 miles from land. She was becalmed and had been so for four hours. No attempt was made to escape.

The master refused to admit that he had been in Russian waters, and, in an affidavit, swore that at no time had he been within 15 miles of Russian territory, and that his schooner was always nearer to land than his boats when out sealing.

The master and mate aver that M. Grebnitsky expressed doubts as to seizing the vessel. If this be correct, the boats cannot have been caught *flagrante delicto*. It is, moreover, improbable that the vessel had been hanging round the islands for thirteen days, sending her boats into territorial waters to hunt.

The claim of the owners of the "Rosie Olsen" is for 22,809 dollars. In this case there is no claim for the schooner itself, which was restored by the Russian authorities. Mr. Anderson reduces it 7,719 dollars (see Paper E (1)).

The "Carmolite" was seized by the Russian cruiser "Vitiaz." The evidence relating to this seizure is more complete than in the two previous cases, and is carefully sifted in column 3 of the statement in Paper L. It is specially to be noted that, even according to the statement of the officers of the "Vitiaz," the vessel was not within territorial waters when sighted. She was not sealing at the time, nor is it alleged that she had been doing so just before.

The papers received from the Russian Government are inclosed in Paper E (2).

The Law Officers reported on the 3rd November, 1893, that on the evidence before them the seizure was not justifiable (Paper B).

The claim of the "Carmolite" amounts to 28,649 dollars, and a further claim is made for the ensuing seasons. Mr. Anderson reduces the amount to 18,633 dollars.

The "Vancouver Belle" appears to have been seized by the "Zabiaka" on the assumption that the boats of the "W. P. Sayward" which had just previously been seized were her boats. She was not in territorial waters on the day of seizure. The Report of the Commander of the "Zabiaka" states that it appeared from the log-book that some of the seals had been killed in the strait between the islands. This was three days before the pursuit took place.

The Law Officers on the 3rd November, 1893, also reported with reference to the "Vancouver Belle" that on the evidence before them the seizure was not justifiable.

The "Vancouver Belle" claims 36,080 dollars. Mr. Anderson suggests 26,080 dollars.

The papers received from the Russian Government will be found in Sir F. Lascelles' despatch No. 23 of the 26th January, 1895 (Paper E (2)).

The boats of the "W. P. Sayward" were seized by the "Zabiaka." There is little to be said in their defence as they appear to have been sealing within 3 miles of the shore.

They claim 610 dollars. Mr. Anderson reports that the case appears to be of rather a doubtful character.

The boats of the "E. P. Marvin" and "Annie Moore" were seized on the rookery, and there is therefore no defence.

The "Marvin" claims 320 dollars.

The "C. H. Tupper" was boarded by the "Zabiaka" according to the Russian account, 47 miles from Behring Island, on suspicion that some of the boats seized in territorial waters belonged to her. The claim in this case is for the loss of the season, and not for skins seized. It amounts to 10,500 dollars. Mr. Anderson estimates it at 3,000 dollars.

The "W. P. Hall" was boarded by the "Zabiaka" merely on suspicion. There was admittedly no proof that the schooner had been sealing in territorial waters. The claim is for loss of season, as the master was ordered to leave Russian waters by the Captain of the "Zabiaka," and the definition of "Russian waters" was such as to include the whole area where seals were to be found.

The "W. P. Hall" claims 10,644 dollars. Mr. Anderson says 3,000 dollars would be sufficient.

I am to request your opinion as to whether any of the foregoing claims, and, if so, which of them, may properly be supported and to what extent. In the cases of the "Maria," "Rosie Olsen," "Carmolite," and "Vancouver Belle," the point to be settled is whether the vessels or their boats were in territorial waters when first sighted by the Russian ships. The claims for the boats of the "W. P. Sayward" and "E. P. Marvin" seem difficult of defence. With regard to the "C. H. Tupper" and "W. P. Hall," it appears that they are entitled to some compensation for having been boarded on suspicion and forced to proceed homewards.

Lord Salisbury would also be glad to receive your opinion as to the sums which can fairly be asked for on account of these claims. Mr. Anderson's reduced estimates have been quoted above, but it must be borne in mind that they were only prepared with a view to the possible offer of a lump sum by the Russian Government, and that on reference to the Colonial Office it was found that there was a strong objection to the adoption of these minimum amounts in presenting the claims severally to the Russian Government.

The figures which have been suggested in the cases of the "Ariel" and "Willie McGowan" will doubtless assist you in computing the remaining claims which should presumably be calculated on a similar basis.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Law Officers' Report (with papers)	(Confidential 6347 p. 60A)	November 23, 1892.
(B.)	Ditto (ditto)	(Confidential 6508 p. 62)	November 3, 1893.
(C.)	Blue Book, "Russia No. 2 (1893)," (C.—7028).		
(D.)	Sir R. Morier	(No. 161)	June 12, 1893.
(E.)	(1) Colonial Office		December 29, 1894.
(E.)	(2) Sir F. Lascelles	(No. 23)	January 26, 1895.
(F.)	Colonial Office		January 31, "
(G.)	Ditto		March 4, "
(H.)	Ditto		March 9, "
(I.)	Sir J. Pauncefote	(No. 89)	March 15, "
(J.)	To Colonial Office		March 27, "
(K.)	Colonial Office		April 3, "
(L)	Ditto		April 10, "
(M.)	To ditto		May 13, "
(N.)	Colonial Office		June 27, "
(O.)	Memorandum		July 12, "

Report.

In dealing with the questions enumerated at p. 3 of Mr. Bertie's letter, it will be well, in the first instance, to advert to certain general considerations which affect the question of claims for unlawful seizure. I would refer in the first place to the Report

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of the Law Officers of the 14th March, 1888, quoted in Paper N, which appears to me correctly to state some of the general principles applicable to such claims. As regards prospective profits or loss of catch, while I agree that the amount of prospective profits *eo nomine* cannot be recovered upon the ground that their acquisition or earning may be prevented by other contingencies, it is, on the other hand, undoubtedly true that the loss of the earning power of the ships wrongfully seized may be taken into consideration, and general damages awarded in respect thereof, and in the assessment of such damages regard may be had to the average earnings of vessels similar in size and equipment, taking one season with another, and all considerations fairly bearing upon the question of the probability or improbability of such profits being earned.

2. If it be determined to frame the claims so as to include a claim for damages in respect of the loss of the use of the vessels, interest on the capital invested ought not to be added.

3. No general answer can be given as to the period for which prospective loss may be taken into consideration. In each case the facts must be considered, the condition of the ship, her suitability for the employment, her probable life, and the contingencies to which the employment is liable. I think that, as pointed out in the Law Officers Report of the 14th March, 1888, to which I have already referred, the simplest way in which the claims can be framed in cases where the owners have been permanently deprived of a vessel is to claim for the value of the vessel and her equipment, together with a claim for interest thereon from the date of her seizure, and some sum in respect of loss of her employment during the season in which she was seized, with interest thereon from the approximate date of the termination of the season. If the vessel has been restored to the owners after certain detention the claim should be framed upon the basis of reasonable compensation for the loss occasioned by her non-employment during the period of detention. The above considerations apply to claims in cases in which the wrongful seizure is admitted, or it is intended to be maintained that the seizure was wrongful. If it is determined to prefer claims for loss of the employment of the ships, items for wages, provisions, ammunition, and consumable stores must not be included in the claims, as such expenses would be incurred and articles used up in the employment of the ships. I desire to add one word upon the question of the merits, whether the seizures were justifiable or not. In considering the probable truth of accounts differing, as in many of the cases in question they differ in most material points, and in determining whether a claim in respect of any particular seizure should be pressed or not, it is, in my opinion, of the first importance to consider carefully whether there are admitted facts pointing to the guilt or innocence of any particular ship. In the absence of such facts, and where the allegations are as in many of these cases wholly conflicting, the only possible way of dealing with the cases is to agree to some Tribunal before which evidence can be taken, and the witnesses, if possible, cross-examined.

I will now proceed to consider the individual cases:—

The "Ariel."

In this case the liability for the seizure is admitted by the Russian Government. The claim, which is to be found at p. 22 of the Blue Book, C.—7028, appears to be made out upon the proper principle. Following out, however, what I have suggested, if the claim for 18,746 dollars, or a corresponding amount for similar items stands, interest should be charged thereon, and a figure inserted for the loss of the use of the schooner during the season of 1892. It would be inconsistent with a claim for the total value and interest thereon from 1892 to claim for the loss of the use of the schooner in subsequent seasons, and if a claim for loss of sealing during the season is made, loss of provisions, ammunition, and stores cannot be claimed as well. I do not know upon what principle the amounts have been reduced in the Colonial Office Estimates, nor why the outfit of the schooner has been excluded; but of course, in any settlement there will have to be a considerable reduction in the gross amount. The wages of the crew cannot be claimed, as they would have been expended in any event.

The "Willie McGowan."

The claim in this case, C.—7028, pp. 31 and 102, is made out upon the right principle, except that the item 1,000 dollars for stock of provisions, &c., cannot be claimed, if the item for loss of the employment of the vessel is claimed, and I should think the claim for seal-skins would have to be reduced.

The observations I have already made in the case of the "Ariel" apply to this case.

The "Maria."

In this case the claim should, I think, at present be pressed, but, at the same time, I must add that I regard the story of the "Maria" as very suspicious. The fact that her log-book had not been kept for four days, and that the vessel had obviously been for some time in the proximity of the islands lends strong colour to the suggestion of the Russian Government that her boats had been sealing in territorial waters. I agree, however, with the remarks of the Colonial Office that nothing but a judicial investigation will elicit the truth. The claim is made out upon a right basis, except that the figures are round figures, and I should think excessive, and they should be considerably reduced. The estimate of 1,200 skins is obviously excessive, and a lump sum of 6,000 dollars for outfit is unsatisfactory. The owner ought certainly to give further particulars as to how these figures are arrived at, especially in view of the suspicion which attaches to this case.

"Rosie Olsen."

I regard this case also as one of very great suspicion, if it be true that the ship's log had not been kept for several days. I agree, however, with the Colonial Office criticisms, and think that the case cannot, at any rate at present, be withdrawn. As regards the claim, it is made out upon a right basis, but the estimate of the catch is obviously greatly exaggerated, and the items provisions, ammunition, slop chest, compasses, &c., appear to be very exaggerated, and cannot be claimed with the last item.

The "Carmolite."

In my opinion, this case cannot ultimately be pressed. If the master's story is true, that she was well out of sight of territorial waters when sighted by the "Vitiaz," I can see no reason why he should have set sail and stood to the eastward. The Canadian statement admits that the vessel was sailing away to the eastward for an hour and a-half. I have little doubt myself that the boats of the "Carmolite" had been sealing within territorial waters. As regards the claim the value of the schooner, and the amount of the season's catch seem very exaggerated, and the amount claimed for the stock of provisions must be excluded if a claim is made for the use of the schooner during the season. I think, however, that it may not be possible ultimately to press this case. The same observations apply as in previous cases as regards the non-posting of the log-book.

"Vancouver Belle."

This case should, at present at any rate, be pressed, though the evidence as to the distance of the vessel and her boats from the islands is not satisfactory, and it is to be noted that when the smoke of the cruiser was first seen, a signal was given to summon the boats, which was unnecessary, if they were well outside territorial waters. I agree, however, that the Russian statements are not altogether satisfactory. The figures of the claim are obviously very exaggerated, and the item of 10,000 dollars, including the loss of the ship for the year 1893, cannot be pressed in its entirety if the value of the ship and interest is claimed.

"W. P. Sayward."

Unless some satisfactory evidence can be obtained from the boats that they were outside the 3-mile limit, I do not think this claim should be pressed.

"E. P. Marvin," "Annie Moore."

Upon the facts before me, neither of these claims can be pressed.

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"C. H. Tupper."

I agree entirely with the observations made by Mr. Anderson that a claim for 10,500 dollars cannot be supported, the vessel not having been interfered with until the 10th August. Assuming, however, that there is satisfactory evidence that the vessel did abandon sealing solely by reason of the interference of the Russian cruiser, a moderate claim should be pressed.

"W. P. Hall."

The same remarks apply in the case of the "W. P. Hall."

With regard to all the above cases in the absence of a settlement, both as to the merits and as to the items, it is, in my judgment, of extreme importance that some Joint Commission should be appointed which can investigate the facts.

(Signed) RICHARD E. WEBSTER.

Royal Courts of Justice,
August 10, 1895.

No. 48.

[October 21, 1895.]

Foreign Office to the Attorney-General.

Foreign Office, September 25, 1895.

Seizure of British sealers in Behring Sea by Russian cruisers.

Sir,

YOUR report of the 10th ultimo relative to the seizure of certain British sealing-vessels in Behring Sea by Russian cruisers during the season of 1892 has been communicated to Her Majesty's Secretary of State for the Colonies; and I have now the honour to transmit to you, by direction of the Marquess of Salisbury, the reply which has been received from the Colonial Office* on this subject, containing Mr. Chamberlain's observations with regard to your Report.

I am to request that you will take the letter from the Colonial Office into your consideration, and favour Lord Salisbury with your opinion thereon, and with any general observations which you may have to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

We have considered Mr. Chamberlain's observations on the Attorney-General's Report of the 10th August.

As matters of argument which may very properly be urged on behalf of the British ships, we recognize the justice of many of the criticisms by the Colonial Office upon the views expressed by the Attorney-General, and it is quite possible that the more intimate acquaintance with the facts and earlier correspondence possessed by the Colonial Office officials enable them to form a more trustworthy judgment on each case.

Nothing, however, is to be gained—at any rate at present—by discussing argumentatively and in detail the differences of opinion.

We concur in the course suggested by Mr. Chamberlain at the conclusion of the Colonial Office letter of the 14th ultimo, and suggest that claims should be prepared and presented in all cases as to which there appears on the statements of the masters and crews any fair ground for their presentation, and that the detailed points of difference should be discussed in consultation between the Colonial Office and the Law Officers after the draft of the claims has been prepared.

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* Colonial Office, September 14, 1895.

With reference to the specific points referred to, we would make the following observations:—

The Attorney-General was quite aware that the posting of log-books was not compulsory. We still think that it is a circumstance of suspicion that a vessel has kept no record of her position. Even in small vessels it is usual to make some entries, and the importance of the question of position must have been fully known.

As regards attempted flight, recognizing the argument thereon, we still think vessels sealing *on the high seas* would not make the probably useless attempt to escape from a cruiser by flight. We think such conduct may justly be regarded as suspicious.

We do not, of course, wish the arguments urged by the Colonial Office to be withdrawn, but we think the observations of the Attorney-General well-founded.

The "Marie."—The observation that the vessel had obviously been in the proximity of the islands was founded on the fact, which we understood to be admitted, that out of 622 skins, 585 were those of females; that the vessel had been for four days in approximately the same locality, and was found not far outside territorial waters.

The Attorney-General does not, however, desire to press his view in any way against that of the Colonial Office.

The "Carmolite."—There is, we think, much force in the observations of the Attorney-General. No doubt the arguments of the Colonial Office, if the data on which they are based may be assumed to be correct, are well-founded.

The Attorney-General did not suggest the withdrawal of the claim at present.

"Vancouver Belle."—We must point out that the Attorney-General considered that the claim should at present be pressed.

As we have already pointed out, discussion in detail of arguments *pro* and *con* can at present serve no useful purpose.

If it be established that the Russian vessels were ordered to seize all vessels sealing west of a certain line, the Attorney-General's observations would, of course, have far less weight; but at present this cannot be assumed.

The observations by the Colonial Office supply valuable arguments in support of the British Case.

(Signed) RICHARD E. WEBSTER.
R. B. FINLAY.

Royal Courts of Justice,
October 21, 1895.

Annex.

Colonial Office to Foreign Office.

Downing Street, September 14, 1895.

Sir,

I AM directed by Mr. Secretary Chamberlain to acknowledge the receipt of your letter of the 30th ultimo, inclosing copy of a Report by the Attorney-General on the seizure in 1892 of certain British vessels by Russian cruisers in the North Pacific.

Mr. Chamberlain has read with much satisfaction the general statement of the principles governing these cases which is contained in the first three paragraphs of Sir R. Webster's Report, and he is glad to observe that these paragraphs confirm in substance the views expressed in the letter from this Department of the 27th June last, and he gathers that Sir R. Webster's view is that the claims of the "Ariel" and "Willie McGowan" should be presented as in the first alternative form given in that letter.

With regard to the other seizures, the legality of which is still in dispute, Mr. Chamberlain does not understand that it is intended to present definite claims until the question of their justification has been definitely settled, but; if that is not the case, he will cause a statement of these claims to be prepared on the same lines as in the cases of the "Ariel" and "Willie McGowan."

With regard to the Attorney-General's remarks on the individual cases, Mr. Chamberlain is disposed to think that, possibly from his not being familiar with the earlier parts of the voluminous correspondence on this question, Sir R. Webster has attached undue weight to the failure of the masters in some of the cases to post the log-books up to date, and to the vessels having attempted to escape from the cruisers.

With regard to the posting of the log-book, I am to observe that the daily entry of particulars as to the ship's course and position, which is required by the Award Regulations, is not compulsory in the waters now in question. The vessels are all under 100 tons burthen, and the absence of entries in the log might also be due to the inefficiency of the class of officers found in such small craft.

Neither the "Ariel" nor the "Willie McGowan" had their logs posted up, and it appears to Mr. Chamberlain difficult to draw any conclusion unfavourable to the vessels from that fact.

With regard to the point that the vessels took to flight on sighting the cruisers, I am to observe that a foreign cruiser has no right to interfere in any way with a British vessel on the high seas, and, if such a cruiser is pursuing a British vessel, the fact of pursuit affords a presumption of unfriendly intention. Sealing vessels might naturally take alarm at the approach of the cruiser, seeing that they had for six years previously been harassed by the United States' cruisers in the neighbouring part of the North Pacific, and the fate of the "Araunah" in 1888, and the summary manner in which she was treated were so well known, that the efforts of the sealers to escape were only natural. The "Willie McGowan"—the seizure of which is admitted to have been illegal—also attempted to escape, and no doubt the "Ariel" would have done so, too, had she not been becalmed at the time.

It must not be forgotten that if there is a presumption against the sealers on these grounds, there is a still stronger presumption against the action of the Russian cruisers.

The Commanders of these cruisers had—or alleged that they had—instructions to seize all vessels found sealing to the west of the United States' water boundary and north of a line from Cape Chalutka, on the Kamschatkan coast, to the most southerly of the Aleutians. They, in fact, acted on the assumption that the whole of Behring Sea, instead of only the eastern half, had been closed to sealing. This was repeatedly stated by their officers, and the limits were actually marked on the chart of the "W. P. Hall," now in possession of Her Majesty's Government, by the Commander of the "Zabeaka." who entered on the schooner's log that she had been within Russian waters for sealing, although it was admitted that she had never been near territorial waters.

With regard to the case of the "Maria," Sir R. Webster remarks that she had "obviously been for some time in the proximity of the island," a statement which appears to be made under some misapprehension, for Mr. Chamberlain finds no support for it in the papers before him. It is, indeed, stated that for two or three days she had been in a dense fog, but it is impossible to found on that any inference as to her proximity to the islands, as she was cruising about the whole time. She had no motive for going or sending her boats into territorial waters, as on that side of Copper Island where she was seized, there is no rookery or landing-ground for seals, and to reach the territorial waters on that side, seals coming from the rookery on the other side of the island would have to round the southern extremity and double back out of their course, so that they would therefore be less likely to be plentiful in territorial waters than outside. It may also be observed that if the two boats captured by the "Kotik" were, as the master alleges, to the south-west of the vessel, the cruiser, if she captured them, as alleged, before seizing the vessel, must have passed the vessel on her way to the boats. It is not impossible that M. Grebnitzky may have confused the boats of the "Maria" wth those of the "Annie Moore," which appear to have been captured about the same time.

"*Carmolite.*"

Mr. Chamberlain regrets that Sir R. Webster gives it as his opinion that this case cannot ultimately be pressed. He says:—

"If the master's story is true, that the vessel was well out of sight of territorial waters when sighted, I can see no reason why he should have set sail and stood to the eastward."

Mr. Chamberlain does not understand upon what this doubt of the master's statement is founded. The master's affidavit asserts that the vessel was 12 miles from land when she saw the cruiser, and at that distance, and even much further, the land and the cruiser would easily be seen from the vessel. The Attorney-General also says he has little doubt that her boats had been sealing within territorial waters, though, as has been pointed out, this is not alleged by the Russians, and the British evidence is to the effect that the boats were not out at all on the day the vessel was captured, and as the vessel, like the "Maria," was on the side of Copper Island where there are no rookeries, she was more likely to find seals outside than inside territorial waters.

"*Vancouver Belle.*"

Sir R. Webster, in considering this case, would appear to have overlooked the connection between it and the seizure of the "Sayward's" boats. These boats were, according to the statement of the Russians, seized at a distance of 9 miles from the south-eastern point of Copper Island, and it was not till after they had been seized that the cruiser, proceeding in a south-westerly direction—away from the island—sighted the "Vancouver Belle," which must therefore have been considerably more than 9 miles from land when sighted.

No allegation is made that her boats were within territorial waters, and the only justification of the seizure is the allegation that some time previously she had caught seals between Copper and Behring Islands, but it is maintained that the allegation, if true, could not warrant the seizure on a subsequent day, even if the seals in question had been taken in territorial waters.

With regard to these last two cases—the "Carmolite" and "Vancouver Belle"—in which the full Russian accounts have been received, Mr. Chamberlain concurs in his predecessor's opinion that there is no evidence to justify the seizures, and he trusts that Lord Salisbury will concur in this view.

As to the suggestion that a Joint Commission should be appointed to investigate the disputed cases and assess the damages, I am to observe that such a Commission would have to take evidence both in Russia and in British Columbia, and it is only in the autumn, when the sealing season is over, that the British Columbian evidence would be available, and as the principal Russian witness, M. Grebnitzky, is the Governor of the Seal Islands, it is not known when or where his evidence could be taken.

There would be considerable difficulties, therefore, in the way of such a Commission, except in so far as the assessment of damages is concerned, a task which might easily be done with the aid of some person acquainted with the sealing industry.

In Mr. Chamberlain's view, only two of the four disputed cases are doubtful, the "Maria" and the "Rosie Olsen," in which the contemporary Russian accounts of the seizures have not been received, and before making to the Russian Government the suggestion of a Commission, he would suggest that a representation should at once be made to the Russian Government on the cases of the "Vancouver Belle" and the "Carmolite," for which ample materials exist in the later evidence received from Russia, and that the extraordinary contradictions in the evidence as to the "Maria" and "Rosie Olsen" should be pointed out, and the inconvenience caused by the long delay in furnishing the further evidence, pending the receipt of which Her Majesty's Government cannot ignore the fact that on the sworn evidence before them these seizures are unjustifiable, while nothing but a résumé of apparently unsworn statements has been produced on the part of the Russians, and must therefore continue to press for compensation for these vessels.

At the same time, the claims of the "Ariel" and "Willie McGowan" should be put in, and the Russian Government informed that the further claims will be presented in due course.

I am, &c.
(Signed) JOHN BRAMSTON.

No. 49.

[October 31, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 31, 1895.

Gentlemen,

Draft Admiralty instructions to cruisers under "Seal Fisheries (North Pacific) Act, 1895."

WITH reference to the letter from the Attorney-General of the 21st instant, approving the draft Order in Council under "The Seal Fisheries (North Pacific) Act, 1895," I have the honour to transmit to you, by direction of the Marquess of Salisbury, a draft of revised instructions to the Commanding Officers of Her Majesty's ships,* which have been drawn up by Mr. Albert Gray, in accordance with the provisions of the new Act and of the Order in Council which has now been passed.

I am to inclose, for convenience of reference, the former Admiralty instructions,† showing the alterations made by Mr. Gray, and copies of the Act‡ and Order in Council.§

Lord Salisbury would be glad to be informed whether, in your opinion, the instructions are right and proper, and whether they may be issued forthwith.

I am, &c.
(Signed) T. H. SANDERSON.

Report.

In our opinion the instructions, as altered in italics, and initialled by us, may properly be issued.

(Signed) RICHARD E. WEBSTER.
R. B. FINLAY.

Royal Courts of Justice,
October 31, 1895.

Annex.

"SEAL FISHERIES (NORTH PACIFIC) ACT, 1895."

Draft Admiralty Instructions.

IN accordance with an arrangement concluded between Great Britain and Russia on the 30th May, 1893, and in conformity with the powers vested in Her Majesty's Government by "The Seal Fisheries (North Pacific) Act, 1895," and "The Seal Fisheries (North Pacific) Order in Council, 1895" (copies of which are attached), the following Regulations have been made:—

1. British cruisers are to co-operate with vessels of the Russian Imperial Navy or Government in preventing persons belonging to British ships from killing or hunting seals during the period and within the prohibited zones, *and until otherwise directed by a further Order in Council.*

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* Draft instructions.

† Former instructions.

‡ Act.

§ Order in Council.

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2. The masters of British ships likely to be affected should be warned that they will be liable to capture if their ships are being or have been used or employed for the purpose of killing or hunting seals within those zones.

3. If any person belonging to a British ship kills, takes, hunts, or attempts to kill or take, any seal during the said period or within the said zones, or if any British ship, or the equipment or crew thereof, is or are used or employed in such killing, taking, hunting, or attempt, the ship may be stopped and examined within the prohibited zones by a British or a Russian cruiser, and in any other place by a British cruiser.

4. Where the Commander of a British cruiser stops and examines a ship, he should draw up and sign a statement in writing of the circumstances under which and the grounds on which he stopped and examined the ship. Any evidence contained in the statement should, if possible, be taken on oath in the presence of the person charged in the evidence, and that person should have an opportunity of cross-examining the person giving the evidence, and of making his reply to the evidence. Where this is done the officer making the statement should certify that the evidence was so taken, and that there was such opportunity of cross-examining and of making a reply.

5. If the Commander of a British cruiser decides to seize the ship, he is to take her for adjudication to one of the specified ports, that is to say, either Yokohama or Shanghae, or a British colonial port at which there is a competent Court. In ordinary cases, the most convenient port will be Yokohama.

6. Instead of seizing the ship, the Commander of the British cruiser may, if he thinks fit, either retain the certificate and give a provisional certificate in lieu thereof, or return the certificate with an indorsement of the grounds on which it was seized, and in either case may direct the ship, by an addition to the provisional certificate, or to the indorsement, to proceed forthwith to one of the specified ports to be named in the certificate or indorsement. Forms of provisional certificate and of indorsement are sent herewith.

7. Where the Commander of a British cruiser seizes or indorses a ship's certificate, he should on the first opportunity send the certificate or copy of the indorsement, and also the above-mentioned statement, and the witnesses, to the specified port, addressing the documents to the proper officer there. The proper officer will be the British Consul if the specified port is Yokohama or Shanghae, and the Collector of Customs if it is a colonial port.

8. ~~When the Commander of a Russian cruiser stops and examines a British ship, and seizes and detains the ship or her certificate, he will, on the first opportunity, hand over the ship or her certificate, as the case may be, to the Commander of a British cruiser or other British authority. The Russian Commander must, however, satisfy the British Commander or other authority that there were reasonable grounds for the seizure and detention, having regard to the provisions of the Act and Order in Council, and must furnish the necessary evidence for adjudication as required by the Order in Council. The Russian Commander is not authorized to indorse the certificate or to give a provisional certificate, or to send the ship for adjudication, or to detain any of the crew, or any portion of the equipment.~~

8. *When the Commander of a Russian cruiser stops and examines a British ship and seizes and detains the ship or her certificate, he will on the first opportunity hand over the ship, or her certificate, as the case may be, to the Commander of a British cruiser or other British authority. The Russian Commander is not authorized to indorse the certificate, or to send the ship for adjudication, or to detain any of the crew or any portion of the equipment.*

9. *The British Commander or authority will take over the ship, or her certificate only if the ship or her master or members of the crew is or are charged with a specific offence which is a contravention of "The Seal Fisheries (North Pacific) Act,* 1895," *and "The Seal Fisheries (North Pacific) Order in Council,* 1895."

10. *The Russian Commander must satisfy the British Commander or other authority that there were reasonable grounds for the seizure and detention, having regard to the provisions of the Act and Order in Council, and must furnish the necessary evidence for adjudication as required by the Order in Council.*

11. *If the Russian Commander fails to satisfy the British Commander or other authority as above provided, or to furnish to such Commander or other authority such sufficient evidence, the British Commander or other authority who has taken the ship over from the Russian cruiser may release the ship.*

~~9.~~ 12. Where the Commander of a British cruiser receives such ship or certificate from a Russian cruiser, and is satisfied that there were reasonable grounds for the seizure and detention, he is to proceed in like manner as if he had himself stopped and examined the ship and seized the ship or her certificate.

~~10.~~ 13. Where the Commander of a British cruiser either seizes a ship or deals with her certificate as above directed, or receives a British ship from a Russian cruiser, *and is satisfied as hereinbefore provided*, all the equipment for sealing is to be removed from the ship, and taken or sent to the proper officer at the port to which the ship is taken or sent for adjudication.

~~11.~~ 14. In any case, the Commander of a British cruiser is to record the name of every ship in respect of which he performs any act hereinbefore directed, and of her master, and he is at the first opportunity to inform the Commander-in-chief of the action taken by him.

~~12.~~ 15. In the event of a British Agent visiting the Kormandorsky Islands and Robben Island to confer with the authorities there, and to inquire into the working of the arrangement, British cruisers are to co-operate with the said Agent, and to give him any assistance in their power.

~~13.~~ 16. It is to be understood that these Regulations do not apply to those parts of the zones which consist of Russian territorial waters, and that within those waters the Government of Russia will alone exercise jurisdiction.

(A.) *Form of Provisional Certificate of Registry.*

1.

No.			Date of Registry.
Name of Ship,	British or Foreign built.	Port of Registry.	How propelled.

2. The original certificate of the said ship containing the above particulars is dated at , the day of , 18 , and purports to be signed by as Registrar.

3. The said original certificate has been seized, and this provisional certificate has been granted by the Undersigned, in accordance with the provisions of "The Seal Fisheries (North Pacific) Act, 1895."

4. The said ship is hereby directed to proceed forthwith to the port of for adjudication, and the master is directed to report himself forthwith on arrival there to the British Consul [*or* Collector of Customs, *as the case may be*].

Dated at [give ship's position] , the day of , 189 .
(Signed)

Commanding Officer, H.M.S.

(B.) *Form of Indorsement on Certificate of Registry.*

In accordance with the provisions of "The Seal Fisheries (North Pacific) Act, 1895," the said ship has been stopped and examined, and this certificate has been seized by the Undersigned on the following grounds:—[*shortly state grounds*].

This certificate is with this indorsement returned to the master.

The said ship is hereby directed to proceed forthwith to the port of for adjudication under the said Act, and the master is hereby directed to report himself forthwith on arrival there to the British Consul [*or* Collector of Customs, *as the case may be*]

Dated at [give ship's position] , the day of , 189 .
(Signed)

Commanding Officer, H.M.S.

Approved:
R. E. W.
R. B. F.

SALVADOR.

No. 50.

[September 19, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 2, 1895.

Gentlemen,

Claim of Central American Mint Company against Salvador Government.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers relative to the claim of the Central American Mint Company against the Government of San Salvador.

A history of the case is given in the Company's letter of the 6th August (Paper E), and a Memorandum has been drawn up in this Office on the subject (Paper D).

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The Company undertook to recoin 5,000,000 dollars by a Contract dated the 7th July, 1893. After the revolution, which took place during the same year, the new Government appear to have infringed the conditions of the Contract in several respects.

In reply to the representations made by Her Majesty's Legation at Guatemala, the Government of San Salvador refer to the clause in the former Contract of the 14th May, 1891, by which the Company renounced any claim to diplomatic intervention, and agreed to settle any disputes as to the interpretation of the Contract by means of arbitration.

Copies of both Contracts are inclosed in Paper E, and Lord Salisbury would be glad to be favoured with your opinion as to what measure of support Her Majesty's Government would be justified in giving to the Company, having regard to the circumstances of the case, and to their several transactions and Contracts with the Government of San Salvador.

I am, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Mr. Gosling	(No. 100)	July 25, 1895.
(B.)	Central American Mint Company..	(No. 180)	
(C.)	Mr. Roberts		August 6, „
(D.)	Memorandum		August 6, „
(E.)	Central American Mint Company	(No. 188)	
(F.)	Mr. Roberts	(No. 192)	
(G.)	Ditto	(No. 202)	
(H.)	Ditto		

Report.

We are of opinion that the Central American Mint Company are precluded by their Contract with the Government of San Salvador from invoking diplomatic action on the part of Her Majesty's Government.

The Contract of the 20th April, 1891, stipulated against this. The Contract of the 6th July, 1893, is engrafted on the Contract of the 20th April, 1891, and provides that the original Contract of the 20th April, 1891, remains in force in so far as it has not been modified by the special Contract.

It would, in our opinion, be an unduly narrow construction to confine the stipulation that "in no case shall any claim be made through a diplomatic medium" to claims arising solely on the provisions of the original Contract. We think it must be read as applying also to such modifying Contracts as that of the 6th July, 1893.

The fact that the party invoking the diplomatic action of Her Majesty's Government on his behalf is, in so doing, breaking his Contract, is not conclusive against the propriety of such action, as there might be special circumstances rendering it proper and expedient that his claims should be supported. In the present case no such special circumstances, in our opinion, exist.

(Signed) RICHARD E. WEBSTER
R. B. FINLAY.

Royal Courts of Justice,
September 19, 1895.

SWEDEN.

No. 51.

[May 10, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, March* 16, 1895.

Exemption of Swedish vessels from compulsory pilotage in Thames.

I AM directed by the Earl of Kimberley to transmit herewith the papers enumerated in the accompanying list, which relate to the question of granting exemption from compulsory pilotage in the north channel of the Thames to the vessels of the Thule Company, a Swedish line of steamers plying between the ports of Gothenburg and London.

The international engagements and statutory enactments which have a more or less direct bearing on this question are the following:—

1. Declaration of Sweden for the abolition of certain dues affecting British commerce in the ports of Sweden, signed at Stockholm, the 24th April, 1824. (See Hertslet's "Commercial Treaties," vol. iii, p. 388 *et seq.*).
2. Declaration of Sweden for the abolition of certain dues affecting British commerce in the ports of Norway, signed at Helsingborg, the 16th July, 1824. (See Hertslet's "Commercial Treaties," vol. iii, p. 396 *et seq.*).
3. Declaration signed at Stockholm by General Bloomfield on the part of His Majesty's Government, the 24th April, 1824. (Inclosure in M. Åkerman's note of the 31st January, 1895.)
4. Note from General Bloomfield, dated the 15th July, 1824. (Inclosure in M. Åkerman's note of the 31st January, 1895.)
5. An Act of Parliament for the amendment of the Law respecting Pilots and Pilotage, &c. (6 Geo. IV, cap. 125, sec. 59.)
6. Treaty of Commerce and Navigation between Great Britain and Sweden, the 18th March, 1826 (Article X). (See Hertslet's "Commercial Treaties," vol. iii, p. 433 *et seq.*).
7. "Merchant Shipping Act, 1854" (17 & 18 Vict., cap. 104), section 353 (now repealed).
8. "Merchant Shipping Act, 1894" (57 & 58 Vict., cap. 60), sections 572, 598 (2), 599, 603, and 625.

I am now to call your attention to a note addressed by M. Åkerman, the Swedish Minister at this Court, to Lord Kimberley on the 31st ultimo. You will gather from this note that, relying on the provisions for according national treatment to Swedish vessels contained in the notes and Declarations of 1824, and confirmed by Article X of the Treaty of 1826, M. Åkerman, on behalf of his Government, claims for the ships and masters of the Thule Company in English waters the same treatment as regards exemption from obligatory pilotage ("l'affranchissement du pilotage obligatoire") as is accorded, in the same waters, to British ships and their masters.

The Act 6 Geo. IV, cap. 125, was repealed by the Merchant Shipping Acts' Repeal Act (17 & 18 Vict., cap. 120), but by section 353 of "The Merchant Shipping Act, 1854" (17 & 18 Vict., cap. 104), and subsequently by section 603 of "The Merchant Shipping Act, 1894," the exemption in favour of certain persons and vessels contained in section 59 of the Act of Geo. IV has been preserved and continued.

It will be seen on reference to this last-mentioned section (section 59 of 4 Geo. IV, cap. 125), which is specially cited by M. Åkerman in his note of the 31st January, that one of the conditions under which a ship trading to Norway or the Cattegat may be exempted from taking pilots is that she has a British register; while section 353 of "The Merchant Shipping Act, 1854," provides that, "subject to any alteration to be made by any pilotage authority in pursuance of the power hereinbefore in that behalf given, the employment of pilots shall continue to be compulsory in all

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districts in which the same was by law compulsory immediately before the time when this Act comes into operation, and all exemptions from compulsory pilotage then existing within such districts shall also continue in force."

On the repeal of "The Merchant Shipping Act, 1854," by the Merchant Shipping Act of last year, the effect of this section was reproduced with a slight difference in wording by section 603 of the latter enactment.

From the reply addressed on the 15th September last to M. Åkerman by the Board of Trade, with which Department the Minister had, as a preliminary step, entered into communication with regard to this question, it will be gathered that the Trinity House authorities considered that M. Åkerman's request could not be complied with, mainly on the ground that, inasmuch as it carries passengers, the Thule line could not claim exemption from compulsory pilotage, as the ships belonging to it do not come under the category of vessels exempted by section 379 of the Merchant Shipping Act of 1854 (see section 625, "Merchant Shipping Act, 1894,") the word "ship" in Part V of which is declared by the Act of 1889 to include a foreign ship. Section 340 of the Act of 1854 (see section 599 of Act of 1894) provides that the master or mate of any ship may apply to any pilotage authority to be examined, and, if found competent, be granted a pilotage certificate. It would therefore be competent for a master or mate of the Thule line to avail himself of this privilege as pointed out by the Board of Trade. In regard to this point the question arises as to whether it could equitably be contended that the permission granted alike to the masters and mates of British and foreign ships to serve as qualified pilots acts as a discrimination —from the point of view of Treaty interpretation—between British and foreign ships.

The Swedish Government might maintain that it does, because the British master or mate—from familiarity (1) with the English language in which the examination is conducted, and (2) with British waters—can readily obtain a certificate as pilot, while such is not the case with a Swedish subject. On the other hand, the necessity for an exact knowledge of the British waters and of the English language might, it is thought, well be urged on the ground of securing the safety of the passengers, in addition to which the same means of avoiding compulsory pilotage is open to both British and foreign ships, viz., the employment of a duly certificated pilot as master or mate.

I am also to call your attention to the cases of the "Hannah" and "Vesta," to which the Board of Trade refer in their note to M. Åkerman, as bearing on the question at issue.

The former case which was heard by Dr. Lushington in 1866 is reported in the "Law Reports," vol. i, Admiralty and Ecclesiastical Cases, pp. 283–293, and the latter—which was heard by Sir Robert Phillimore in 1882—in the "Law Reports," Probate Division, vol. vii, pp. 240–247.

It is, however, possible that the present claim of the Swedish Government, even although the correctness of the opinion of the Board of Trade as to its inadmissibility when regarded simply from the standpoint of the English statute law and judicial decisions bearing upon the subject, be assumed, may yet be well founded from the point of view of the Treaty rights of Sweden and the Treaty obligations of Great Britain in that regard.

If so, it would apparently become the duty of Great Britain either to bring the provisions of her municipal law into harmony with her Treaty obligations, or—in so far as discrepancy exists between them—to modify those obligations by denunciation or further arrangement.

I am to request that you will be good enough to take these papers into your consideration, and to favour Lord Kimberley with your opinion on the following points:—

1. Whether the letter of the Board of Trade to M. Åkerman of the 15th September, 1894, contains in your opinion a correct statement of the English municipal law bearing upon the question, or whether the views expressed in that letter require to be modified or supplemented, and, if so, in what respects and to what extent.

2. Whether the Swedish Government can, as a matter of Treaty right, and irrespective of the provisions of the existing law, properly claim that the privileges which are accorded by the joint operation of 6 Geo. IV, cap. 125, section 59, and "The Merchant Shipping Act, 1854," section 353 (for which section 603 of "The Merchant Shipping Act, 1894," must now be substituted), to certain vessels "having British registers" should be extended also to Swedish vessels of the same kind not having British registers.

3. Whether the facilities for obtaining pilotage certificates, which are accorded by section 340 of the Act of 1854 (section 599, "Merchant Shipping Act, 1894") constitute such an extent of reciprocal national treatment as the Swedish Government are entitled to claim in this respect under the Anglo-Swedish Treaty of the 18th March, 1826, and the notes and Declarations of 1824 above-mentioned.

Lord Kimberley would further be glad to be favoured with any general observations you may consider it desirable to offer as to the terms in which the reply to M. Åkerman's representation should be framed.

I have, &c.
(Signed) E. GREY.

List of Papers.

"Hertslet's Treaties," vol. 3, containing Declarations of 1824 and Treaty of 1826, pp. 388, 396, and 433.	
Act of Parliament, 1825, Geo. IV, cap. 125.	
"Merchant Shipping Act, 1854," Vict., cap. 104.	
"Merchant Shipping Pilotage Act. 1889," 52 & 53 Vict., cap. 68.	
M. Åkerman	January 31, 1895.
Board of Trade	February 11, ,,
"Merchant Shipping Act, 1894," 57 & 58 Vict., cap. 60.	

Report.

1. The letter of the Board of Trade to M. Åkerman, dated the 15th September, 1894, contains, in our opinion, a correct statement of the British Municipal Law.

2. In our opinion the Swedish Government cannot make that claim as a matter of Treaty right.

The terms of the Convention provide reciprocal exemption from "other or higher ship duties or charges." We do not consider that, according to British construction, an obligation to employ a pilot comes within these words. That was the opinion of Dr. Lushington in the "Hannah," and of Sir R. Phillimore in the "Vesta." It is confirmed by the language of "The Customs Consolidation Act, 1855," section 14, which appears to draw a distinction between pilotage and other dues and charges on the one hand, and Rules as to the employment of pilots on the other hand. "The Customs Laws Consolidation Act, 1876," section 141, contains a similar distinction.

We desire, however, to refer your Lordship to the preambles of the Swedish Declarations of the 24th April, 1824, and 16th July, 1824, in both of which it is recited that Sir Benjamin Bloomfield had given assurances of a perfect reciprocity between vessels of the different countries. Strictly speaking, the language used in the declaratory paragraphs, and the language of the subsequent Convention, do not cover, according to the interpretation of British Judges and Statutes, the case of compulsory pilotage. But, if it be the case that this language has been construed to the advantage of British merchandize, as including compulsory pilotage by the Swedish Government, it will be for your Lordship to determine how far that consideration will affect your judgment.

3. In our opinion the facilities referred to do not constitute a perfect reciprocity in fact, if they are to be measured against a complete exemption from compulsory pilotage in Sweden.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
May 10, 1895.

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No. 52.

[August 23, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 7, 1895.

Gentlemen,

Exemption of Swedish vessels from compulsory pilotage in Thames.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list, which relate to the question of granting exemption from compulsory pilotage in the north channel of the Thames to the vessels of the Thule Company, a Swedish line of steamers plying between the ports of Gothenburg and London.

This question was referred to your predecessors in office, whose Report, under the date of the 10th May last, will be found among the papers now transmitted to you. (Paper A.)

The Memorandum of the 13th May by Sir H. Bergne (Paper B) was referred privately to the Attorney-General, who stated that the arguments therein advanced did not cause him to desire any alteration to be made in the opinion expressed by the Law Officers.

The Report, together with the Memorandum thereon, was referred to the Board of Trade (Paper C), whose reply (Paper D) I am now to inclose.

The matter to be principally considered appears to be as follows:—The declarations preceding the Convention between Great Britain and Sweden, and which declarations are expressly kept in force by Article I of that Convention, do, in fact, state that the treatment accorded in British waters to national vessels in regard to pilotage dues is also extended in those waters to Swedish and Norwegian vessels.

Do the terms of these declarations taken as a whole imply that, if, under certain circumstances, a vessel having a British register, can avoid the compulsory payment of a pilot, the same immunity must be extended in similar circumstances to Swedish and Norwegian vessels, on the ground that the compulsory payment to the pilot is, in fact, a pilotage due within the meaning of the declarations in question?

In answering this question, I am to request you to take these papers into your consideration, and to be good enough to favour Lord Salisbury with your opinion on the following points:—

1. Do you concur in the opinion expressed by your predecessors in office that the Swedish Government cannot, as a matter of Treaty right, claim that the privileges which are accorded by the joint operation of 6 Geo. IV, cap. 125, and "The Merchant Shipping Act, 1854," section 59 (for which section 603 of "The Merchant Shipping Act, 1894," must now be substituted) to certain vessels "having British registers" should be extended also to Swedish vessels of the same kind not having British registers?

2. In the event of your answering the above question in the affirmative, in what terms do you advise that the claim made by the Swedish Government should be answered?

3. In the event of your answering the above question No. 1 in the negative, in what manner do you advise that the inequality of treatment between British and Swedish vessels should be removed?

4. Finally, Lord Salisbury would be glad to be favoured with any observations which you may consider it advisable to offer on the case generally.

I have, &c.
(Signed) GEORGE N. CURZON.

List of Papers.

Papers sent to Law Officers on March 16, 1895; and

(A.) Law Officers	.. ..	May 10, 1895.
(B.) Sir H. Bergne	.. .. .. (Memorandum)	May 13, „
(C.) To Board of Trade	.. ..	June 17, „
(D.) Board of Trade	.. ..	July 19, „

Report.

1. I agree in the opinion expressed by my predecessors that the Swedish Government cannot as a matter of Treaty right claim that the privileges which are accorded by the joint operation of 6 Geo. IV, c. 165, and "the Merchant Shipping Act" to certain vessels having British registers should be extended also to vessels having Swedish registers. It is not necessary for me to add any additional reasons, but I will observe with reference to Sir Henry Bergne's Memorandum that the difficulty really appears to have arisen from the use of the word "frais" in the Declaration of the 24th April, 1824. No doubt the word "frais" would ordinarily convey a wider meaning than the word "droits," but looking to the whole of the contemporary documents I have little doubt that the word was intended to be used in the same signification, and to refer to the amount of pilotage dues.

2. In my opinion the claim made by the Swedish Government should be answered by a statement to the following effect:—

That by the law of England the obligation that certain vessels shall be compelled to take a pilot is not regarded as the imposition of a due, but a condition imposed for the safety and benefit of the foreign ships themselves, and that Swedish vessels being charged the same amount for pilotage dues as English vessels, the terms of the Convention have not been infringed. If it is deemed desirable I see no reason why the judgment of Dr. Lushington in the case of the 'Hannah' should not again be cited.

3. This is a question of policy rather than of law, but so far as it is for me if the Foreign Office is of opinion that there is practical inequality in consequence of vessels of Swedish registry being compelled to take a pilot in cases in which vessels of British registry are not so compelled, my own view is that it would be far better to repeal the exemption in the case of British vessels, unless they are entitled to exemption on other grounds, *e.g.*, by the master or mate having a pilotage certificate.

To concede the claim of Sweden may give rise to considerable difficulties under favoured-nation-clauses if any such exist, but apart from that I am of opinion that the mere exemption on the ground of registry without the safeguard of the qualification of an officer on board the vessel qualified to pilot her, is objectionable.

(Signed) RICHARD E. WEBSTER.

Royal Courts of Justice,
August 23, 1895.

TURKEY.

No. 53.

[January 9, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, December 22, 1894.

Gentlemen,

Ottoman Dominions (Prisoners' Removal) O. in C. Draft of.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the draft of an Order in Council (to be styled "The Ottoman Dominions (Prisoners' Removal) Order in Council, 1894"), applying "The Colonial Prisoners Removal Act, 1884" (47 & 48 Vict., cap. 31), to Egypt, and to the Ottoman dominions (except Egypt).

I am also to inclose the accompanying letters from the Home and Colonial Offices, stating that the terms of the draft Order in Council meet with the concurrence of those Departments; and I am to request that you will, at your earliest convenience, favour Lord Kimberley with your opinion whether the draft Order may, in its present shape, properly be laid before the Queen in Council, for Her Majesty's approval.

I have, &c.
(Signed) FRANCIS BERTIE.

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List of Papers.

(A.)	Draft Order in Council.	
(B.)	"Colonial Prisoners' Removal Act, 1884" (47 & 48 Vict., cap. 31).	
(C.)	Home Office	December 19, 1894.
(D.)	Colonial Office	December 11, ,,

Report.

As altered in red ink,* and initialled by us, the draft Order in Council may properly be submitted to the Queen in Council for Her Majesty's approval.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
January 9, 1895.

Annex.

Draft Order in Council.

WHEREAS Her Majesty the Queen has jurisdiction within the Ottoman dominions:

And whereas "The Colonial Prisoners Removal Act, 1884," provides that it shall be lawful for Her Majesty in Council to direct that that Act shall apply as if, subject to the conditions, exceptions, and ~~modifications~~ *qualifications* (if any) contained in the Order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the Order, were a British possession and part of Her Majesty's dominions, and to provide for carrying into effect such application:

Now, therefore, Her Majesty, by virtue of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," and the said recited Act, or otherwise, in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. "The Colonial Prisoners Removal Act, 1884," shall apply to Egypt and to the Ottoman dominions (except Egypt) as if those places were respectively British possessions and parts of Her Majesty's dominions.

Subject as follows:—

As respects Egypt, Her Majesty's Agent-General, and as respects the Ottoman dominions (except Egypt), Her Majesty's Ambassador at Constantinople, shall be substituted for the Governor or Government of a British possession.

2. This Order may be cited as "The Ottoman Dominions (Prisoners' Removal) Order in Council, 1895," and shall be read as one with "The Ottoman Order in Council, 1873," and the Orders amending that Order.

R. T. R.
F. L.

No. 54.

[March 6, 1895.]

Foreign Office to the Law Officers of the Crown.

Ottoman Dominions (Courts) Order in Council.

Gentlemen, *Foreign Office, February* 22, 1895.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the accompanying papers respecting an Order in Council to be entitled "The Ottoman Dominions (Courts) Order in Council, 1895," which it is proposed to issue for the purpose of carrying into effect a reorganization of the Consular and Judicial Staff at Constantinople, recommended by Her Majesty's late and present Ambassadors.

Particulars of the scheme will be found in Sir P. Currie's despatch of the 7th May, 1894 (Paper A), and in the letter from this Department to the Treasury of the 20th July, 1894 (Paper B).

It will be seen that it is proposed (*inter alia*) to separate the Consular and Judicial establishments, to abolish the office of Consul-General and that of Assistant Judge, to promote the present Assistant Judge to be Judge, and to appoint a gentleman of sufficient legal acquirements to be Registrar of the Court and Legal Vice-Consul.

These changes will necessitate an amendment of the Ottoman Orders in Council, 1873, 1882, and 1890, and of "The Ottoman Tribunals Orders in Council, 1891;" and in this connection I am to call your attention to the inclosed Memoranda by Mr. Middleton, a Puisne Judge of the Cyprus Supreme Court, who officiated as Acting Judge at Constantinople for some weeks during the past summer (Paper F), and by Mr. Davidson, Q.C. (Paper I); and to Mr. Albert Gray's letters of the 30th October, 1894, and the 4th February, 1895 (Papers G and J).

I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Kimberley with your opinion whether the draft Order in Council (Paper K) may, in its present shape, properly be laid before the Queen in Council for Her Majesty's approval.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Sir P. Currie	(Separate)	May 7, 1894.
(B.)	To Treasury		July 20, ,,
(C.)	Treasury		August 23, ,,
(D.)	Sir P. Currie	(No. 43. Consular)	,, 28, ,,
(E.)	To ditto	(No. 49. Consular)	September 13, ,,
(F.)	Mr. Justice Middleton		October 5, ,,
(G.)	Mr. A. Gray		,, 30, ,,
(H.)	Sir P. Currie	(No. 65. Consular)	November 29, ,,
(I.)	Memorandum (Mr. Davidson, Q.C.)		January 9, 1895
(J.)	Mr. Gray		February 4, ,,

(K.) Draft Order in Council.

(L.) Book, Ottoman Orders in Council, 1873 to 1890 (Confidential No. 2354).
(M.) Ottoman Fees Order in Council, February 23, 1891 (Confidential No. 6046*).
(N.) Ottoman Tribunals Order in Council, November 24, 1891 (Confidential No. 6142*).
(O.) Regulations respecting Assessors, December 2, 1891 (Confidential No. 6142**).
(P.) Extracts from Orders in Council, 1873, 1882, and 1890.

Report.

The draft Order in Council as initialled by us, may, in our opinion, properly be submitted for Her Majesty's approval.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
March 6, 1895.

Annex.

OTTOMAN DOMINIONS.

(Supreme Court.)

Draft Order in Council.

WHEREAS by Treaty, Capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within the Ottoman dominions:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

Supreme Court.

1. Subject to the provisions of this Order, there shall be one Judge of the Supreme Court who shall be appointed by Her Majesty by warrant under her Royal sign-manual.

He shall be at the time of his appointment a member of the Bar of England, Scotland, or Ireland, of not less than seven years' standing.

2. For the purposes of this Order the Secretary of State may, from time to time, appoint a fit person, being either a Judge of the Supreme Court of a British possession or of Cyprus, or a

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* *Italics.*

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person qualified to be Judge of the Supreme Court at Constantinople, to be an Additional Judge of the Supreme Court.

3. Every appeal from the Court for Egypt, under the Ottoman Orders in Council, shall be heard and determined by the Judge and Additional Judge of the Supreme Court.

4. Any person aggrieved by any final order of the Supreme Court in a civil suit or proceeding, whether in the original or appellate jurisdiction of that Court, and not being an order made on an appeal from the Court for Egypt, may within fifteen days after the order is made apply by motion to the Supreme Court for a rehearing, and the cause or matter in which the order was made shall be set down for rehearing, and shall be reheard before the Judge and the Additional Judge of the Supreme Court.

Articles 257 and 258 of the Order of 1873, which relate to applications by motion to the Supreme Court for leave to appeal to Her Majesty the Queen in Council, shall apply only to final orders of the Supreme Court made after such rehearing as is provided for by this Article, and the jurisdiction of the Supreme Court under those Articles shall be exercised by the Judge.

For the purposes of this Article, "final order" includes any rule or order having the effect of a final or definitive judgment, decree, or sentence.

5. There shall be attached to the Supreme Court a Registrar and so many officers and clerks as the Secretary of State from time to time thinks fit.

The Registrar shall be appointed by Her Majesty, and shall hold by Commission from Her Majesty the appointment of Legal Vice-Consul.

He shall be either a member of the Bar of England, Scotland, or Ireland, or a Solicitor of the Supreme Court in England or Ireland, or a Writer to Her Majesty's Signet, or a Solicitor in the Supreme Courts in Scotland.

He shall, subject to any directions of the Judge, hear and determine by summary trial such criminal charges as may, under the Ottoman Orders in Council, be properly so heard and determined, and for this purpose shall have all the jurisdiction, power, and authority of a Judge.

6. In case of the death or illness, or the absence or intended absence from the Consular district of Constantinople, of the Judge of the Supreme Court, or the Registrar, Her Majesty's Ambassador may appoint a fit person to be Acting Judge or Acting Registrar as the case may be.

Jurisdiction in Lunacy.

7. The jurisdiction in lunacy conferred by Article 89 of "The Ottoman Order in Council, 1873," upon the Supreme Court shall, so far as the same relates to Egypt, be exercised by the Court for Egypt, concurrently with the Supreme Court, but subject to the same rights of appeal to the Supreme Court as in civil suits and proceedings.

8. A Provincial Court shall, as far as circumstances permit, have with respect to British subjects and protected persons all such jurisdiction relative to the custody and management of the persons and estates of persons of unsound mind as for the time being may be exercised in England by the Masters in Lunacy, under the provisions of "The Lunacy Act, 1890," and any Act amending the same.

In any such case the Provincial Court may of its own motion, or on the application of any person interested, take or authorize such steps as to the Court may seem necessary or expedient for the immediate protection of the person and property of any person appearing to the Court to be of unsound mind, and may from time to time revoke, or vary, or supplement any order or proceeding taken in the matter.

Subject to the provisions of this Article, a Provincial Court shall not proceed in any such matter except under and according to the directions of the Supreme Court.

General Provisions, Repeal, &c.

9. Any reference to Her Majesty's Consul-General at Constantinople, or to his Consulate-General, contained in any Order in Council relating to the Ottoman dominions, shall be read as if "Consul" and "Consulate" were substituted therefor respectively.

10. The following provisions are hereby repealed:—

In "The Ottoman Order in Council, 1873," Articles 10 to 12; Article 34 from "or may direct" to the end of the Article; Article 48; in Article 89 the words "in itself exclusively;" and in Article 266 the words "or Assistant Judge."

In "The Ottoman Order in Council, 1882," Articles 5 and 6.

In Article 2 of "The Ottoman Order in Council, 1890," the word "Assistant."

In Article 2 of "The Ottoman Tribunals Order in Council, 1891," the words "Consul-General or other person for the time being acting as the Principal."

In Regulation 1 of the Regulations respecting Assessors before Ottoman Tribunals, made pursuant to "The Ottoman Tribunals Order in Council, 1891," and approved by the Secretary of State on the 2nd December, 1891, the words "Consul-General and."

11. This Order may be cited as "The Ottoman Dominions (Courts) Order in Council, 1895," and shall be construed as one with the Ottoman Orders in Council, 1873, 1882, and 1890.

And the Right Honourable the Earl of Kimberley, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

(Initialled) R. T. R.
F. L.

No. 55.

[April 26, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, April* 19, 1895.

Judgment of death recorded on Ugo Fabre by Egypt Court and upheld by Supreme Court.

I HAVE the honour, by direction of the Earl of Kimberley, to transmit to you a despatch which has been received from Mr. Tarring, the Acting Judge of the Supreme Court for the Ottoman Dominions,* inclosing a report of a judgment of the Court for Egypt, ordering judgment of death to be recorded upon one Ugo Fabre, together with a copy of the minutes and the notes of evidence taken at the trial, and certain observations of the learned Judge thereupon.

It will be seen that the prisoner was indicted for the wilful murder of one Luigi Negroponte on the 10th November last, and that the jury brought in a special verdict which the learned Judge who tried the case interpreted as a finding of wilful murder.

On the application of the counsel for the prisoner, Sir Charles Cookson postponed judgment, and reserved a case for the consideration of the Supreme Court at Constantinople on certain points of law involved.

On the 27th February, 1895, the Acting Judge of the Supreme Court delivered judgment upholding the view of the Court for Egypt, and finding that the prisoner was by the verdict of the jury convicted of the crime of wilful murder.

Thereupon judgment of death was, on the 7th March last, entered on record against Ugo Fabre by the Judge of the Court for Egypt, and, in accordance with the provisions of Article 269 of "The Ottoman Order in Council, 1873," the matter has now been reported home, for the direction of the Secretary of State respecting the punishment to be actually imposed.

The case is one of a somewhat unusual character, and, in these circumstances, Lord Kimberley desires, before coming to any decision respecting the punishment to be imposed on Ugo Fabre, to be favoured with your opinion as to—

1. Whether the finding of the jury amounted to a verdict of wilful murder against Ugo Fabre.

2. Whether, if so, such finding and verdict was justified by the evidence.

3. What punishment, having regard to all the circumstances of the case, ought to be actually imposed.

Finally, I am to state that Lord Kimberley would be glad to receive such observations as you may be good enough to offer for his assistance generally in dealing with the matter.

I have, &c.
(Signed) H. PERCY ANDERSON.

Report.

1. In our opinion, the finding of the jury amounted to a verdict of wilful murder.

2. In our opinion, the finding and verdict were justified by the evidence.

3. In the circumstances a punishment of ten years' imprisonment with hard labour would be a proper punishment. The death of the deceased was probably the result of an accident, though the prisoner intended to shoot Frederico, who, it appears, had grossly insulted him, and attempted to strike him from behind with a bottle. The offence committed by the prisoner was in law equivalent to murder, and certainly demands a severe punishment, but, in our opinion, it is not necessary to inflict the extreme sentence of twenty years' imprisonment.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
April 26, 1895.

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* Acting Judge Tarring, No. 26, March 25, 1895.

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UNITED STATES.

No. 56.

[January 9, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 1, 1895.

Behring Sea Award Act. Draft O. in C. and Schedule.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list which relate to "The Behring Sea Award Order in Council (No. 2), 1894," and the form of Special Licence to be issued to sealers under it.

As this Order expired at the end of last year, Mr. Albert Gray, the draftsman of the original Order, has been instructed to prepare the draft of a new Order, with certain amendments and alterations designed to obviate the necessity for issuing a fresh Order every year; and has also been directed to amend the form of Licence attached to it, in accordance with certain suggestions that have been made by the Canadian Minister of Marine and Fisheries in a letter to the Governor-General of Canada of the 24th October last. (Inclosure 1 in A.)

I am to inclose the draft of an amended Order in Council, and of the form of Special Licence attached to it, which has now been submitted by Mr. Gray, and which has received the concurrence of the Secretary of State for the Colonies; and I am to request that you will take the papers transmitted herewith into your consideration, and will favour Lord Kimberley with your opinion whether the draft Order, with the Schedule annexed thereto, may in its present shape properly be laid before the Queen in Council for Her Majesty's approval.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

The draft Order in Council, with the Schedule annexed, as initialled by us, may properly be submitted to the Queen in Council for Her Majesty's approval.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
January 9, 1895.

Annex.

"BEHRING SEA AWARD ACT, 1894."

Draft Order in Council.

WHEREAS by "The Behring Sea Award Act, 1894," it is enacted that Her Majesty the Queen in Council may make Orders for carrying into effect the provisions of the Behring Sea Arbitration Award set out in the first Schedule to that Act, and therein referred to as the Scheduled Provisions:

And whereas arrangements have been made between Her Majesty and the Government of the United States for giving effect to Articles 4 and 7 of the said Scheduled Provisions, and it is expedient that effect should be given to those arrangements by an Order in Council under the said Act:

Now, therefore, &c.:—

1. On the application of the owner or master of any British sailing-vessel intended to be employed in fur-seal fishing under the provisions of the recited Act, a Secretary of State, or any person duly authorized by him for the purpose, may, if satisfactory evidence as required by the said Article 7 has been given by such owner or master of the fitness of the men to be employed by him on the said vessel in the said fishing, grant a special licence in the form in the Schedule hereto, authorizing that vessel (for the year mentioned in the licence) to fish for fur-seals during

the period in the manner and in the waters in which fur-seal fishing is allowed by the recited Act; and the said special licence, when so granted, shall be carried on board the said vessel at all times while so employed.

2. Every British sailing-vessel provided with a special licence under this Order shall show, under her national colours, a flag, not less than 4 feet square, of two equal triangular pieces, yellow and black, joined from the right-hand upper corner of the fly to the left-hand lower corner of the luff, the part above and to the left to be black, and the part to the right and below to be yellow.

3. If in the case of any vessel there is any contravention of these Regulations, a Secretary of State, or any person duly authorized by him for the purpose, whether any penalty has been recovered under the recited Act or not, may revoke the special licence, whether the same was granted by a Secretary of State or by such person.

4. This Order may be cited as "The Behring Sea Award Order in Council, 1895," and "The Behring Sea Award Order in Council, 1894," and this Order may together be cited as "The Behring Sea Award Orders in Council, 1894 and 1895."

And the Right Honourable the Earl of Kimberley, K.G., and the Most Honourable the Marquis of Ripon, K.G., two of Her Majesty's Principal Secretaries of State, and the Lords of the Admiralty, are to give the necessary directions herein as to them respectively appertain.

R. T. R.
F. L.

SCHEDULE.

FORM OF SPECIAL LICENCE.

"The Behring Sea Award Act, 1894."

"The Behring Sea Award Order in Council, 1895."

Special Licence.

Whereas the British sailing-vessel   is intended to be employed in fishing for fur-seals under the provisions of "The Behring Sea Award Act, 1894."

And whereas satisfactory evidence of the fitness of the men who are to be employed on board the said vessel in the said fishing has been given by *A. B.*, the owner [*or A. B. and others, owners, or C. D., the master*] of the said vessel.

[*And whereas I (name and description) have been duly authorized by a Secretary of State to grant special licences under the provisions of the above-mentioned Act and Order in Council.*]

Now, therefore, in pursuance of the above-mentioned Act and Order in Council, I hereby authorize the said vessel for the year [*eighteen hundred and ninety-five, or as the case may be*] to be employed in fur-seal fishing during the period of time in the manner and in the waters in which fur-seal fishing is allowed by the above-mentioned Act.

This special licence is subject to revocation in case of any contravention of the above-mentioned Act or Order in Council.

Given under my hand, this   day of   , 189 .
(Signed)

R. T. R.
F. L.

No. 57.

[April 1, 1895.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, March* 18, 1895.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to the seizure of the British sealing-schooner "Wanderer" by the United States' ship "Concord" in June last, for an alleged infringement of "The Behring Sea Award Act, 1894" (Paper A). The facts of the case are given in the inclosed letter from the Admiralty (Paper B).

Seizure of British vessel "Wanderer" for alleged infringement of Behring Sea Award Act.

The "Wanderer," while in the waters affected by the Award of the Arbitrators, and during the close season, was boarded, and the master warned by an officer from the United States' ship "Yorktown" of the provisions of the Award Act.

A certain quantity of arms and ammunition was produced to the officer of the "Yorktown," and was sealed up in accordance with an arrangement come to between the British and United States' Governments in May last (Paper C), and the master of

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the "Wanderer" signed a statement to the effect that the fire-arms, sealing implements, and ammunition then produced and specified in the statement were all that belonged to the vessel or to any person attached to her.

The seal-skins on board were counted, and the number amounted to 400.

On the afternoon of the same day the vessel was again boarded within the waters affected by the Award by an officer from the United States' ship "Concord." The master produced the arms and ammunition which had been sealed up in the morning, and the seals which had previously been placed on them were found to be intact. Further search was, however, made, and in the extreme forward part of the ship a shot-gun with thirty-nine cartridges loaded with buckshot for use with the gun were found, which the mate of the "Wanderer" said belonged to him.

The number of seal-skins found on board corresponded with the number counted by the officer of the "Yorktown" (Paper B, Inclosure 4).

The vessel was thereupon towed to St. Paul's, Kadiak Island, formally seized, sent thence with a prize crew to Unalaska, and handed over to Her Majesty's ship "Pheasant" in accordance with Article 1 of "The Behring Sea Award Order in Council, 1894" (Paper D).

The grounds for the seizure as given by the Commander of the "Concord" (Paper B, Inclosure 4) were: "the possession of an unsealed gun and ammunition in contravention of 'The Behring Sea Award Act, 1894,' clause 1, paragraph 2, and clause 3, paragraph 2, as well as of section 10 of the President's Proclamation" (Paper D).

The allusion to section 10 of the President's Proclamation, which apparently seeks to establish a presumption against a vessel found within the area comprised by the Award with sealing implements on board, although there is no corresponding provision either in the Award of the Tribunal of Arbitration, in "The Behring Sea Award Act, 1894," or in the Behring Sea Order in Council, was probably inserted through some misapprehension on the part of the seizing officer, and it is clear that, except in so far as the President's Proclamation embodies substantive provisions of the British Statute and Order in Council, it cannot be binding on British subjects outside of United States' territory.

The sections and sub-sections of the English enactment referred to provide penalties for contravening the Award Regulations, which forbid by Article 6 the use of fire-arms and explosives in the fur-seal fishing, except outside of Behring Sea during the season when it may be lawfully carried on.

The master protested (Paper B, Inclosure 7), one of the grounds of protest being that the gun and ammunition were the private property of the mate, and that they had been hidden by him (the mate) without his (the master's) orders or knowledge. On this point, in so far as it may affect the liability of the master under the circumstances, I am to refer you to section 4, sub-section 2, of "The Behring Sea Act, 1894" (Paper A).

The master also said at the time the vessel was boarded that he was making direct for St. Paul, a port in United States' territory. On the receipt of the necessary documents the Commander-in-chief on the North American Station requested Messrs. Davie, Pooley, and Luxton, the Admiralty Solicitors in Victoria, British Columbia, to give him a legal opinion as to whether a verdict in favour of the Crown would be likely if the vessel were prosecuted. Their opinion was as follows (Paper B, Inclosure 1):—

"The vessel could not be successfully prosecuted for sealing during the close season, because the sealing outfit (except the gun and ammunition mentioned, *i.e.*, the shot-gun and thirty-nine cartridges) and the seal-skins (400) were sealed up by the officer of the United States' ship 'Yorktown,' and upon the subsequent boarding of the said schooner by the officer of the steam-ship 'Concord,' the seals that had been placed upon these several packages were unbroken, and it would therefore be unreasonable to suppose that the schooner 'Wanderer' was proceeding upon a sealing voyage with only one gun, and no charge of this nature is alleged by Commander Goodrich, commanding the United States' ship 'Concord,' in his report."

In these circumstances Admiral Stephenson, without communicating with the officer commanding the "Concord," whose action in seizing the "Wanderer" and in delivering her to a British officer was based on "The Behring Sea Award Act, 1894," and on the Behring Sea Award Order in Council of the 30th April, 1894 (Paper D), decided not to take proceedings against the "Wanderer," and requested the Collector of Customs at Victoria, in whose charge she was, to release her.

Had proceedings been instituted against the "Wanderer," they would have been taken by way of an Admiralty action *in rem* for the condemnation of the ship for a contravention of "The Behring Sea Act, 1894." And it is presumed that the pleadings and procedure would as a matter of fact have been cast in similar form to those *in re* the ship "Oscar and Hattie," which was heard on appeal from the Admiralty District of British Columbia by the Supreme Court of Canada in October 1893 (see vol. 23, No. 3, of the Reports of the Supreme Court of Canada, pp. 396 *et seq.*, which is sent herewith).

It will be observed that on the pleadings in the matter of the "Oscar and Hattie" above referred to Her Majesty the Queen appears as the actual plaintiff, although it is believed that in other proceedings of an analogous nature taken in this country by Her Majesty's Customs under those provisions of "The Merchant Shipping Act, 1854," which are incorporated by Schedule in "The Behring Sea Act, 1894," the seizing officer is usually made the plaintiff. In such a case, should the Court be of opinion that there were no reasonable grounds for the seizure or detention of the ship, it is presumed that any order for the payment of damages to the aggrieved party would be made nominally against the seizing officer, who would be subsequently reimbursed by the Crown.

But in the case of proceedings taken by the Queen herself it is not clear against whom, if any one, the Court could make such an order.

Moreover, even assuming that in cases where a United States' officer seizes and detains a British colonial vessel, which he subsequently hands over to the British authorities for prosecution before their Colonial Courts, the procedure adopted in the case of the "Oscar and Hattie" is correct in point of form, it seems doubtful, nevertheless, in the event of the abandonment of such proceedings by the British authorities without the knowledge and assent of the United States' Government, any claim for compensation in respect of a seizure alleged to have been originally illegal can properly be put forward by Her Majesty's Government against that of the United States.

It would seem to be open to the United States' Government to argue that in such a case as that of the "Wanderer" they cannot be held in any way responsible for the consequences of Admiral Stephenson's action, with respect to which they were never consulted, which they might have deprecated if they had been consulted, and of which the result has been to deprive them of the benefit of the only decision which they are prepared to recognize as binding and authoritative upon the legality or otherwise of their officer's proceedings. The United States' Government might not improbably contend, in the event of this claim being pressed (and it is therefore relevant to the purposes of the present reference to consider the possible contention), that although they had agreed to accept as decisive of such questions the Judgment of the Tribunal nominated for that purpose by the Act under which the proceedings in the case of the "Wanderer" were taken, they must decline to be bound by, and must seriously protest against, the action of the British Admiral in withdrawing the case from the Tribunals without their consent, and in practically substituting his own opinion upon the merits of the case for the judicial decision to which they were entitled.

On the other hand, it might be argued that, as the Commander of the "Concord" appears to have seized the ship under the misapprehension that the provisions of the United States' Act applied to British vessels, and as the documents in the case did not disclose any offence against the English Statute, it was impossible for Her Majesty's Government to cause proceedings to be taken against the vessel.

A letter from the Colonial Office is also inclosed (Paper E), expressing the opinion that the seizure of the "Wanderer" was entirely unwarranted, and suggesting that Her Majesty's Ambassador at Washington should be instructed to make a representation to the United States' Government on the subject, pressing for the issue of instructions to prevent the recurrence of such unjustifiable seizures, and asking for compensation for the loss inflicted on the owners by the action of the United States' cruiser.

I am to request that you will take these papers into your consideration, and favour Lord Kimberley with your opinion as to—

1. Whether the seizure of the "Wanderer" by the officer commanding the United States' ship "Concord" was warranted by the facts of the case, and, if not, in what respects and on what grounds his proceedings were open to objection.

2. Whether, having regard to the circumstances of the case generally, and especially to the fact that the Admiral Commanding-in-chief on the North Pacific Station abandoned all proceedings against, and released, the vessel without having previously communicated with the United States' authorities and ascertained their

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views, Her Majesty's Government would be justified in putting forward a claim for compensation on behalf of the owners of the "Wanderer" against the United States' Government; and, if so, on what specific grounds such a claim could most properly and advantageously be based.

Lord Kimberley would be glad at the same time to be favoured with such general observations on the papers submitted as you may desire to offer.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Behring Sea Award Act (57 Vict., cap. 2).		
(B.)	Admiralty		January 26, 1895.
(C.)	Sir J. Pauncefote	(No. 115)	May 14, ,,
(D.)	Order in Council, 1894 (Confidential No. 6480*).		
(E.)	Colonial Office		March 11, ,,

Report.

In our opinion, though this is certainly a difficult case, it is not a case in which compensation can be claimed of right against the United States' Government.

There is no Treaty or Agreement before us regulating the circumstances under which compensation should be made for improper seizure by officers either of Her Majesty or the United States. Accordingly we think that general principles must apply, and compensation cannot be claimed unless there has been a violation of the law of nations or unreasonable and unfair conduct.

When Her Majesty and the United States' Government reciprocally authorized the seizure of vessels of their own flag by the naval officers of the other State, it cannot be supposed that either intended to incur a pecuniary liability in every case in which the seizure, however reasonable, did not ultimately result in conclusive evidence of guilt.

In this particular case the Captain of the "Concord" appears to have acted upon the authority of American law, which is, of course, inapplicable to British vessels.

But if he did what he was justified by British law in doing, though he did it upon an erroneous ground, the complaint is rather technical than substantial.

Now, by British law, the pursuing of seals is an offence (Article 2 of Schedule to Act of 1894), and in the arrangement of the same year between the two Governments Article 2 makes the sealing-up of fishery implements and the entry in the log a protection to a vessel, "unless there shall be evidence of seal-hunting notwithstanding."

When the Captain of the "Concord" found a concealed gun and cartridges in the "Wanderer," and a statement by the master a few hours before that there was no such weapon on board except such as had been sealed up, and further observed, or honestly thought he observed, the "Wanderer" under such sail as she was accustomed to carry when dodging about for seals, he might reasonably think that she was seal-hunting. She would be seal-hunting even if the intention was merely to kill such seals as might come in her way on her voyage to port.

The British Act and Order in Council in terms authorize seizure only when an offence has been committed. But under section 104 of "The Merchant Shipping Act, 1854," which is incorporated with "The Behring Sea Act, 1894," no officer is responsible for seizure if it is shown there were reasonable grounds for seizure, and we think the same principle applies to the action of an United States' officer.

We further consider that the release of the vessel before she came for trial throws additional difficulties in the way of a claim for compensation. The release is not conclusive against such a claim, just as a judicial decision exculpating the accused vessel would not be conclusive in favour of such a claim. But the United States' Government have been deprived of that guidance as to the propriety of the course pursued by their officer which would have been afforded by a judicial investigation of the facts, and the decision of a legal Tribunal.

We therefore answer your Lordship's first question in the affirmative, and the second question in the negative.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
April 1, 1895.

No. 58.

[June 7, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 21, 1895.

Gentlemen,

Seizure by United States of British sealing-schooner "Favourite."

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list relative to the seizure of the British sealing-schooner "Favourite" by United States' war-vessel "Mohican" on the 24th August last.

The inclosed letters from the Admiralty (Paper A) and Colonial Office (Paper B) give the facts in connection with the case.

The "Favourite" cleared from Victoria (British Columbia) on the 18th June, 1894, properly provided with a licence to hunt and carrying the distinctive flag as prescribed in the Paris Award Regulations.

There were no fire-arms on board with the exception of one rocket-gun to be used for signalling purposes, and this appeared on the ship's manifest signed by the Collector of Customs.

The vessel called at Kyuquot, on the west coast of Vancouver Island, to procure the requisite crew of Indian hunters, and there had all spears on board sealed up by Her Majesty's Customs officer in accordance with the Agreement between the British ang United States' Government of May last (Paper E). She then proceeded to Akoun Island at the entrance to Behring Sea, and on the 1st August, the first day of the open season, she entered Behring Sea, and after breaking seals and releasing the spears, commenced sealing.

On the 24th August she was boarded by an officer of the United States' ship "Mohican." While the schooner's papers were under examination the master produced the signalling gun and placed it on the table before the Examining Officer. The officer expressed himself satisfied, and entered the following in the schooner's log:—

"Boarded the 'Favourite,' found log correctly kept. No violation of Regulations as per log. One shot gun unsealed."

The "Mohican" steamed off about 2 miles, but returned. The same officer boarded the "Favourite" again and ordered the master to take the schooner's papers and the signal gun on board the "Mohican," where he was informed that his vessel was seized for having fire-arms on board.

Lieutenant Wadhams, who was in command of the "Mohican" during the illness of her Commander, Captain Clark, stated the grounds for seizure to be (Inclosure 3 in Paper A), that the vessel had on board a double-barrel shot gun, which was found upon trial on board the "Mohican" to carry No. 10 gauge cartridges, and to shoot accurately at least 50 yards, and that the possession of this shot gun was in contravention of Article 6 of the Paris Award (Paper D), and of that part of section 10 of the Act of Congress (Paper E), which reads, "or if any licensed vessel shall be found in waters to which this Act applies, having on board apparatus or implements suitable for taking seals, but forbidden then and there to be used, it shall be presumed that the vessel in the one case and the apparatus or implements in the other was or were used in violation of this Act until it is otherwise proved."

The gun in question was carried for the sole purpose of firing rockets as night signals. It was described as being an old one, barely 11 inches long in the barrels, with a pistol-handle grip of 9 inches, and quite unfit for killing seals. This description is confirmed by Admiral Stephenson, the Commander-in-chief on the Pacific Station (Inclosure 1 in Paper A). Not only was the gun mentioned in the ship's manifest signed by the Collector of Customs at Victoria, but the master stated (Inclosure 3 in Paper A) that he was verbally authorized by the Custom-house official who sealed his weapons to carry it and rockets unsealed. Moreover, Commander Hunter Blair, of Her Majesty's ship "Pheasant," and Captain Clark, of the "Mohican," had agreed (Inclosure 3 in Paper A) to authorize sealing-vessels to carry the means of signalling, and the former states that had application been made to him he would certainly have permitted the "Favourite" to carry the weapon on account of which she was seized.

No cartridges, or shot of any kind, were found on the vessel.

In spite of the master's protest a prize crew was placed on board the schooner, by which she was taken to Unalaska, and there handed over to the Commander of Her

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Majesty's ship "Pheasant," by whom she was ordered to proceed to Victoria and report to the Collector of Customs. The latter applied to the Admiral for special instructions (Inclosure 4 in Paper A), considering that he was not justified under "The Behring Sea Award Act, 1894" (Paper F) in taking any action against the vessel for the alleged offence of having an unsealed shot gun on board, and the Admiral replied (Inclosurse 5 in Paper A) that in his opinion there was no ground for a prosecution, and therefore requested that the schooner should be released.

The master of the "Favourite" has preferred a claim (Inclosure in Paper B) for 22,430 dollars, the amount at which he estimates the loss incurred by the interruption of his voyage.

The circumstances are in their main aspect similar to those connected with the seizure of the "Wanderer," and I am therefore to inclose your report on that case (Paper G), together with the papers submitted to you in my letter of the 18th March (letter and inclosures marked H), with special reference to the questions of the authority under which the officer of the United States' ship justified the seizure of the "Favourite," and of the action of Admiral Stephenson in directing that the vessel should be released without any proceedings being taken against her.

In order to avoid as far as may be possible the recurrence of the difficulties which have occurred in regard to these two cases, it would be desirable to consider whether British or United States' officers are justified in releasing on their own authority vessels which have been handed over to them after seizure for alleged offences against the Behring Sea Award Regulations, and the enactments passed to enforce those Regulations.

The provisions of the Merchant Shipping Act, recited in the 2nd Schedule to "The Behring Sea Award Act, 1894," make it lawful for "any commissioned officer" . . . . "to seize and detain any ship which has, either wholly or as to any share therein, become subject to forfeiture as aforesaid, and to bring her for adjudication before the High Court of Admiralty in England or Ireland, or any Court having Admiralty jurisdiction in Her Majesty's dominions."

"The Behring Sea Award Order in Council, 1894," provides that officers of the United States duly authorized "may seize and detain any British vessel which has become liable to be forfeited under the provisions of the recited Act, and may bring her for adjudication before any such British Court of Admiralty, as is referred to in section 103 of 'The Merchant Shipping Act, 1854,' . . . . or may deliver her to any such British officer as is mentioned in the said section for the purpose of being dealt with pursuant to the recited Act."

The United States' Act lays down, section 12, "that any vessel or citizen of the United States, or person described in the 1st section of this Act, offending against the prohibitions of this Act or the Regulations thereunder, may be seized and detained by the naval or other duly commissioned officers of Her Majesty the Queen of Great Britain, but when so seized and detained they shall be delivered, as soon as practicable, with any witnesses and proofs on board, to any naval or revenue officer or other authorities of the United States, whose Courts alone shall have jurisdiction to try the offence, and impose the penalities for the same: Provided, however, that British officers shall arrest and detain vessels and persons, as in this section specified, only after, by appropriate legislation, Great Britain shall have authorized officers of the United States duly commissioned and instructed by the President to that end to arrest, detain, and deliver to the authorities of Great Britain vessels and subjects of that Government offending against any Statues or Regulations of Great Britain enacted or made to enforce the Award of the Treaty mentioned in the title of this Act."

In each case proceedings against the seized vessel are contemplated, and the mode of procedure is to a certain extent indicated.

I am to request that you will take these papers into your consideration, and favour Lord Kimberley with your opinion as to—

1. Whether the seizure of the "Favourite" by the officer in command of the United States' ship "Mohican" was warranted by the facts of the case; and, if not, in what respects, and on what grounds, his proceedings were open to objection.

2. Whether, having regard to the circumstances of the case generally, and especially to the fact that the Admiral Commanding-in-chief on the North Pacific Station abandoned all proceedings against, and released, the vessel, without having previously communicated with the United States' authorities, and ascertained their views, Her Majesty's Government would be justified in putting forward a claim for compensation on behalf of the owners of the "Favourite" against the United States' Government; and, if so, on what specific grounds such a claim could most properly and advantageously be based.

3. Whether, in the event of a claim being preferred, the amount, 22,430 dollars, at which the master estimates the loss incurred, may be considered reasonable, and the payment of that sum be demanded from the United States' Government.

4. Whether, in cases where British vessels have been seized by United States' officers for alleged offences against the Behring Sea Regulations, and the enactments passed to enforce those Regulations, and handed over to British officers, the latter are justified in using any discretion as to bringing such vessels before the proper Court for adjudication; and, if so, to what extent that discretion may be used.

Lord Kimberley would be glad at the same time to be favoured with such general observations on the papers submitted as you may desire to offer.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Admiralty	January 23, 1895.
(B.)	Colonial Office	March 16, „
(C.)	Sir J. Pauncefote, No. 115.	
(D.)	Award of Behring Sea Tribunal.	
(E.)	United States' President's Proclamation	April 9, 1894.
(F.)	Behring Sea Award Act, 1894 (57 Vict., cap. 2).	
(G.)	Law Officers	April 1, 1895.
(H.)	To ditto	March 18, „

Report.

1. In our opinion the seizure of the "Favourite" by the officer in command of the United States' ship "Mohican" was not warranted by the facts of the case.

We consider that a duly-authorized officer of the United States is warranted in seizing a British vessel, if he believes, and has reasonable grounds for believing, that the British law has been violated. But he is not warranted in seizing if there are no reasonable grounds for that belief, and he is not warranted in applying to British vessels the doctrine of presumptive guilt which is contained in section 10 of the Act of Congress.

In this case we do not perceive any evidence of guilt according to British law. The gun was a signal-gun, and was entered on the manifest, and voluntarily showed to the United States' officer. It was necessary for signalling in a fog, and the propriety of carrying it is evidenced by the agreement between Captain Clark and Commander Hunter Blair. Like any other gun it might carry shot a distance of 50 yards, but there was no ammunition on board, as we understand the case, beyond signalling rockets which could not practically be used for destroying seals. Under these circumstances we consider that even if section 10 of the Act of Congress applied, no presumption would be raised against the "Favourite," because no forbidden implement suitable for taking seals was on board, and if such presumption of guilt could be raised by the presence of this signalling-gun, it would be effectually rebutted by the absence of ammunition.

2. Having regard to the circumstances of the case, Her Majesty's Government would be justified in putting forward a claim for compensation against the United States' Government upon the grounds already indicated.

The circumstance of the release of the "Favourite" by the British Admiral is not conclusive against such a claim in any circumstances, though where the facts are doubtful, or the inference to be drawn from them is really disputable, such a release would throw almost insuperable difficulties in the way of maintaining a claim. In this particular instance we do not perceive that there is doubt of the facts, or room for dispute as to their significance, and though the United States' Government may possibly rely upon the absence of any judicial investigation or sentence, we do not consider that such an argument ought to prevail.

3. We do not think the master can claim an amount based upon the assumption that his vessel would have realized the highest profit of any vessel of the same size.

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The damages would depend upon a computation of what profit the "Favourite" would have made had her voyage not been interrupted, taking into consideration the average profits of other like vessels during that period. We have no sufficient materials to enable us to form a judgment upon this subject. We should conjecture 15,000 dollars, but submit to your Lordship's consideration whether it would be advisable to suggest arbitration upon the question of amount.

4. In our opinion the British officers in the case put may, in the exercise of their discretion, release the British ship where the case is clear, but they should be careful not to release except in a clear case, and wherever it is practicable, without delay, they should communicate with the United States' authorities before releasing.

5. In answer to your Lordship's request that we should offer such general observations as we might desire, we beg to observe that it may become inconvenient if United States' officers pursue the practice of applying to British ships section 10 of the Act of Congress. That section is peculiar in this sense, that without affecting directly to enlarge the obligation which the Award imposes upon sealing-vessels, it creates an artificial presumption of guilt, springing from facts which otherwise might not be evidence of guilt at all, and thereby indirectly makes the Award weigh heavier on these vessels.

This Act of Congress is not applicable to British vessels, though its enactment certainly appears to show a desire on the part of the United States to enforce very strictly upon their own citizens the duties contained in the Award.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
June 7, 1895.

No. 59.

[June 13, 1895.]

Foreign Office to the Law Officers of the Crown.

Mr. Bain's claim on account of injuries received during New Orleans riots.

Gentlemen,
Foreign Office, April 20, 1895.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the papers noted in the accompanying list, which relate to a claim for compensation preferred against the Government of the United States by Mr. Bain, purser of the British steam-ship "Engineer," for injuries received during the recent riots at New Orleans.

These riots originated in the ill-feeling aroused amongst the white cotton screwers by the action of the local ship agents in infringing, by the employment of negroes, the exclusive rights of loading ships with cotton which had been assumed by the white labouring organization.

They culminated on the 12th March, when 200 white men appeared on the wharves armed with Winchester rifles and revolvers, and proceeded to fire at the coloured men, killing five men, and wounding about twelve other persons, amongst whom was Purser Bain (see Papers A and B).

Mr. Bain states that shortly after 7 A.M. on the 12th March, whilst stepping from his ship on to the wharves in the discharge of his duty, he was shot at and wounded in several parts of the head and in the right arm by a body of armed men, who acted without provocation or warning.

He became unconscious, and was taken to a hospital. He suffered and still suffers much from his wounds, one of which he fears may cause the loss of an eye (Paper C).

He claims compensation in respect of the alleged neglect of the local authorities, notwithstanding ample and sufficient warning, to take proper precautions for the protection of peaceable citizens and foreigners like himself, and for the outbreak which occurred in consequence of this neglect, and which has entailed upon him sufferings and injuries of a serious character, as well as hospital and other expenses in connexion with their treatment.

I am to request that you will take these papers into your consideration, and favour Lord Kimberley with your opinion whether Her Majesty's Government would be justified in presenting a claim to the United States' Government, and, if so, on what grounds it might most suitably be based.

His Lordship will be glad to be favoured at the same time with any observations of a general nature which you may desire to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Sir J. Pauncefote, No. 88.
(B.) „ „ No. 95, Confidential.
(C.) „ „ No. 100.

Report.

In our opinion, a claim for compensation may be supported in cases such as the present, wherever injury has been done to the subject of a foreign State by riot which could not have occurred but for the neglect of their duties by the local authorities. That principle is supported by good authority, and was acted upon by a Resolution of Congress on the 3rd March, 1853, upon the occasion of a former riot at New Orleans.

Upon the whole we infer, from the materials before us, that in this case there was such neglect. Previous acts of violence had occurred from a state of feeling notorious in New Orleans; remonstrances had been addressed to the Mayor without effect, and a building on the Levee was known to contain arms, which the white labourers were about to use, or likely to use. The extent and duration of the riot make it difficult to believe it was not foreseen, or, if foreseen, might not have been suppressed.

We therefore answer your Lordship's question in the affirmative.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
June 13, 1895.

No. 60.

[August 2, 1895.]

Foreign Office to the Attorney-General.

Seizures of British sealers "Wanderer" and "Favourite" by United States' cruisers.

Sir,
Foreign Office, July 11, 1895.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to the seizures of the British sealing-vessels "Wanderer" and "Favourite" by the United States' cruisers "Concord" and "Mohican" in the months of June and August last year, for alleged infringement of the Behring Sea Award Act of 1894.

These documents comprise references to the late Law Officers of the Crown on the above-mentioned cases, with the opinions received from them, together with an opinion given by the late Lord Chancellor (Lord Herschell) on the case of the "Wanderer" (Papers (A), (B), (C), (D), and (E)).

Upon these opinions an instruction was prepared to Viscount Gough, Her Majesty's Chargé d'Affaires at Washington, which is herein inclosed (Paper F), and I am to request that you will be good enough to inform Lord Salisbury whether, having regard to the circumstances of the two cases as set forth in the papers submitted to the late Law Officers of the Crown, you approve the terms of this instruction.

Since the date of the above-mentioned communications, the United States' Chargé d'Affaires in London has communicated a despatch (Paper G), from the Department of State at Washington, dealing further with the seizures of the two sealing-vessels, and I am to inquire whether, in your opinion, the arguments contained in this communication are such as should in any way modify the conclusions arrived at by the Earl of Kimberley, and, if so, to what extent.

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If you consider that there are no grounds for modifying these conclusions, I am to say that Lord Salisbury would be glad to learn what answer should be made to the United States' contention that "additional breaches of the law could be assigned and made the subject of condemnation proceedings at any time before the trial."

Lord Salisbury would be glad at the same time to be favoured with such general observations on the papers submitted as you may desire to offer.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) To Law Officers	March 18, 1895
(B.) Law Officers	April 1, „
(C.) To Law Officers	May 21, „
(D.) Law Officers	June 7, „
(E.) Lord Chancellor Herschell	May 29, „
(F.) Proposed draft to Viscount Gough.	
(G.) Communication from United States' Legation	July 3, „

Report.

In my opinion, the arguments contained in Attorney-General Olney's letter of the 18th June, 1895, are not sufficient to necessitate any modification of the conclusions arrived at by the Earl of Kimberley.

Assuming a vessel to be seized upon the ground that there is reason to believe that a breach of the Act of 1894 has been committed, it would, in my opinion, be open to the seizing officers to support their claim to condemnation by evidence of an offence against the Act which had come to their knowledge subsequently to the seizure. It is possible that some mistake may have arisen owing to the fact that the Acts of 1891 and 1893 contained a provision as to onus of proof in the event of shooting implements being found on board ships. (See section 1 (5) of Act of 1891, and section 1 (6) of Act of 1893.) This provision was not re-enacted in the Act of 1894.

The possession of arms might in some circumstances be evidence of an offence under sub-section 2 of section 1 of the Act of 1894 if unaccounted for, or if coupled with other circumstances of a suspicious character.

It is, in my opinion, very undesirable that the Commander of a British vessel should take upon himself the responsibility of releasing vessels which have been seized and sent into his custody upon a charge of an offence against the Acts. He most certainly should not do so without distinct notice to the United States' authorities.

It is clearly intended that where a ship has been seized the merits should be investigated by the proper legal Tribunal.

I annex a suggested reply to Mr. Attorney-General Olney's letter.

(Signed) RICHARD E. WEBSTER.

Royal Courts of Justice.
August 2, 1895.

Annex.

Reply to Letter of Mr. Attorney-General Olney.

IF the vessels in question, the "Wanderer" and the "Favourite," had been arrested for any alleged breach of "The Behring Sea Award Act, 1894," it is conceded that it would be contrary to the intent and spirit of the legislation that the British Naval authorities should release the vessels before trial before a Court of competent jurisdiction; but it must be observed that in the case of the "Wanderer" the ground of seizure, as given by the Commander of the "Concord," was the possession of an unsealed gun and ammunition, in contravention of "The Behring Sea Award Act, 1894," and section 10 of the President's Proclamation; and in the case of the "Favourite," as given by the Commander of the "Mohican," was the possession of an unsealed gun, in contravention of Article 6 of the Paris Award, and section 10 of the Act of Congress.

No allegation was made in either case that the vessels had committed, or attempted to commit, any actual breach of "The Behring Sea Award Act, 1894."

Inasmuch, therefore, as it was clear upon the face of the proceedings that the arrest was not justifiable, it does not appear that the British Naval authorities acted contrary to the intent or spirit of the legislation in question.

It is not disputed that, in the case of a vessel arrested upon an alleged breach of the Acts in question, additional breaches might be assigned, assuming the seizing officer to be in a position to adduce evidence of such additional breaches, but in this case, as has already been pointed out, there was up to the time of the release of the vessels no allegation of any such charge.

While it is conceded that it was never intended that the Naval authorities should take upon themselves to decide questions which undoubtedly could only be decided by a British Court of Admiralty, it was, on the other hand, equally never intended that vessels should be interfered with, arrested, and handed over to the Naval authorities upon any charges other than those which were the subject of the Behring Sea Award and consequent legislation.

It is quite clear from the proceedings that the seizing officer purported to act under section 10 of the Act of Congress, Public, No. 48, of the 6th April, 1894, which is not binding upon British subjects.

R. E. W.

No. 61.

[September 12, 1895.]

Foreign Office to the Attorney-General.

Seizure of "Shelby." Representation of United States by Counsel at trial.

Foreign Office, August 3, 1895.

Sir,

WITH reference to my letter of the 11th ultimo relating to the seizures of the sealing-vessels "Wanderer" and "Favourite" in Behring Sea, I have the honour to transmit to you, by direction of the Marquess of Salisbury, the inclosed papers respecting the application of the United States' Government for the consent of Her Majesty's Government to the appointment of Counsel to represent the United States at the trials of the "Shelby" and of other vessels seized during the present season.

Certain points are raised in the correspondence which are required to be considered in connection with the draft despatch to Lord Gough which is now before you, and Lord Salisbury would also be glad to have your opinion on the proposal for the representation of the United States' Government by Counsel at the trials before sending the instructions to Lord Gough which are suggested in the letter from the Colonial Office of the 18th ultimo.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

Viscount Gough	(No. 164)	June 29, 1895.
To Colonial Office		July 18, „
Colonial Office	(No. 173)	
Viscount Gough	(No. 185)	
Ditto		

Report.

In our opinion, it would *not* be proper to allow Counsel for the United States to take any part in the proceedings, to examine witnesses, or to address the Court.

The offence for which the proceedings are taken is the breach by British subjects, or a British ship, of a British Statute, and the proceedings can only be taken in a British Court. The vessel, if condemned, would be forfeited to the Crown, and any fine would belong to the Crown.

Under such circumstances, to allow a foreign nation to appear as a party, or conduct or take part in the proceedings, would not only be without precedent, so far as we know, but would, on principle, be both dangerous and undesirable.

The provisions of the General Act of the Brussels Conference do not, in our judgment, afford any precedent for permitting the United States to take part in the proceedings against British vessels or subjects for breach of British laws.

(Signed) RICHARD E. WEBSTER.
R. B. FINLAY.

Royal Courts of Justice,
September 12, 1895.

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No. 62.

[September 16, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 6, 1895.

Gentlemen,

Taking over by British cruisers of British vessels seized by American cruisers.

WITH reference to my letter of the 3rd ultimo, inclosing papers in regard to the seizure of the sealing-schooner "Shelby" by the United States' revenue-cutter "Corwin," I have the honour to transmit to you, by direction of the Marquess of Salisbury, a further letter from the Colonial Office,* in which it is suggested that the Commanders of British cruisers should be instructed to decline to take over any British vessel seized by an American cruiser unless the declaration of seizure alleges a specific contravention of the British Act of Parliament.

Lord Salisbury would be glad to be favoured with your opinion as to whether such instructions can properly be given to the officers commanding Her Majesty's ships.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

We are of opinion that instructions can properly be given to the officers commanding Her Majesty's ships to decline to take over any British vessel seized by an American cruiser unless the declaration of seizure alleges a specific offence which is a contravention of the British Act of Parliament. It is only in cases of such contravention that the American cruiser can seize a British ship, and the officers commanding Her Majesty's ships ought not to take over a vessel so seized unless such contravention is alleged.

(Signed) RICHARD E. WEBSTER.
R. B. FINLAY.

Royal Courts of Justice,
September 16, 1895.

No. 63.

[October 12, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 20, 1895.

Gentlemen,

Monroe doctrine. Claim of United States under, to prescribe arbitration as to British Guiana and Venezuela boundary.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, a despatch from the Government of the United States, which has been left with his Lordship by Mr. Bayard.

Lord Salisbury does not desire to trouble you at present with the first part of the despatch. Until nearly the middle of page 7 in the printed copy which I inclose, it is exclusively concerned with a frontier dispute which has been going on for many years between the Republic of Venezuela and the Colony of British Guiana. This portion of the despatch, if it is necessary to answer it, can be answered separately. But after that point it proceeds to advance views with respect to questions of international law, upon which it is desirable that the opinion of the Law Officers of the Crown should be expressed.

The argument of this part of the despatch may be summed up as follows:—

The United States have a right to protect every other independent State in North or South America from the control of any European State. Therefore, they have a right to protect every American State from any annexation of any part of its territory. The British Government claim a portion of territory adjacent to its frontier in Guiana, which Venezuela declares to belong to her. The United States cannot tell which of the two disputants is in the right. Therefore, by virtue of their prerogative of protecting

Venezuelan territory from annexation, the United States insist that Great Britain shall submit the disputed issue to arbitration.

This argument rests largely on the doctrine laid down by President Monroe, which Lord Salisbury believes is now for the first time advanced in a formal communication addressed to another Power; and his demur to the control of American by European States and to European colonization in America receives a considerable development.

I am to call your attention to the treatment of this doctrine in the despatch, and to ask that his Lordship may be favoured with your opinion as to whether it is not desirable that it should be formally noticed, and that its incompatibility with international law, if such incompatibility exists, should be pointed out in reply.

Beyond this more theoretic issue there lies a further and more practical question. Whether the Monroe doctrine is true or false, it is undoubtedly within the competence of the United States to declare themselves the allies of Venezuela, and to go to war, if they please, for the boundary claimed by that Republic. But the summons by the United States to go to arbitration, in a cause which they are not themselves prepared to adopt as their own, or even to advocate, appears to Lord Salisbury to be novel, and likely to lead to anomalous results. Whenever any American State has a difference with any European State, the United States are to have a right of insisting on arbitration, without giving even such a pledge of the seriousness of the American claim as is involved in an undertaking to give it material support. I am to request you to advise whether this contention of the United States is justified by international precedent, and also to furnish his Lordship with some general observations upon this part of the case.

Lord Salisbury further desires me to call your attention to the following passages in the despatch:—

(Page 10.)—"That distance and 3,000 miles of intervening ocean make any permanent political union between an European and an American State unnatural and inexpedient will hardly be denied. But physical and geographical considerations are the least of the objections to such a union. Europe, as Washington observed, has a set of primary interests which are peculiar to herself. America is not interested in them, and ought not to be vexed or complicated with them. Each great European Power, for instance, to-day maintains enormous armies and fleets in self-defence, and for protection against any other European Power or Powers. What have the States of America to do with that condition of things, or why should they be impoverished by wars or preparations for wars with whose causes or results they can have no direct concern? If all Europe were to suddenly fly to arms over the fate of Turkey, would it not be preposterous that any American State should find itself inextricably involved in the miseries and burdens of the contest? If it were it would prove to be a partnership in the cost and losses of the struggle, but not in any ensuing benefits."

(Page 11.)—"Thus far in our history we have been spared the burdens and evils of immense standing armies, and all the other accessories of huge warlike establishments, and the exemption has largely contributed to our national greatness and wealth, as well as to the happiness of every citizen. But, with the Powers of Europe permanently encamped on American soil, the ideal conditions we have thus far enjoyed cannot be expected to continue. We too must be armed to the teeth, we too must convert the flower of our male population into soldiers and sailors, and, by withdrawing them from the various pursuits of peaceful industry, we too must practically annihilate a large share of the productive energy of the nation. How a greater calamity than this could overtake us it is difficult to see."

These passages profess only to support the doctrine that European States are not to be allowed to annex any territory on American soil which they do not now possess. But they are drawn, apparently on purpose, so as to cover equally the case of territory now in the possession of European States. His Lordship would be glad of your opinion as to whether such arguments, if passed without notice, might not plausibly be quoted in some future controversy as accepted doctrines.

In order to assist you in the consideration of these questions, I have the honour to inclose a collection of papers bearing upon the Monroe doctrine.

I am, &c.
(Signed) FRANCIS BERTIE.

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* Colonial Office, July 30, 1895.

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List of Papers.

(A.)	Mr. Olney to Mr. Bayard		July 20, 1895.
(B.)	Memorandum		May 20, 1880.
(C.)	Ditto		June 16, 1882.
(D.)	Ditto		June 22, 1883.
(E.)	Sir J. Pauncefote	(No. 132)	May 3, 1895.
(F.)	Pamphlet.		

Report.

It is desirable that the treatment of the Monroe doctrine in the despatch in question should be formally noticed. In our opinion, the doctrine propounded in this despatch is absolutely incompatible with international law.

By international law, the United States have no right to interfere in any controversy between any other State in America and a European Power unless the action of either of the parties to the dispute seriously menaces the interests of the United States.

The so-called Monroe doctrine was, and can only be regarded as, a declaration of policy: it has not always been stated in the same terms, and can only be justified on the principle that the acquisition by European Powers of political control in America may be prejudicial to the United States, as tending to involve them in international complications.

In the despatch now in question, an attempt has been made to formulate the Monroe doctrine in such a way as to extend its operation far beyond those cases, which even in America have been considered as falling within it.

It is not pretended that the settlement of the dispute as to the boundaries between British Guiana and Venezuela can affect the interests of the United States. But the right is asserted to dictate a particular mode of settlement of that dispute because the territory in question is in South America.

This appears to us to be an attempt to declare a policy, and possibly extract recognition of a principle in such a manner as to include a number of cases which in no way fall within the principle on which that policy professes to rest. In this view, and having regard to the passages marked IIX, and the three concluding paragraphs of Mr. Olney's letter, it is extremely important that, in the reply, reference should be made to the declarations and actions of the United States since 1823, inconsistent with the view now attempted to be maintained. See Memorandum 4215 (Paper B), and 4823 (Paper D), also pp. 10 and 11 of J. B. Moore's pamphlet (Paper F).

As regards the second question, it appears to us that the claim of the United States to prescribe that the dispute should be settled by arbitration is wholly unjustified by international precedent.

International law recognizes the right of one State to interfere in the concerns of its neighbours, if such intervention is necessary for the purpose of self-preservation, or if it is demanded in the interests of humanity. The claim of the United States that Great Britain and Venezuela should settle the dispute by arbitration rests solely on the fact that Venezuela is in South America. It does not appear to us that the intervention of the United States on this occasion can be justified by the most elastic interpretation which has been given to the right of intervention.

With regard to the passages quoted from pp. 10 and 11 of the despatch in question, it does not appear to us, taking the despatch as a whole, that these passages were intended to lay down the proposition that the Monroe doctrine involves the withdrawal of any European Power from its present possessions in America. These passages, however, contain expressions which, taken by themselves, might appear to bear this construction, and we certainly think it desirable that any such use of them in the future should be precluded by noticing them in replying to the despatch.

(Signed) RICHARD E. WEBSTER.
R. B. FINLAY.

Royal Courts of Justice,
October 12, 1895.

No. 64.

[October 28, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 30, 1895.

Gentlemen,

ON the receipt of your Report of the 12th instant respecting the application of the United States' Government for permission to be represented by Counsel at the trials of British sealing-vessels seized in Behring Sea, the Marquess of Salisbury proposed to the Secretary of the Colonies that Her Majesty's Ambassador at Washington should be instructed to inform the United States' Government in accordance with the opinion expressed in your Report, that Counsel for the United States could not be allowed to take any part in the proceedings, to examine witnesses or to address the Court.

Representation by Counsel of U. S. at trials of Brit. sealers seized in Behring Sea.

I have now the honour, by his Lordship's directions, to transmit to you, with other correspondence, the reply received from the Colonial Office (Paper E), in which Mr. Secretary Chamberlain points out that if such an intimation be made to the United States' Government, Her Majesty's Government may find it difficult to press on them claims for compensation for unwarrantable seizures made by United States' naval officers, and that compensation may ultimately have to be paid from Imperial funds.

Lord Salisbury also desires me to call your attention to a telegram from Sir J. Pauncefote (Paper D) explaining the wishes of the United States' Government with regard to the facilities which they wish their Counsel to have at the trials.

I am to return to you, for convenience of reference, your Report of the 12th instant, and the papers previously submitted to you (Packet marked F), and I am to inquire whether your opinion is in any way changed by the consideration of the further correspondence which is now inclosed.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	To Lord Gough	(No. 42. Telegraphic)	September 4, 1895.
(B.)	Colonial Office		September 17, „
(C.)	To ditto		
(D.)	Sir J. Pauncefote	(No. 53. Telegraphic)	September 25, „
(E.)	Colonial Office		September 12, „
(F.)	Law Officers (And previous correspondence.)		

Report.

In our opinion there is no objection to the proposal contained in Sir Julian Pauncefote's telegram of the 23rd September, 1895, as to the representation of the United States' Government in the cases referred to.

At any public trial any person who considers that he may be affected by the proceedings, may watch the case by Counsel; the United States' Government are entitled so to watch these cases, and that their Counsel should be permitted to examine the pleadings and make suggestions to the Government Counsel is, in our opinion, reasonable and quite unobjectionable.

This proposal is very different from the former suggestion that the United States' Government should be recognized as a party to the litigation, with a *locus standi* before the Court. This they are *not* entitled to.

The situation would be altered if the United States' Government were to enter into an agreement to be bound by the result of the trial, and to pay damages to be assessed by the Tribunal if the seizure should be held to be wrongful. They would then have an interest in the result of the case, which would make it reasonable that they should be allowed in some form to take part in the proceedings. If such an agreement as to the payment of damages can be arranged, and the United States'

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Government will not consent to it merely on the terms of being allowed to watch the case, and make suggestions, it might, perhaps, be carried out by allowing them to employ solicitors and Counsel to conduct the prosecution of the suit in the name of the Crown. This would insure that their case would be adequately presented to the Crown.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 28, 1895.

VENEZUELA.

No. 65.

[April 13, 1895.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 8, 1895.

Gentlemen,

Alienation of property of Venezuela-Panamá Gold Mine Company by Venezuelan Government.

I HAVE the honour to transmit to you, by direction of the Earl of Kimberley, the inclosed letter from the liquidators of the Venezuela-Panamá Gold Mine Company (Limited), (Paper A), in which they apply for the assistance of Her Majesty's Government in obtaining redress for the alienation of their property by the Venezuelan Government.

The Company was formed in 1882 to acquire and work a gold mine in the Yuruari district of Guiana, the necessary formalities having been carried out in accordance with Venezuelan law.

From the outset the operations proved unproductive owing to a severe drought and an obstruction in the mine, the result being that the Company went through voluntary liquidation. The royalties due under the Venezuelan Mining Code were regularly paid for a time, but at the beginning of 1887—on the ground that these royalties were in arrear—proceedings were instituted against the Company, and judgment was given against them in the Court of First Instance. Appeal was made to the Superior Court, but the ruling at the former trial was upheld, and the titles of the Company's property were declared to be forfeited. General Guzman Blanco, then President of the Venezuelan Republic, informed the liquidator of the Company in October 1887 that he had bought the mine, and in the following month a Decree was issued conferring the rights of the mine on two of General Guzman Blanco's private clerks.

The foregoing facts are more fully set forth in a Memorandum prepared in this Department (Paper B).

Representations were made to Her Majesty's Government on behalf of the Company, and the case was twice referred to the Law Officers of the Crown, who, on each occasion, were of opinion that there was no ground for diplomatic intervention. Copies of their Reports are annexed (Papers C and D), together with the papers then submitted for consideration.

The joint liquidators now state that they have made applications to the successive Presidents and Governors of Venezuela for the restoration of the Company's property; that these applications have been met with expressions of a desire to do justice, always coupled, however, with demands with which it was impossible to comply; and, finally, that a Decree had been published in the Government official Gazettes of Carácas on the 5th and 6th December last, giving absolutely the mine to Señor Juan Mona Maninat, who, it appears, has entered into an agreement with the El Callao Gold Mine Company for working the mine.

The liquidators, therefore, appeal once more for assistance, and express a hope that Her Majesty's Government will be able, if not immediately, then at some future and more suitable time, to procure redress for the grievous wrong which, as they allege, has been inflicted on the proprietors, mortgagees, and others in the loss of their property.

I am to request that you will take these papers into your consideration, and that you will favour Lord Kimberley with your opinion as to—

1. Whether, in view of the further and fresh matter now put forward, Her Majesty's Government would be justified in making any formal diplomatic representation on behalf of the Company.

2. If so, whether it would be a proper and desirable course that a protest against the confiscation of their property should be drawn up, on their own responsibility, by the liquidators of the Company, and that this protest should be communicated to the Venezuelan Government through the German Chargé d'Affaires at Carácas, who is at present in charge of British interests, with an intimation that Her Majesty's Government reserve the claims of the Company for consideration on a future occasion.

I am to state, at the same time, that Lord Kimberley will also be glad to be favoured with any observations of a more general nature which you may desire to offer upon the papers now submitted.

I am, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Messrs. Grigg and Harris	March 20, 1895.
(B.)	Memorandum (Foreign Office)	March 26, „
(C.)	Law Officers' Report	November 28, 1887.
(D.)	Ditto (Confidential No. 5956, p. 123) ..	September 30, 1889.

Report.

1. In our opinion, the answer to this question depends wholly upon one point—whether there has been fair dealing on the part of the Tribunals and the Administration who set them in motion.

Having regard to the opinion expressed by Mr. St. John in his letter of the 6th November, 1887, and the subsequent attempts of the President to make a profit on the reconveyance of the mine to its original owners, we think corruption very probable.

We consider that now all hope of restoration has disappeared, Her Majesty's Government would be entitled, at their convenience, to ask for explanation and inquiry into the circumstances of the litigation and the action of the late President, and the merits of the Judgments delivered, and, in the absence of satisfactory explanation of what is open to most legitimate suspicions, to claim compensation.

2. We think the course suggested is a proper and desirable course.

We desire to add that, though in ordinary circumstances it is difficult to impugn the decisions of foreign Tribunals, yet where the forfeiture of property has been based upon a purely technical point, and has enured to the personal advantage of the head of the Government, who subsequently has sought to traffic upon the results of the judicial Decree, and especially where the case is not an isolated case, there is a right to demand explanation, and, in the absence of satisfactory explanation, to prefer a claim. Such matters afford, until explained, a *primâ facie* case of unfair dealing.

(Signed) R. T. REID.
FRANK LOCKWOOD.

Royal Courts of Justice,
April 13, 1895

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Printed for the use of the Foreign Office. June 1897.

CONFIDENTIAL.

(6918.)

REPORTS

BY THE

LAW OFFICERS OF THE CROWN, &c.

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(Arranged according to Countries.)

Note.—The Reports not addressed to the Foreign Office are marked *1A*, *1B*, &c.

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1	Law Officers	Sept. 21,	Trial of Captain Lothaire for causing death of C. H. Stokes in Congo Free State. No further remonstrance should be addressed to Congo Government, but a Memorandum, or protest, calling attention to certain points, might be sent in	5
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CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.: 1896.

AFRICA.

No. 1 A. [Colonial Office.]

[April 27, 1896.]

The Law Officers of the Crown to the Colonial Office.

Sir, *Royal Courts of Justice, April* 27, 1896.

Construction of Article IV of London Convention with South African Republic of 1884.

WE were honoured with your commands signified in Mr. Wingfield's letter of the 15th instant, stating that he was directed by you to request us to favour you with our opinion upon the construction of Article IV of the London Convention with the South African Republic of the 27th February, 1884.

That in November 1893 an Extradition Convention between Portugal and the South African Republic was signed at Lisbon by Plenipotentiaries of the two States, and that, that having come to the knowledge of Her Majesty's Government, the attention of the South African Government was called to the omission to communicate a copy of the Convention to Her Majesty's Government in accordance with Article IV of the "London Convention."

That the State Secretary of the South African Republic replied that the Convention with Portugal, though signed, had not been authorized either by the Portuguese Cortes or by the Volksraad, and that the Government of the South African Republic intended to submit it to Her Majesty's Government after authorization.

That the Government of the South African Republic were then informed by your direction that, to avoid possible conflict with the Volksraad, it would be better that in future all Treaties with foreign Powers should be communicated to Her Majesty's Government prior to their formal approval by that body.

That the State Secretary, in reply, stated that Extradition Treaties need not be submitted to the Volksraad, as the law of the South African Republic empowered the State President, with the advice and consent of the Executive Council, to conclude such Treaties; that his Government were waiting for the authorization of the Portuguese Cortes of the Extradition Convention, and that immediately on learning that such authorization had been obtained and the Treaty completed, they would give notice thereof to Her Majesty's Government, in accordance with the terms of Article IV of the London Convention.

That the question upon which you desired our opinion was whether, by the terms of Article IV, the Government of the South African Republic could be required to deliver to Her Majesty's Government a copy of a Treaty or Engagement between the South African Republic and a foreign Power immediately after such Treaty or Engagement had been signed, although it might require, before ratification, the authorization of the Legislature of both or one of the Contracting Parties; or whether, as contended by the State Secretary of the South African Republic, the

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obligation did not arise until after the authorization of the Legislature or Legislatures.

That it would, in your opinion, be desirable, in view of the negotiations which would shortly take place between Her Majesty's Government and the Government of the South African Republic, that Her Majesty's Government should be in a position to maintain that Her Majesty was entitled to have the opportunity of expressing her approval or otherwise of a Treaty or Engagement between the South African Republic and a foreign Power at the earliest possible stage, and that you wished to know whether, in our opinion, the language of Article IV would not at least sustain a claim to have that opportunity before the Treaty was submitted for the authorization of the Legislatures of the Contracting States, with a view to its subsequent ratification.

That you had already, as previously stated, informed the Government of the South African Republic that the communication of a copy of any Treaty to Her Majesty's Government, for the purpose of ascertaining whether it would be approved by Her Majesty before it was laid before the Volksraad, would have the advantage of avoiding possible conflict with that body.

That if, however, the Government of the Republic did not accept that view, and preferred to proceed at once to invite the Volksraad to authorize the Treaty, without waiting for the signification of Her Majesty's approval, such a course, though it might be objected to by Her Majesty's Government, could not be prevented. That the Government of the South African Republic might base such action upon the terms of Article XXVII of the Grondwet, according to which a Resolution of the Volksraad was required prior to the proposal, acceptance, or conclusion of any Treaty. That, at the same time, it must be remembered that in the first instance quoted hereafter (the Treaty of the 17th May, 1884, between Portugal and the South African Republic) the Government of the Republic actually asked for the approval of the Queen before submitting the Treaty to the Volksraad. But that the case of the foreign State which was a party to any such Treaty presented a further point requiring special consideration. That Her Majesty's approval had not hitherto been withheld from any Treaty, but that, were the Queen's right of disapproval to be exercised, Mr. Wingfield was to point out that it might be regarded as contrary to international comity that Her Majesty's Government should step in at the last moment, after the Treaty had been discussed and authorized by the foreign Legislature.

That a foreign Government might fairly contend that it should not be invited to seek from its Legislature authorization to ratify a Treaty or Engagement without being informed whether, if it should succeed in obtaining such authorization, the British Government would assent to its coming into force. That in case of a subsequent veto the foreign Government might not unreasonably complain that its Legislature should have been permitted to waste time in an idle discussion through the reticence of Her Majesty's Government, which might be treated as discourteous.

That on that ground, more especially, you considered it desirable to maintain that the word "completion" in Article IV referred to the signature of a Treaty by Plenipotentiaries.

That the practice hitherto followed had not been uniform, and was therefore not conclusive as to the interpretation of the Article:—

(i.) That in the case of the Supplementary Treaty of the 17th May, 1884, between Portugal and the South African Republic, the Government of the South African Republic requested the approval of Her Majesty previous to the authorization of the Treaty by the Volksraad, as would be seen by reference to p. 73 of Parliamentary Blue Book, C.—4213.

(ii.) That the Treaty between the South African Republic and Germany of the 22nd January, 1885, was submitted to and authorized by the German Reichstag before it was submitted for the approval of Her Majesty. That the records of the Colonial Office did not show at what date it was submitted to the Volksraad. That a Protocol appended to that Treaty declared that both Contracting Parties understood that the Treaty should not be ratified till it should have met with the expressed or tacit approval of Her Majesty, in accordance with Article IV of the London Convention.

(iii.) That a Commercial Treaty between the South African Republic and France, signed on the 10th July, 1885, was communicated to Her Majesty's Government after it had been authorized by the Volksraad, but before it had been authorized by the French Legislature.

(iv.) That in the case of the Commercial Treaty between the South African Republic and Switzerland of the 6th November, 1885, paragraph 2 of the Protocol attached to the Treaty was in the following terms:—

"En raison de l'Article IV de la Convention conclue le 27 Février 1884, entre la Grande-Bretagne et la République Sud-Africaine le présent Traité ne sera soumis à la ratification de l'Assemblée Fédérale Suisse que lorsque le Gouvernement de la République Sud-Africaine aura fait savoir au Conseil Fédéral Suisse que la conclusion du Traité a obtenu, en conformité du susdit Article IV, l'approbation expresse ou tacite du Gouvernement Britannique."

That that Treaty was submitted to and authorized by the Volksraad before being communicated to Her Majesty's Government, and that the Swiss Federal Assembly authorized it after the Swiss Government had been informed by the British Minister that Her Majesty's Government had no objection to it.

(v.) That the Treaty between the South African Republic and Italy of the 6th October, 1886, was authorized by the Volksraad before being submitted for the approval of Her Majesty. That at the time of the signature of that Treaty the Plenipotentiaries signed a Protocol, declaring that it was understood that the Treaty should be ratified only after the expressed or tacit approval of the British Government.

(vi.) That the Treaty between the South African Republic and Belgium, signed on the 21st April, 1888, was communicated to Her Majesty's Government before it was authorized by the Legislature of Belgium. That the records of the Colonial Office did not show whether it had been authorized by the Volksraad before such communication.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

That, by Article IV of the Convention of 1884, the Government of the South African Republic are bound to submit to Her Majesty's Government any Treaty "immediately upon its completion." This means that the Treaty must be submitted as soon as its terms have been settled between the Plenipotentiaries, or other Agents by whom it was negotiated.

It is quite impossible that the word "completion" in this connection can denote the final conclusion of the Treaty by the ratification of the respective Governments, inasmuch as the Government of the South African Republic has bound itself by Article IV to conclude no Treaty or Engagement with other Powers until the same has been approved by Her Majesty.

After "completion" of the Treaty it must at once be submitted to Her Majesty. Her approval is to be inferred if six months elapse from such submission without notification of dissent on the grounds mentioned in the second sentence of Article IV. Upon such approval, express or implied, and not before, the South African Republic Government may "conclude" the Treaty.

We think that the Government of the South African Republic is not bound to wait for Her Majesty's approval before submitting the terms of the Treaty to the Volksraad. Whether they do so or not is a matter for their own consideration. There would certainly be some discourtesy on the part of the Government of the South African Republic if they invited the Legislature of another Power to consider the terms of a Treaty before they knew that Her Majesty, by approving the same, had given them authority to conclude it.

We are, therefore, of opinion that the Government of the South African Republic are bound to deliver to Her Majesty's Government a copy of any Treaty or Engagement immediately after such Treaty or Engagement has been signed, although it requires before ratification the authorization of the Legislature of both or one of the Contracting Parties. On the other hand, we do not think that Her Majesty's approval must be obtained before the Treaty is submitted for the authorization of the Legislatures of the Contracting States. The Treaty cannot be concluded (by ratification) till after such approval by Her Majesty.

With reference to the suggestion that it might be supposed to involve some breach of international comity if Her Majesty's Government should withhold approval after the Treaty had been discussed by the foreign Legislature, it might be worthy of consideration whether Her Majesty's Government should not, as soon as it has received a copy of any Treaty, inform the Government of the foreign State that the approval of Her Majesty's Government is necessary, that the matter is under consideration, and

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that until Her Majesty's approval has been given the Government of the South African Republic has no power to conclude the Treaty.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

The Right Hon. Joseph Chamberlain, M.P.,
&c. &c. &c.

No. 1 B. [Colonial Office.]

[July 27, 1896.]

The Law Officers of the Crown to Mr. Chamberlain.

Royal Courts of Justice, July 27, 1896.

Sir,

Extradition Treaty between Netherlands and South African Republic.

WE were honoured with your commands signified in Mr. Wingfield's letter of the 24th instant, stating that with reference to our Report of the 27th April, 1896, on the construction of Article IV of the London Convention with the South African Republic of the 27th February, 1884, he was directed by you to inform us that an Extradition Treaty between the Netherlands and the South African Republic was concluded on the 9th November, 1895, that ratifications of it were exchanged at the Hague on the 19th June, and that it had been published in the official Gazette at the Hague.

That Mr. Wingfield was to inclose a copy of a translation of the Decree directing its publication and copies of despatches from Her Majesty's Minister at the Hague upon the subject.*

That this Treaty had not been communicated to Her Majesty's Government by the Government of the South African Republic as required by Article IV of the Convention, nor had any communication on the subject been addressed by the Government of the Netherlands to Her Majesty's Government.

That in the preamble of the Treaty it would be observed that it was referred to as a "fresh" Treaty, but that Her Majesty's Government were not aware of any previous Extradition Treaty or Convention between the Netherlands and the South African Republic.

That in concluding and ratifying this Treaty, the Governments of the Netherlands and of the South African Republic appeared to have disregarded the stipulation of Article IV of the Convention, and that both the Marquess of Salisbury and yourself considered that representations should be made to and explanations requested from each of these Governments on the subject; and Mr. Wingfield was to request that we favour you with our opinion as to the form in which such representations should be made in each case.

In obedience to your commands we have taken the matter into our consideration, and have the honour to

Report—

That there appears to have been a clear infraction by the South African Republic of the terms of Article IV of the Convention of 1884.

We think that a represention of the facts so far as known should be made to the Government of the South African Republic; that their attention should be called to the terms of Article IV; that they should be informed that Her Majesty's Government must insist on the observance of this Article, and cannot recognize the validity of any Treaty concluded without Her Majesty's sanction; and that they should be asked for an explanation of their apparent disregard of the terms of the Article in this instance.

We think that the Government of the Netherlands should be informed of the terms of Article IV; that they should be apprised that the Government of the South African Republic have no power to conclude a Treaty except with the approval of Her Majesty, and that Her Majesty's Government cannot recognize the validity of the Treaty of Extradition which has been concluded without her sanction.

Although the particular Treaty now in question may not be in itself of great

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* No. 8, Treaty, July 2, and No. 9, Treaty, July 8, 1896.

importance, the principle involved is obviously of the utmost gravity, and the breach of the Convention in this case, if condoned, would no doubt be followed by other breaches in matters of vital importance.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

No. 1.

[September 21, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 27, 1896.

Gentlemen,

Trial of Captain Lothaire for causing death of C. H. Stokes.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers mentioned in the accompanying list, which relate the circumstances under which Captain Lothaire, an officer in the service of the Congo Free State, has been put on his trial for causing the death of a British subject named Charles Henry Stokes within the jurisdiction of the Congo Free State.

The first intimation of the death of Mr. Stokes reached Her Majesty's Government in August 1895, and they immediately called upon the Government of the Free State for an explanation of the circumstances. The reply is contained in the Memorandum dated the 11th August (Paper (A), p. 3). It is there stated that Stokes had been condemned to death by the Council of War of the Arab Zone, having its seat at the post of Lindi.

On the 31st August a further note was sent by the Congo Government (Paper (A), p. 8) in explanation and justification of the execution. The note stated that the Council of War had been legally constituted in accordance with the regulations for such matters, and that Captain Lothaire presided over it as Judge. Amongst other papers forwarded with the note was one (Paper (A), p. 9) purporting to be the Judgment pronounced at the close of the ordinary proceedings, which bore the signature of Captain Lothaire. After reciting the charges brought against Stokes of selling arms and ammunition to bands of persons in revolt against the Government of the Congo State, it goes on to say that the Council of War, looking at Article 10 of the Decree of the 10th March, 1892, and Article 28 of the Military Penal Code, which were read at the hearing, condemned Stokes to death by hanging on the next day, and pronounced the confiscation of his goods.

The depositions said to have been taken before the Tribunal are given at p. 10 of Paper (A), and at p. 14 of the same paper is a declaration written by Stokes on the 14th January, and addressed to Captain Lothaire, in which he protests that he had not been influenced in any of his transactions with the natives by a desire to oppose the Government.

Copies of the Articles alluded to in the Judgment are printed at p. 19 of Paper (A).

On the 9th September a despatch was addressed to Her Majesty's Minister in Brussels (Paper (A), p. 170), in which are given the reasons for which Her Majesty's Government, after a careful study of the papers connected with the trial, were unable to come to any other conclusion than that there was no justification for the execution of Stokes without allowing an appeal to the Court at Boma, to which he had the right under Article 37 of the Decree of the Congo Government of the 22nd December, 1888 (Paper (A), p. 19). Her Majesty's Minister was instructed to call attention to the arbitrary character of the proceedings, and to ask for a full statement of the views of the Congo Government in respect of the points enumerated.

The reply of that Government is contained in the note addressed to Sir F. Plunkett on the 13th September (Paper (A), p. 179), in which the irregularity of the proceedings is admitted, regret is expressed, and it is stated that Captain Lothaire would be recalled, and that, if the explanations which he would be called upon to give were unsatisfactory, the Congo Government would send him for trial before the competent Tribunal.

On the 4th October (Paper (A), p. 203), Her Majesty's Minister at Brussels, acting under Lord Salisbury's instructions, informed the Congo State Government that Her Majesty's Government would claim full compensation for the confiscation of Stokes'

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property, which was admitted to have been illegal, and that the question of the extent and nature of the reparation to be claimed on account of his execution would be deferred until further explanations had been received from Captain Lothaire.

On the 3rd November (Paper (A), p. 236), the Congo State Government addressed a note to Her Majesty's Minister, in which they engaged, with a view to giving full satisfaction to Her Majesty's Government, to bring Captain Lothaire before a Court competent to throw complete light on the whole question, to adjudicate on the accusations which had been made against him, and, in the event of his guilt being established, to inflict punishment proportionate to the gravity of his offence. They further offered to pay at once to Her Majesty's Government, as compensation for the irregularities in the procedure followed in the case, the sum of 150,000 fr., and to order the restitution of Stokes' property.

These offers were accepted (Paper (A), p. 238), and the money was duly paid to Her Majesty's Government.

Considerable difficulty was experienced by the Congo Government in deciding upon the Court which should try Captain Lothaire, and the method of procedure. The views of different authorities on the subject will be found at pp. 241, 242, 243, 244, 251, 253, 254, 257, 258, 259, 260, 262, 263, 264, 267, 270, 272, 273, 274, 285, of Paper (A).

Finally, it was settled, with the concurrence of Her Majesty's Government (Paper (A), p. 286), that the trial should take place in the Congo State before the Court of Appeal at Boma, on the understanding that the Public Ministry of that State would appeal to the Conseil Supérieur at Brussels if Her Majesty's Government were not satisfied with the decisions of the Boma Tribunal.

This mode of procedure was based on Article 57 of the Decree of the 27th April, 1889, and Article 1 of the Decree of the 8th October, 1890. Copies of these Decrees are printed at p. 102 of Paper (B), and p. 159 of Paper (C), and are referred to at p. 210 of Paper (A), where explanations are given as to the constitution of the Conseil Supérieur at Brussels.

After some further discussion, the Governments drew up and exchanged copies of instructions to their respective Representatives. Those addressed to the Governor-General of the Congo State are given at p. 321 of Paper (A) and the instructions to Her Majesty's Vice-Consul at p. 325 of the same paper. In the latter document will be found references to various papers printed in Paper (A), which were collected with a view to prove that Stokes was not engaged in wilfully supplying munitions of war to persons in revolt against the Congo State, but that any sales he effected were made in the ordinary course of his business as a trader in ivory.

There is also a reference to evidence printed at p. 217, and again in the form of a Memorandum at p. 219, which is of considerable importance. If the statement of Dr. Michaux given therein is correct, Captain Lothaire, when he gave orders for Stokes' execution, had no copy of the Congo State Code of Laws in his possession, and was not aware of there being any right of appeal under it. It is clear that in this case grave suspicion would arise as to the authenticity of the accuracy of the judgment, which states that certain Articles of that Code were read at the hearing, and which claims to have been delivered in accordance with certain specified Articles of the Code.

The fact is the more remarkable because in the report of the trial sent home by Vice-Consul Arthur (Paper (D)) the defence, and the ground on which Captain Lothaire was ultimately acquitted, was that Stokes was not dealt with as a civilian with powers to appeal, but as a military man who enjoyed no such right.

The Vice-Consul's report on this point is confirmed by the shorthand notes taken at the trial on behalf of the Congo Government, which will be found in Paper (E). It will be seen that Captain Lothaire's defence at Boma is based on the assertion that he knew the law under which a non-native civilian is entitled to appeal from a local Court to the Superior Court at Boma, but that the evidence in his possession justified him in looking upon Stokes as a "militaire," who was not entitled by law to appeal, and whom he was therefore justified in summarily executing.

The finding of the Court at Boma, which was a verdict of acquittal, is printed in Paper (F). On learning its nature, Her Majesty's Government instructed the Vice-Consul to request the Public Minister to exercise the right of appeal. They did so in order to keep alive the right of obtaining a re-hearing of the case pending a study of the proceedings at the trial, without which it was impossible to form an opinion as to whether the circumstances were such as to require an appeal. However, on the notice of appeal being received in Brussels, and before the proceedings could be examined by Her Majesty's Government, the date of the 3rd August was fixed for the appeal to be heard.

Her Majesty's Government then notified to the Government of the Congo State that they dissociated themselves from any responsibility for a participation in the appeal proceedings; that, in view of the early date fixed, they could make no suggestions nor express any opinion as to whether the appeal ought to be proceeded with or as to the points which it might be desirable to clear up; that the responsibility must rest entirely with the Congo Government; that it would presumably be open to the Court to adjourn the case to a later date on an application by the prosecution, but that whether such application should be made was for the decision of the Congo Government.

The proceedings began on the 6th instant.

The constitution of the Court, and the full stenographic report of the trial, is given in Paper (G), and a resumé of the proceedings by Lord Vaux, Second Secretary in Her Majesty's Legation at Brussels, who was present throughout, will be found in Paper (H). The verdict was again one of acquittal.

I have the honour to request that you will take the papers forwarded herewith into your consideration, and will favour Lord Salisbury with your opinion as to whether there is anything in the proceedings at either trial which would justify Her Majesty's Government in addressing further representations to the Congo Government on the subject, and, if so, on what grounds such representation should be based.

Lord Salisbury would also be glad to have any general observations that may occur to you in regard to the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) First Revise for Parliament of the 16th February, 1896, of papers relating to case.
(B.) Bulletin officiel du Congo, No. 4 *bis.*, April 1889. (In Sir F. Plunkett's No. 201, Africa, 10th September, 1895.)
(C.) Bulletin officiel du Congo, No. 10, October 1890. (In Lord Vivian's No. 79, Africa, 30th October, 1890.)
(D.) Vice-Consul Arthur's Report on the Boma trial (No. 13 of the 18th May, 1896).
(E.) Notes of Boma trial communicated to Sir F. Plunkett by the Congo Government (in his Nos. 194, 195, and 197, Africa, of the 19th, 20th, and 23rd July, 1896).
(F.) Finding of Court at Boma. [Printed in first day's proceedings at Brussels, Paper (G).]
(G.) Stenographic Report of trial at Brussels. (In Sir F. Plunkett's Nos. 216 and 217, Africa, of the 11th and 13th August, 1896.)
(H.) Lord Vaux's Report on Brussels Trial. (In Sir F. Plunkett's No. 212, Africa, of the 8th August, 1896.)

Report.

So far as the culpability of Captain Lothaire, or any question of further proceedings against him is concerned, we do not think that there is anything in these proceedings which would justify Her Majesty's Government in addressing further remonstrance, or making any representations to the Congo Government on the subject.

Upon the evidence, it appears to us that the hanging of Mr. Stokes was, in effect, a military execution, carried out without reference to the provisions of the Code, and in ignorance of what they were.

We regard the statement of Captain Lothaire that he considered that Mr. Stokes had no right of appeal, as he was not a "non-militaire," as a mere afterthought, and the statement in the Judgment, that the Articles of the Code were read, as untrue.

Captain Lothaire was acting at the head of a small party in a disturbed district of country. He appears to have honestly formed the opinion that Mr. Stokes had been engaged in selling arms and ammunition to the Arab Chiefs. This was, no doubt, an offence against the law of the Congo State, and Captain Lothaire appears to have drawn the conclusion that Mr. Stokes was actually stirring up war, and to have considered that the death of Mr. Stokes was necessary by way of example, and for the safety of his force, and had him hanged after a summary trial by court-martial.

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We have little doubt that Mr. Stokes deserved punishment as an unscrupulous leader, but he had not by law incurred the penalty of death. The proceedings were altogether irregular if viewed, as intended to be, in the administration of ordinary law, and could be justified, if at all, only as a resort to martial law under critical circumstances and in a state of war.

But we do not think that it can be said that it follows that Captain Lothaire should have been convicted of homicide. Her Majesty's Government agreed to the proposal that the question of Captain Lothaire's guilt should be tried by the Court of Boma, and from that decision an appeal has in form been brought to the Tribunal at Brussels.

It is true that the prosecution at Boma, and the argument of the Procureur d'État on the appeal in Brussels, were not in reality serious prosecutions; the speech of the appellant's counsel—the Procureur d'État at Brussels—was in reality a speech made on behalf of the prisoner. But still, the facts were before the Court, and we do not think it probable that, in the case of such a charge under like circumstances, any jury would have convicted. We think that the defence that the circumstances warranted the application of martial law would probably have been successful.

The proceedings were in formal accordance with the arrangement made with Her Majesty's Government, and we do not think that the conduct of the prosecution is such as to warrant a representation of Her Majesty's Government so far as the culpability of Captain Lothaire is concerned. Having regard, however, to the facts as now ascertained, and with a view to the future, we think it is desirable that a protest or Memorandum should be addressed to the authorities of the Congo State respecting the proceedings in question.

The protest might with propriety call attention to the following points:—

(*a.*) The absence of any evidence justifying, or any necessity for, the immediate execution of Stokes.

(*b.*) The impropriety of treating him as a non-civilian.

(*c.*) The injustice of depriving him of his right of appeal.

(*d.*) The evident interpolation of the passage in the Judgment at Lindi to the effect that Article 28 of the Code Pénal Militaire was read to Stokes at the hearing.

(*e.*) The perfunctory, not to say the illusory, character of the so-called proceedings before the Tribunal at Boma and at Brussels.

The Memorandum might enforce the position that in all cases of civilians, or quasi-civilians, the right of appeal should be strictly observed, and that it is essential that the law should be strictly observed by persons in the position, or intrusted with the responsibilities and authority, of Captain Lothaire, and that any inquiry into their action should be thorough and impartial.

We have already reported (26th September, 1895) on the proposed resumption by Her Majesty's Government of extra-territorial jurisdiction in the Congo State.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 21, 1896.

No. 2.

[October 8, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, October* 3, 1896.

Asylum granted to Khaled at German Consulate at Zanzibar.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the accompanying papers, which relate to the case of Khaled-bin-Muhammed, a pretender to the Sultanate of Zanzibar, and lately a refugee in the German Consulate at Zanzibar, from which the German Government have now removed him on board one of their vessels of war.

A copy is also inclosed of a Memorandum on the right of asylum prepared in this Department some years ago, which contains at pp. 3, 4, 11, 12, and 13 information which may possibly be of use to you in connexion with my present letter.

The circumstances of Khaled's case are briefly as follows:—

In the absence of any definite law of succession to the Sultanate of Zanzibar, Her Majesty's Government, in the exercise of the general and paramount authority vested in Great Britain as the Protecting Power, decided that Hamoud-bin-Muhammed should succeed to the Sultanate on the death of Sultan Hamid-bin-Thwain.

Sultan Hamid died unexpectedly and suddenly on the 24th August last. Khaled, who is also a member of the reigning family, within two hours after the Sultan's death, assured himself of the adhesion of the Sultan's guard, seized the Palace and defended it with the help of his armed supporters. He refused to surrender at the summons of Sultan Hamoud and of Her Majesty's Acting Consul-General. On the arrival of Her Majesty's ship "St. George," the Palace was bombarded, and Khaled, finding resistance hopeless, went to the German Consulate, with a number of his adherents, and was there received.

The German Government were requested to give the necessary instructions to the Imperial Consul that Khaled might be handed over to Her Majesty's Acting Consul-General, but the reply was to the effect that the Treaty between Germany and Zanzibar, a copy of which will be found among the papers accompanying this letter, secured complete extra-territoriality for German subjects in Zanzibar, that Khaled must therefore be considered as having taken refuge on German soil, and that Germany could not give up a political offender without an assurance that his life and liberty would be secured.

Her Majesty's Ambassador at Berlin was then instructed to inform the German Government that Khaled was not a German subject, and that the Treaty contained no provision converting the German Consulate into German soil. The Imperial Government then called attention to Articles XVI and XXI of the Treaty as conferring complete extra-territoriality on German subjects and on their dwellings.

Her Majesty's Acting Consul-General at Zanzibar was immediately instructed that the German Consulate should be watched, though care was to be taken not to allow the police to enter upon any land belonging to the Consulate. If Khaled left the Consulate, he was to be arrested; and if any attempt were made by the German Consul, or by persons acting under his orders, to remove Khaled from the island, an agent of the police was to make an effort to arrest him, in order to establish that the Consul was using force.

The German Government thereupon asked whether there would be any objection to Khaled being embarked on a German man-of-war's boat from the garden of the Consulate, one portion of which runs down to the sea, adding that they considered that they had a right to embark him from the Consulate, but did not wish to take any step which might be disagreeable to Her Majesty's Government.

To this communication Lord Salisbury replied that he could not admit that extra-territoriality conferred on those who possessed it the right of enabling fugitives from justice to escape out of the country in which they had committed an offence, and that as soon as Khaled left the protection afforded by the Treaty to German dwelling-houses in Zanzibar he must be arrested. At the same time it was intimated that if the rights of the Government of Zanzibar were recognized, any friendly intimation of the wishes of the German Government in regard to the disposal of the prisoner would be favourably considered.

The German Government thereupon repeated that they had a right to remove Khaled in the manner proposed, as he would not cease to be under German protection, and that they could not give up an Arab who had sought asylum in a German house, and whose offence was of a political character.

To this communication Lord Salisbury answered to the effect that Her Majesty's Government could not admit that extra-territoriality converted the ground on which German houses stood into German soil, still less that it gave the right to remove from the country a person taking refuge from the police. At the same time Lord Salisbury added that if the German Government insisted on their interpretation of the Treaty he was ready to refer it to an eminent jurisconsult belonging to a neutral State.

It appears from Sir F. Lascelles's telegram No. 15, Africa, of the 29th ultimo that the German Government have finally founded their right to remove Khaled from Zanzibar in a German ship of war, not on the right of extra-territoriality contained in the Treaty, which they put aside and on which they decline to arbitrate, but on the alleged right of uncontrolled communication between a German Consulate which can be reached by sea and a German man-of-war.

The telegram was received by the Secretary of State at midday on the 1st October. The same day Sir F. Lascelles was instructed to reply that Her

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Majesty's Government were entirely unable to accept the doctrine that, apart from Treaty stipulation, a German man-of-war's boat has unrestricted right of communication with a German Consulate in a foreign country because it happened to be built near the edge of the water; that even if extra-territoriality gave Germany a right over the land lying between the Consulate and the sea, which appeared doubtful, it gave no right over the 3 miles of territorial water beyond; that the German man-of-war's boat had no right to land anywhere except at the places allowed by the law of the country, nor to carry off a fugitive from justice across the territorial waters belonging to the Sultan; and, finally, that such a proceeding would be an act of violence.

It appears from Mr. Cave's telegram No. 104 of the 2nd instant that Khaled has now been carried away from Zanzibar in the manner contemplated by the German Government, the British and Zanzibar authorities having been unable to interfere, as Khaled was taken on board of a man-of-war's boat at the garden wall of the Consulate, which adjoins the sea and is accessible to boats at high water.

In these circumstances, I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Salisbury with your opinion as to whether the view taken by Her Majesty's Government of the rights claimed by the German Government is correct and should be maintained.

I am also to state that Lord Salisbury would be glad to be favoured with any observations which may occur to you as to the case generally.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

List of telegrams to and from Mr. Cave.	
List of telegrams to and from Sir F. Lascelles.	
Memorandum by Mr. Green (Confidential No. 1764)	May 3, 1870.
Treaty between Germany and Zanzibar, 1886 (in "Africa No. 3, 1887") (Parliamentary No. 3123).	

Report.

In our opinion the view taken by Her Majesty's Government of the rights claimed by the German Government is correct, and should be maintained.

Article XVI of the Treaty of the 20th December, 1885, confers on German subjects the rights of extra-territoriality, but these rights are personal, and the contention that their houses are thereby made German soil seems to us untenable and inconsistent with the limited protection which is given by Article XXI.

Article XVII negatives the idea that the jurisdiction of the Sultan is excluded in the case of persons other than servants by the fact that they have found their way into the premises of German subjects.

Article III confers upon German Consuls in Zanzibar the privileges of Consuls of the most highly-favoured nation. We presume that there is not any Treaty conferring on the Consul of any nation in Zanzibar the right of extra-territoriality as regards his residence, and in the absence of any such Treaty a Consul has certainly no such privilege.

The proposition that as Consul the German Consul can grant an asylum to alleged criminals, whether political or ordinary, cannot, in our opinion, be sustained. It is true that such a privilege has been exercised by Diplomatic Representatives in Spain and in South America, and by Consuls in Persia, but there is, in our opinion, no doubt that this right of asylum, even in the case of Ambassadors, can be properly conferred only by the consent of the countries to whom they are accredited. It is in no way necessary for the discharge of an Ambassador's duty that his house should be an asylum for persons charged with crime of any description, and no such privilege can be properly asserted by an Ambassador, still less by a Consul. There is nothing in the Treaty with Germany to confer such a privilege, and we assume that there is no Treaty to that effect with any other nation which would be incorporated by Article III of the German Treaty.

The right of communicating by sea with the Consular premises extending to the shore appears to be relied on by the German Government as justifying their action. Such a contention is, in our opinion, untenable. The sea for 3 miles from the shore belongs to Zanzibar as territorial water, subject to the right of passage which the ships of all nations enjoy. German ships have no special privilege by reason of the contiguity of their Consular premises, and are subject to any law which may exist in Zanzibar as to the spots where embarkation and debarkation are permitted. They cannot lawfully use these waters to carry off a criminal to whom they have not the right to give asylum.

If any similar incident should occur in the future, regard must be had to Article XXI of the Treaty. The German Consul would be bound to give his assistance in the entry on any German premises, including the Consulate, for the purpose of arresting any person charged with crime, whether political in its nature or not. If he refused the entry, arrest might be made without his concurrence, as the right of asylum does not exist, and the attempt to assert it would be an abuse of the rights conferred by the Treaty.

Having regard to the course which events have taken in the present case, we do not think that Her Majesty's Government ought to insist on the surrender of Khaled even if it were on other grounds desirable. But we would suggest that the views of Her Majesty's Government as the Protecting Power and on behalf of the Sultan of Zanzibar, upon the whole subject should be communicated to the German Government, and that they should be notified that the right of asylum claimed cannot be recognized.

We have, further, only to remark, that while the question of the right of asylum claimed for the German Consul may become of importance, it is, in our opinion, entirely overshadowed by the claim of extra-territoriality for the premises of Germans which was at one time put forward, a claim, the successful assertion of which might have consequences of the greatest gravity, involving as it does the question of sovereignty over these premises on shore and the waters adjacent to them.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 8, 1896.

No. 2 A.

[Colonial Office.]

[October 21, 1896.]

The Law Officers of the Crown to Mr. Chamberlain.

Sir, *Royal Courts of Justice, October* 21, 1896.

Bill relative to expulsion and residence of Aliens in South African Republic.

WE were honoured with your commands, signified in Sir Robert Meade's letter of the 5th instant, stating that he was directed to lay before us the correspondence relating to a Bill which had been passed by the Volksraad of the South African Republic authorizing the banishment by order of the Executive of foreigners who were dangerous to the public peace and order, and the regulation by Executive order of the place of residence of foreigners or burghers who were dangerous to the public order and peace.

That no copy of the Bill as passed had been received, but that we would observe that the British Agent in the South African Republic, in his telegram to the High Commissioner, reported in the High Commissioner's telegram of the 25th September, stated that the Bill had passed the Second Reading practically in the same form as the draft forwarded by him to the Acting High Commissioner in his despatch No. 41, dated the 20th July (a copy of which was inclosed in General Goodenough's despatch No. 497 of the 27th July), and that it might be assumed for the purpose of the reference to us that it passed the Third Reading in the same form.

That Sir Robert Meade was also to inclose copies of the Convention of 1884 between Her Majesty and the South African Republic, and a translation of the Grondwet of the South African Republic.

That it would be seen that Mr. Searle, the Legal Adviser of the High Commissioner, had advised that the Bill infringed, and was contrary to the letter and spirit of, Article XIV of the Convention, by authorizing the banishment of foreigners, and the restriction of the place of residence of foreigners, without, in either case, a judicial decision that the person banished or restricted had not conformed to the laws

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of the South African Republic, and by placing foreigners as regarded the right to reside in any part of the Republic on a different and less favourable footing than burghers.

That Sir Robert Meade was also to inclose for reference a copy of the Parliamentary Paper C.—7911 of 1895, relating to the Arbitration Case before the Chief Justice of the Orange Free State referred to in Mr. Searle's Report.

That he was to request that we would favour you with our opinion on the following questions:—

1. Whether the enactment of the Bill in question would be an infringement of the Convention of 1884?

2. Whether an order made under the Bill, if it were enacted, banishing a foreigner from the South African Republic, or ordering a foreigner to reside in a certain place, or prohibiting a foreigner from residing in a certain place or places, without, in either case, the decision of a competent Court of Justice that such foreigner was not conforming himself to the laws of the South African Republic, would be an infringement of the Convention?

3. Whether it would be desirable that Her Majesty's Government should object to the enactment of the Bill, or, if it had become law, should insist on its repeal, or should reserve the right of objecting to any action taken under its provisions?

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

1. That the enactment of the Bill in question will, in our opinion, be an infringement of the Convention of 1884. The XIVth Article of that Convention secures to all persons, other than natives, conforming themselves to the laws of the South African Republic, full liberty to travel or reside in any part of the Republic.

We should not regard it as an infringement of this Article if the Volksraad had enacted that any foreigner who failed to conform to the laws of the Republic might be summarily expelled by the Executive without conviction in a Court of Law.

The XIVth Article does not, in our opinion, secure to foreigners the right of residence unless they have been convicted, after trial in Court, of a breach of the law, but leaves it open to the Republic summarily to expel any foreigner contravening the law. If he were expelled when, in fact, he had conformed to the law, it would form the subject of diplomatic representation.

But the Act of the Volksraad now before us goes much further, and provides that any foreigner who is dangerous to public peace and order can be banished by the Executive of the Republic.

Circumstances may well exist in which the presence of the particular foreigner might be rightly considered dangerous to the public peace and order, although he had conformed in every respect to the laws of the Republic. His position and influence might be such as to lead the Executive of the Republic to the conclusion that the public safety demanded his expulsion, although he was not himself charged with having broken the law. The Act now in question confers upon the Executive the right to expel any foreigner with regard to whom they have come to this conclusion, without requiring that they should also be satisfied that he has failed to conform to the law of the Republic.

The Act is, therefore, in our opinion, of itself an infraction of the Convention. The enactment of such a measure must occasion a sense of insecurity among the foreigners in the Transvaal, and constitutes a breach of the XIVth Article.

2. An order made under the Bill, if it is enacted, banishing a foreigner, or ordering him to reside in a certain place, or prohibiting him from residing in a certain place would, in our opinion, be an infringement of the Convention, if the foreigner in question had, in fact, conformed himself in all respects to the laws of the South African Republic. The British Government are not, in our opinion, entitled to insist upon the decision of a competent Court of Justice as a condition precedent to the right of the Republic to expel a foreigner who, in fact, has broken the law; his expulsion in such case may be effected simply by the action of the Executive. But the expulsion of the foreigner who has conformed to the law, merely on the ground that his presence is regarded as dangerous to the public peace and order, would be an infringement of the Convention.

3. It is, in our opinion, desirable that Her Majesty's Government should object to the enactment of the Bill, or, if it has become law, should insist on its repeal or amendment so as to bring it into conformity with the Convention.

The mere existence of such a law must interfere with the settlement of foreigners in the Transvaal, and with the business and social arrangements of those who are already there.

Although, as a matter of strict right, Her Majesty's Government are not, in our opinion, entitled to insist on conviction by a Court of Law as a necessary preliminary to expulsion, it would, we think, be much more satisfactory, and much more likely to prevent friction in future, if the law were amended so as to confine the right of expulsion to the case of a foreigner legally convicted.

We further think that Her Majesty's Government should reserve the right of objecting to any action taken under the provisions of the Bill in question.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

No. 2 B. **[Colonial Office.]**

[December 4, 1896.]

The Law Officers of the Crown to Mr. Chamberlain.

Royal Courts of Justice, December 4, 1896.

Sir,

Act relative to expulsion of Aliens in South African Republic.

WE were honoured with your commands, signified in Mr. Wingfield's letter of the 28th ultimo, stating that, with reference to our report of the 21st October last on the subject of the Bill recently passed by the Volksraad of the South African Republic relating to the expulsion of aliens, he was directed by you to lay before us the inclosed copy of the Act as passed.

That it would be seen that the wording of the Act differed considerably from that of the Bill, and that Mr. Wingfield was to request that we would inform you whether our Report applied to the Act, or whether we would desire to modify it in view of the difference between the Act and the Bill.

That Mr. Wingfield was also to draw our attention to the Report of the Law Officers to the Foreign Office of the 1st November, 1883, on the case of the expulsion of the Salvationists from certain Cantons of Switzerland, and especially to the passage beginning, "We do not think it would constitute a violation," which might be thought to place a somewhat different construction upon a clause in the Treaty between Great Britain and Switzerland similar in language to Article XIV of the Convention with the South African Republic from that which we placed upon that Article.

That Mr. Wingfield was also to refer us to Wharton's Digest of International Law of the United States, Section 206 (vol. II, pp. 516 *et seq.*) as showing the views of the Government of the United States of America upon the effect of Treaty provisions similar in character to Article XIV of the Convention, and to ask us to consider whether by treating the Act of the Volksraad as an infringement of Article XIV of the Convention Her Majesty's Government would give a handle to foreign Governments, with which Great Britain had Treaties containing similar Articles, to object on Treaty grounds to such legislation as the Aliens Bill introduced by the Marquess of Salisbury in the House of Lords in 1894.

We have taken the matter into consideration, and, in obedience to your commands, have the honour to

Report—

That our Report of the 21st October last does not apply to the Act of the Volksraad as passed.

That Act renders liable to expulsion, or confinement, to a particular place of residence, aliens who have been guilty of acts or proceedings imperilling the public peace. Such acts or proceedings are, it must be assumed, in contravention of the law of the Transvaal. We think, as stated in our previous Report, that Her Majesty's Government are not entitled to insist that there should have been a conviction in a Court of Law before the Transvaal Executive could take summary proceedings.

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The difference between the Bill and the Act seems to us to be vital. The former did, and the latter does not, render liable to expulsion or restriction aliens who conform to the law.

In view of the wording of the Act, we do not recommend that Her Majesty's Government should protest against it as in itself an infraction of the XIVth Article of the Convention of 1884. At the same time, as it is manifestly capable of being abused so as to infringe that Article, we do not recommend that there should be any admission of its validity. We would suggest that the Transvaal Government should be notified that Her Majesty's Government in view of the XIVth Article of the Convention, cannot admit the right of the Transvaal Government to expel or restrain any foreigners who are not shown to have failed to conform to the laws of the Republic, and reserve the right to object to any proceedings under the Act which may amount to an infraction of the Convention.

The passage in the Report of the Law Officers of the 1st November, 1883, which is referred to in the third paragraph of the despatch to which we are now replying had not escaped our attention, and was fully considered by us before making our Report. We only think it necessary to observe that a consideration of the general question was not involved in the case then submitted to the Law Officers which turned upon the question whether the Municipal Law of Switzerland had been observed.

The passages in Wharton's Digest referred to in the fourth paragraph of the despatch relate to the importance of the right of excluding foreigners who are dangerous to the public peace, but not to the construction of any particular Treaty, or method of exercising such right.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

No. 2 c. [Colonial Office.]

[December 9, 1896.]

The Law Officers of the Crown to Mr. Chamberlain.

Sir, *Royal Courts of Justice, December* 9, 1896.

Law regulating admission of aliens into South African Republic.

WE were honoured with your commands, signified in Mr. Wingfield's letter of the 30th ultimo stating that, with reference to his letter of the 30th ultimo on the subject of the Law passed by the Volksraad of the South African Republic relating to the expulsion of aliens, he was directed by you to transmit to us a copy of a telegram from the High Commissioner for South Africa giving the text of a further Bill introduced by the Government of the South African Republic, and passed without amendment, which purports to regulate the admission of aliens to the Republic.

That Mr. Wingfield was to inclose a translation of an extract from a Law passed by the Volksraad in 1885 to which you thought that section 7 of the new Law must refer, and which hitherto, according to statements in the South African press, had not been generally enforced.

That you would be glad to be favoured with our opinion whether the new Law constitutes a violation of Article XIV of the London Convention; and, if so, what steps should be taken by Her Majesty's Government.

That with reference to the requirements of passports in connection with Treaty obligations, Mr. Wingfield was to draw our attention to the Lewisohn case (Law Officers to Foreign Office, 1881 and 1882).

We were also honoured with a further letter, dated the 4th instant, from Mr. Wingfield, inclosing a translation of the new Law.

We have given the matter our careful consideration, and, in obedience to your commands, have the honour to

Report—

That, in our opinion, this new Law constitutes a violation of Article XIV of the London Convention.

That Article stipulates that all persons other than natives, conforming themselves to the Laws of the South African Republic, shall have full liberty to enter, travel, or reside in any part of the South African Republic.

The new Law provides that such persons shall not be at liberty to enter or reside in the Republic unless they can show affirmatively that they have the means or ability to support themselves. The only condition imposed by the Article is that they should conform to the Laws of the Republic. The new Law imposes a further condition of a burthensome nature, which it might be difficult for many of the poorer, though perfectly respectable, immigrants to satisfy.

The condition is to be fulfilled by production of a passport, certifying means or ability, granted by the Government of the immigrant, and *visé* by a Consular official of the Republic, or by proof to the satisfaction of the Field-Cornet or other official, that the immigrant is possessed of such means, or is able to support himself.

We are unable to regard this Law otherwise than as imposing a new and important modification upon Article XIV of the Convention.

Before, however, any remonstrance is addressed to the Transvaal Government upon the subject of this Law, we think that there ought to be consultation with the Foreign Office, inasmuch as there are provisions similar in their character to this Article in some Treaties concluded by England with foreign Powers: for instance, Article XI of the Treaty with Russia of the 12th January, 1859, and Article I of the Treaty with Switzerland of the 6th September, 1855.

It may be necessary to consider whether the considerations governing the construction of such an Article in the case of a Treaty between two independent Powers, providing for the mutual admission of their subjects respectively, are the same as those which apply in the case of a Convention like the present, defining the terms upon which a qualified independence had been granted to what was previously British territory, and providing for the free admission into the Transvaal of all aliens other than natives.

The question how far any possible legislation as to immigrants into the United Kingdom might be affected in the light of Treaties with foreign Powers by any action taken with reference to this Law of the South African Republic deserves consideration.

The subject is of such great importance that we think it right, at present, only to indicate these considerations, and to suggest that, before any step is taken, it should be considered in all its bearings.

We have, &c.
(Signed) RICHARD E. WEBSTER
ROBERT B. FINLAY.

AUSTRIA.

No. 3.

[May 11, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 2, 1896.

Importation of ore for iron-works at Trieste in Austrian ships only.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the papers noted in the accompanying list which relate to certain provisions in a concession granted to an Austrian Company by the Government of Austria-Hungary for the purpose of setting up iron-works at Servola, near Trieste.

Her Majesty's Government were at first led to believe that among the stipulations contained in this Concession were the two following:—

(1.) That ore for smelting was to be imported from Greece and Spain only, and
(2.) That it should only be imported in Austrian bottoms.

Her Majesty's Ambassador at Vienna was accordingly instructed to address a

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representation to the Austro-Hungarian Government on both these points, but as it appears, from their reply, that there were no grounds for the first assumption, and that ore may be imported from all countries alike, it is only to the second point that I need for the present invite your attention.

Article I of the Treaty between Great Britain and Austria-Hungary of 1868 contains the following proviso:—

"British ships and their cargoes, in all the dominions of His Imperial and Royal Apostolic Majesty . . . . from whatever place arriving, and whatever may be their place of destination, and whatever may be the place of origin or destination of their cargoes, shall be treated in every respect as national ships and their cargoes."

I am next to direct your attention to the representation that Her Majesty's Ambassador at Vienna addressed to the Imperial and Royal Government on the 22nd February last, and to the reply which the latter returned thereto on the 28th ultimo. These notes form the inclosures in Sir E. Monson's despatches Nos. 6 and 17 Commercial, of the 23rd February and the 3rd April respectively (marked papers D and F).

The Austrian Government's reply, you will observe, characterizes the contention advanced by that of Her Majesty as a strained interpretation of the terms of Article I of the Treaty above referred to, and expresses the opinion that the Article is not susceptible of the construction in question.

In the view of the Austro-Hungarian Government, the Article in question lays down the principle on which reciprocal Navigation Treaties of other nations are usually based, namely, that, as regards the treatment of ships and their cargoes, no difference is to be made between foreigners and natives. This stipulation, they proceed to urge, has not, however, been considered prejudicial to the passing of laws in most States for the protection of their respective commercial navies, or for the subsidizing of native shipping companies, neither can Treaty rights be appealed to when the Concession of advantages to Austrian shipping is imposed on an Industrial Company which has requested favourable treatment from the State as regards freedom from taxation, &c. An arrangement of the nature referred to creates—according to the view of the Austro-Hungarian Government—no inequality in the treatment of native and foreign shipping, but only combines a proviso which is consistent with the legitimate functions of the State with a special Concession made by the latter, and cannot be regarded as a question which comes within the domain, or which is to be decided by considerations of International, as distinguished from Municipal Law.

I am to request that you will take these papers into your consideration, and favour Lord Salisbury with your opinion

(1.) As to whether the language of Article I of the Treaty between Great Britain and Austria-Hungary of 1868 is properly susceptible of the interpretation that has been placed upon it by Her Majesty's Government, and by the terms of Sir E. Monson's note of the 22nd February, so far as that note relates to the point under consideration.

(2.) Whether, in the event of your reply to the above question being in the affirmative, there are any additional arguments that could properly be cited in support of that view.

His Lordship would further be glad to receive any observations which you may be disposed to offer on the reply of the Austro-Hungarian Government, and on the matter generally, which raises a question of principle of great international importance.

I have, &c.
(Signed) GEORGE N. CURZON.

List of Papers.

Consul Haggard (Trieste)	..	(No. 4.	Commercial)	February	1, 1896.
Sir E. Monson (Vienna)	..	(No. 4,	Commercial)	February	4, „
To Sir E. Monson ..	..	(No. 5.	Commercial)	February	14,
Sir E. Monson ..	..	(No. 6.	Commercial)	February	23, „
To Sir E. Monson ..	..	(No. 7.	Commercial)	February	28, „
Sir E. Monson ..	..	(No. 17.	Commercial)	April	3, „
To Board of Trade ..	..	..	.. ..	April	10, „
Board of Trade ..	..	..	.. ..	April	22, „
Sir E. Monson ..	..	(No. 22.	Commercial)	April	24, „
Treaty of Navigation with Austria (Treaty No. 505)			..	April	30, 1868.

Report.

The interpretation to be put on Article I of the Treaty of 1868 with reference to the action of the Austrian Government raises questions of considerable difficulty, but, in our opinion, the view taken by Her Majesty's Government, and embodied in Sir E. Monson's note, is correct.

We understand the Austrian Government to contend that the Article relates merely to the treatment to be accorded to British vessels and their cargoes, when they have got them, and does not extend to prevent legislation putting British ships at a disadvantage as compared with Austrian in competition for freights. This appears to us to be an unduly narrow construction of the Article. If correct it would leave it open to the Austrian Government to impose penalties upon their subjects for employing foreign vessels, and it seems to us impossible to say that legislation of this sort would be consistent with equality of treatment.

On the other hand, we are disposed to agree with the contention of the Austrian Government that the Article leaves them at liberty to encourage Austrian shipping by subsidies, or in other analogous ways.

In the present case, the Austrian Government proposes to exempt the Company from taxation if they employ Austrian ships only, thus, in effect, penalizing the employment of British vessels. If this is not an infraction of the Treaty it would be open to the Austrian Government to make it a condition of licensing any industry in Austria that Austrian vessels only should be employed, either for import or for export, thus in effect, though not in name, excluding British vessels altogether from Austrian ports.

It is undoubtedly difficult to draw the line, but we are, on the whole, of opinion that what has been done in this case *does* constitute an infraction of Article I of the Treaty.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 11, 1896.

BELGIUM.

No. 4.

[May 19, 1896.]

Foreign Office to Law Officers of the Crown.

Gentlemen,
Foreign Office, May 6, 1896.

Supplementary Convention with Belgium to amend Extradition Treaty of 1876.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying Papers respecting a proposed Supplementary Convention with Belgium, to amend the Extradition Treaty between Great Britain and Belgium of the 20th May, 1876 (Paper A), in regard to the procedure to be adopted in this country in the case of persons whose extradition may be applied for by the Belgian Government.

L.O.R. 1895 (Conf. 6796), p. 40.

The object of the proposed Convention is to give effect, as regards Belgium, to "The Extradition Act, 1895" (Paper B), and it has been drafted, *mutatis mutandis,* on the basis of the Convention recently concluded with France, which formed the subject of your Reports of the 30th September, 1895 (Paper C), and the 20th February, 1896 (Paper D).

I am to request that you will take the inclosed Papers into your consideration, and that you will inform Lord Salisbury whether, in your opinion, the draft Convention, as amended in the manner indicated by the Home Office (Paper H), may, in its

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present shape, properly be submitted to the Belgian Government. His Lordship would also be glad to be favoured with any general observations which you may wish to offer on the subject of the proposed Convention.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Extradition Treaty between Great Britain and Belgium (Treaty No. 598)	May 20, 1876.
(B.)	Extradition Act, 1895 (58 & 59 Vict., cap. 33).	September 30, 1895.
(C.)	Law Officers' Report (Confidential No. 6796, p. 40) ..	February 20, 1896.
(D.)	Ditto	March 14, 1896.
(E.)	Baron Whettnall	April 7, 1896.
(F.)	To Home Office	May 1, 1896.
(G.)	Home Office	
(H.)	Draft Convention.	

Report.

The draft Convention (Paper H) as amended by us in red ink,* and initialled by us, may, in our opinion, properly be submitted to the Belgian Government.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 19, 1896.

Annex.

Draft Convention between Great Britain and Belgium, modifying the Extradition Treaty of May 20, 1876 *(as modified in accordance with Home Office letter of May* 1, 1896).

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Majesty the King of the Belgians, being desirous to render more efficacious the provisions of Articles II and IV of the Treaty between Great Britain and Belgium of the 20th May, 1876, for the mutual extradition of fugitive criminals, have named as their respective Plenipotentiaries for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India,

And His Majesty the King of the Belgians;

Who, after having communicated to each other their respective Full Powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The text of Article II of the Extradition Treaty of the 20th May, 1876, is amended by the substitution of the words "a Magistrate" for the words "the police Magistrate who issued the warrant, or some other police Magistrate in London," in the first sentence of the third ("*fourth in French text*") paragraph of section I, and by the omission of the word "police" in the second sentence of the said paragraph, and in both paragraphs of section II.

ARTICLE II.

The text of Article IV of the aforesaid Treaty is amended by the substitution of the words "a Magistrate" for the words "a police Magistrate in London."

ARTICLE III.

The text of Article VII of the aforesaid Treaty is amended by the omission of the word "police."

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* *Italics.*

ARTICLE ~~III~~ *IV.*

The present Convention shall be ratified, and the ratifications shall be exchanged as soon as possible.

It shall come into force ten days after its publication in the manner prescribed by law in the respective countries, and shall have the same force and duration as the Treaty to which it relates.

In witness whereof the respective Plenipotentiaries have signed the present Convention, and have affixed thereto their seals.

Done in duplicate at the 1896.

[Initialled] R. E. W.
R. B. F.

No. 5.

[October 29, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, October* 16, 1896.

Anglo-Belgian Extradition Treaty Order in Council.

WITH reference to your Report of the 19th May last (Paper A), I have the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying draft of an Order in Council (Paper B), applying the Extradition Acts, 1870 to 1895, in the case of a Convention between Great Britain and Belgium, signed at London on the 27th August last, amending certain Articles of the Extradition Treaty between the two countries of the 20th May, 1876 (Paper C), to which the Extradition Acts, 1870 and 1873, were applied by an Order in Council, dated the 21st July, 1876 (Paper D).

The terms of the draft Order in Council are concurred in by Her Majesty's Secretary of State for the Home Department (Paper E).

I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Salisbury with your opinion whether the draft Order in Council (Paper B), may, in its present form, properly be laid before the Queen in Council for Her Majesty's approval.

His Lordship would also be glad to be furnished with any general observations which you may wish to offer, after perusal of the accompanying papers.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Law Officers' Report	May 19, 1896.
(B.)	Draft Order in Council.	
(C.)	Anglo-Belgian Extradition Treaty (Treaty No. 598) ..	May 20, 1876.
(D.)	Order in Council applying above (Confidential No. 2897*) ..	July 21, ,,
(E)	Home Office letter	October 12, 1896.

Report.

The draft Order in Council, which we have initialled, may, in our opinion, properly be submitted for Her Majesty's approval.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 29, 1896.

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Annex.

WHEREAS by the Extradition Acts, 1870 to 1895, it was, amongst other things, enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in, or suspected of being in, the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

And whereas a Convention was concluded on the 27th day of August, 1896, between Her Majesty and His Majesty the King of the Belgians, amending certain Articles of the Extradition Treaty of the 20th May, 1876, for the mutual extradition of fugitive criminals, which Convention is in the terms following:—

[See Treaty Series No. 16, 1896.]

And whereas the ratifications of the said Convention was exchanged at London on the 30th day of September, 1896:

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the * day of , 1896, the said Acts shall apply in the case of Belgium, and of the said Convention with His Majesty the King of the Belgians, and of the said Extradition Treaty as modified by the said Convention.

Provided always that the operation of the said Acts shall be and remain suspended within the Dominion of Canada so long as an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," shall continue in force there, and no longer.

[Initialled] R. E. W.
R. B. F.

No. 6.

[November 3, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, October 26, 1896.

Gentlemen,

Expulsion of Mr. Ben Tillett from Antwerp.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the papers noted in the accompanying lists which relate to the arrest and imprisonment of Mr. Ben Tillett at Antwerp, and his expulsion from Belgian territory.

Mr. Tillett's version of the affair is given in a letter addressed by him to this Office on the 25th August, inclosing an extract from the "Daily Chronicle," which, Mr. Tillett states, is, with certain amendments and additions, an accurate account of what took place.

From this account (see List A, Paper 1) it appears that on his arrival at Antwerp by the Harwich boat on the morning of Thursday, the 20th August, Mr. Tillett was met by a force of police, who arrested him. In reply to his protestations, he was informed that the Minister of Justice had issued instructions to the effect that he was not to be allowed to address a public meeting, and that unless he consented not to do oi, he was to be summarily expelled. Mr. Tillett was taken to the police office, and after an hour was allowed to go free without knowing the precise conditions on which he was liberated. He had stated his desire to observe the law of the country, adding that he would not address a public meeting that would tend to disorder, but would confine himself to meeting the trade-union men with an address on purely trade-union matters. Following up these declarations, Mr. Tillett proceeded to a meeting place in the rear of the branch (of the Union?) premises, and addressed the members of the trade-union, the general public being, according to his statement, excluded. His address dealt only with trade-unionism, and the need for international combination.

On the following day (Friday), Mr. Tillett again addressed a similar meeting on the details pertaining to international combination. He had barely finished his address when the police burst in, arrested Mr. Tillett, and took him to the police office, where he was interrogated, and, in answer to his inquiries, was informed that no specific charge was preferred against him. No other reason for his detention was given to Mr. Tillett but that he was arrested by the orders of the Minister of Justice. The police official communicated the fact of the arrest to the authorities at Brussels, and requested that instructions should be sent as to what further action was to be taken. This message was sent at 4 P.M. on Friday, thus allowing three hours for a reply before the boat left in which Mr. Tillett had arranged to cross to England. No answer having arrived before the departure of the boat, Mr. Tillett was taken from the police office to the gaol.

Mr. Tillett then proceeds to describe how he was subjected to a treatment which he states was that of a common felon: how his request to communicate with his wife and friends and with the British Consul was ignored until two hours before his liberation: how he was under arrest and in gaol for twenty-six and a-half hours, and how at 6 o'clock on Saturday evening he was liberated and conducted by a detective to the steamer which was about to leave for England.

Mr. Tillett concludes by asserting that his detention occasioned him loss of time and additional expenses, and that, in consequence of the prison treatment and the foul cell in which he was placed, he had suffered in health, being stripped naked, searched, and kept without proper food.

Her Majesty's Consul-General at Antwerp, in a brief Report to Her Majesty's Chargé d'Affaires at Brussels (see List A, Paper 2), stated that Mr. Tillett was informed by the police that he could not be permitted to hold meetings at Antwerp; but that, in spite of this warning, Mr. Tillett addressed an open-air meeting on Friday, and on the evening of that day was arrested and placed in confinement.

I am now to draw your attention to Sir F. Plunkett's despatch No. 151, Commercial, of the 15th September, inclosing a copy of the reply (dated the 14th September) of the Belgian Government to the inquiries made by Her Majesty's Minister at Brussels under instructions from Lord Salisbury (see List A, Papers 3, 4, and 5).

M. de Favereau in his observations on the charges brought by Mr. Tillett defends the action of the police, by stating that Mr. Tillett had been warned that he must not engage in any public propaganda, and that he undertook not to do so. In spite of this undertaking he spoke at a public meeting. M. de Favereau adds that inquiry had established that Mr. Tillett never asked leave to communicate with persons outside the prison, but that he telegraphed to his family: that Mr. Tillett was submitted to the ordinary discipline of the prison, and that his detention until the following day was the result of an accidental delay in the transmission of the orders of the Minister of Justice.

In a letter from Mr. Villiers, dated the 18th September (see List A, Paper 6), the papers on this case were referred to Her Majesty's Attorney-General, and it will be seen from Lord Salisbury's Memorandum of the 17th September that his Lordship requested that he might be favoured with an opinion as to whether, as no prosecution of Mr. Tillett was intended, the Belgian Government were justified in inflicting upon him the various indignities which resulted from his imprisonment. Sir Richard Webster's Memorandum on the subject is included in the inclosed papers (see List A, Paper 7).

In accordance with the suggestions of the Attorney-General, Sir Francis Plunkett was instructed to formally request the Belgian Government to inform him as to the character of the offence which Mr. Tillett was alleged to have committed, and to show that the law of Belgium justifies arrest and imprisonment for such an offence (List A, Papers 8 and 10). At the same time, the observations of Mr. Tillett with respect to M. de Favereau's note of the 14th September were invited. It will be observed that Mr. Tillett, in his reply dated the 5th October (List A, Papers 9 and 11), adheres to every part of his original statement, and lays stress on his contention that the meetings he addressed were private and not public, admission being by ticket only: he also relates in detail his attempts to communicate with the British Consul and with his friends.

In Sir F. Plunkett's despatch No. 168, Commercial, of the 14th October (List A, Paper 14), will be found the reply of the Belgian Government to the formal inquiries which Sir F. Plunkett had, by the advice of Sir Richard Webster, been instructed to make.

You will notice that, in M. de Favereau's note, the Belgian Government practically justify their treatment of Mr. Ben Tillett, on the ground that it flows from, and is ancillary to, the sovereign right of the Belgian Crown to exclude foreigners from

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* Date to be inserted by Council Office, and to be a date ten days after publication in "London Gazette."

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Belgian territory. They do not ground their justification on the violation by Mr. Tillett of any special Belgian law, but on the broad international principle referred to above. They state that immediately on his arrival Mr. Ben Tillett was warned that he would be sent out of the country if he did not keep the engagement which he then took to abstain from organizing, or being the cause of, public meetings of dock labourers at Antwerp: that he failed to keep this engagement, and that his arrest was the necessary consequence. It was owing to an accidental circumstance, as stated in M. de Favereau's note of the 14th September, that Mr. Tillett was detained in custody until the following day.

M. de Favereau maintains that there was nothing unusual in the treatment extended to Mr. Tillett, and claims that, under such circumstances, the foreigner must necessarily be kept in temporary detention, or the practical object of his arrest, viz., to prevent his disturbing the public peace by addressing meetings, might be frustrated.

His Excellency further asserts that foreigners are placed for the time that elapses between their arrest and expulsion in the "quartier des passagers," and that Mr. Tillett's treatment differed in no respect from that usually accorded to such persons.

Sir F. Plunkett observes that M. de Favereau disposes very summarily of the precise question which had been put to his Excellency in his (Sir F. Plunkett's) note, and would seem to claim that the expulsion of foreigners is a matter of pure sovereign right, uncontrolled or unmodified by any special provisions of Belgian Municipal Law. Moreover, M. de Favereau adduces no proof that the prison authorities did not exceed their powers during the time in which Mr. Tillett was in the so-called "quartier des passagers."

I am to request that you will take these papers into your consideration, and favour Lord Salisbury with your opinion—

1. As to whether any further representations should be made to the Belgian Government on the subject.

2. In the event of your reply to the above question being in the affirmative, as to the grounds on which such representations should be based.

His Lordship would also be glad to receive any observations which you may be disposed to offer on the case generally.

I am further to inclose a collection of papers (see List B) with regard to the expulsion of Mr. Havelock Wilson, M.P., and Mr. Tom Mann from Antwerp, which you may consider it useful to peruse in connection with the present question.

An extract from the "Réforme" on the legal aspect of the case is annexed (List B, Paper 11), and also a medical opinion transmitted by Mr. Tillett on the state of his health (List B, Paper 12).

I have, &c.
(Signed) T. H. SANDERSON.

List A.

1. Mr. Ben Tillett, August 25, 1896.
   (Inclosing extract from "Daily Chronicle.")
2. Mr. Adam, No. 133, Commercial, August 25.
   (Inclosing Report from Her Majesty's Consul-General at Antwerp.)
3. To Mr. Adam, No. 49, Commercial, August 29.
4. Sir F. Plunkett, No. 138, Commercial, September 1.
5. Sir F. Plunkett, No. 151, Commercial, September 15.
   (Inclosing M. de Favereau's note of September 14 and Minute by Mr. Villiers.)
6. To the Attorney-General, September 18.
   (Inclosing Minute by Mr. Villiers and Memorandum by Lord Salisbury of September 17.)
7. Memorandum by Sir Richard Webster.
8. To Sir F. Plunkett, No. 56, Commercial, September 26.
9. To Mr. Tillett, September 26.
10. Sir F. Plunkett, No. 162, Commercial, October 3.
11. Mr. Tillett, October 5.
12. To Sir Richard Webster, October 8.
13. Sir Richard Webster, October 10.
14. Sir F. Plunkett, No. 168, Commercial, October 14.
   (Inclosing M. de Favereau's note of October 13.)

List B.

1. Sir F. Plunkett, No. 105, Commercial, July 18, 1896.
2. Sir F. Plunkett, No. 109, Commercial, July 22.
3. Sir F. Plunkett, No. 113, Commercial, July 26.
4. Sir F. Plunkett, No. 114, Commercial, July 27.
5. Board of Trade, August 15.
6. Mr. Adam, No. 132, Commercial, August 23.
7. To Mr. Adam, No. 48, Commercial, August 27.
8. Sir F. Plunkett, No. 140, Commercial, September 3.
9. Sir F. Plunkett, No. 155, Commercial, September 19.
10. Sir F. Plunkett, No. 166, Commercial, October 11.
11. Sir F. Plunkett, No. 142, Commercial, September 4.
   (Inclosing article from "Réforme.")
12. Mr. Tillett, October 12.
   (Inclosing medical opinion.)

Report.

We think that further representations should be made to the Belgian Government on the subject.

The right of the Belgian Government to expel Mr. Ben Tillett is undoubted. But the arrest and detention, and the various circumstances of hardship with which they were accompanied are, in our opinion, altogether in excess of anything which could be justified as incidental to the right of expulsion. It is not suggested that these proceedings were preliminary to a criminal prosecution, which was afterwards abandoned for expulsion, or even that Mr. Tillett had committed any offence which would justify arrest, imprisonment, and searching before trial.

In cases of urgency, arrest, as a preliminary to expulsion, may possibly be justified as a measure of precaution. In this case it seems to have been quite unnecessary. Mr. Tillett might have been kept under police supervision till the departure of the next boat. The arrest was followed by a detention quite unnecessary in its duration, and even if, as alleged, this was the result of mistake or accidental delay, for that the Belgian authorities are responsible—it was in no way occasioned by Mr. Tillett. We cannot see how it could be thought proper to have Mr. Tillett searched. The attempt to excuse the various hardships to which Mr. Tillett was exposed during his detention on the ground that the same treatment is accorded to other foreigners under similar circumstances seems to us to be no answer at all.

A foreigner in Belgium while there is subject to the procedure of the Belgian law, but ought not to be subjected to arbitrary penalties of this sort.

We think that any further representations to the Belgian Government should be based on the foregoing considerations. We suggest that the Belgian Government ought to express regret for what has occurred, and make some compensation to Mr. Tillett. The Belgian authorities probably acted under a very natural feeling of irritation on the intrusion of a foreigner engaged in what they probably regarded as an incendiary campaign, but what they have done is, in our opinion, quite unjustifiable.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 3, 1896.

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BORNEO.

No. 7.

[July 2, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 19, 1896.

Alleged breach of faith by British North Borneo Co. in respect to Spanish deserters from Manilla.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to proceedings in connection with certain deserters from the Spanish army in the Philippines who had taken refuge in the territory of British North Borneo.

The following statement of events is taken from the Reports received from the Governor of British North Borneo, and, through him, from the Commandant of Police, who was sent to arrest the deserters (Paper A, pp. 4–7; Paper D, pp. 1–3, 6–11).

On the 4th September last a Spanish cruiser arrived in North Borneo under the orders of a Commodore sent specially to warn the Governor of the supposed presence in British North Borneo of twenty-five Spanish soldiers who had deserted from the Philippines after murdering the officers of the garrison, carrying off some women, one of them the wife of an officer. They had stolen a considerable sum of money, had taken with them all their arms and accoutrements, and were well provided with ammunition. They were all good marksmen, and all bore bad characters.

The Commodore offered to assist in the search, and, if the men could be traced, in their capture. His offer was accepted conditionally by the Governor, who ordered Mr. A. Jones, a European officer, to proceed with fifteen native Dyak police on board the small unarmed cruiser "Petrel" to search for the mutineers. In consequence of disturbances in the northern part of North Borneo no larger force of police was at the time available for this expedition.

The instructions drawn up for Mr. Jones by the Governor in Council will be found at pp. 8 and 9 of Paper (D).

The "Petrel" and the Spanish cruiser started on the 5th September, and received information the same evening from another vessel that the mutineers were at the Tunku River. The two ships at once proceeded thither, and arrived at midnight. Leaving the Spanish cruiser at Tunku, the "Petrel" went to Silam to call for Mr. Dunlop, the Resident of the district. Finding that he was absent, Mr. Jones returned with the "Petrel" to Tunku, arriving there at 1 P.M. on the 7th. He was then informed by a native, Salleh, that the mutineers were encamped up one of the small rivers difficult of access, and that they had expressed a determination to fight to the last rather than surrender to the Spanish authorities. It appears that the landing of the mutineers at Tunku had caused great consternation among the natives. They had taken by force whatever they required, and had threatened with their weapons those who resisted. Some natives who had gone near their camp reported that they had been fired at, and that firing was going on all day, the mutineers firing at random at anything moving in the neighbouring jungle. The natives had collected and armed themselves for the purpose of attacking the mutineers, but were restrained by Salleh and the Chiefs. The mutineers had threatened to attack the Rajah's Kampong.

The British flag was flown by the Spanish cruiser for a few hours on the afternoon of the 7th in order to reassure the natives, who were in great alarm on account of the presence of the mutineers on shore, and the detention on board the Spanish ship of some of their Chiefs, who had boarded her in the morning and who were detained there pending Mr. Jones' return, as until his arrival they could not communicate with the Spaniards for want of an interpreter. The flag could not, however, have been seen by the mutineers as they were a long way inland.

Mr. Jones sent Salleh to the mutineers to inform them that he had arrived with Government police, and to call upon them to surrender. They at first attempted to make conditions, but at last agreed to surrender unconditionally to the British North Borneo Company's police next morning at daybreak. In the meantime they agreed to give up their arms, and Salleh returned at 10 P.M., bringing twenty-three rifles, but he stated that they had retained their side-arms and ammunition.

Mr. Jones informed the Spanish Commodore of what had taken place, and

requested him to land a party to be in readiness to arrest the mutineers on their arrival. Three officers and twenty men from the Spanish cruiser accordingly landed at 3 A.M. the following morning (8th September). Mr. Jones placed these in concealment, and arranged to give them a signal when the time came to arrest the mutineers. At 6 A.M. the latter arrived, twenty-three in all, some still dressed in uniform and others as Sulus. Mr. Jones then told them that they would be given up to the Spaniards, and gave a signal to the Spanish officer to arrest them. As soon as the mutineers saw the Spanish sailors approaching they took to flight. They were called upon to stop, but took no notice of the summons. The Spaniards then fired upon them and sixteen were killed; the remaining seven were captured. A few of the Dyak North Borneo policemen joined in the firing, but were stopped by Mr. Jones. Some of the Dyaks who made a rush at the mutineers with their weapons were driven back by him. The Spanish cruiser left soon after with the seven prisoners.

There are several points in connection with these proceedings on which Lord Salisbury would be glad to be favoured with your opinion.

The view taken by the British North Borneo Company of the action of Governor Beaufort and of Mr. Jones will be seen from the letters and telegrams of Mr. R. Biddulph Martin, M.P., the Chairman of the Company, to Mr. Beaufort, which will be found in Paper (D).

Lord Salisbury does not doubt that you will concur in the Company's condemnation of Mr. Jones' action in inducing the mutineers to lay down their arms by leading them to believe that they were surrendering to the forces of the North Borneo Government. The stratagem employed is not excused by the argument that it would otherwise have been necessary to employ force, and that in that case the loss of life would probably have been greater than it was.

It does not appear that fault can be found with the British North Borneo authorities for handing over the mutineers to the Spanish Commodore. Your opinion is, however, desired on this point. British North Borneo is, according to the provisions of the Charter granted to the Company by Her Majesty, to be regarded as an independent State *under the protection* of Great Britain. No Extradition Treaty exists between Spain and Great Britain on behalf of British North Borneo. The law of the country is based on the Indian Penal, Criminal Procedure, and Civil Procedure Codes, with adaptations of certain British Colonial Acts. According to the letter from the Chairman of the Company to Governor Beaufort of the 17th January, 1896 (Paper (D), p. 11), the surrender of the mutineers to the Spanish authorities was not contrary to the laws of North Borneo, and there does not appear to be any ground for doubting the accuracy of this view.

A further point on which you are requested to give an opinion is whether, supposing the authorities of North Borneo to have been justified in giving up the mutineers to the Spanish Commodore, they were, in the circumstances of the case, acting correctly in surrendering them without trial.

The use made by the Chairman of the British North Borneo Company in his letter to Governor Beaufort of the 17th January, 1896 (Paper (D), p. 11), of the expression "comity of nations," in connection with the relations between Spain and the Government of North Borneo, seems to call for remark. It is suggested that the phrase is inappropriate where a Protectorate is concerned. The international relation to which the comity attaches would appear to be between the Protecting Power (Great Britain) and Spain, and not between the Protectorate and Spain.

In conclusion, Lord Salisbury requests to be favoured with your opinion whether, in the circumstances of the case, as they appear from the inclosed papers, the authorities of British North Borneo were justified in availing themselves, without previous communication with Her Majesty's Government, of the offer of the Spanish Commodore to assist is arresting the mutineers in the territory of British North Borneo. It is suggested that the Governor may have thought it unsafe to allow these dangerous men to remain in the country until he had had time to communicate with Her Majesty's Government and that the urgency of the case justified his immediate action.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion on the questions submitted in this letter, and with any general observations which you may have to offer on the case.

I have, &c.
(Signed) H. PERCY ANDERSON.

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List of Papers.

(A.)	Colonial Office	March 18, 1896.
(B.)	To Colonial Office	March 24, ,,
(C.)	To British North Borneo Company	March 26, ,,
(D.)	British North Borneo Company	April 16, ,,
(E.)	Minutes.	

Report.

We agree in the condemnation by the Company of the stratagem employed by Mr. Jones to induce the mutineers to lay down their arms.

We do not think that any fault could have been found with the Company for merely handing over the mutineers to the Spanish Commodore. It appears that there is no ground for supposing that such a surrender would be contrary to the laws of British North Borneo. It is quite clear that any State, unless it has fettered its action by its own municipal laws, is at liberty to arrest foreign criminals who have landed on its territory, and to hand them over to the authorities of their own country. This may be a necessary measure of self-protection.

It does not sufficiently appear whether there is anything in the laws of British North Borneo which rendered a trial necessary before handing over the mutineers to the Spanish Commodore. Of course, if there is, the municipal laws of the territory have been violated, but we must point out that any trial would, under the circumstances of the case, have been a mere formality. There appears to be not the slightest doubt that the men were mutineers who had murdered their officers, and who had established themselves in the territory of British North Borneo, with arms and ammunition, under such circumstances as to be a source of terror and disturbance in the neighbourhood.

The British North Borneo Company has no relations with foreign Powers, and the phrase "comity of nations" is not strictly applicable as between the Company and Spain. The question of international relations is for the Protecting Power, Great Britain.

We think that the authorities of British North Borneo were justified in availing themselves, without previous communication with Her Majesty's Government, of the offer of the Spanish Commodore to assist in arresting the mutineers. The case was one of emergency, and disaster might have ensued if the delay necessary to communicate with Her Majesty's Government had been permitted. The circumstances under which the assistance of the Spanish Commodore was rendered were most unfortunate, but if proper precautions had been taken, we see no reason to think that it would have been improper for the authorities of British North Borneo to accept Spanish aid.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 2, 1896.

BRAZIL.

No. 8.

[January 11, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, December 21, 1895.

P. Wilson's claim for compensation for injuries caused by Brazilian troops.

Gentlemen,

I HAVE the honour to transmit to you herewith, by direction of the Marquess of Salisbury, correspondence relating to the claim of Peter Wilson against the Brazilian Government for compensation in consequence of injuries received by him from the fire of Brazilian troops whilst on board a boat belonging to the British steamship "Severnbank."

There is much conflict of evidence in regard to the circumstances in which the boat was fired at, as will be seen from the inclosed Memorandum (Paper H). The latest reply from the Brazilian Government (Paper G) states that the boat carried neither flag nor ensign, and the application for compensation is refused on the ground that she did not obey the order to stop within speaking distance.

Lord Salisbury would be glad to be favoured with your opinion as to whether Her Majesty's Government would be justified in pressing for the payment of 100*l.* to Peter Wilson in view of the statements made on either side respecting the facts of the case, and having regard to the state of revolution existing at the time in the harbour of Rio de Janeiro.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	From Clyde Sailing-ship Association		January 24, 1894.
(B.)	From Mr. Wyndham	(No. 80)	March 3, ,,
(C.)	From Clyde Sailing-ship Owners		November 20, ,,
(D.)	To Clyde Sailing-ship Association		November 24, ,,
(E.)	To Mr. Phipps	(No. 46)	June 5, 1895.
(F.)	From Mr. Phipps	(No. 95)	July 15, ,,
(G.)	Ditto	(No. 172)	November 14, ,,
(H.)	Memorandum		December 12, ,,

Report.

In our opinion, this claim should not be pressed.

There appears to be a conflict of testimony as to whether the boat was showing the red ensign, and it is, moreover, alleged by the Brazilians that the boat did not stop when hailed. These statements, taken in conjunction with the disturbed state of Rio at the time, make the case one in which it is difficult for Her Majesty's Government to insist upon payment of compensation.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 11, 1896.

No. 9.

[June 10, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 29, 1896.

Claims for detention of vessels at Rio during civil war.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list respecting the claims of British ship-owners for the detention of their ships in the harbour of Rio de Janeiro during the civil disturbances in 1893–94.

L.O.R. 1894 (Conf. 6641), p. 17.

I am to call your attention to the Report given by the Law Officers of the Crown on the 16th March, 1894 (Paper B), as to the reply which it was, in their opinion, desirable to return to a letter from the Clyde Sailing-ship Owners' Association.

L.O.R. 1894 (Conf. 6641), p. 19.

The Report of the Law Officers in the case of the "Arethusa" (Paper F) is also annexed for reference. Many other applicants have received replies similar to those which were based on these Reports.

The Petition from ship-owners at Liverpool and Glasgow, which is inclosed in Mr. Bigham's letter of the 20th instant (Paper H), sets forth the circumstances in which they have applied to Lord Salisbury for assistance in pressing their claims on

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the Brazilian Government, after having failed to recover damages from the charterers or consignees by taking legal proceedings against them.

In view of the importance of the interests at stake, Lord Salisbury would be glad to be favoured with your opinion—

1. As to whether any such liability attaches to the Brazilian Government in respect to the detention of the vessels at Rio as would justify Her Majesty's Government in presenting claims for compensation on behalf of the British ship-owners concerned; and

2. Generally on the papers now submitted to you.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Clyde Sailing-ship Owners' Association	February 19, 1894.
(B.)	Law Officers (Confidential No. 6641, p. 17)	March 16, „
(C.)	"Arethusa" Ship Company	May 29, „
(D.)	To ditto	June 9, „
(E.)	"Arethusa" Ship Company	July 27, „
(F.)	Law Officers (Confidential No. 6641, p. 19)	August 15, „
(G.)	To "Arethusa" Ship Company	August 25, „
(H.)	Mr. Bigham	May 20, 1896.

Report.

In our opinion, no such liability attaches to the Brazilian Government in respect of the detention of the ships at Rio as would justify Her Majesty's Government in presenting claims on behalf of the British ship-owners concerned. Foreigners must take the risks of civil war in any State to which they come, and the Government of the State cannot by international law be required to compensate them for injuries sustained by reason of civil war or insurrection.

To sustain any such claim it would be necessary to show that there has been on the part of the State some breach of duty under international law. The occurrence of an insurrection, or the failure at once to put it down, does not constitute such breach of duty.

In the present case we can see nothing to lay the foundation for any claim against the Brazilian Government.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 10, 1896.

No. 10.

[June 30, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 23, 1896.

Gentlemen,

Claims on account of detention of vessels at Rio.

WITH reference to your Report of the 10th instant, a copy of which is inclosed, I have the honour to transmit to you, by the direction of the Marquess of Salisbury, a letter from the Liverpool Ship-owners' Association* respecting the detention in the harbour of Rio de Janeiro of certain vessels carrying coal consigned to Messrs. Lage Irmãos.

It appears from the Memorandum which accompanies the letter from the Association that, during the insurrection, the Brazilian Government ordered all merchant ships to withdraw from the island of Vianna, where Messrs. Lage's coal stores were situated, and that although Messrs. Lage applied for permission to return to the island immediately after order was restored, on the 13th March, 1894, it was not until the 31st July that they were allowed to have access to their premises. In the meantime the coal ships were detained, and a schedule is appended to the Memorandum showing the period during which each vessel remained in the harbour.

I am to request that Lord Salisbury may be favoured with your opinion as to whether any claim for compensation may properly be presented to the Brazilian Government on behalf of the ship-owners, in respect of those vessels which were compulsorily detained for a considerable period after the close of the disturbances.

His Lordship would be glad at the same time to be favoured with any general observations which you may desire to offer on the matter.

I have, &c.
(Signed) FRANCIS BERTIE.

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* June 11, 1896.

Report.

Upon the facts before us, we do not think that Her Majesty's Government should press this claim. If, as a consequence of the disturbances in the port, the Brazilian Government prevented Messrs. Lage using their island until the 31st July, we do not think that this claim can be pressed any more than the claims for detention while the disturbances were in actual progress.

In order to justify a claim it would have to be shown that the act of the Government in preventing the re-establishment of the trade until July was for their own purposes, and for reasons not connected with the rebellion, of which we see no evidence.

We, therefore, do not advise that Her Majesty's Government should present any claim for compensation on behalf of the ship-owners.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 30, 1896.

CHINA.

No. 11.

[February 12, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 1, 1896.

Gentlemen,

Trial of Chinese servant on H.M.S. "Esk" for killing a native at Ichang.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers marked in the accompanying list, respecting the case of a Chinese servant employed on board Her Majesty's ship "Esk," who, whilst on shore at Ichang, accidentally shot and killed a native Customs official.

The local authorities have demanded the surrender of the servant for trial, but the Crown Advocate at Shanghae holds that the British Courts are competent to deal with the offence committed, and that the Chinese are not entitled to insist on the surrender.

The Acting Chief Justice of the Supreme Consular Court, on the other hand, is of opinion that Her Majesty's Consular Court has no jurisdiction to entertain proceedings in such a case, although he agrees with the Crown Advocate in considering that the accused can properly be tried by naval court-martial under the provisions of "The Naval Discipline Act, 1866."

Lord Salisbury is not, however, satisfied as to the correctness of this view, and

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would therefore be glad to be favoured with your opinion on the question, and also generally as to what instructions should be sent to Her Majesty's Chargé d'Affaires at Peking.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Mr. Beauclerk	(No. 7. Telegraphic)	January 14, 1896.
Ditto	(No. 11. Telegraphic)	January 20, „
Chefoo Convention (Treaty No. 756).		
Sir H. Parkes	.. (No. 16)	January 27, 1883.

Report.

In the absence of any Treaty for extradition, the delivery up of criminals who have taken refuge on board a British man-of-war rests on the comity of nations, and the principle that such refugees should be put on their trial in the only Court in which a trial can be had.

In the present case, the Chief Justice and Crown Advocate are agreed in thinking that the Chinese servant can be tried under "The Naval Discipline Act, 1866," and we are not prepared to dissent from this view.

The refusal to deliver him up would not secure immunity from trial, and as the man belonged to the vessel and was borne on the books, he is not in the position of a criminal who merely escaped to the vessel in the hope of avoiding trial for an offence committed on shore.

We therefore recommend that he should not be given up, but put on his trial under the Naval Discipline Act; the Chinese authorities may, but purely as a matter of courtesy, be invited to send a Representative to watch the trial.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 12, 1896.

No. 12.

[June 17, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 22, 1896.

Claim on China for loss of "Kow-Shing."

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list relative to the sinking of the British steam-ship "Kow-Shing" by the Japanese man-of-war "Naniwa" on the 25th July, 1894.

These papers include the depositions and statements made by persons who were on board the "Kow-Shing" (Paper A, pp. 1–9, 21–26, and 35, and Paper D), the Report of the proceedings before a Naval Court held at Nagasaki (Paper A, p. 10), and the charter-party (Paper A, p. 27), under which the vessel was engaged by the Chinese Government to convey troops to Corea.

The previous Reports of the Law Officers of the Crown on this subject, and two Memoranda, dated respectively the 10th November and 29th October, 1894, by the then Lord Chancellor (Lord Herschell), and the legal adviser to this Department, are also inclosed in a separate printed paper (Paper B), to which are annexed two letters, dated the 2nd and 6th August, 1894, respectively, to the "Times," from Professors Westlake and Holland.

I am also to submit to you a statement (Paper C) which was drawn up for presentation to the Chinese Government, and which purports to inclose the claim put forward by the owners of the "Kow-Shing."

Before proceeding to apply to the Chinese Government, Lord Salisbury wishes to refer the case to you for further consideration. It seems to his Lordship that it is difficult to lay down, on the opinions of Lord Herschell and Sir Robert Reid, as they stand, that China is bound to pay compensation for the destruction of the "Kow-Shing." It may perhaps be said that the circumstances have been held to justify the action of the "Naniwa," and that the Japanese Government are thus exonerated from liability, but even so, it is not clear that the Chinese Government can be made responsible for the disaster which ensued.

I am to request that his Lordship may be favoured with your opinion as to the course which should now be followed, and as to what steps (if any) can be taken to obtain compensation for the owners of the vessel, for those Europeans who survived, and for the families of the Europeans and Asiatics who were lost.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Inclosures in letter to Law Officers		September 28, 1894.
(B.) Legal opinions on case.		
(C.) Statement drawn up in Foreign Office.		
(D.) Sir N. O'Conor	(No. 266.)	August 8, „

Report.

In our opinion, a claim may properly be made on the Chinese Government for compensation.

The Chinese Government, having chartered the vessel, put Chinese troops on board her. These troops refused to allow the captain and crew to follow the Japanese man-of-war into port—the only reasonable course—and took possession of the vessel for the purpose of resistance, a course which naturally ended in the destruction of the vessel and loss of life.

No claim can be sustained against the Japanese Government, who were within their rights in treating as they did, in time of war, a vessel engaged in a belligerent operation which refused to surrender.

The Chinese Government are, in our opinion, responsible for the conduct of their troops on board, especially as it was led and directed by the Chinese Generals in command, and the loss of the vessel was the direct result. The vessel would have been brought safe into port if they had allowed the captain and crew to act as they desired. It is true that she might have been confiscated by the Japanese Government as having been engaged in an act of belligerency, but it is not certain that this right would have been insisted on as against a British vessel under the circumstances, and the loss of life to the crew would certainly not have taken place. Moreover, in our opinion, the Chinese Government cannot set up the possible loss of the ship in some other way as an answer to a claim against them for a loss occasioned by the action of their officers, assuming they are responsible for such action.

The Chinese Government were the charterers, and if their representatives on board take a course likely to cause, and which does cause, the loss of the vessel, and loss of life among the crew, it appears to us that they *are* liable.

A private charterer, whose representatives on board acted in this way, would be liable in an action at law, and, in our opinion, there is a claim against the Chinese Government which may properly be pressed by diplomatic action. We approve of the proposed letter.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 17, 1896.

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Annex.

Draft of a letter to the Chinese Government.

THE "Kow-Shing," a British registered ship, the property of the Indo-China Steam Navigation Company, was chartered by the Chinese Government to convey troops to Corea. She left Taku on the 23rd July. On the 25th July, while on her way, she was stopped and boarded by the Japanese vessel of war "Naniwa." The purpose of her journey having been ascertained, she was ordered to follow the "Naniwa." The European officers were ready to obey this order, but the General commanding the Chinese troops refused to consent, and this being communicated to the "Naniwa," she fired a torpedo and broadside into the "Kow-Shing," sinking her almost immediately. Some of the European officers were saved, including the master, Captain Galsworthy, the mate, Mr. Tamplin, and a German officer, Captain von Hanneken, who was in Chinese employ as military instructor. The Chinese officers and about 1,100 troops went down with the ship.

Her Majesty's Government have most carefully considered all the circumstances connected with the destruction of the "Kow-Shing."

The notification that a state of war existed between China and Japan was made by the Japanese Government on the 1st August, but, as a matter of fact, hostile operations between the naval forces of the two countries had actually occurred upon the 25th July, before the "Kow-Shing" was stopped and boarded by the "Naniwa," for a few hours previously an engagement had taken place between a Chinese and one or more Japanese war-vessels, a Chinese man-of-war had passed the "Kow-Shing" bearing marks of injury from shot, and flying the Japanese colours as a ruse and the "Naniwa" herself had a shot in her boiler-room.

Hostilities had therefore begun, and it is recognized in practice, and is not inconsistent with the principles of the law of nations, that war may be commenced and a state of war exist without any formal declaration of war.

The service upon which the "Kow-Shing" was engaged, though it may have been peaceable and lawful in its inception, was of such a nature as, when war had broken out, to warrant the exercise of belligerent rights on the part of Japan, and to subject the vessel, if she wished to preserve her neutrality, to the obligations of a neutral. She was employed in carrying Chinese troops and materials of war to Corea.

Japan was entitled to refuse to permit this, and to insist that she should not proceed to her destination. The master was ready, in discharge of his neutral obligations, to acquiesce in the orders given with this object by the Captain of the "Naniwa," but the Chinese military officers on board the "Kow-Shing" forcibly took the command into their own hands, and did this with belligerent intentions, having in view active opposition to the naval forces of Japan. The "Kow-Shing" was then no longer under the control of her neutral British Commander. She had become, in fact, a belligerent.

The Captain of the "Naniwa," who was acquainted with this state of affairs, was therefore entitled to treat her as a belligerent, and there is no principle of international law on which a claim for redress on the part of the owners against the Government of Japan can be based.

It must also be borne in mind that at the date, the 17th July, when the "Kow-Shing" was chartered, the possibility of war between China and Japan was contemplated, as it was specially provided in the charter-party that, in the event of hostilities breaking out between China and Japan, the vessel should at once be dispatched to Shanghae, when the charter would terminate, the alternative being reserved to the charterer to purchase the ship outright.

In view, therefore, of the facts that the "Kow-Shing" was engaged in the service of conveying Chinese troops to the seat of war after the actual commencement of hostilities, and that the British master of the "Kow-Shing" had been divested by duress of his command of the vessel, whose actual control had passed into the hands of the Chinese military officers on board, Her Majesty's Government were advised on the highest legal authority that the liability rests with China to make good the losses caused to British subjects and property.

It is, therefore, the duty of Her Majesty's Government to present to the Chinese Government the claim put forward by the owners of the "Kow-Shing." As will be seen from the inclosed statement it is divided into two parts. According to the charter-party the sum which the Chinese Government engaged to refund in the event of the "Kow-Shing" not being returned to her owners amounts to 205,000 dollars. In addition to this sum, compensation is claimed on behalf of the Europeans and Asiatics who were on board the ship, and interest at the rate of 7 per cent. is charged on the aggregate.

Her Majesty's Government request that the Chinese Government will appoint some person to discuss with the Foreign Office the details of the claim put forward by the owners of the ship.

(Initialled) R. E. W
R. B. F.

Statement of Claim per "Kow-Shing."

EUROPEANS on basis of Scottish Widows' Fund Tables for Annuities, but two-thirds only. Survivors one half of above.

	Gross. £		£
Captain aged 30, saved	5,781	÷ ½ =	2,890
1st Officer „ 39, „	2,069	÷ ½ =	1,034
2nd „ „ 31, drowned	2,192	full	2,192
3rd „ „ 55, „	1,018	„	1,018
1st Engineer, aged 41, drowned	4,653	„	4,653
2nd „ „ 26, „	3,937	„	3,937
3rd „ „ 22, „	3,078	„	3,078
			18,802

Asiatic crew on basis of wages of those lost taking two years' pay, survivors one year's pay.

Saved.	Wages. Dollars.		Dollars.
3 Quartermasters	24	× 12 =	864
5 A.B.'s	12	× 12 =	720
No. 1 and 2 Firemen	20 and 18	× 12 =	432
3 Firemen	14	× 12 =	504
Trimmer and Cook	12 and 25	× 12 =	444
Lost.			
1 Quartermaster	24	× 24 =	576
Boatswain	18	× 24 =	432
2 A.B.'s	12	× 24 =	576
5 O.S.	9	× 24 =	1,080
Topaz	8	× 24 =	192
Carpenter	18	× 24 =	432
No. 3 Fireman	16	× 24 =	384
3 Firemen	14	× 24 =	1,008
5 Trimmers	12	× 24 =	1,440
Steward	22	× 24 =	528
Cook	25	× 24 =	600
2 Saloon boys	10	× 24 =	480
Mess-room boy	10	× 24 =	240
Pantry boy	8	× 24 =	192
No. 2 Compradore	100	× 24 =	2,400
Chief Officer's boy	8	× 24 =	192
			13,716
31 men not on Articles, Compradore's staff			6,000
			19,716

19,716 dollars at exchange 2*s.* 2*d.* = £2,135 18*s.*

Résumé.

	Dollars.
Compensation for value of steamer as stated in charter-party	190,000
Coals and stores on board	6,000
One month's charter hire	9,000
	205,000

	£	*s.*	*d.*
At exchange 2*s.* 2*d.*	22,208	6	8
Compensation to Asiatic crew	2,135	18	0
„ Europeans	18,802	0	0
7 per cent. interest for one year to 25th July, 1895	3,020	4	4
	46,166	9	0

(For the Indo-China Steam Navigation Company, Limited),
(Signed) A. CHEYNE, *Secretary.*

London, September 6, 1895.

No. 13.

[December 11, 1896.]

Foreign Office to Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 1, 1896.

Detention of Sun Yat Sen in Chinese Legation in London.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying collection of printed papers relative to the detention of a person of Chinese origin named Sun Yat Sen or Sun Wen, in the Chinese Legation in London.

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There is some discrepancy in the accounts of the parties concerned as to the circumstances under which Sun Yat Sen visited the Chinese Legation, but there can be no doubt that, having come inside on the 11th October, he was kept a close prisoner till, through the intervention of this Department, he was released on the 23rd October, after the Chinese Minister had made a formal reservation of his diplomatic rights.

In the note addressed to the Chinese Minister, which is also inclosed, demanding the release of the prisoner, Lord Salisbury stated that the man's detention against his will in the Chinese Legation was, in the opinion of Her Majesty's Government, an infraction of English law, which was not covered by, and was an abuse of, the diplomatic privilege accorded to a foreign Representative. But in view of the reservation made by the Chinese Minister, and in order to prevent the recurrence of so flagrant a violation of municipal and international law, his Lordship has thought it advisable that the views entertained by Her Majesty's Government on the subject should be formally recorded in a communication to be made to the Chinese Government by Her Majesty's Minister at Peking. For this purpose a draft of a despatch to Sir Claude MacDonald has been prepared, and is now inclosed for your consideration. I am to request you to be good enough to state whether you concur in its language, and, if not, in what respects you think that its terms can with advantage be either altered or amended.

Lord Salisbury will be glad at the same time to receive any observations of a general nature which you may desire to offer upon the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Collection of Printed Papers (Confidential No. 6854.)
Draft to Sir C. MacDonald.

Report.

The only suggestions we have to make are the following, viz., that for "visited" should be substituted the word "entered," as it is by no means clear that Sun Yat was not taken into the Embassy by force, and

That the language of the despatch should be guarded, so as to avoid the appearance of an admission that even a member of the Legation can be forcibly detained. There is a good deal of uncertainty as to the rights of an Ambassador over the members of his suite, and the point should, we think, be reserved.

As altered and initialled by us, we approve the draft despatch.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 11, 1896.

Annex.

Draft of Despatch to Sir C. MacDonald.

Foreign Office, December , 1896.

Sir,

THE inclosed collection of printed correspondence will make you acquainted with what has passed in regard to the detention of a person of Chinese origin named Sun Yat Sen or Sun Wen, in the Chinese Legation in London.

This individual states that he was born at Hong Kong, and, if this assertion be correct, he is, in contemplation of English law, a British subject. He appears to have been concerned in a conspiracy to overthrow the Viceroy and Government at Canton. His extradition, with that of two fellow conspirators, was demanded by the Canton authorities, but was refused by the Governor of Hong Kong on the ground that the offence with which they were charged was a political one. Sun Yat Sen had, however, left the Colony, and the Governor, considering that his return to Hong Kong would be very undesirable, issued a Decree of banishment against him. Sun Yat Sen went in the first instance to Hawaii. From Hawaii he came on to England, passing through the United States, and his departure from New York for Liverpool was reported by telegraph by the Chinese Legation at Washington to that in London. Sir Halliday Macartney thereupon called at this Office and inquired whether the extradition of a Chinese subject from this country could be obtained under Article XV of the Convention of the 1st March, 1894, relative to Burmah and Thibet, which provides for the mutual surrender of criminals, subjects of either country, on due requisition being made. He was informed that the Article obviously related only to extradition between China and Burmah, and that extradition of criminals from the United Kingdom could only be obtained in virtue of Conventions concluded in accordance with certain Acts of Parliament, and notified by Order in Council in the manner directed in those Acts. No such Convention, as he was aware, existed between this country and China.

There is some discrepancy as to the circumstances under which Sun Yat Sen ~~visited~~ *entered* the Chinese Legation, but all accounts agree that, having come inside the Legation on Sunday, the 11th ultimo, he was thereafter kept a close prisoner. He was confined in an upper room, the window of which was barred; the door was locked and carefully guarded; every precaution was taken to frustrate attempts on his part to communicate with his friends, and the window was nailed up on its being found that he had thrown notes out of it for that purpose. In consequence of the measures taken, the fact of his detention within the Legation did not become known to any one outside of it for more than a week, when his friends at last received information of the fact, and, upon depositions on the subject being brought to the knowledge of Her Majesty's Government, I at once addressed a note to the Chinese Minister, pointing out that his detention was an abuse of the diplomatic privilege enjoyed by the Chinese Legation, and requesting his immediate release. This request was complied with on Friday, the 23rd ultimo, after the man had been for twelve days in confinement, the Chinese Minister at the same making a reservation of his diplomatic rights.

I must request you to represent to the Chinese Government that, in the absence of any Treaty stipulations giving the Chinese Representative in this country extra-territorial jurisdiction over Chinese subjects, the detention within the Legation house of any person, ~~not belonging to the staff of the Legation~~, even though such person should be an undoubted subject of China, is a serious abuse of the privileges and immunities which are granted to foreign Representatives, and which have for their sole object to secure for such Representatives complete freedom and independence in the discharge of their mission. Her Majesty's Government are convinced that in no other European capital would such an act have been tolerated, and they consider that if persisted in or repeated, it would justify the use of whatever measures might be necessary for the liberation of the captive, and a demand for the immediate departure from this country of any persons responsible for his imprisonment. They trust, therefore, that the Chinese Government will give strict instructions to their Minister in London to abstain carefully for the future from any acts of the kind.

(Initialled) R. E. W.
R. B. F.

DENMARK.

No. 14.

[April 13, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 2, 1896.

Gentlemen,

Diseases of Animals Bill. Exceptional treatment of Iceland.

I HAVE the honour, by the direction of the Marquess of Salisbury, to submit to you the papers enumerated in the accompanying list, in connection with the amendments to the Diseases of Animals Bill which now stand in the Order Book of the House of Commons, and the object of which is to accord by Statute exceptional treatment, either to the Colonies as a whole, or to certain specified Colonies, viz., Canada and New Zealand, and to one foreign country, viz., Iceland.

It is important that Her Majesty's Government should know, before the discussion in the House of Commons of these amendments, which may probably take place on the 13th instant, how far the proposals to grant such exceptional treatment would be consistent with the existing Treaty engagements of Her Majesty with other Powers.

A copy of the Bill is inclosed (marked Paper A), from which its precise provisions will be learnt. Copies of the amendments above referred to are also annexed to the Bill for convenience of consideration.

It will be seen that the Bill which amends the Diseases of Animals Act, 1894 (Paper B), provides that all foreign cattle imported into the United Kingdom shall be

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slaughtered at the port of entry, and that it is desired to make exceptions in the case of cattle introduced from the places above mentioned.

With regard to the question of preferential treatment in favour of British Colonies, little doubt is felt that the proposed amendments would not conflict with our existing Treaty stipulations with foreign Powers. This view is supported by the L.O.R. 1882 (Conf. 4783), p. 42. inclosed Report of the 14th January, 1882, from the then Law Officers of the Crown (Paper C), who, when considering the position of the Colonies with reference to the most-favoured-nation clauses in various Treaties between this country and foreign Powers, stated, *inter alia*, that they concurred "in the view that the most-favoured-nation clause does not affect the right of this country to extend to the produce of its Colonies more favourable treatment than it accords to the produce of foreign or third countries; and that the question of admitting colonial produce on more favourable terms than similar produce of foreign countries with which Great Britain has entered into most-favoured-nation stipulations is entirely a question of policy."

Copies of the Treaties to which it is thought desirable to draw attention in this connection are inclosed, and special reference will be made to their provisions later on in the present letter.

His Lordship's attention has been called to the stipulations of the Anglo-Swiss Treaty of the 6th September, 1855, a copy of which is also inclosed (Paper D) as bearing upon this point, and it is, therefore, thought expedient to bring to your notice its provisions, which are exceptionally wide, although it is presumed that it will be held not materially to affect the immediate question at issue.

Article VIII of that Treaty provides that:—

"In all that relates to the importation into . . . . . and the exportation from their respective territories of any article of lawful commerce, the two Contracting Parties engage that their respective subjects and citizens shall be placed upon the same footing as subjects and citizens of the country."

It is, perhaps, open to question whether this might not be held to preclude preferential treatment in favour of any British Colony, but so wide an intertpreation of the Article would confer privileges of an unprecedented character, and would seem clearly opposed to the intention of the framers of the clause. Lord Salisbury is disposed, therefore, to think that the privileges granted to Swiss citizens by this Article would not form any obstacle to the exception which it is proposed to make in favour of Canada and New Zealand.

With regard to Iceland, the differentiation of treatment would, it is thought, infringe the stipulations of British Treaties with foreign Powers.

It seems probable that Article III of the Convention between this country and France of the 28th February, 1882, of which a copy is inclosed (Paper E), might be held to preclude such treatment. Under Article III, the High Contracting Parties engage not to enforce, one against the other, any prohibition of importation or exportation which shall "not at the same time be applicable to all other nations;" and this Article, when considered in reference to a permanent prohibition, rather than a temporary restriction, would seem scarcely to permit preferential treatment, even when read in connection with the conditional restrictions contained in the previous Article.

Article II provides that "each of the High Contracting Parties reserves to itself to decide, as regards goods and merchandize passing from one or other of the two countries, on such prohibitions or temporary restrictions of import, export, or transit which [*sic*] they may think necessary to inforce for sanitary reasons to prevent the spread of cattle diseases or the destruction of crops, or in the event of war."

The provisions of Article V of the Treaty of 1865 with the Zollverein, of which a copy is inclosed (Paper F), are still more explicit, and Treaties containing similar clauses have been concluded with many other Powers. As, however, that with the Zollverein is a typical example of such Treaties, it is not thought necessary for the purposes of the present reference to trouble you with copies of others.

Article V declares "that no prohibition of importation or exportation shall be established by either of them (the High Contracting Parties) against the other which shall not, at the same time, be applicable to all other nations."

This is not qualified, as is the case in the French Treaty, by any saving clause as to precautions against cattle disease, &c.

Its application would, therefore, appear conclusive against the proposed exception in the Bill in favour of Iceland.

I am to request that you will take the various papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion on the following special points, viz.:—

Whether the exceptional treatment contemplated in the amendments to the Bill is consistent with the Treaty obligations of this country with other foreign Powers—

(*a.*) In the case of British Colonies generally, or of the Colonies specified in particular.

(*b.*) In the case of Iceland.

As well as with any observations of a more general nature which you may be disposed to offer on the subject of this reference.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Bill to Amend the Diseases of Animals Act, 1894, and Amendments.	
(B.)	Diseases of Animals Act, 1894 (57 & 58 Vict., cap. 57).	
(C.)	Law Officers (Confidential No 4783, p. 42)	January 14, 1882.
(D.)	Anglo-Swiss Convention (Treaty No. 401)	September 6, 1855.
(E.)	Anglo-French Convention (Treaty No. 695)	February 28, 1882.
(F.)	Anglo-Zollverein Convention (Treaty No. 487)	May 30, 1865.
(G.)	Mr Elliott	March 24, 1896.
(H.)	Board of Agriculture (with Minutes)	" 31, "

Report.

1. In the case of British Colonies generally, and of the Colonies specified in particular, we are of opinion that the exceptional treatment contemplated in the amendments to the Bill which relate to these Colonies *is* consistent with the Treaty obligations of this country to foreign Powers.

Article VIII of the Treaty with Switzerland of the 6th September, 1855, appears to us in no way to fetter the power of this country to confer such a privilege upon cattle coming from Canada or any other Colony. Article VIII confers the same privileges on Swiss citizens as may be enjoyed by subjects or citizens of the most favoured nation or by the subjects of Great Britain. Swiss citizens will, if the Colonies be excepted, be exactly in the same position with regard to the importation of cattle into the United Kingdom as subjects or citizens of the most favoured nation, or as British subjects themselves, whether belonging to the United Kingdom or the Colonies. Cattle coming from an excepted Colony, by whomsoever imported, need not be slaughtered. Cattle coming from another country or Colony not excepted, by whomsoever imported, must be slaughtered.

Articles II and III of the Treaty with France of the 28th February, 1882, guaranteed to France the same treatment as may be accorded to other nations. But a British Colony is not, in our opinion, included within the words "most favoured nation" or "other nations," and these Articles have, therefore, no application.

The same observation applies to Articles II and V of the Treaty with the Zollverein of the 30th May, 1865. A British Colony is not a "third country" within the meaning of Article II, nor is it comprised within the term "other nations" in Article V.

Article VII of the same Treaty seems to us also to have no application, as we think that, both in its express terms and in the incorporation of Articles I to VI, as applied to the Colonies, its object was merely to place the Colonies in the same position with reference to the Zollverein as the United Kingdom, and its provisions relate only to traffic between the Colonies and the Zollverein, and cannot, either directly or indirectly, affect traffic between the Colonies and the United Kingdom.

2. In the case of Iceland, we are of opinion that the exceptional treatment contemplated by the amendments to the Bill is *not* consistent with the Treaty obligations of this country to foreign Powers.

Iceland is part of a foreign country, being a dependency of Denmark, and it appears to us clear that privileges extended to any part of a foreign country must, under the most-favoured-nation clauses and in such Treaties as those with France and Germany, be extended also to the countries with which these Treaties have been made.

In strictness, perhaps, it might be said that a provision that cattle shall be

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slaughtered as soon as landed is not a prohibition of their importation. But, in substance, it is, and we think that it must be treated as falling within the terms of Article III of the French Treaty and Article V of the German Treaty. Even if this point were arguable, Article II of the German Treaty, with reference to the treatment of the produce of the States of the Zollverein imported into this country, would render impossible the enforcement, in their case, of a provision for slaughter on landing of cattle which did not apply to cattle from all foreign countries.

The last clause of Article II of the French Treaty appears to us to relate only to prohibitions or restrictions of a more or less temporary nature, and not to such a permanent prohibition as is contemplated by the Bill.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 13, 1896.

No. 15.

[December 28, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, December 10, 1896.

Gentlemen,

Interference of Icelandic authorities with British trawlers.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the printed correspondence, as marked in the accompanying list, which relates to the interference of the Icelandic authorities with British trawlers for contravention of the Icelandic Fisheries Law in waters adjacent to the coast of Iceland.

The text of the Law in question is contained in the despatch from Her Majesty's Consul at Reykjavik of the 27th August, 1894* (marked Paper A).

It will be seen that under section 1 of the Law, fishing by means of trawls is prohibited within the territorial waters of Iceland, and that under section 3 a fishing-vessel found within such waters with a trawl on board, although not engaged in fishing, is liable to a fine of 200 to 2,000 kroner, unless the ship is seeking a harbour in distress.

Heavier penalties are incurred for a repetition of the offence.

This Law received Royal Assent on the 10th November, 1894, and came into effect in the middle of the February following. Public notice thereof was given to British fishermen in the "London Gazette," through the Board of Trade Journal for December 1894, and by handbills distributed through the Board's officers at the ports concerned.

A considerable outcry was raised by the fishing community in this country, and the new enactment aroused a good deal of attention in Parliament and elsewhere, Her Majesty's Government being strongly urged to make representations to the Danish Government with a view to its repeal. Her Majesty's Government felt, however (see Board of Trade letter of the 15th March, 1895, Paper C), that the right of a country to prohibit foreigners from fishing in its waters and to make Regulations for the police of those waters was generally recognized, and that diplomatic representations could only properly be made in the event of penalties for a disregard of such prohibition or Regulations being absolutely of an unreasonable character.

The imposition of penalties for the mere presence of a vessel in territorial waters with a trawl on board was felt, however, to involve other considerations, and Her Majesty's Government were advised (see also Paper C) that on this head the Icelandic Law was not consonant with international comity.

Mr. Scott, Her Majesty's Minister at Copenhagen, was accordingly instructed to make a representation to the Danish Government with reference to the excessive severity of section 3. In reply to this representation, the Danish Government stated that they had no power to alter the provisions of the Law, but they would always be able practically to prevent, either by an act of grace or by abstaining from prosecution, its unjust application. They also stated that they were under the impression that trawling grounds did not exist outside the territorial waters of Iceland, the inference being that vessels would not come with trawls on board except to fish in territorial waters. Complete evidence to the contrary was, however, furnished by Her Majesty's Government (see Board of Trade letters of the 15th May and 17th July, 1895, Papers D and D 2), and Mr. Scott pressed for an alteration of the Law.

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* Although therein referred to as a Bill, it will be seen from Mr. Scott's subsequent despatch (Paper B) that the Bill was ultimately passed in these precise terms, with the addition of the enacting words.

After considerable delay the Danish Government promised to use every effort to induce the Althing (Icelandic House of Representatives) to make such an alteration as would meet the objections raised by Her Majesty's Government.

It was pointed out, however, that any alteration of the Law could only be made by the Althing, which only meets every second year; that that body would not meet again till July 1897, and that, consequently, any amendment, even if enacted, could hardly be put in force until after the close of the trawling season for that year.

Up to the commencement of the recent fishing season section 3 of the Law had practically been suffered to remain in abeyance, but in the course of this summer its provisions were enforced with marked severity in the cases of a large number of British trawlers. Of these only one was fined for fishing within Icelandic waters, while three, the "Caspian," the "Porpoise," and the "Germania," were (as will be seen from the despatch from Her Majesty's Consul at Reykjavik of the 11th July, Paper E) fined 12*l.* each for passing inside the Westmann Isles on the way to their fishing-grounds, and thus crossing the territorial waters; and others, viz., the "St. Lawrence," "Oregon," and "Niagara," were also fined a similar amount for entering the harbour of Reykjavik in order to buy ice and provisions.

(The fines in the last six cases have either been or are about to be remitted as an act of grace by the Danish Government.)

The harsh measures above referred to produced great discontent and irritation among the trawlers, and, in view of this state of affairs, it was thought well to take advantage of the presence of the training squadron in those waters to investigate matters, and to obtain a report on the situation. A copy of Commodore Atkinson's report is inclosed in the letter from the Admiralty of the 23rd July, Paper (F), to which I am to call your attention as throwing valuable light on the whole subject.

Several interviews took place between the Governor of Iceland, the Commodore, and Her Majesty's Consul at Reykjavik. The harshness of the measures adopted was recognized by the Governor, but it was contended that the Icelanders were justified in using all lawful means to keep the trawlers away from their shores, as they were practically driving the native fishermen away from the banks, where the latter had gained their living from time immemorial, and the population of the district around Faxe Bay, who live almost exclusively by fishing, were likely to be reduced to starvation if the present state of affairs continued. The fishing banks in the Faxe Bay, which is the largest and most important fishing district in Iceland, lie for the most part at a distance of more than 3 miles from the coast, and are thus outside territorial limits It being admitted that there was a grievance on both sides, it seemed advisable to come to some compromise in the interests of both parties, and a temporary agreement or *modus vivendi* was arrived at between the Governor of Iceland and the Commodore to the following effect:—

"That, pending further arrangements between the Governments of Great Britain and Denmark, British trawlers may use and enjoy the hospitalities of any port in Iceland from this 10th day of July, 1896, on the west coast, and from the 25th day of July on the east coast, and use the waterways between Westmann Islands and Iceland, and between Reykjanes Point and the Fuglasker Rocks, providing their trawls are stowed, and not ready for fishing.

"In consideration thereof trawlers are not to trawl east of a line drawn from Ilunypa (near to Keflavik) to Thorsmodssker Islet, and are not to interfere with lines or nets set by the Icelanders to the east of this line."

The Board of Trade, to which Department this agreement was submitted with a view of considering how far it was suitable to form the basis of a more formal instrument, observe, in a letter of the 1st October, Paper (G), to which I am to invite your special attention, that:—

"The arrangement in question is to the effect that the Icelandic authorities will recognize the innocent use of their territorial waters and ports by our trawlers, provided that the latter do not attempt to fish in those waters or inside a special line drawn across Faxe Bay.

"An examination of the chart, of which a copy is inclosed, Paper (H), shows that, if our trawlers maintain respect for the above line, they will be relinquishing their right of fishery over an area of between 50 to 100 square miles lying outside the ordinary 3-mile limit, and the question arises whether they are to receive any corresponding benefit in return.

"It should at the outset be remarked that, in offering to recognize on terms the use

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of Icelandic waters and ports by our trawlers, the Governor is regarding as a concession that to which the trawlers are already entitled as a matter of international right; and it is necessary to place the question on a proper footing in this respect as a preliminary to considering the proposed compromise upon its merits. In this connection the Board are advised that:—

Firstly, the sovereignty of a State over its territorial waters is subject to the acknowledged right of merchant-vessels to innocent passage for the purpose of navigation.

Secondly, it is at least deemed to be an unfriendly act to refuse commercial intercourse with another nation, even if it cannot be said to amount to a breach of international law.

"Thirdly, to treat as a criminal offence the peaceful and innocent presence of a foreign vessel in the harbours of any State, when due to accident or stress of adverse circumstances (treating as the only exception a vessel seeking a harbour in distress) is a flagrant breach of the international duty of hospitality towards a friendly State."

In support of their view in regard to the first point, *i.e.*, the right of innocent passage, the Board quote the observations of the late Mr. W. E. Hall in his "Treatise on International Law" (4th Edition, p. 164).

"Section 42. In all cases in which territorial waters are so placed that passage over them is either necessary or convenient for the navigation of open seas, as in that of marginal waters or of an appropriated strait connecting unappropriated waters, they are subject to a right of innocent use by all mankind for the purposes of commercial navigation. . . . . For more than 250 years no European territorial marine waters which could be used as a thoroughfare, or into which vessels could accidentally stray or be driven, have been closed to commercial navigation, and during the present century no such waters have been closed in any part of the civilized world. The right, therefore, must be considered to be established in the most complete manner."

Mr. Hall states, in a note, "that the case of gulfs or other inlets would seem to be upon a different footing, except in so far as they are used for purposes of refuge. Any right to their navigation must be founded on a right of access to the State itself." This right is treated of by the Board under head 2, which has reference to commercial intercourse.

It seems, however, unnecessary to take into account, in the present case, the unsettled state of international law with respect to gulfs, bays, or other inlets, for the Governor of Iceland himself practically admits that the present question is one of concession on the part of foreign Powers, while the Danish Government, at any rate for the last forty years, does not seem to have claimed to include Faxe Bay within the territorial waters of Iceland.

In support of the second point, viz., as to the right to use the ports of a State for the purposes of provisioning, &c., the Board again rely on the opinion of Mr. Hall, who, in treating of the moral obligations or duties of States as between themselves, observes (§ 13, p. 58) that there are but two—both arising out of the duty of sociability—which can at all be said to put in "a serious claim to fall within the boundaries of law." One of these relates to commercial and other intercourse, with respect to which Mr. Hall writes as follows:—

"It is not uncommonly said that nations have a right to maintain intercourse, if it so pleases them, with other nations; that an entire refusal on the part of a State to allow of intercourse, by being a denial of a fundamental obligation, is a renunciation of the advantages of international law, so that a nation becomes an outlaw by isolating itself, and that, in particular, the innocent use of the land and water communications within the territory of a State cannot be withheld from other States, and the privilege of trade in articles of necessity cannot be refused. The doctrine is no doubt limited by the qualification that a State may take what measures of precaution it considers needful to prevent the right of access and intercourse from being used to its injury, and may subject foreigners and foreign trade to regulation in the interest either of its own members or of States which it wishes to favour. In the last resort, however, there would still remain a right, taking priority of the rights of independence and property, and capable of being enforced, if broken by war."

There is, of course, a wide distinction between the "regulation of foreigners and foreign trade," and the entire refusal of commercial intercourse.

With regard to the third point, the Board observe that if the right to commercial intercourse, or the purposes of trade can be placed so high as in any degree to amount to "a serious claim to fall within the boundaries of law," the pretension of the Althing to exclude a trawler from territorial waters when without intention to trade or to trawl would be altogether unwarranted and inadmissible. But it is pointed out that the Althing has gone even beyond this, and has made it a criminal offence for "a vessel to be found within territorial waters having a trawl on board, although not actually engaged in fishing at the time."

The Board consider it clear that a variety of causes short of the necessity of seeking a harbour in actual distress, but wholly consistent with legitimate business and innocent navigation, may compel or lead a trawler with a trawl on board unintentionally to infringe this law. It is, in their opinion, not too much to say that this treatment is a flagrant departure from the usages of civilized nations, and a Law which expressly sanctions it, is really intolerable. A Law of this kind becomes still more serious when it is admittedly directed against the vessels of a single nation, and is both rigidly interpreted and rigidly enforced as it has been this summer.

It might, it is thought, be competent for the Althing to enact, as a matter of "regulation," that when in territorial waters a trawl shall be stowed, but that this would be the extent of its powers.

In these circumstances it would be, in the opinion of the Board, unjust to British trawlers even to take the proposed arrangement into serious consideration without a preliminary recognition by the Danish Government upon all the points in question that the trawlers' claims to redress are a matter of right on their part, and not a matter of favour or concession on the part of the Icelandic authorities, and, further, without an absolute pledge for the abrogation of the portion of the Icelandic Law of November 1894 which embodies the obnoxious enactment above referred to.

In view of these considerations, Lord Salisbury would wish, before going further in the matter, to be favoured with your opinion as to whether it is a matter of international obligation, either as an accepted principle of international law or as a matter of international comity and right conduct as between civilized States:—

1. To permit the innocent passage of merchant-vessels through the territorial waters of the State for the purpose of navigation.

2. To permit commercial intercourse with another State.

3. To permit the presence of trawlers within territorial waters when not fishing or intending to fish or to trade.

His Lordship would also be glad to receive any observations which you may be disposed to offer on the case generally.

Besides the papers to which I have been directed to draw your special attention, a printed collection of papers bearing on the subject is also sent herewith in case you should desire to refer to them.

I am to add, for your information, that the Iceland fishing season being now at an end no British trawlers will, in the natural course, again resort to the coasts of Iceland until next spring, but in the meantime communications will be made with the owners of trawlers engaged in the Iceland fishing with a view either to secure their observance of the terms of Commodore Atkinson's Agreement, or to induce them in some other way to meet, as far as possible, the reasonable complaints of the Iceland fishermen.

I have, &c.
(Signed) GEORGE N. CURZON.

List of Papers.

(A.)	Consul Paterson	(No. 7)	August	27, 1894.
(B.)	Mr. Scott	(No. 31. Commercial)	November	16 „
(C.)	Board of Trade		March	15, 1895.
(D.)	Ditto		May	15, „
(D².)	Ditto		July	17, „
(E.)	Consul Paterson	(No. 6. Commercial)	July	11, 1896.
(F.)	Admiralty		July	23, „
(G.)	Board of Trade		October	1, „

Report.

1. That, it is an accepted principle of international law that the innocent passage of merchant-vessels for the purposes of navigation should be permitted through territorial waters. But this right is subject to any reasonable restrictions which the State may impose with the object of preventing the right of passage being abused for the commission

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of acts forbidden in its territorial waters. In the present case we should be of opinion that it would be quite reasonable for the Icelandic Government to permit the passage of trawlers, only if their trawls were properly stowed. The use of trawls in the territorial waters is illegal by the law of Iceland, and it is only a reasonable precaution against the evasion of this law to require that trawlers passing through territorial waters should have their trawls properly stowed, and not ready to be shot.

2. There is no principle of international law imposing upon any State (apart from Treaty) the duty of permitting commercial intercourse.

It would, however, be a violation of international comity and of right conduct as between civilized States to forbid such intercourse without some adequate reason.

In the present case the Government of Iceland allege that the trawlers by their operations outside the territorial waters, but in the vicinity of Iceland, are making the prosecution of the line fishery by the Icelanders impossible, and destroying the fishery beds, and they decline to allow their ports to be used as a base for such operations.

We do not think that Her Majesty's Government can properly treat this as a breach of international comity or right conduct. We think the reason for the exclusion of trawlers is adequate.

The trawlers are entitled to prosecute their industry outside the territorial waters, although this inflicts injury and may entail ruin on the Iceland fishermen, but, in our opinion, the Icelandic Government is within its rights in refusing the use of Icelandic ports for the prosecution of an industry so detrimental to their subjects.

3. There is no obligation of any kind on the Government of Iceland to permit the presence of trawlers within territorial waters, except for the purpose of innocent passage as above defined.

The arrangement made by the Commodore seems to us to be reasonable, and, so far as we can judge, in the interests of the British trawlers.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 28. 1896.

FRANCE.

No. 15 A. **[Home Office.]**

[January 15, 1896.]

Case for the Law Officers of the Crown.

Extradition of Cornelius Herz.

ON the 14th August, 1876, a Treaty for Extradition was concluded with France, which was ratified at Paris on the 8th April, 1878.* On the 16th May, 1878, the Extradition Acts were applied in the case of France by an Order in Council, which duly recited and embodied this Treaty. Copy of this is annexed.†

Article VII of the Treaty provides that when in this country a person has been apprehended in pursuance of a claim made by the French Government for his surrender, "he shall be brought before the Police Magistrate who issued the warrant, or some other Police Magistrate in London."

Before the present year the evidence in support of any claim for extradition could not be heard elsewhere than at some proper place within the jurisdiction of the Police Court of Bow Street. On this point the Law Officers are referred to an Opinion given by their predecessors on the 23rd October, 1893, which is sent herewith.

Cornelius Herz, whose extradition is claimed by France, was arrested at Bournemouth on a warrant issued by the Chief Magistrate, and his health being such as not to allow of his being brought to London, the law did not permit of his case being heard at all, and he remains in custody at Bournemouth.

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* Treaty No. 619.

† Confidential Paper No. 3623.

To meet this difficulty the Act, of which a copy is annexed, was passed last Session, and gives power to the Secretary of State in certain circumstances to issue his order for the hearing of a case under the Extradition Acts elsewhere than at Bow Street.

In the course of drafting the Bill, a difficulty arose in consequence of the fact that the French and certain other Treaties appear to provide for the hearing of the application for extradition in London only. Power could not, therefore, be given to the Secretary of State simply to order the hearing to take place elsewhere without a violation of the rights of foreign nations under such Treaties. To effect this object the words in section 1, "if it appears to him" (the Secretary of State) "consistent with the Order in Council under 'The Extradition Act, 1870,' applicable to the case" were inserted. The intention was that, in the first place, a modification of the Treaty should be agreed on between the Powers, and then that an Order in Council under section 2 of the Act of 1870 should be issued applying this new Convention.

The French Government have been approached for the purpose of arranging a modification of the existing Treaty, but though they have agreed to such an arrangement being made, and have, moreover, expressed their desire that advantage may be taken of the Act of last Session to deal as speedily as possible with the case of Cornelius Herz, no formal arrangement has yet been concluded. No fresh Order in Council can therefore be made, and the question arises whether to hear the case in question at Bournemouth would be consistent with the Order in Council of the 16th May, 1878.

The procedure contemplated in Article VII of the Treaty was undoubtedly that in every case the hearing should be at Bow Street and nowhere else, but it has been contended that the words used do not clearly preclude another course being adopted, and that it would not be inconsistent with them for the accused party to be brought before the Police Magistrate who issued the warrant of arrest at some place elsewhere than in London. The question is whether the words "in London" in Article VII, clause (*a*), paragraph 3, apply only to the words, "some other Police Magistrate" immediately preceding, or to the whole of the sentence. If they apply only to the words immediately preceding—that is, whether they specify the place to which the fugitive is to be brought or are merely descriptive of the Magistrate before whom he is to be brought—the examination can be conducted at Bournemouth by the Police Magistrate who issued the warrant. It is urged that the French text of the Treaty supports this view, but it is submitted that the French text cannot be used to interpret the law binding on English Courts.

It is, however, to be observed that there is no ambiguity in the French words, while the English words are ambiguous, and as the Treaty must if possible be read as having the same meaning in both the French and English versions, the unambiguous words of the French Treaty ought to be adopted.

The Law Officers are asked to advise whether, in view of the terms of Article VII of the Treaty and the procedure which was undoubtedly contemplated when those terms were made, it would or would not be consistent with the Order in Council embodying the Treaty of 1876 for the Secretary of State to issue directions for the hearing of Herz' case by the Chief Magistrate at Bournemouth.

Opinion.

We are of opinion that it would not be consistent with the Order in Council to issue directions for the hearing of Herz' case at Bournemouth.

The Order in Council applies in the case of this Treaty the Acts 33 & 34 Vict., and 36 & 37 Vict. We entirely agree with the Opinion given by the Law Officers in 1893, that, under these Acts, the hearing must take place in London.

The proposed Order would be inconsistent with the Order in Council which applied to the Treaty the procedure of these Acts.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 15, 1896.

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No. 16.

[February 7, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 22, 1896.

Gentlemen,

Pillage by French troops of deserted houses of British Indians in Madagascar.

I HAVE the honour to transmit to you herewith, by direction of the Marquess of Salisbury, the papers noted in the accompanying list which relate to the claims of certain British Indian subjects in Madagascar arising out of the pillage of their stores at Mevatanana in June last by troops forming part of the late French punitive expedition.

The British Vice-Consul at Mojanga, in his despatch of the 20th November, 1895 (Paper A), reports that on the taking of Mevatanana on the 10th June by the advance guard of the French expedition, several stores belonging to British Indian subjects, which had been left without any one in charge of them, were either pillaged or their contents taken by order of the French Commander for the use of his troops.

Mr. Knott forwards copies of a correspondence which took place between himself and the French military authorities with regard to a claim made by a British Indian in respect of goods taken from his stores in these circumstances, from which it will be seen that the French Commander-in-chief has declined to admit, or even to discuss, claims of this character, on the ground that, by the laws of war, the victor is entitled to consider any uninhabited house as being without an owner, or as belonging to the enemy, and to dispose of it according to his requirements.

On receipt of Mr. Knott's despatch, the chief recognized authorities on international law were examined, but no allusion could be found to any rule of war with regard to the special treatment of deserted houses, and Lord Salisbury thereupon asked to be favoured with the opinion of the Secretary of State for War with reference to the principle put forward by General Duchesne.

The reply received from that Department is inclosed (Paper B), in which it is stated that, in the opinion of the military advisers of the Secretary of State, property in an unoccupied house might fairly be considered as belonging to the enemy, and as such liable to seizure. At the same time it is stated that although the "Official Manual of Military Law" contains certain paragraphs (which are mentioned) bearing generally on the question, there is nothing in that Manual which exactly meets the case in point.

In a later despatch, dated the 13th ultimo (Paper C), Mr. Knott states that the French Commander-in-chief declines to take any cognizance of claims of the nature above referred to.

In these circumstances, I am to request that you will be good enough to take the matter into your consideration, and to favour Lord Salisbury with your opinion on the contention of the French military authorities with regard to property found by a belligerent in uninhabited houses, and whether, in the event of your seeing reason to dissent—either wholly or in part—from the principle laid down by General Duchesne, you consider that the claim now more particularly in question can properly be supported diplomatically by Her Majesty's Government, and, if so, to what extent, and on what grounds.

I am, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) Mr. Knott	(No. 20)	November	11, 1895.
(B.) War Office		January	10, 1896.
(C.) Mr. Knott	(No. 25)	December	13, 1895.
(D.) Minutes.			

Report.

Property belonging to a neutral in an enemy's country stands in strictness on the same footing with property belonging to the enemy. The question in each case is whether the property has been dealt with in accordance with the laws and usages of war.

A neutral, however, whose property has been dealt with otherwise than in accordance with the laws and usages of war, may, through the medium of his own Government, be able to obtain redress which might be denied under like circumstances to a member of the State against which the war is being waged.

The limits within which private property on land may be seized and appropriated in the case of military operations are not very clearly defined by international law.

The principle put forward by General Duchesne that if the owner has relinquished possession it may be dealt with at pleasure, appears to us to be absolutely unsustainable. The owner, whether neutral or enemy, by seeking safety in flight, cannot be considered as abandoning his property to the invading army.

The right to levy contributions for the support of the invading force is generally recognized, but such contributions ought, as far as possible, to fall equally upon all the inhabitants of the place or district where they are levied.

The right of seizing food or forage, or other articles immediately wanted for the supply of the invading army, is one that is commonly exercised, and cannot, we think, be regarded as contrary to international law. The practice of paying for any articles taken seems to be peculiar to England.

It does not appear very clearly whether the Hindoo's property was taken for the immediate supplies of the French army, or was pillaged.

We think that the French authorities should be informed that the principle contended for by them with regard to property in uninhabited houses cannot be admitted by Her Majesty's Government. A claim may fairly be put forward for compensation, if on investigation, to be conducted by or with the concurrence of the French authorities, it should appear that this property has really been pillaged by the French troops or made away with as alleged. But if it should appear upon such investigation that the property was taken by the authority of the Commanding officer for the supply of the troops, we do not think that compensation could be insisted on, as a matter of international right, as the practice of English Commanders in these matters has not been generally adopted as binding upon belligerents.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 7, 1896.

No. 17.

[February 20, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 18, 1896.

Gentlemen,

Extradition Treaty with France. Draft Order in Council, applying.

WITH reference to your Report of the 30th September last (Paper A), I have the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying draft of an Order in Council (Paper B), applying the Extradition Acts, 1870 and 1873, in the case of a Convention between Great Britain and France, signed at Paris on the 13th instant (Paper C).

This Convention amends Articles VII and IX of the Extradition Treaty between the two countries of the 14th August, 1876 (Paper D), to which the Extradition Acts, 1870 and 1873, were applied by an Order in Council dated the 16th May, 1878, (Paper E).

The terms of the draft Order in Council are concurred in by the Secretary of State for the Home Department; but it has been suggested that it might perhaps be desirable to recite in the preamble the Extradition Act, 1895 (Paper F), and to apply the Extradition Acts 1870 to 1895 in the case of the Convention of the 13th February, 1896.

Lord Salisbury has, moreover, some doubt whether, in view of the fact that the Convention only modifies the existing Treaty, in so far as the Treaty stipulates that cases shall be heard at Bow Street, it is necessary to make any reference in the draft Order to the Canadian Act of 1886, and to the Order in Council of the 17th November, 1888, suspending the operation in Canada of the Extradition Acts 1870 and 1873.

I am to request that you will take the inclosed papers into your consideration, and that you will favour his Lordship with your opinion whether the draft Order in

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Council (Paper B) may, in its present form, properly be laid before the Queen in Council for Her Majesty's approval, or whether you are of opinion that modifications (and, if so, what modifications) may advantageously be made in its present wording for the purpose of meeting the suggestions indicated above, or otherwise.

I am, in requesting that you will be so good as to indicate on the draft such alterations (if any) as you may consider desirable, to add that his Lordship would alos be glad to be furnished with any general observations which you may wish to offer after perusal of the accompanying papers.

As it is expected that the ratifications of the Convention of the 13th February, 1896, will be exchanged almost at once, Lord Salisbury is anxious that the draft Order should be ready to be laid before the Queen at the Council which it is intended to hold on Saturday next, the 22nd instant.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Law Officers' Report (Confidential No. 6796, p. 40)	September 30, 1895.
(B.)	Draft Order in Council.	
(C.)	Extradition Convention between Great Britain and France (Treaty No. 981)	February 13, 1896.
(D.)	Extradition Treaty between Great Britain and France (Treaty No. 619)	August 14, 1876.
(E.)	Order in Council (Confidential No. 3623)	May 16, 1878.
(F.)	Extradition Act, 1895 (58 & 59 Vict., cap. 33).	

Report.

We are of opinion that the draft Order in Council (Paper B), as modified by us, may properly be laid before the Queen in Council for Her Majesty's approval.

We have made the modifications which we consider desirable upon the draft in red ink initialled by us.

We think it is unnecessary to recite the Canadian Act and Order relating thereto, but the proviso as to Canada is, we think, necessary to prevent it being supposed that the application of the Extradition Acts to the Treaty, as modified by the Convention, extends to Canada.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 20, 1896.

Annex.

WHEREAS by the Extradition Acts, 1870 to 1895, it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient; ~~and that if, by any law made after the passing of the Act of 1870 by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying the said Acts in the case of any foreign State, or by any subsequent Order, suspend the operation within any such British possession of the said Acts or of any part thereof, so far as it relates to such foreign State, and so long as such Law continues in force there and no longer~~:

~~And whereas by an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," provision is made for carrying into effect within the Dominion the surrender of fugitive criminals~~:

~~And whereas by an Order of Her Majesty the Queen in Council, dated the 17th day of November, 1888, it was directed that the operation of the Extradition Acts, 1870 and 1873, should be suspended within the Dominion of Canada so long as the provision of the said Act of the Parliament of Canada of 1886 should continue in force and no longer~~:

And whereas a Convention was concluded on the 13th day of February, 1896, between Her Majesty and the President of the French Republic amending Articles VII and IX of the Extradition Treaty of the 14th August, 1876, for the mutual extradition of fugitive criminals which *Convention* is in the terms following:—

[*Here follows the Convention of the* 13*th February*, 1896.]

And whereas the ratifications of the said Convention were exchanged at Paris on the * day of , 1896.

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the † day of , 1896, the said Acts shall apply in the case of France, and of the said Convention with the President of the French Republic *and of the said Extradition Treaty as modified by the said Convention.*

~~Provided always, and it is hereby further ordered, that the operation of the said Extradition Acts, 1870 and 1873, shall be suspended within the Dominion of Canada so far as relates to France and to the said Convention and so long as the provisions of the Canadian Act aforesaid of 1886 continue in force, and no longer.~~

Provided always that the operation of the said Acts shall be and remain suspended within the Dominion of Canada so long as an Act of the Parliament of Canada passed in 1886 *and entitled* "*An Act respecting the Extradition of Fugitive Criminals*" *shall continue in force there, and no longer.*

R. E. W.
R. B. F.

No. 18.

[May 6, 1896.]

Foreign Office to the Law Officers of the Crown.

Effect of Diseases of Animals Bill on Anglo-French Commercial Treaty of 1882.

Gentlemen,
Foreign Office, May 2, 1896.

WITH reference to your Report of the 13th ultimo, on the subject of the Bill now before Parliament for the purpose of amending the Diseases of Animals Act, 1894, I have the honour, by direction of the Marquess of Salisbury, to transmit herewith a Memorandum, communicated to his Lordship by the French Ambassador at this Court, taking exception to the terms of the Bill on the ground that they conflict with the provisions of Article II of the Commercial Convention between this country and France of the 28th February, 1882.

I am at the same time to submit a draft of the reply, which Lord Salisbury would propose to return to Baron de Courcel, and to request that you will be so good as to take it into your consideration and inform his Lordship whether its terms meet with your concurrence, or whether on the other hand its language may, in your opinion, with advantage be modified or amended, and if so in what respects.

A copy of the Anglo-French Convention of 1882 is also annexed for convenience of reference.

I am, &c.
(Signed) GEORGE N. CURZON.

List of Papers.

Baron de Courcel	March 22, 1896.
Draft to M. Geoffray.	
Anglo-French Convention (Treaty No. 695).	February 28, 1882.

Report.

We approve of the draft reply.

We think it right to point out that the clause at the end of Article II is a qualification of the right to treatment of the most-favoured nation. Differential treatment may be justified under that clause if it falls within its scope.

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* This date will be filled in later.

† Date to be inserted by Council Office, and to be a date ten days after publication in "London Gazette."

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If all foreign nations are treated alike it has no application, and as in the present case it is proposed to extend the same treatment to all foreign nations, we think that the clause cannot be relied on by the French Government as affording them any ground of complaint.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 6, 1896.

Annex.

Draft of Letter to M. Geoffray.

Foreign Office, May , 1896.

Sir,

I REFERRED to the Board of Agriculture the Memorandum communicated to me on the 22nd March last by Baron de Courcel, in which exception was taken by your Government to the terms of the Bill to amend "The Diseases of Animals Act, 1894," as conflicting with the provisions of Article II of the Commercial Convention between this country and France of the 28th February, 1882.

The last paragraph of Article II of that Convention is as follows:—

"It is understood that each of the two High Contracting Parties reserves to itself to decide as regards goods and merchandize passing from one or other of the two countries, on such prohibitions or temporary restrictions of import, export, or transit, which they may think necessary to enforce, for sanitary reasons, to prevent the spread of cattle diseases or the destruction of crops, or in view of events of war."

Article III stipulates that "the High Contracting Parties engage not to enforce one against the other any prohibition of importation or exportation which shall not at the same time be applicable to all other nations."

I have the honour to observe that the impression that the Bill would be inconsistent with these provisions appears to be due to a misconception of its practical scope and object.

It is simply proposed to enact, as a sanitary precaution, that all cattle landed shall be slaughtered within a specified time after importation, internal sanitary measures of such a character being clearly within the exclusive competence of Her Majesty's Government.

In such circumstances no discrepancy could arise between the international obligations of Her Majesty under the Convention and the provisions of English municipal law, unless in the case of the application of differential treatment in favour of any particular country. No such treatment is, however, contemplated in the Bill.

For this reason Her Majesty's Government are of opinion, after careful consideration, that the present Bill in no way infringes the Convention; but I have further to observe, with reference to the point raised by the French Government, that if it were proposed by legislation to prohibit, for sanitary purposes the importation of live cattle, the principle of such prohibition, if not differential, is expressly admitted by the terms of the IIIrd Article of the Convention as above quoted.

I am, &c.

No. 18 A. [Board of Trade.]

[May 18, 1896.]

Opinion of the Law Officers of the Crown and Mr. H. Sutton.

"The Mail-ships Act, 1891." Interpretation of "real security" in § 3.

WE are of opinion that the words "real security," in section 3, sub-section 2 (*a*), of "The Mail-ships Act, 1891," must be read as meaning security upon land.

For this purpose only the words of the Act can be looked at, and the words "real security" have, in English law, a well-defined technical meaning, and denote security on land. It follows that the words cannot, in our opinion, be read as meaning that the security is to be real in the sense of substantial.

We do not think that Article III of the Convention can be read as stipulating that a mere personal security should be accepted. The English as well as the French version must be looked at, and even assuming that the French word "caution" denotes personal suretyship only, the English version provides that the bond must be guaranteed by security within the jurisdiction of the Tribunals of the country in which the bond may have been entered into, thus leaving it open to Great Britain to determine whether the security should be merely personal or should be upon property of some kind.

The French Government have, however, in our opinion, legitimate ground of complaint, on account of the hard and fast line laid down by "The Mail-ships Act, 1891," that the security must be real security. We therefore recommend that the words complained of in section 3, sub-section 2 (*a*), of the Act should be got rid of. For this purpose we are of opinion that legislation is necessary.

Power is indeed given by the Act to apply it with "exceptions" or "modifications," but we think that a fresh Order in Council applying the Act with the exception of the words in question would violate the express enactment of the Legislature.

The power to make exceptions would apply to the manner of application, or the subject to which the Act was to be applied, but would not extend to altering its provisions by leaving out some words from a section.

With respect to the amendment of the sub-section, the following amendment would, in our opinion, give proper effect to Article V of the Convention:—

"The security shall be the bond of the owner guaranteed either:

"(*a*.) By the personal security of one or more responsible sureties within the jurisdiction of the High Court; or

"(*b*.) By the payment or transfer into Court of cash or consols, as the case may be."

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.
HENRY SUTTON.

Royal Courts of Justice,
May 18, 1896.

No. 19.

[June 23, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 6, 1896.

Gentlemen,

Effect of Madagascar becoming a French Colony on Treaties with foreign Powers.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to the position of affairs created by the new relations between France and Madagascar.

It will be seen from the text of the Ministerial statement made by the French Minister for Foreign Affairs in the Chamber of Deputies on the 30th ultimo (Paper B), that the French Government has submitted the draft of a law declaring the island of Madagascar and the islands dependent upon it to be a French Colony. One reason for this step is stated to be the wish to settle the question of the claims of foreign Powers arising out of Treaties with the Queen of Madagascar, and it is assumed by the French Government that these Treaties will cease to be operative on the passage by the Chambers of the proposed law.

L.O.R. 1885 (Conf. 5246), p. 22.

There is no doubt that there are many circumstances in which annexation may take place which would justify the French assumption. The Report by the Law Officers of the Crown of the 18th December, 1885 (Paper C), on the occasion of the conquest of Burmah by Great Britain, ran as follows:—

"The conquest of the King of Burmah, and the military occupation of his territory have given the Crown the right to extinguish the independent existence of the State of Upper Burmah. If the Crown thinks fit to exercise this right, all Treaties which the King of Burmah or his predecessors may have made with foreign Powers will thereupon cease to exist."

When Germany, in 1890, acquired the territories of the Sultan of Zanzibar, on the East Africa mainland, which now form part of the German possessions, it was claimed by the German Government that the annexation had extinguished the Sultan's Treaties, and the claim has not been disputed.

But there are circumstances connected with the French position in Madagascar which render it of an exceptional character.

On the 27th December, 1885, the French Government authorized its Representative in London to give to Her Majesty's Government the following explicit assurance regarding the Treaty between France and Madagascar of the 17th of that month:—

"Le Traité ne change rien aux Traités actuellement existants entre le Gouvernement Hova et les autres États. Au surplus, il n'est jamais entré dans notre pensée de

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If all foreign nations are treated alike it has no application, and as in the present case it is proposed to extend the same treatment to all foreign nations, we think that the clause cannot be relied on by the French Government as affording them any ground of complaint.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 6, 1896.

Annex.

Draft of Letter to M. Geoffray.

Foreign Office, May , 1896.

Sir,

I REFERRED to the Board of Agriculture the Memorandum communicated to me on the 22nd March last by Baron de Courcel, in which exception was taken by your Government to the terms of the Bill to amend "The Diseases of Animals Act, 1894," as conflicting with the provisions of Article II of the Commercial Convention between this country and France of the 28th February, 1882.

The last paragraph of Article II of that Convention is as follows:—

"It is understood that each of the two High Contracting Parties reserves to itself to decide as regards goods and merchandize passing from one or other of the two countries, on such prohibitions or temporary restrictions of import, export, or transit, which they may think necessary to enforce, for sanitary reasons, to prevent the spread of cattle diseases or the destruction of crops, or in view of events of war."

Article III stipulates that "the High Contracting Parties engage not to enforce one against the other any prohibition of importation or exportation which shall not at the same time be applicable to all other nations."

I have the honour to observe that the impression that the Bill would be inconsistent with these provisions appears to be due to a misconception of its practical scope and object.

It is simply proposed to enact, as a sanitary precaution, that all cattle landed shall be slaughtered within a specified time after importation, internal sanitary measures of such a character being clearly within the exclusive competence of Her Majesty's Government.

In such circumstances no discrepancy could arise between the international obligations of Her Majesty under the Convention and the provisions of English municipal law, unless in the case of the application of differential treatment in favour of any particular country. No such treatment is, however, contemplated in the Bill.

For this reason Her Majesty's Government are of opinion, after careful consideration, that the present Bill in no way infringes the Convention; but I have further to observe, with reference to the point raised by the French Government, that if it were proposed by legislation to prohibit, for sanitary purposes the importation of live cattle, the principle of such prohibition, if not differential, is expressly admitted by the terms of the IIIrd Article of the Convention as above quoted.

I am, &c.

No. 18 A. [Board of Trade.]

[May 18, 1896.]

Opinion of the Law Officers of the Crown and Mr. H. Sutton.

"The Mail-ships Act, 1891." Interpretation of "real security" in § 3.

WE are of opinion that the words "real security," in section 3, sub-section 2 (*a*), of "The Mail-ships ~~Act, 1891~~," must be read as meaning security upon land.

For this purpose only the words of the Act can be looked at, and the words "real security" have, in English law, a well-defined technical meaning, and denote security on land. It follows that the words cannot, in our opinion, be read as meaning that the security is to be real in the sense of substantial.

We do not think that Article III of the Convention can be read as stipulating that a mere personal security should be accepted. The English as well as the French version must be looked at, and even assuming that the French word "caution" denotes personal suretyship only, the English version provides that the bond must be guaranteed by security within the jurisdiction of the Tribunals of the country in which the bond may have been entered into, thus leaving it open to Great Britain to determine whether the security should be merely personal or should be upon property of some kind.

The French Government have, however, in our opinion, legitimate ground of complaint, on account of the hard and fast line laid down by "The Mail-ships Act, 1891," that the security must be real security. We therefore recommend that the words complained of in section 3, sub-section 2 (*a*), of the Act should be got rid of. For this purpose we are of opinion that legislation is necessary.

Power is indeed given by the Act to apply it with "exceptions" or "modifications," but we think that a fresh Order in Council applying the Act with the exception of the words in question would violate the express enactment of the Legislature.

The power to make exceptions would apply to the manner of application, or the subject to which the Act was to be applied, but would not extend to altering its provisions by leaving out some words from a section.

With respect to the amendment of the sub-section, the following amendment would, in our opinion, give proper effect to Article V of the Convention:—

"The security shall be the bond of the owner guaranteed either:

"(*a.*) By the personal security of one or more responsible sureties within the jurisdiction of the High Court; or

"(*b.*) By the payment or transfer into Court of cash or consols, as the case may be."

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.
HENRY SUTTON.

Royal Courts of Justice,
May 18, 1896.

No. 19.

[June 23, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 6, 1896.

Gentlemen,

Effect of Madagascar becoming a French Colony on Treaties with foreign Powers.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to the position of affairs created by the new relations between France and Madagascar.

It will be seen from the text of the Ministerial statement made by the French Minister for Foreign Affairs in the Chamber of Deputies on the 30th ultimo (Paper B), that the French Government has submitted the draft of a law declaring the island of Madagascar and the islands dependent upon it to be a French Colony. One reason for this step is stated to be the wish to settle the question of the claims of foreign Powers arising out of Treaties with the Queen of Madagascar, and it is assumed by the French Government that these Treaties will cease to be operative on the passage by the Chambers of the proposed law.

L.O.R. 1885 (Conf. 5246), p. 22.

There is no doubt that there are many circumstances in which annexation may take place which would justify the French assumption. The Report by the Law Officers of the Crown of the 18th December, 1885 (Paper C), on the occasion of the conquest of Burmah by Great Britain, ran as follows:—

"The conquest of the King of Burmah, and the military occupation of his territory have given the Crown the right to extinguish the independent existence of the State of Upper Burmah. If the Crown thinks fit to exercise this right, all Treaties which the King of Burmah or his predecessors may have made with foreign Powers will thereupon cease to exist."

When Germany, in 1890, acquired the territories of the Sultan of Zanzibar, on the East Africa mainland, which now form part of the German possessions, it was claimed by the German Government that the annexation had extinguished the Sultan's Treaties, and the claim has not been disputed.

But there are circumstances connected with the French position in Madagascar which render it of an exceptional character.

On the 27th December, 1885, the French Government authorized its Representative in London to give to Her Majesty's Government the following explicit assurance regarding the Treaty between France and Madagascar of the 17th of that month:—

"Le Traité ne change rien aux Traités actuellement existants entre le Gouvernement Hova et les autres États. Au surplus, il n'est jamais entré dans notre pensée de

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mettre obstacle par ces arrangements au libre développement des intérêts privés qui pourraient se fonder à Madagascar, de quelque nationalité qu'ils relèvent."

This explicit assurance was further confirmed by the Declarations exchanged between the British and French Governments on the 5th August, 1890 (Paper B), in which the former agreed to recognize the Protectorate of France over Madagascar with its consequences, and the latter engaged that the establishment of the Protectorate should not affect any rights or immunities enjoyed by British subjects in the island. When the expedition to Madagascar was authorized by the French Chamber, the most explicit assurances were given that the object of the expedition was to establish and secure the French Protectorate, an assurance which, under the circumstances, implied that the object of the expedition was not inconsistent with British Conventional rights. It is submitted that there is a broad difference between the invalidation by conquest of the promises made by the conquered party, and the invalidation by conquest of the confirmatory promises given by the conqueror. The case is of exceptional importance, because the case of Tunis stands behind it.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour the Marquess of Salisbury with your opinion as to whether the engagements entered into by France in these documents are such as to entitle Her Majesty's Government to claim that the rights confirmed to this country under them have not been annulled, and still exist, notwithstanding the annexation of the island by France, and generally with any observations which you may have to offer on the position of this country in view of that annexation.

I have, &c.
(Signed) H. PERCY ANDERSON.

List of Papers.

(A.)	Revise of Proposed Parliamentary Paper.		
(B.)	Inclosure in Marquess of Dufferin ..	(No. 91. Africa.)	
(C.)	Law Officers' Report (Confidential No. 5246, p. 22)		December 18, 1885.
(D.)	Agreement of 5th August, 1890 (Treaty No. 856.)		
(E.)	Inclosure in Marquess of Dufferin..	(No. 300. Africa.)	
(F.)	To Marquess of Dufferin.. ..	(No. 124. Africa.)	

Report.

There is no doubt as to the existence of the general rule that Treaties made by a State are determined on its conquest by another Power, and are not binding upon the conqueror. The application of this rule, however, assumes that the conquering State is itself under no engagements to the Powers with whom the conquered State had made these Treaties.

In the present case, we think that a remonstrance may properly be addressed to the French Government against the proposal to put an end to the Treaty-rights of Great Britain. This remonstrance may be rested on the following considerations:—

The Declarations exchanged on the 5th August, 1890, show that the establishment of a French Protectorate in Madagascar was not to affect any rights or immunities enjoyed by British subjects in that island. When the French expedition into Madagascar was about to be undertaken, the French Foreign Minister stated, in the most explicit terms in the French Chamber, that the expedition was to establish the Protectorate. He cited the Declarations exchanged with England, and, stating that there was a complete parallelism between the cases of Zanzibar and Madagascar, he affirmed that France was quite at liberty to dispatch the forces necessary to insure the exercise of the Protectorate, and that the prudence and loyalty of the foreign Powers were a sure guarantee that they would not intervene. These Declarations were obviously made not to the French Chamber only, but through it to the foreign Powers concerned, and involved the assurance that the expedition to Madagascar would not prejudice the Treaty-rights of Great Britain in that country.

The Law Officers are not quite agreed as to the extent and nature of the liability of France to Great Britain with regard to these Treaties.

The Attorney-General thinks that if this case is to be decided with reference to principles of international law already established, it will be exceedingly difficult for Her Majesty's Government to maintain successfully that the French Government are under any binding engagement which prevents them from passing the proposed law, or from disregarding the rights of Great Britain founded upon pre-existing Treaties with Madagascar. He thinks that no contract or engagement exists that France will not annex Madagascar, and if Madagascar becomes part of French dominions, that there is no engagement to prevent France from legislating for that part of her dominions independently of the rights which were conferred on Great Britain and other countries by the pre-existing Treaties. But, at the same time, the case appears to him to be somewhat novel, and not to be precisely governed by the same considerations which apply in ordinary cases of conquest or annexation such as are referred to in Sir H. P. Anderson's letter of the 6th June, and under the circumstances he thinks that a remonstrance ought to be presented upon the grounds above indicated.

The Solicitor-General thinks that France is under engagements to this country which render it inconsistent with good faith that she should, by converting her Protectorate into dominion, determine the Treaty-rights of Her Majesty's Government in Madagascar. The French Foreign Minister stated that the expedition was merely to establish the Protectorate, the continuance of which involved the maintenance of existing Treaties with the Hova Government. The "Exposé des Motifs" prefixed to the "Projet de Loi" set out in "Le Temps" of the 31st May, 1896, indicates very clearly that it is intended by annexation to get rid of these Treaties altogether. In other words, the success of an expedition which was accompanied with assurances that it would not prejudice these Treaties is to be utilized to annul them. The Solicitor-General thinks that there has been no change of circumstances to justify a fresh departure of this nature, and that Her Majesty's Government is entitled to require that our Treaties with Madagascar shall be respected.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 23, 1896.

No. 19 A. [Home Office.]

[November 25, 1896.]

Home Office to Treasury.

Whitehall, November 19, 1896.

Trial of Émile Arton for offences other than those for which he was extradited.

Sir,

I AM directed by Secretary Sir Matthew Ridley to forward herewith a letter he has received from the Foreign Office, with inclosures, relative to the proposed trial of Émile Arton for offences other than those for which he was surrendered to France by Her Majesty's Government; and I am to request that you will be good enough to submit the same to the Law Officers of the Crown, and obtain their opinion with the least possible delay on the questions—

1. Whether M. Arton's letter of the 3rd instant to the Procureur-Général at Paris can be held to relieve the French Government of the obligation under which they are placed by Article IV of their Extradition Treaty with this country of the 14th August, 1876?

2. Whether the proceedings against M. Arton, alluded to in M. Geoffray's note to Lord Salisbury of the 10th instant would constitute a breach of that Treaty?

3. What reply should, in their opinion, be returned to M. Geoffray's communication of the 16th November?

I am, &c.
(Signed) KENELM E. DIGBY.

Inclosure.

Foreign Office to Home Office.

Foreign Office, November 16, 1896.

Sir,

WITH reference to your letter of the 12th February last, enumerating the charges in respect of which Émile Arton was surrendered to France, I am directed by the Marquess of Salisbury to transmit herewith a copy of a note, and of its inclosure, from the French Minister at this Court, from which it

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appears that it is the intention of the French judicial authorities to place Arton on his trial on all the counts of the accusation brought against him, and that the Minister of Justice holds that he must be tried again on the charges which led to his conviction, *par contumace*, in 1893.

This course of procedure seems to Lord Salisbury to be in contravention of the terms of Article IV of the Extradition Treaty between Great Britain and France of the 14th August, 1876, which provides that a "person surrendered shall not be tried for any crime or offence committed in the other country before the extradition other than the crime for which his surrender has been granted."

The French Government state that the voluntary renunciation by Arton of the right conferred on him by the Treaty cancels the limitations imposed by its provisions. They accordingly confine themselves to simply informing Her Majesty's Government of the course they intend to adopt, and abstain from asking for the concurrence of this country, a course which even Arton himself, from the terms of his letter, clearly considers necessary.

It appears to be open to very grave doubt whether it is within Arton's competence to renounce a stipulation in the Treaty (whether such stipulation operates in his favour or against him) so as to relieve one of the High Contracting Parties to that Treaty of its international obligation to the other Contracting Party, which, in the present case, is the obligation not to try Arton for any crime or offence other than that for which his surrender has been granted.

The Law Officers of the Crown, in advising on another subject in 1865, expressed the following opinion in a Report, of which a copy is inclosed:—

"Treaty engagements, it must be remembered, are with the Government of Great Britain, not with its individual subjects. Consequently it is not competent for individual British subjects to renounce the benefit of those engagements."

Similar opinions were expressed by the Law Officers of the Crown in 1867 and in 1872 in Reports, copies of which are also inclosed.

I am to request that you will move Secretary Sir Matthew Ridley to take M. Geoffray's note, and the observations contained in this letter, into his early consideration. As the matter is one that involves an important question of principle, he may not improbably think proper to refer it to the Law Officers of the Crown, with the view of ascertaining what reply should, in their opinion, be returned to M. Geoffray's communication, which, for the present, has been simply acknowledged.

I am, &c.
(Signed) T. H. SANDERSON.

List of Papers.

M. Geoffray	November 10, 1896.
Law Officers	February 14, 1865.
Ditto	1867.
Ditto	1872.

Report.

We are of opinion that as a matter of principle an individual cannot waive the stipulations of a Treaty. The obligation under the Treaty is on the part of the French Republic to Her Majesty's Government, and it is for Her Majesty's Government to decide whether in view of Arton's wishes they will consent to his trial upon other charges.

The French Government are not entitled to proceed with such trial merely upon Arton's consent. They ought also to apply for the consent of Her Majesty's Government. If such an application should be made in this case, we think Her Majesty's Government might consent to Arton being tried for the alleged offences on the ground that Arton himself desires to be tried. Sub-section (2) of section 3 of the Act of 1870 shows that such trials were contemplated under some circumstances, but Article IV of the Treaty of 1876 prohibits any such trial taking place.

We see no reason, however, why Her Majesty's Government should not in this case consent to Arton being tried, as he raises no objection, if they see none, but we think it very important that it should be made clear that the case is not to be used as a precedent for the trial of extradited prisoners upon charges other than those on which they were extradited, and in that view it is essential that consent should only be given upon application by the French Government.

We therefore suggest that the French Government should be informed that the trial cannot properly, having regard to the Treaty, take place without the consent of Her Majesty's Government, but that if such consent is desired formal application should be made by the French Government.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Law Officers Department,
November 25, 1896.

GENERAL.

No. 20.

[February 24, 1896.]

Foreign Office to the Law Officers of the Crown.

Consular Service Order in Council, 1896.

Foreign Office, February 13, 1896.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying draft of an Order in Council, which has been prepared by Mr. Albert Gray (see Paper B), for the purpose of making regulations for Her Majesty's Consular Service similar to those which have been applied to the Civil Service by the Order in Council of the 15th August, 1890 (Paper A).

Lord Salisbury has substituted the passages printed in italics for those erased in the inclosed draft Order, and the terms of the draft, as thus amended, are concurred in by the Lords Commissioners of Her Majesty's Treasury (see Paper C).

I am to request that you will take the inclosed draft Order in Council (Paper D) into your consideration, and that you will favour Lord Salisbury with your opinion whether it may, in its amended form, properly be laid before the Queen in Council for Her Majesty's approval. His Lordship would also be glad to be furnished with any general observations which you may wish to offer after perusal of the inclosed papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Order in Council (Confidential No. 5990*)	August 15, 1890.
(B.) Mr. Gray	March [?], 1895.
(C.) Treasury	February 6, 1896.
(D.) Draft Order in Council.	

Report.

In our opinion, the draft Order in Council (Paper D) may, in its amended form, properly be laid before the Queen in Council for Her Majesty's approval.

No other observations occur to us upon the inclosed papers.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 24, 1896.

Annex.

Draft Order in Council regulating the Consular Service.

WHEREAS, by an Order in Council made on the 15th August, 1890, Her Majesty was pleased to make certain Regulations in order to secure greater uniformity in the rules governing officers of higher rank than the Second Division in the several Departments of the Civil Service:

And whereas it is expedient that similar Regulations, so far as circumstances admit, should be made with respect to pensionable officers in the Consular Service of Her Majesty:

Now, therefore, Her Majesty, by and with the advice of her Privy Council, is pleased to order, and it is hereby ordered, as follows:—

1. This Order shall apply to all such Consular officers and other persons employed in or in connection with the Consular Service as are entitled to receive superannuation allowances under the Superannuation Acts, 1834 to 1892, and any Acts amending those Acts.

2. ~~Except in the case of any appointment with respect to which it appears to the Secretary of State to be necessary that a Royal Commission should immediately be issued,~~ *Except in the*

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case of officers appointed by Commission from Her Majesty, every person hereafter certificated by the Civil Service Commissioners for appointment to the Consular Service shall be subject to a strict probation for a period of two years, during which his conduct and capacity in the transaction of business shall be subject to such tests as may be determined by the Secretary of State, and he shall not be finally appointed to the Consular Service unless his probation shall furnish to the Secretary of State satisfactory proof of his fitness to be permanently employed in the Consular Service.

3. Promotion of officers in the Consular Service shall be strictly according to merit, and shall take place subject to the following conditions:—

(1.) That there is a vacancy which, under the arrangements sanctioned for the time being by the Commissioners of the Treasury, it is competent for the Secretary of State to fill up;

(2.) That the work of the Consular Service requires such vacancy to be filled up;

(3.) That the officer proposed for promotion appears to the Secretary of State to be fit to discharge the duties of the higher office.

4. Every officer hereafter appointed to the Consular Service shall be required to retire at the age of 65 on such pension as by the length of his service he is qualified to receive.

Officers heretofore appointed to the Consular Service shall be required to retire at the age of 70.

If in any special case the Secretary of State is satisfied that the retirement of an officer would be detrimental to the interests of the public service, he may, *with the concurrence of the Commissioners of the Treasury*, from time to time extend that officer's employment for such period or periods, *not exceeding five years*, as he may determine.

Nothing in this Article shall affect any existing power of the Secretary of State to require any officer to retire from the Consular Service if he has ceased, from whatever cause, to be fully competent for the performance of his duties.

5. ~~All Consular officers shall discharge their duties in accordance with~~ *The Consular Service shall be governed by* such instructions as may from time to time be issued by a Secretary of State, with the approval, in so far as such instructions may affect the expenditure of public funds or the receipt and application of fees, of the Commissioners of the Treasury.

6. This Order may be cited as "The Consular Service Order in Council, 1896."

(Initialled) R. E. W.
R. B. F.

No. 21.

[September 3, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, August 14, 1896.

Silk Industry in Cyprus. Effect of proposed Law on Treaty obligations.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit herewith the papers noted in the margin,* which relate to a proposed legislative measure to provide for the development and improvement of the silk industry in Cyprus.

You will perceive, on reference to the Colonial Office letter inclosed, that the Legislative Council of the Island of Cyprus has recently passed a Law with the object above referred to, but that, in consequence of the opinion of the Acting Queen's Advocate for the island, the High Commissioner has reserved it for the confirmation or disallowance of Her Majesty, as provided by the Order in Council of 1878.

Section 2 of this Law provides that: "The High Commissioner shall, with the advice of the Board of Agriculture, select and determine the foreign persons or firms from whom it shall be lawful to procure eggs and import the same into Cyprus;" and, further, that "the names of such persons or firms, hereinafter referred to as approved firms, shall be notified in the official Gazette, not later than the 1st August in each year."

Commenting on this section, the Acting Queen's Advocate expresses the following opinion:—

"This Law will practically confer upon the selected firms a monopoly of imported silkworms' eggs into Cyprus. The result may be that some countries, such as Italy, Greece, or France, who have hitherto had a share in that trade, may be entirely excluded. I am, therefore, of opinion that the provisions of this law might prove to be inconsistent with Treaty obligations, and I cannot advise that this Law is one to which the High Commissioner can assent on behalf of Her Majesty."

It has, accordingly, to be determined whether Her Majesty should be advised to confirm or disallow the Law in question.

I am to inclose a Return of the most-favoured-nation clauses in Treaties of commerce and navigation between Great Britain and various foreign Powers, including Italy, Greece, and France, the countries specially mentioned by the Acting Queen's Advocate. This Return also comprises the prohibition which, on sanitary grounds, are specially provided for.

You will observe that the Treaty engagements with some countries—for example, that with the Zollverein of the 30th May, 1865 (Blue Book, p. 20)—contain a provision that—"No prohibition of importation or exportation shall be established by either of them against the other which shall not at the same time be applicable to all other nations," but do not contain any express reservation as to restrictions for sanitary, agricultural, or other purposes such as those defined in the last portion of Article II of the Treaty with France of 1882 (Blue Book, p. 19).

I am to request that you will take these papers into your consideration, and favour Lord Salisbury with your opinion as to whether section 2 of the Law as it now stands constitutes an infraction of the Treaty obligations between Her Majesty's Government and either or all of the three countries mentioned by the Acting Queen's Advocate in Cyprus, and with any observations you may think it desirable to offer on the bearing of the clause on the principle of most-favoured-nation Articles generally.

I have, &c.
(Signed) GEORGE N. CURZON.

Report.

In our opinion, the second section of the proposed Law as it now stands does *not* of itself constitute an infraction of the Treaty obligations of Her Majesty's Government with any of the three countries mentioned by the Acting Queen's Advocate in Cyprus.

It puts all foreign countries on precisely the same footing. Trustworthy firms are to be selected from whom eggs may be procured for importation into Cyprus. If the Law is fairly worked, no advantage will be conferred on one nation beyond another, as the selection will be impartially made without regard to nationality, and solely with regard to capacity to supply healthy eggs.

Of course, if the Law were administered so as to confer a preference on certain foreign firms *because* they belong to a particular country, this would constitute an infraction of our Treaty obligations with the countries in question.

No doubt the administration of such a Law as this might be abused with the object of giving indirectly, by selection of firms, a preference to a particular nation which could not be given directly, and this would constitute an infraction of the most-favoured-nation clause in any Treaty; but we assume that experts in the matter can indicate the conditions which insure that eggs of a suitable quality will be supplied, and, these conditions having been laid down, foreign firms of any nation may be selected as able to supply eggs in accordance with such conditions.

The possibility of such machinery being resorted to by other countries for the purpose of evading their Treaty obligations with us, and the possibility of complaints by foreign nations as to the administration of the Law being such as to create a breach of favoured nation clauses, may be taken into account on the question of policy in determining whether it is desirable that we should initiate such legislation; but we have no doubt that such a law fairly and impartially administered in the sense we have indicated would *not* constitute an infraction of Treaty obligations. The preference would not be as between countries, but as between different firms, as to their ability to meet the requirements prescribed to insure healthy eggs; the conditions would be the same for all countries.

(Signed) RICHARD E. WEBSTER
ROBERT B. FINLAY.

Royal Courts of Justice,
September 3, 1896.

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* Colonial Office, June 30, 1896; No. 17, Commercial, 1893, C. 7229.

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GERMANY.

No. 22.

[December 4, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 28, 1896.

Gentlemen,

Expulsion of Mr. Tom Mann from Hamburg.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the papers noted in the accompanying list, which relate to the expulsion of Mr. Tom Mann from Hamburg.

On the 19th September Mr. Mann addressed a letter to this Office (see Paper 5) containing a statement to the following effect:—

Mr. Mann, as Chairman of the International Federation of Ship, Dock, and River Workers, was instructed by the Council of that body to hold meetings at Hamburg, Altona, and Bremerhafen.

On the 31st August application was made through an agent to the police at Hamburg for permission to hold a meeting, of which the subject was to be Trade-Unionism, in that town. This authorization was granted, and on the strength of it Mr. Mann proceeded to Hamburg, where he arrived on the 15th September.

Shortly after his arrival he was arrested and taken to the Stadthaus, where he was informed that he could not hold any meeting, and that he must forthwith quit Hamburg territory.

At his request Mr. Mann was conducted by a police official to the British Consulate-General, whence he returned to the Stadthaus, accompanied by Mr. Pogson, the Acting Consul-General.

It then transpired that the police intended that Mr. Mann should leave Hamburg the same evening by steam-boat to London.

Mr. Pogson pleaded on behalf of Mr. Mann that the latter should be allowed to proceed to Altona or Bremerhafen, where arrangements had been definitely made, with the assent of the local authorities, to hold meetings, but permission was refused.

Mr. Mann concludes his statement by requesting that inquiry might be made in regard to the action of the Hamburg police in thus forcibly preventing him from proceeding from the Free State to other places in the German Empire.

I am to call your attention to the actual document (Inclosure in Paper 5) authorizing the expulsion, which states that Mr. Mann's further stay within the Free State was prohibited, that he should leave Hamburg immediately, and that failing to do so he would be liable to compulsory deportation.

The Report of the Acting British Consul-General at Hamburg (see Paper 3) on the case does not differ on material points from Mr. Mann's own account of the circumstances attending his arrest and expulsion.

It will be observed that in the course of his Report Mr. Pogson states that in spite of his representations on behalf of Mr. Mann, "the order of expulsion by the steamer 'Vesta' leaving Hamburg direct for London at 5 P.M. (he not being a Prussian subject justified in demanding removal into the surrounding Kingdom of Prussia) was adhered to."

Mr. Mann accordingly lodged two protests, of which Mr. Pogson incloses copies (see Inclosure in Paper 3), against the action of the Hamburg authorities: in the first he protested against the decree of expulsion on the ground (1) that it was his intention to observe scrupulously the Laws and Regulations of the several States of Germany in which he proposed to deliver lectures; and (2) that the police authorities were made fully cognizant of the circumstances of the lecture to be delivered at Hamburg, and had given their authorization for the meeting to be held on that occasion.

In the second he protested against the decision of the police, verbally communicated to him, that he would only be permitted to leave Hamburg by the steamer leaving direct for London whereas he desired to proceed to Altona.

The conduct of the police officials towards Mr. Mann is acknowledged to have been in every respect courteous and sympathetic, and is not made the subject of any complaint. Mr. Mann was allowed to move about freely in the company of a plain-clothes officer, and seems to have been treated with every consideration by the official charged to conduct him to the steamer.

The justification of the action of the German authorities, as explained to Mr. Mann by the police, appears from Mr. Pogson's Report to have been founded on the following considerations:—

1. The majority of the German working classes are thoroughly imbued with social democratic principles;

2. Mr. Mann, being ignorant of the conditions of the country, could not, however well meaning his intentions, have avoided trenching in his address on subjects which are forbidden to be discussed at public meetings; and

3. The principles Mr. Mann advocates in connection with trade unionism would tend to start a movement which would get out of the control of its leaders and might assume a nature dangerous to the State.

Her Majesty's Ambassador at Berlin was instructed (see Paper 6) to invite the opinion of the Legal Adviser of the Embassy as to whether the action of the Hamburg authorities, not only in expelling Mr. Mann from the Free State, but also in prohibiting him from proceeding to German territory, was in accordance with law, and if not, in what respect their action was *ultra vires*.

It will be seen that Dr. Weber's opinion (see Paper 7) is in favour of the legality of the procedure followed by the Hamburg authorities, (1) in expelling Mr. Mann; (2) in deciding the route by which he should leave the Free State; and, Dr. Weber adds, (3) in taking him into custody on his lodging a protest against the order of expulsion.

I am to request that you will take these papers into your consideration, and will be good enough to inform Lord Salisbury if you agree with Dr. Weber's opinion as to the legality of the manner in which the expulsion of Mr. Mann was carried out by the police authorities of Hamburg.

His Lordship will also be glad to be favoured with your opinion as to whether the expulsion of Mr. Mann from Hamburg, or the circumstances attending it, offer any, and if so what, grounds on which representations to the German Government should be based.

I have, &c.
(Signed) GEORGE N. CURZON.

List of Papers.

1. To Mr. Pogson	(Telegraphic)	September 15, 1896.
2. Mr. Pogson	(Telegraphic)	September 15, „
3. Ditto	(No. 4)	September 15, „
4. Ditto	(No. 5)	September 18, „
5. Mr. Tom Mann		September 19, „
6. To Sir F. Lascelles	(No. 61. Commercial)	September 26, „
7. Sir F. Lascelles	(No. 146. Commercial)	November 4, „

Report.

We agree with the result of Dr. Weber's opinion that there was nothing illegal in the manner in which the expulsion of Mr. Mann was carried out by the police authorities at Hamburg.

The right to expel him cannot be disputed.

It appears to us that the Government of a State which desires to expel a foreigner is justified in prescribing a route by which he is to leave their territory, so long as this right is not exercised unreasonably and in an oppressive manner.

Mr. Mann was not entitled to pass through Hamburg territory in the direction of Altona, or in the direction of the railway station for Bremerhafen. In putting him on board a ship bound for London, we think that a course was taken which cannot be considered as in any way oppressive. And we think that the presence of the police on board till the vessel had passed Cuxhaven may be justified as incidental to the right of expulsion, and as preventing the possibility of his leaving the ship for the purpose of returning to the territory of Hamburg.

The question remains whether Mr. Mann's arrest was justified.

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It appears to us that it was as reasonably incidental to the right of expulsion. He had protested against the expulsion, and against the intimation that he was not to go to Bremerhafen or to Altona. And his arrest was not unreasonable as a precaution to insure that his expulsion should be carried out by the prescribed route.

This is the sense in which we understand that part of Dr. Weber's opinion which relates to the arrest. If it meant that Mr. Mann's protest amounted to disobedience to the order of expulsion, and that the arrest was justified upon that ground, we should be unable to agree with it.

Upon the whole, we are of opinion that the expulsion of Mr. Mann, and the circumstances attending it, do not offer any grounds upon which representations to the German Government should be based. Mr. Mann was treated in a kindly and considerate manner by the Hamburg authorities; the arrest was, in substance, not more than police surveillance.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 4, 1896.

JAPAN.

No. 23.

[December 11, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November* 17, 1896.

Search of British vessels by Japanese in Japanese waters.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers relating to the question whether Japanese authorities have a right to search British vessels in Japanese ports for rebels escaping from their jurisdiction.

The instructions given on this point by Her Majesty's Minister at Tôkiô to Her Majesty's Consul at Tainan (Formosa) were to the effect that he should not permit such search to be made except for criminals, whose names must be specified. The Consul thereupon issued a Circular to British merchants in Tainan, requesting them not to allow the Japanese police to search their vessels except under a warrant from the British Consulate, and he informed the Japanese Prefect that he could only grant a warrant in the cases of persons accused of criminal offences.

It seems to be open to considerable doubt whether the extra-territorial jurisdiction which Her Majesty possesses in Japan extends to Japanese subjects on board British merchant-vessels in Japanese waters, although this doctrine is supported by Mr. Wilkinson, the Crown Advocate at Shanghae (see Paper B).

Lord Salisbury would therefore be glad to be favoured with your opinion on the question, and with any general observations which you may have to offer on the inclosed papers before finally instructing Sir Ernest Satow on the subject.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Sir E. Satow	.. ..	(No. 166)	August 26, 1896.
(B.) Memorandum	.. ..	..	October 12, „

Report.

In our opinion, the extra-territorial jurisdiction which Her Majesty possesses in Japan does not extend to Japanese subjects on board British merchant-vessels in Japanese waters. It is confined to British subjects. We are unable to find in the Treaties any provision that a British merchant-vessel shall be deemed to be extra-territorial.

Apart from Treaty, we do not think that it can be successfully contended that a British merchant-vessel is exempt from search by the Japanese police while in a Japanese port (see Wheaton, 3rd English edition, p. 163, s. 103 G). The practice which has prevailed of first obtaining the sanction of the British Consul is convenient, and should, as far as possible, be adhered to, but if the Japanese Government put forward a claim to search for Japanese criminals, whether political or otherwise, we do not think that it could be successfully resisted on grounds of international law.

If the right were vexatiously or unreasonably exercised, it would afford ground for diplomatic representation, and the present practice lessens the probability of unreasonable action occurring.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 11, 1896.

PACIFIC ISLANDS.

No. 24.

[March 4, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 30, 1896.

Detention and treatment of British subjects for alleged complicity in Hawaiian rebellion. Claims to compensation.

I HAVE the honour to transmit to you, by direction of the Secretary of State for Foreign Affairs, the Papers noted in the accompanying list which relate to the cases of those British subjects whose claims to compensation on account of their detention and treatment for alleged complicity in the Royalist insurrection in Hawaii, formed the subject of a Report from your predecessors on the 5th July last.

A copy of that Report, and of the reference leading to it, together with the correspondence therewith submitted, is inclosed and marked Paper (A).

In accordance with the views therein expressed, Mr. Hawes, Her Majesty's Commissioner and Consul-General at Honolulu, was instructed to furnish a Report as to the status and occupation of each of the injured parties, in whose cases it had been held that a *primâ facie* claim to compensation had been established; and he was directed to estimate the amount of compensation which, guiding himself by the general principles laid down in the Law Officers' Report of the 5th July, 1895, he might consider would fairly meet the merits and redress the injuries in each case.

L.O.R. 1895 (Conf. 6796), p. 83.

He was further instructed to ascertain and report the views of the Hawaiian Government as to the rights and wrongs of the proceedings in these cases, as the Law Officers considered that it might be advisable to be informed on these points before finally determining either the right to, or the amount of, compensation in each particular case. A copy of these instructions is also inclosed, marked Paper (B).

The accompanying Report from Mr. Hawes (Paper C), inclosing a full statement

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of the views of the Hawaiian Government, supported by affidavits in connection with the several cases, and giving such fuller information as was available in respect to the status and occupation of the claimants, has now been received.

Mr. Hawes further incloses briefs furnished by Mr. Neumann, the counsel engaged by most of the claimants, and retained by him on behalf of Her Majesty's Government for Mr. McDowall, who was unable to afford the expense of employing counsel, and for Messrs. C. W. Ashford, F. H. Redwood, and M. C. Bailey, who were absent from Hawaii.

Mr. Hawes, in submitting these documents, has drawn up a summary of the whole case, adhering to the order in which the matters are dealt with in the reply of the Hawaiian Government.

The latter consider that in order to form a just conclusion as to "the rights and wrongs" of the proceedings, it is necessary to view the situation of the community in Hawaii at or immediately preceding the outbreak of January last. Mr. Hatch therefore gives a long review of the state of affairs, which does not appear to differ materially from the version already known to Her Majesty's Government.

They argue that the condition of affairs was so grave and critical that the Hawaiian Government were justified in taking any steps which seemed necessary to preserve peace and to protect life and property; that the insurrection passed beyond the power of the civil authorities to control, and that martial law was then proclaimed, and was in force during the whole period of the complainants' detention.

They quote the petition of an Hawaiian citizen, Jonah C. Kalanianaole for a writ of *habeas corpus*, as throwing light on the condition of the country, the progress of the insurrection, and the final restoration of the privilege of *habeas corpus* on the 18th March, 1895.

The case, which was brought in the Supreme Court of Hawaii, was prosecuted in order to test the jurisdiction of the Military Commission.

The decision of the Supreme Court upheld the jurisdiction and refused the writ of *habeas corpus*. A printed copy of the proceedings in the case is inclosed in Mr. Hawes' despatch No. 35 (Paper D).

The matter of inquiry, in respect to all the cases now under consideration, is by the Hawaiian Government divided into the following branches:—

(A.) The arrest.
(B.) The detention.
(C.) The treatment.
(D.) The stipulation to leave the country.

With regard to the first point they contend that upon the facts as appearing from the affidavits, it is shown in the first place—

1. That the arrests were justifiable on principles of common law, even though the complainants were innocent.

2. That the question of reasonable or probable cause for the arrests is not dependent upon the fact of guilt.

3. That no presumption of want of probable cause arises from the discharge without trial.

They argue in the second place—

1. That during the existence of martial law greater powers must of necessity be conceded to a Government than in time of peace.

2. That the rights of individuals must yield to the obligations of a Government to protect the lives and property of persons under its protection.

And in the third place—

That by recognized principles of international law the complainants are not at this time, as a matter of right, entitled to Diplomatic intervention on the following grounds:—

1. In consequence of their Hawaiian domicil.
2. Not having exhausted their remedy before Hawaiian Courts.
3. In consequence of their participation in seditious and treasonable acts.

In support of each of these contentions they cite a considerable number of legal precedents from reported cases.

With respect to the value of the arguments and the evidence, Mr. Hawes offers some observations which appear to be worthy of consideration.

He points out that the evidence produced does not, except in the case of F. W. Harrison, which he has, with a view to further proof and explanation, withdrawn from those now presented, prove the participation of the complainants in seditious and treasonable acts; and that in none of the other cases has even a reasonable inference of participation been established.

With respect to the second branch of the inquiry, viz., the detention, it is contended that it is shown by the affidavit of the Judge Advocate that the greatest diligence was used in the preparation and prosecution of the cases presented to the Military Commission; that there is absolutely nothing on which to base a charge that one of these men was detained for the purpose of punishment or for any ulterior or other object than to prepare the case and proceed with it in due order, that no discrimination was used in the selection of the cases. To this statement Mr. Hawes takes exception, and considers that the cases of Mr. Carson Kenyon and of Mr. C. Bailey are a sufficient refutation of its accuracy.

Mr. Hatch states that it was undoubtedly a misfortune for the complainants that the right of *habeas corpus* was suspended at the time they were under arrest, and that they were thus deprived of their normal remedy in the Civil Courts; but that as a fact, if they had been committed for trial at the next quarterly term of the Circuit Court, the claimants would have been detained in confinement for a much longer period than they actually were.

With regard to the question of treatment it is contended that save in the case of Dunwell (which was, it is admitted, exceptional, and has already formed the subject of a separate representation and explanation), no sort of harsh or vigorous treatment was adopted; that such force only was used as was necessary to effect the arrests and that the prison where the complainants were confined is conducted on humane principles, and that the closest scrutiny of its management is at all times invited.

With regard to point 4, viz., the stipulation to leave the country, it is contended that Messrs. Levey, Bailey, Redward, McDowall, Harrison, and C. W. Ashford accepted their release voluntarily on condition of leaving the country, and chose this course in preference to standing their trial; that the terms of the Agreement which is quoted clearly amounts to an admission of some degree of guilt, and is conclusive on the question of probable cause, and that it was so understood by the claimants.

The Hawaiian Government hold, therefore, that as there is no contention that these stipulations were obtained by fraud or compulsion, there is no valid ground why they should not stand.

They further contend that the fact that the men were released and allowed reasonable time, varying from four to twenty days, to settle their affairs, during which they had ample time for reflection, and the further fact that they all carried out the terms of the stipulation without any compulsion, conclusively prove the character and good faith of the proceeding.

Mr. Hawes demurs to this conclusion, and considers that, ably as Mr. Hatch argues his case, his statements should not be accepted as correct.

In this connection, Mr. Hatch cites as a case analogous to those of British subjects expelled from Hawaii that of one Kapu, a Hawaiian citizen, formerly in the service of the Hawaiian Board of Missions, who was deported from the Gilbert Islands by the Captain of Her Majesty's ship "Royalist" in 1892, and he points out that in both instances the action complained of was taken by the military authority in times of local disturbance.

The case of Kapu (or Kapua) was exhaustively investigated by Her Majesty's High Commissioner for the Western Pacific, and he reported very fully upon it.

This report, taken in conjunction with those received from Her Majesty's naval officers, satisfied Her Majesty's Government that the step taken by Captain Davis was imperatively demanded in the interests of peace and of good order in the Protectorate, and that it must be regarded as a matter of high policy necessary and justifiable as an act of State.

Her Majesty's Commissioner at Honolulu was accordingly instructed to make a communication to the Hawaiian Government to this effect, stating that, in the opinion of Her Majesty's Government, Kapu was properly expelled, and that he had no claim to any indemnity.

Printed copies of the correspondence in this case are also sent herewith for convenience of reference in a separate bundle marked Paper (E).

The Hawaiian Government now submit that sufficient evidence has been adduced to establish a *primâ facie* case of reasonable and probable cause for the arrest and detention of the persons in question.

They add that further evidence could doubtless have been produced had a trial

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taken place, and point out that in the cases of those who left the country no further investigation was made after the Agreements to do so were signed, and that witnesses whose evidence would have been available were allowed to depart.

Copies of the affidavits and other documents adduced by the Hawaiian Government in defence of their action in the case of Mr. C. W. Ashford have, it appears, been communicated by Mr. Hawes to that gentleman, and the accompanying statement marked Paper (F) supported by further affidavits has now been received from him in reply. Mr. Ashford, being at San Francisco, has, to avoid delay, forwarded these documents, to which I am also to invite your attention, direct to the Secretary of State through Her Majesty's Consul-General at that place.

In view of the reply on the part of the Hawaiian Government, the question arises whether, having regard to the arguments therein contained, to which I am to direct your special attention, you are of opinion that all or any, and if so, which, of the claims in question are entitled to the support of Her Majesty's Government, and on what grounds they can most appropriately be supported.

Lord Salisbury would further desire to be informed as to the general lines which it would be, in your opinion, advisable to follow in the reply to be returned to Mr. Hatch's note.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour the Secretary of State with your opinion on the questions submitted in this letter, and with any general observations which you may have to offer on the matter.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	To Law Officers		May 11, 1895.
	Law Officers (Confidential No. 6796, p. 83)		July 5, „
(B.)	To Mr. Hawes	(No. 21)	July 11, „
(C.)	Mr. Hawes	(No. 48)	
(D.)	Ditto	(No. 35)	
(E.)	Kapu Correspondence.		
(F.)	Inclosure in Mr. Warburton's No. 4 of January 4, 1896.		

Report.

According to international law the Government of any country has the right to request and compel an alien to leave the country. The exercise, however, of this right may form the ground of international remonstrance and demand for compensation if it has been employed in a high-handed or oppressive manner.

A rebellion took place in Hawaii, and under such circumstances it is very difficult to draw a line at the point where the enforcement of what is called martial law is no longer necessary or justifiable. At the time of the outbreak it would not be disputed that the Government were entitled to put martial law in force, and that they were also entitled to continue martial law so long as there was reasonable ground for supposing that the rebellion might again break out.

Martial law, however, ought to be employed only for the purpose of meeting and overcoming immediate danger, not for the purpose of mere punishment, and certainly not for the purpose of inflicting punishment and inconvenience upon political adversaries.

The perusal of the documents before us is calculated to leave on the mind the impression that martial law was used by the Government of Hawaii in some, at all events, of these cases, not for the purpose of meeting immediate danger, but for the purpose of harassing and compelling to leave the country residents who were known to hold pronounced Royalist views.

The persons whose claims are before us, although resident for a very long time in Hawaii, had not ceased to be British subjects, and are therefore entitled to the protection of Her Majesty's Government if they have been unjustly dealt with. The fact, however, that they were domiciled in Hawaii must be taken into account as bearing upon the question how far it is expedient that Her Majesty's Government should intervene on their behalf, and what compensation should be claimed, when it is alleged that they have been guilty of sedition, and of conduct unfriendly to the established government of the country.

It is extremely difficult to fix any amount which would represent the damages which it would be proper to demand for the claimants. The amounts which are mentioned must be taken merely as a rough approximation, and possibly it might be expedient that the question of amount should form the subject of arbitration. With these observations we proceed to the consideration of the particular cases.

1. *Thomas.*—This man is shown to have indulged in a good deal of loose talk hostile to the Government. We think that under the circumstances no reasonable complaint could be made of his arrest, but we fail to see that there was any real ground for his imprisonment for so long a period, namely, from the 7th January to the 7th March. There seems to be no trustworthy evidence against him of anything more than loose talk of a seditious character. We think that in his case 200*l.* would be ample compensation, considering that by his conduct he to some extent conduced to his misfortune.

2. *McDowall.*—We think that in this case 100*l.* may be claimed as compensation for the imprisonment. We do not think that any compensation for leaving the country can be fairly insisted on, inasmuch as McDowall seems to have indulged in language very hostile to the existing Administration, and we think that in his case it was not unreasonable that he should be compelled to leave the island.

3. *C. W. Ashford.*—It appears to us that this man was really arrested and driven out on account of his political opinions, and not because there was any real apprehension of danger from him. The case is, in our opinion, a somewhat serious one. He was subjected to imprisonment, and forced to sign an agreement to leave the country. The proceedings were high-handed, and we think that he ought to obtain substantial damages. As a rough approximation, we would suggest 500*l.*

4. *Redward.*—The arrest of this man appears to have been arbitrary and unnecessary, and we think that 200*l.* might be fairly claimed.

5. *Reynolds.*—In this case also we think 100*l.* may be fairly claimed. There is nothing to show that he took any part in promoting the insurrectionary movement, and his correspondence with the ex-Queen afforded no sufficient ground for his arrest.

6. *Rawlins.*—In this case there was no justification whatever for the imprisonment, and we think that 100*l.* ought to be paid to him as compensation.

7. *Kenyon.*—The arrest of this man took place after the rising had been put down, and apparently because he was connected with a newspaper advocating opinions opposed to those of the Government. The case is an aggravated one, and 200*l.* should be claimed.

8. *Levey.*—In this case also we fail to see that any ground is shown for the arrest and imprisonment, and compelling the man to leave the country. The amount of compensation would fairly be 200*l.*

9. *Bailey.*—There appears to be no shadow of excuse for the arrest of this man on the 12th February. We think that 100*l.* might fairly be claimed in this case.

In replying to the despatch of Mr. Hatch, we think that the following are the general lines which ought to be observed:—

It should be pointed out that Her Majesty's Government do not dispute the proposition that, on the occasion of an insurrection, any Government is entitled to proclaim martial law, and to use any amount of force necessary for its suppression:

It should further be pointed out that Her Majesty's Government do not deny the right of a Government to require removal from the country of any alien whose presence may reasonably be expected to produce disorder, or be inconsistent with the maintenance of good government:

It should be pointed out that Her Majesty's Government cannot accept the proposition that the acquisition of a Hawaiian domicil forfeits the right to the intervention of Her Majesty's Government on behalf of British subjects in cases in which they may appear to have been treated in an arbitrary and oppressive manner:

It should be further pointed out that Her Majesty's Government do not dispute the proposition, that an alien resident in any country may properly be prosecuted and punished in due course of law for seditious language, or for conduct or demeanour

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calculated to endanger the peace of the community, and properly punishable by the law in force:

It should be pointed out that the objection that the claimants had not exhausted their remedy before Hawaiian Courts, is one which appears quite unsustainable in view of the Act of Indemnity passed by the Hawaiian Legislature.

If any of Her Majesty's subjects in Hawaii had been guilty of any participation in seditious or treasonable acts no objection would have been made by Her Majesty's Government to their prosecution and punishment in due course of law, or under martial law, if the enforcement of martial law was reasonably necessary for the safety of the community:

It should be pointed out that the agreement to leave the country cannot be construed as an admission of guilt, being signed under the pressure of imprisonment, and under the apprehension of proceedings under martial law, at a time when in the view of Her Majesty's Government, it could not be supposed to be necessary for the safety of the community:

We think it should be pointed out that the claimants were subjected to imprisonment under martial law, under such circumstances as show that it was not put in force for the repression of insurrection, and rather indicate that it was being used as a means of punishing by imprisonment and exile, persons who had expressed views unfavourable to the existing Government of Hawaii:

It is probably not desirable to go into much detail or argument with regard to the circumstances of each particular case, but the amount claimed may in each case be indicated with the general grounds upon which such claim is based:

It should be pointed out that compelling aliens, the subjects of a friendly State, to leave the country at great inconvenience to themselves, and at the cost of ruin in business is, in the absence of circumstances which call for such measures as an act of self-protection, a step of an unfriendly character, which justifies the Government of such aliens in expecting that adequate compensation will be made to them.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 4, 1896.

ROUMANIA.

No. 25.

[November 13, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November* 3, 1896.

Detention of British ship "Blairmore" at Galatz.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to the detention of the British merchant-ship "Blairmore" by the Roumanian authorities at the port of Galatz.

It will be seen from Sir H. Wyndham's despatch No. 98 of the 25th September (Document B), that the "Blairmore," which is owned by Messrs. Johnston and Co., of Liverpool, arrived at Galatz from the Piræus on the evening of the 22nd September last with a general cargo and passengers. Amongst the latter were two Armenians with passports duly *visés* for Roumania who had embarked at the Piræus for the Danube. Previous to the "Blairmore's" arrival, the Captain of the Port of Galatz had ascertained that she was bringing Armenian passengers, and he consequently informed her owner's agents that she would not be allowed to have any communication with the

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PACIFIC ISLANDS.

No. 24 A.

The Law Officers of the Crown to the Marquess of Salisbury.—(*Received July* 4.)

My Lord, *Royal Courts of Justice, July* 3, 1896.

Expulsion of F. W. Harrison from Hawaii.

WE were honoured with your Lordship's commands signified in Sir H. Percy Anderson's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the inclosed list relative to the case of Mr. F. W. Harrison, a British subject, who claimed compensation from the Hawaiian Government on account of his detention and subsequent expulsion from the country for alleged complicity in the Royalist insurrection in Hawaii.

That our opinion was requested as to whether Mr. Harrison's claim was entitled to the support of Her Majesty's Government, and, if so, on what grounds it could most appropriately and effectually be supported.

In obedience to your Lordship's commands we have the honour to

Report—

That, in our opinion, Mr. Harrison *is* entitled to the support of Her Majesty's Government in his claim.

His arrest on suspicion might have been justified when the outbreak occurred, but the case made against him is extremely weak, and is unsupported by evidence.

We think that his continued detention and expulsion from the country were unjustifiable and oppressive. We regard the case as serious, and as calling for redress on the grounds stated in our former Report with regard to the other claimants.

There is really no case whatever against him of participation in treasonable or seditious acts. He has sustained serious loss by the oppressive action of the Hawaiian Government, and we think that a sum of not less than 1,000*l.* should be claimed.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

List of Papers.

(A.) Mr. Hawes ..	(No. 14. Political)	April 30, 1896.
(B.) To Law Officers	..	January 30, .,
(C.) Mr. Hawes ..	(No. 48)	December 9, 1895.
(D.) Law Officers	..	March 4, 1896.
(E.) Mr. Hawes ..	(No. 14)	March 7, 1895.

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PACIFIC ISLANDS.

No. 24 B.

[Colonial Office.]

[October 31, 1896.]

Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, October 31, 1896.*

Proposed incorporation of Norfolk Island with New South Wales.

WE were honoured with your commands signified in Mr. Bramston's letter of the 7th instant, stating that he was directed to ask our advice upon the following matter:—

That Norfolk Island, which was situated in the Pacific some 900 miles east north-east of Australia, was formerly part of the Colony of Van Dieman's Land (now called Tasmania), but by 18 and 19 Vict., cap. 56, sec. 5, it was provided "that it should be lawful for Her Majesty at any time by Order in Council to separate Norfolk Island from the Colony of Van Dieman's Land, and to make such provision for the government of Norfolk Island as might seem expedient." That on the 24th June, 1856, an Order in Council was passed whereby it was provided that the island should be a distinct and separate Settlement, the affairs of which, until further Order was made in that behalf by Her Majesty, were to be administered by a Governor who was to be for that purpose appointed by Her Majesty with the advice and consent of her Privy Council.

That subsequent events had made it undesirable to continue this form of government, and that it was proposed to incorporate the island with the Colony of New South Wales, but that it was desired to arrange that the laws of the Colony should not extend to Norfolk Island, to which they were not suited in the present condition of that island, and to give to the Governor of New South Wales in Council the power of making laws for the island until the Colonial Parliament should otherwise provide. That by this means such laws of New South Wales as were suitable could be at once introduced, and from time to time could be added to as occasion required, or special laws applicable only to the island could be enacted; but that the question had arisen whether such an arrangement could be effected by Order in Council.

That it was presumed that the island could be annexed to the Colony by Order in Council, and that the annexation would, if the Colony consented to it, be valid by virtue of "The Colonial Boundaries Act, 1895;" and Mr. Bramston was to inquire—

1. Whether in our opinion this was correct. He was further to inquire—

2. Whether the consent of New South Wales might be given by the Colonial Government, or required a vote of the Legislature.

3. Whether the power given to Her Majesty by 18 and 19 Vict., cap. 56, to make provision by Order in Council for the government of Norfolk Island was still in existence, and could be made use of to declare what laws should be in force in the island when it should become part of New South Wales, and to create special powers of legislation for making laws until the New South Wales Legislature should provide otherwise.

4. That if this could not be effected by Order in Council, whether it was competent to the Legislature of New South Wales by Act to declare that the laws of the Colony should not apply to Norfolk Island after annexation, and to provide a special mode of legislation for that island.

We have taken the matter into our consideration, and in obedience to your commands have the honour to

Report—

1. That, in our opinion, Norfolk Island cannot be annexed to the Colony of New South Wales by Order in Council.

The power given to Her Majesty by 18 and 19 Vict., cap. 56, sec. 5, to make provision for the government of Norfolk Island does not, in our opinion, authorize the transfer of the power to make such provision from Her Majesty in Council to the Legislature of New South Wales, which would be the result of annexation. What the statute contemplates is that Norfolk Island should remain a Crown Colony governed under the direction of the Queen in Council, not that Norfolk Island should be annexed to another Colony.

We further think that the general power of Her Majesty to alter the boundaries of Colonies referred to in "The Colonial Boundaries Act, 1895," cannot be relied on to justify the annexation even with the consent of the Colony.

The boundaries of New South Wales rest on a statutory basis: 18 and 19 Vict., cap. 54, and section 46 of the Bill scheduled to that Act defines the limits of New South Wales with a certain defined power of variation by Her Majesty. Even if the annexation of Norfolk Island could be deemed a question of boundary, we do not think that, in view of the Statute 18 and 19 Vict., cap. 54, it can be safely effected by Order in Council.

We therefore think that, even if the Colony consented, the annexation by Order in Council would be invalid.

2. In the case supposed, the consent of New South Wales would require a vote of the Legislature.

3. If the annexation could be effected by Order in Council, we think that Her Majesty could, under 18 and 19 Vict., cap. 56, make use of the power thereby conferred to declare what law should be in force in the island when it becomes part of New South Wales, and to create special powers of legislation till the New South Wales Legislature should provide otherwise: provided that the Legislature of New South Wales by Act consented to these conditions of annexation, but not otherwise.

4. We think that in the case supposed it would require both an Order in Council and a Colonial Act to make special provision for the island after annexation.

But, as we have stated in answer to the first question, we cannot advise annexation by Order in Council, even with the consent of the Colony.

We think that the object in view should be effected by Acts of the Imperial Legislature and of the Legislature of New South Wales. The Imperial Act should authorize Her Majesty to make an Order in Council annexing with the consent of the Colony, and making provision for interim government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

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shore. The Acting British Consul protested to the Captain of the Port against this decision, but was informed, in reply, that strict orders had been received from the authorities at Bucharest to the effect that no ship arriving in the Danube with Armenians on board should be allowed to communicate with Roumanian territory. Accordingly, when the "Blairmore" arrived at Galatz she was compelled to anchor in the stream, whilst a Roumanian gun-boat was told off to keep guard over her.

The Acting British Consul at once reported the circumstances to Her Majesty's Minister at Bucharest, who, after communication with the Roumanian Government, obtained orders for the admission of the vessel to free pratique on condition that the Armenian passengers should not be landed. This condition was complied with, and the "Blairmore" was released on the morning of the 24th September, after thirty-six hours' detention.

The arrest of the vessel was no doubt ordered in pursuance of the stringent measures adopted by the Roumanian Government to prevent the landing of Armenian refugees in Roumanian territory. The nature of those measures and the reasons given by the Roumanian Government for their adoption are related by Sir H. Wyndham in his despatch No. 90 of the 6th September (Document A), which has reference to previous cases in which Armenian refugees were brought to Roumania on British ships.

Lord Salisbury does not in any way dispute the right of the Roumanian Government to make such Regulations as may be necessary to prevent Armenian refugees from landing in their territory, but he doubts whether they are justified in forbidding a foreign merchant-ship to communicate with the shore for the purpose of unloading her cargo merely because of the presence of Armenian passengers on board.

It is to be noted, moreover, in the present instance, that no attempt appears to have been made by the captain of the "Blairmore" to land his Armenian passengers, and that after the Regulations had been notified to Her Majesty's Minister, all proper steps were taken by him to insure their observance.

Lord Salisbury would be glad to learn whether, under the circumstances of this case, you consider that Her Majesty's Government might properly advance a claim for compensation against the Roumanian Government on behalf of the owners of the "Blairmore" in respect of the detention of that vessel.

It will be observed that the vessel did not, as was apprehended, forfeit her outward charter-party, and that the amount claimable would be practically limited to the ordinary demurrage charges in respect of the thirty-six hours' detention of the vessel, unless, indeed, it should be held that the owners are entitled to compensation for the maintenance of the Armenians who were shipped at the Piræus as passengers, and not at Constantinople as refugees.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Sir H. Wyndham	(No. 90)	September 6, 1896.
(B.)	Ditto	(No. 98)	September 25, ,,
(C.)	Ditto	(No. 102)	October 6, ,,

Report.

We think Her Majesty's Government may properly advance a claim for compensation against the Roumanian Government on behalf of the owners of the "Blairmore" in respect of the detention of that vessel.

The forbidding communication with the shore by the "Blairmore" was altogether in excess of any precautions which the right of the Roumanian Government to prevent the landing of Armenians might render justifiable.

The absence of notice that any such stringent measures were intended makes the enforcement of such a Regulation a ground of legitimate complaint, and we think that the circumstances justify a claim for compensation.

1896

It should, we think, be confined to the amount of the demurrage for the thirty-six hours.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 13, 1896.

RUSSIA.

No. 26.

[March 4, 1896.]

Foreign Office to the Law Officers of the Crown.

Seizure of British sealers by Russian cruisers in Behring Sea in 1892.

Gentlemen, *Foreign Office, February* 20, 1896.

I HAVE the honour to transmit to you herewith, by direction of the Marquess of Salisbury, the correspondence noted in the accompanying list, relative to the seizures of British sealing-vessels by Russian cruisers in 1892, and the drafts of two despatches which his Lordship proposes to address to Her Majesty's Chargé d'Affaires at St. Petersburgh on the subject.

Your Report of the 13th December to the Colonial Office is attached to their letter of the 17th of that month. (Paper G.)

The claims in respect of the "Ariel" and "Willie McGowan," are stated in the draft (marked A). Interest at the rate of 6 per cent. has been added to the claims which you approved and initialled. On this point I am to refer you to my letter to the Colonial Office of the 5th instant (Paper H), and to their reply of the 11th (Paper I).

With regard to Draft (B), which deals with the claims not yet admitted in principle by the Russian Government, I am to state that his Lordship has adopted the figures submitted to you by the Colonial Office (*see* Paper G), and that interest at 6 per cent. has been added as in the other cases. The statement in three columns which Draft (B) purports to inclose for presentation to the Russian Government, has already been before you, but it has since been again revised by Mr. Anderson, of the Colonial Office, and I am now to request you to give it your further consideration, and to favour Lord Salisbury with any observations which you may have to offer, and to insert such alterations (if any) as you may deem to be expedient.

It is gathered from the Colonial Office that, in 1893, the then Law Officers of the Crown, Sir Charles Russell and Sir John Rigby, suggested that an examination of the evidence should be presented in this form to the Russian Government, but, in now dealing with this point, Lord Salisbury would also desire to be furnished, for his assistance, with your own views upon the matter.

His Lordship will be glad if, in favouring him with your opinion as to whether the two despatches are such as may properly be addressed to the Russian Government, you will be good enough to add any observations of a general nature which you may desire to offer.

I am, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Colonial Office..	June 27, 1895.
(B.)	To Attorney-General	July 18, „
(C.)	Attorney-General	August 10, „
(D.)	To Colonial Office	October 26, „
(E.)	Colonial Office..	September 14, „
(F.)	Law Officers (Confidential No. 6796, p. 108) ..	October 21, „
(G.)	Colonial Office..	December 17, „
(H.)	To Colonial Office	February 5, 1896.
(I.)	Colonial Office..	February 11, „

Report.

In our opinion the two despatches are such as may properly be addressed to Her Majesty's Chargé d'Affaires at St. Petersburgh.

We think that the statement in three columns annexed to the second of these despatches, sets forth the case in regard to each of the vessels in a convenient form, and we approve of it, as drawn, for transmission to Mr. Goschen.

We have added a paragraph to the first despatch pointing out that the statement of grounds is for his own information, to enable him to present the case as regards these vessels to the Russian Government, and not for communication to that Government, unless in his discretion he thinks that this may conduce to the successful result of the negotiation.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 4, 1896.

Annex (A).

Draft of Despatch from the Marquess of Salisbury to Mr. Goschen.

(A.)
(No. .)
Foreign Office, March , 1896.

Sir,

THE late Sir R. Morier, in his despatch No. 161 of the 12th June, 1893, respecting the seizures of British sealing-vessels by Russian cruisers in 1892, inclosed a copy of a note from M. Chichkine, stating that the Russian Government would not refuse to consider the amount of compensation to be awarded in the cases of the schooners "Ariel" and "Willie McGowan."

Since that date much time has necessarily been occupied in collecting and examining the proofs in regard to the value of these schooners and of their outfit, and in estimating on a proper basis the sums to be claimed from the Russian Government. No trouble has been spared in order to arrive at a fair valuation, and Her Majesty's Government have on several occasions had recourse to the opinion of the Law Officers of the Crown and of those best qualified to assess the losses suffered by the owners of the captured vessels.

I now transmit to you, for communication to the Russian Government, the two claims as received from the Canadian Government in the month of November last, with the vouchers and other documents by which they are supported. Lists of these original papers are also inclosed. The total amounts claimed are summarized as follows:—

"Ariel."

	Dol.	c.
Cost of schooner	8,522	10
„ outfit	8,868	23
Interest on cash expended for purchase of supplies	3,925	24
Compensation due for loss of sealing seasons 1892, 1893, and 1894	35,704	00
Total	57,019	57

1896

"*Willie McGowan.*"

	Dol.	c.
Cost of schooner	9,341	40
,, outfit	7,828	01
Interest on cash expended for purchase of supplies	4,229	13
Compensation due for loss of sealing seasons 1892, 1893, and 1894	37,512	00
Total	58,910	54

These figures have, however, been submitted to a strict scrutiny, and it has been decided to reduce them materially, as Her Majesty's Government are unwilling to put forward any claims to which exception might be taken. The following statements are accompanied by explanatory remarks, *which are for your own information only.* You are instructed to present to the Russian Government the statements themselves, and when communicating them you should say that, as the justice of the claims has been admitted by them, and the compensation named by Her Majesty's Government is on the lowest possible scale, I trust that Prince Lobanoff will feel himself able to accept them as they stand.

"*Ariel.*"

	Dol.	c.	Dol.	c.
1. Cost of vessel at Halifax and expenses of transfer to British Columbia Vouchers I, 1–23, 24 (part), 25–62, 71–75.			8,037	70
2. Fitting out as a sealing-vessel at Victoria Vouchers II, 1, 4–9, 14, 18, 20, 24–25, 28, 29–31, 34 (part), 35, 39, 99.			1,436	32
3. Expenses of voyage, including salt, ammunition, provisions, wages, &c. Vouchers I, 24 (part), 62*a*, 63–70, 76–78; II, 2, 3, 10, 11–13, 15–16, 17 (part), 19, 21–23, 26, 26*a*, 27 (part), 28, 32–34, 36–38, 40–65*a*, 67–97.			5,265	81
4. Profits of voyage— 207 skins on board, and estimated further catch of 579 seals, at 12 dollars each	9,432	00		
Less expenses of voyage (3)	5,265	81		
			4,166	19
5. Expenses (legal, &c.), in connection with seizure Vouchers II, 66, 98.			166	50
			19,072	52
Interest for three years at 6 per cent.			3,433	05
Total			22,505	57

Remarks.—The "Ariel" was purchased at Halifax in the end of 1891, and fitted out there for the voyage to British Columbia, with a view to engaging in sealing from Victoria in that province. The first item above includes all the expenses incurred in the purchase of the vessel, fitting her for the voyage to Victoria, and the expenses connected with the voyage.

The second includes the cost of the alterations and fittings required for adapting the vessel for sealing purposes, including the purchase of boats, guns, &c.

The third item consists of the outlay incidental to the particular voyage—the cost of ammunition, provisions, wages, insurance, &c.

The fourth consists of the estimated net profits of the voyage, the expenses of the voyage having been deducted. The Return which accompanies the "Willie McGowan" papers shows that 14 vessels with 84 boats made in the vicinity of the Commander Islands a catch of 9,427 seals, giving an average of 112·23 per boat. The "Ariel" had 7 boats, which would give her an estimated total catch of 786 seals.

"*Willie McGowan.*"

	Dol.	c.	Dol.	c.
1. Cost of vessel at Sydney, Cape Breton, and of transfer to Victoria, British Columbia Vouchers I, 1–44; II, 1.			10,115	64
2. Outfit at Victoria for equipment as a sealing-vessel Vouchers II, 4–6, 9, 11, 14, 20, 22 (part), 23.			1,597	27
3. Expenses of voyage, including salt, ammunition, wages, insurance, &c. Vouchers II, 1–3, 7–8, 10, 12, 13, 15–19, 21, 22 (part), 24–63, 65, 67.			4,561	00
4. Profits of voyage— 87 skins on board, and estimated further catch 699 skins, at 12 dollars	9,432	00		
Less expenses of voyage (3)	4,561	00		
			4,871	00
5. Expenses in connection with seizure Vouchers II, 64, 66.			19	50
			21,164	41
Interest for three years at 6 per cent.			3,809	59
Total			24,974	00

Remarks.—The "Willie McGowan" was a larger vessel than the "Ariel," though carrying the same number of boats. It is difficult to make out in many cases whether the supplies should be charged to head (1) or to head (3), as the owners, W. H. Moore, of Sydney, appear to have furnished much of the provisions and other supplies, not only for the voyage to British Columbia, but also for the sealing voyage, before the vessel left Cape Breton.

You will point out that the claims for compensation for the loss of the seasons subsequent to 1892 have been eliminated, and that very much smaller sums have been substituted which represent the interest on the amounts claimed for the three years which have elapsed since the dates of seizure.

Annex (B).

Draft of Despatch from the Marquess of Salisbury to Mr. Goschen.

(B.)
(No. .)

Foreign Office, March , 1896.

Sir,

WITH reference to my despatch No. of to-day's date, I have to request you to call the attention of the Russian Government to the claims of other British vessels which were seized by Russian cruisers in 1892.

Documents relating to these seizures were communicated to the Russian Government by Sir R. Morier in his notes of the 29th November, 1892, and of the 21st February, 1893. The claims were not admitted by the Commission appointed to inquire into the matter, and the decision of the Russian Government, communicated to Sir R. Morier in M. Chichkine's note of the 10th June, 1893, was to admit their liability for compensation only in the cases of the "Ariel" and the "Willie McGowan."

In a note of the 25th November, 1893, Mr. Howard asked that copies of the Protocols and Reports received by the Imperial Government might be furnished in order to enable Her Majesty's Government to arrive at a clear knowledge of the facts. But it was not till the 23rd January, 1895, that M. Chichkine forwarded to Sir F. Lascelles the papers asked for in the cases of the "Carmolite" and "Vancouver Belle," amongst which were the log-books of those two vessels, returned herewith.

The documents respecting the "Rosie Olsen" and the "Maria" have not yet been received, and the preparation of the statements of claims has been delayed in the hope that the Russian Government would comply with the request made by Mr. Howard.

After a careful consideration of the information before them, Her Majesty's Government are strongly of opinion that the evidence on which the vessels were condemned as lawful seizures was insufficient. But they have decided only to present claims in the cases which after full investigation they consider to be well founded.

I inclose the statements of claims in respect of the "Maria," "Carmolite," "Vancouver Belle," "Rosie Olsen," "C. H. Tupper," and "W. P. Hall." These statements have been prepared on the same basis as those of the "Ariel" and "Willie McGowan," and have been reduced to a proportionate extent from the figures as submitted by the owners to the Canadian Government.

The summary of the amounts claimed is as follows:—

	Dol.	c.
"Maria"	22,880	00
"Rosie Olsen"	11,972	50
"Vancouver Belle"	29,300	00
"Carmolite"	22,745	00
"C. H. Tupper"	3,600	00
"W. P. Hall"	3,000	00
	93,497	50
With interest for three years at 6 per cent.	16,829	55
Total	110,326	05

I also inclose a statement of the conclusions arrived at by Her Majesty's Government in each case, and of the grounds upon which the claims are individually and collectively supported.

In forwarding these papers to the Russian Government you will express a hope that they will give their favourable consideration to the claims of the several vessels, and grant compensation to the owners for the serious losses which they have sustained in consequence of the seizures.

If, after the claims are admitted in principle, the production of further documentary proofs is required in support of the amounts as now stated, Her Majesty's Government will endeavour to substantiate the claims by collecting the vouchers as has been done in the cases of the "Ariel" and "Willie McGowan." But you should do your utmost to procure a final settlement of the question as soon as possible, as it will be extremely difficult to obtain all the necessary papers, and a delay of several months will be occasioned, which, considering that more than three years have passed since the seizure of the vessels, it is manifestly desirable to avoid.

1896

"*Ariel.*"

List of Documents in support of Claim.

1. Detailed statement of cost, outfit, and repairs at Halifax, Nova Scotia; supplies, &c., for voyage to North Pacific Ocean, purchased at Victoria, British Columbia; advances to crew and other expenses. Summary of claim, &c., amounting in the aggregate to 57,019 dol. 57 c.

2. Book containing pasted therein bill of sale and original receipts, &c., for payment of moneys (as per above statement), numbered separately 1891, from No. 1 to No. 81 inclusive, but there being duplicate numbers, there are for 1891 86 vouchers.

For 1892 there are vouchers, &c., numbered from 1 to 99 inclusive, with duplicate numbers, making in that year 102 vouchers, or a total number of vouchers in the book of 188.

3. Statement showing cost of schooners "Sapphire" and "Carlotta G. Cox," for comparison.

4. Statement showing the average price of seal-skins, realized in 1892, with printed Petition, with Appendices, prepared for *modus vivendi* claims, to assist in establishing the value of skins and loss of profits during the years 1892 and 1893.

"*Willie McGowan.*"

List of Documents in support of Claim.

1. Detailed statement of purchase, outfit, and repairs at North Sydney; outfit and supplies for sealing voyage in North Pacific Ocean, purchased at Victoria, British Columbia, and other expenses, &c. Summary of claim, &c., amounting in the aggregate to 58,910 dol. 54 c.

2. Bill of sale and vouchers in support of above expenses; one set numbered from 1 to 44 inclusive, and another numbered from 1 to 67 inclusive; in all 111 vouchers.

3. Letter from W. H. Moore to Collector of Customs at Victoria, 26th August, 1895.

4. Declaration of W. H. Moore and G. F. H. Forbes, 26th August, 1895.

5. Particulars of claim for loss of catch for 1894.

STATEMENT OF CLAIMS.

"*Maria.*"

Schooner "Maria," 94 tons register, seized by "Kotik" on the 21st August, 1892:—

	Dol. c.	Dol. c.
1. Value of schooner		10,000 00
2. Boats—		
6 at 110 dollars each	660 00	
6 outfits, at 20 dollars each	120 00	780 00
3. Guns, instruments, &c. (say)		1,300 00
4. Skins, as 12 dollars each—		
On board when seized, 597	7,164 00	
Estimated further catch, 303	3,636 00	10,800 00
Total		22,880 00

"*Rosie Olsen.*"

Schooner "Rosie Olsen," 39 tons register, seized in latitude 54° 24′ north, longitude 165° 40′ east, by the "Kotik" on the 26th July, 1892:—

	Dol. c.	Dol. c.
1. Outfit of schooner—		
Slop chest and goods for trading	1,200 00	
Compasses, fog-horn, lamps, &c.	750 00	1,950 00

	Dol. c.	Do . c.
2. Boats—		
2 at 110 dollars each	220 00	
2 outfits, at 20 dollars each	40 00	
Canoes—		
9 canoes, at 25 dollars each	225 00	
9 outfits, at 17 dol. 50 c. each	157 00	642 50
3. Guns—		
10 shot-guns, at 35 dollars each	350 00	
1 ditto, at 55 dollars	55 00	
1 ditto, at 45 dollars	45 00	450 00
4. Skins, at 12 dollars each—		
On board when seized, 377	4,524 00	
Estimated further catch, 323	3,876 00	8,400 00
5. Detention of vessel at Vancouver		300 00
6. Legal expenses, &c., in recovering possession		230 00
Total		11,972 50

"*Vancouver Belle.*"

Schooner "Vancouver Belle," 73 tons register, seized on the 12th August, 1892, by "Zabiaka," 24 miles from Copper Island:—

	Dol. c.	Dol. c.
1. Value of vessel		15,000 00
2. Guns, boats, &c.		2,300 00
3. Skins, at 12 dollars each—		
On board when seized, 680	8,160 00	
Estimated further catch, 320	3,840 00	12,000 00
Total		29,300 00

"*Carmolite.*"

Schooner "Carmolite," 99 tons register, seized on the 28th August, 1892, by "Vitiaz," in latitude 54° 25′ north, longitude 168° 50′ east:—

	Dol. c.	Dol. c.
1. Value of vessel		10,000 00
2. Boats—		
7 at 120 dollars each	840 00	
7 outfits, at 20 dollars each	140 00	980 00
3. Chronometer		125 00
4. Guns—		
15 Parker shot-guns, at 55 dollars each	825 00	
1 rifle	15 00	840 00
5. Skins, at 12 dollars each—		
On board when seized, 608	7,296 00	
Estimated further catch, 292	3,504 00	10,800 00
Total		22,745 00

"*C. H. Tupper.*"

Schooner "C. H. Tupper," 92 tons register, boarded on the 10th August, 1892, by "Zabiaka," in latitude 53° 50′ north, longitude 166° 7′ east, and ordered to cease sealing:—

	Dol. c.
Estimated loss of catch, 300 skins, at 12 dollars each	3,600 00

"*W. P. Hall.*"

Schooner "W. P. Hall," 91 tons register, boarded by "Zabiaka" on the 17th August, 1892, 25 miles south-west of Behring Island, and ordered to stop sealing:—

	Dol. c.
Estimated loss of catch, 250 skins, at 12 dollars each	3,000 00

1896

SUMMARY.

	Dol. c.	Dol. c.
"Maria"	22,880 00	
"Rosie Olsen"	11,972 50	
"Vancouver Belle"	29,300 00	
"Carmolite"	22,745 00	
"C. H. Tupper"	3,600 00	
"W. P. Hall"	3,000 00	
Total		93,497 50
With interest at 6 per cent. from end of 1892		16,829 55
		110,326 05

Report of Russian Commission.	Statements of Masters and Crews.	Remarks.
"MARIA." Pages 12 and 13 of Blue Book "Russia No. 3 (1893)":— This vessel was arrested on the 9th (21st) August, 1892, by the Governor of the Commander Islands, M. Grebnitzky, on board the "Kotik," in north latitude 54° 36′ and east longitude 168° 24′, at a distance of 7* miles from Copper Island. *Two boats belonging to the schooner had been seen and seized at a distance of 1½ miles from the shore.* Seventeen seals were found on them, ten of which had not been skinned. Without waiting to pursue the other boats, which were hunting at some distance, M. Grebnitzky arrested the schooner itself, and brought her to anchor before sunset in front of the village of Glenka. Next morning, on examination of the vessel and the boats which had joined her during the night, 622 skins were found on board, of which 585 were skins of females, "prises, par conséquent, près de la côte." The log-book had not been kept for four days, the latitude and longitude was only marked in the almanacks, and that carelessly. The skins taken were those of fertile females, and must have been killed near the coast, as in July and August, when	These are contained in the four affidavits by the master, the mate, a seaman, and the cook of the "Maria," printed pp. 94–97 of Blue Book "Russia No. 2 (1893)." They all state that the vessel had been in a dense fog, for three days according to the master, for forty-eight hours according to Cardiff, the seaman, which had rendered it impossible to obtain any observations. That the boats were out hunting during the fog, and that when it lifted, about 1 o'clock on the day the vessel was seized, they found themselves 11 or 12 miles from land, and setting towards land with the current. They then saw the "Kotik" approaching from land, but as it was dead calm and the sails were furled they made no attempt to escape. The "Kotik" came alongside about 3 o'clock, and ordered the master on board with his ship's papers. After examining them, M. Grebnitzky informed the master that his vessel was seized for taking seals in Russian waters; the crew of the "Maria" were transferred to the "Kotik," and a prize crew placed on board the former. The master denied that he had been hunting in Russian waters, as he had been outside	It must be borne in mind that the Russian accounts of the seizure of this and all the other vessels were given after they had had every opportunity of studying the British evidence. The whole question as to this vessel turns on the position of the boats at the time of seizure. The first Russian account makes no mention at all of boats captured within territorial waters as a justification for the capture of the vessel, and the first Canadian affidavits were silent on the subject. The conversation stated by M. Grebnitzky to have taken place with the master as to the boats is not referred to, and M. Grebnitzky is, on the other hand, silent as to the allegation that he claimed as Russian waters all west of the line of demarcation and north of the parallel of Cape Lopatka. If the master had admitted, as M. Grebnitzky states, that his boats were sealing within the limits, it is difficult to see why he positively refused to sign the statement that he had been taking seals in Russian waters. The fact that clubs were found on board proves nothing, as every pelagic sealer carries such clubs to

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* According to the Chart opposite p. 72 of Blue Book "Russia No. 2 (1893)," this position is nearly 9 miles from Copper Island.

1896

Report of Russian Commission.	Statements of Masters and Crews.	Remarks.
giving milk, the females cannot go far from the coast. Clubs were found on the schooner used only for killing seals on shore. The vessel's chronometer was in such a condition as to indicate an error of 15 miles in the vessel's position. The captain admitted that 499 skins had been taken in the neighbourhood (" dans les parages ") of Copper Island, and did not deny that the three boats of the "Maria" were seized in Russian territorial waters, but declared that M. Grebnitzky should have confined himself to arresting them, as he had done in the case of the boats of the "Annie Moore." In fact, the "Annie Moore" had escaped, though her boats were seized, a circumstance which shows that the schooners, while remaining outside territorial waters themselves, send their boats inside from a long distance to hunt the seals in their rookeries. The captain of the "Maria" has recognized that the act of arrest was properly drawn up, but refused to sign it. The first Russian statement as to the seizure published in the official Gazette (p. 61 of Blue Book "Russia No. 2 (1893)") gives the distance from land as 8 miles, not 7, as in the later account above.	3 leagues of the coast, and *M. Grebnitzky informed him that he was in Russian waters directly he crossed the boundary-line between American and Russian waters, and that the latter extended south to the parallel of Cape Lopatka.* While the crew were being transferred, M. Grebnitzky drew up a document stating that the vessel had been taking seals in Russian waters, which the master refused to sign on the ground that he had not been doing so. A further affidavit by the master, mate, and two seamen of the "Maria" has now been received, in which it is affirmed "that no boats belonging to the 'Maria' were captured by the Russians previous to the capture of the said vessel, the only boats captured being two in number, and they were captured about 3 miles S.W. from where the said schooner was captured. There were four boats and one canoe hunting to the east and north of the said vessel when seized, which, however, the steam-ship 'Kotik' failed to find before dark, and they rejoined during the night." They add, "that the vessel was not brought to anchor before sunset off the village of Glenka on the day on which she was seized, but arrived there at 8 A.M. on the following day, 23rd August."	knock on the head wounded seals which are not dead when hauled on board the boat. The presence of females in the catch is similarly not to the point, as the bulk of the catch in summer undoubtedly consists of females, but they are found all over the sea, and certainly do not confine themselves to territorial waters. In support of this it is only necessary to refer to the fact that the Agreement with Russia for the protection of female seals extends to an area of 30 miles round the islands. In regard to the statement of the Commission that the log-book of the vessel had not been posted for four days, and that the latitude and longitude was only marked on the almanack, and that carelessly, it is to be remembered that these vessels are small fishing craft engaged on a prolonged fishing voyage, and that the daily posting of the log in such cases is not required, and is in fact unusual. It is a curious coincidence that only in the case of the two vessels seized by M. Grebnitzky, the "Maria" and "Rosie Olsen," does the legality of the seizure turn on the position of the boats. There was no hint of this in the earlier Russian account of the seizures nor in any of the British affidavits. The latest Canadian affidavit quoted above positively denies that the boats were captured before the schooner, and affirms that the only two that were captured were seized after the seizure of the vessel 3 miles to the S.W. of the schooner, a position which assuming that the schooner was, as alleged by the Russians, 7 miles from land, would place the boats well outside territorial waters. The first paragraph of the Commission's Report says that M. Grebnitzky seized two boats, and the next paragraph that three boats were seized. The statements of M. Grebnitzky to the Commission are contradicted by the sworn affidavits in detail, and if the boats were not outside

		territorial waters, why should he have stated to the master that Russian waters extended to the parallel of Cape Lopatka, and to the water boundary in the Treaty of 1867? There are, it is believed, no rookeries on the east side of Copper Island where the "Maria" was seized, and there was therefore no special inducement to send the boats into territorial waters, seals being as likely, if not more so, to be found outside as inside. The protocol drawn up at the time of seizure, which has been promised, may aid in explaining these contradictions, but at present the case against the vessel rests wholly on the *ex post facto* statements of the seizing officer, unsupported by any contemporaneous documentary or other evidence, and flatly contradicted by the evidence supplied to Her Majesty's Government.
"ROSIE OLSEN." Page 13 of Blue Book "Russia No. 3 (1893)":— Seized by M. Grebnitzky on the 14th (26th) July, 1892, in north latitude 55° 23′ and east longitude 165° 27′. The schooner had been seen in the territorial waters, but having caught sight of the smoke of the pursuing steamer had succeeded in gaining the open sea after having given the signal of recall to her boats. Nevertheless, the "Kotik" and a boat she had detached seized four boats of the "Rosie Olsen" in territorial waters, one of them at a distance of a mile from the shores of the Island of Aria. Three out of seven boats managed to regain the schooner. After seizing the four boats M. Grebnitzky proceeded to seize the schooner, and drew up the protocol of arrest. This the master of the "Rosie Olsen," who was much excited, refused to sign, and, on his arrival at Petropaulovski, protested against the seizure of his vessel on the high sea. On board the schooner and boats were found 379 seal-skins, of which 96 per cent. were skins of females; two of the skins were in the boats. It	Affidavits, pp. 40–47 and p. 98 of "Russia No. 2 (1893)." The "Rosie Olsen" was lying-to in north latitude 54° 24′, east longitude 165° 40′, about 38 miles from land, when hailed by the "Kotik," and the captain required to bring his papers on board. The vessel was becalmed and had been so for four hours before the seizure, which took place about 2 P.M. on the 26th July (pp. 46 and 98), and though the steamer was seen approaching for two hours no sail was set nor any attempt made to escape. When M. Grebnitzky had examined the papers the master asked if they were all right, and was answered "Yes." The master further asked if he was done with him, and if he could now return to his vessel, and M. Grebnitzky answered that he was, but that he would go on board with the master to see if there were any fresh skins on board, but changing his mind left the master on the "Kotik," and went to the "Rosie Olsen" by himself.	There is the most extreme discrepancy between the Russian and English accounts of the seizure. The latitude differs by 59′ and the longitude by 13′. The Russians say the seizure took place to the north-west of the north point of Behring Island, while the English statement is that it took place to the south-west of the south point. At first the Russians said 13* miles from land, then only 9½.* It is of course possible that in one of the accounts a clerical error of a degree has crept into the latitude. The Russians state (p. 13, Blue Book "Russia No. 3 (1893)") that four boats were seized inshore before the vessel was boarded, three having been able to reach the "Rosie Olsen" before they could be seized. The English say that one boat, that of the mate, reached the ship about the same time as the steamer, and before the master left the vessel (p. 46, Blue

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* This discrepancy may be accounted for by the use of different charts.

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appeared from the journal that the schooner had been hunting for thirteen days "dans les parages de l'Ile de Cuivre," with the assistance of its boats, which it had sent into territorial waters. On the 12th (24th) July 101 seals had been taken. The log had not been kept for several days, and the chronometer was all wrong. The captain's statement that the vessel was 38 miles from land at the time of seizure must be wrong, as the intersection of the latitude and longitude which he gives is 54 miles from the nearest point of the coast. In the first Russian official account (p. 61, Blue Book "Russia No. 2 (1893)"), the distance from land of the vessel when seized was 13 miles, while the position given above only indicates a distance of 9½ miles.	On board the "Rosie Olsen" he asked to see the hold, and the mate, with one of the sailors from the "Kotik" examined the skins in the hold. The mate then asked M. Grebnitzky if he was going to seize the vessel, and he replied that he did not know, it would have to be looked into. The boat which brought M. Grebnitzky on board the "Rosie Olsen" had, before coming to that vessel, gone to meet one of the canoes and taken it to the "Kotik." When M. Grebnitzky returned to the "Kotik" after the examination of the "Rosie Olsen," the master inquired what he was going to do, and he replied to tow the vessel to Behring Island. When asked what for, and if he intended to seize the vessel, he said "No," but that he was going to stop her from sealing. The master then asked why he was taking them to Behring Island, and was informed that the skins were to be confiscated as having been taken in Russian waters, but that he would not confiscate the vessel. The "Kotik" then took the "Rosie Olsen" in tow, and after steaming round to pick up the boats that had not returned, proceeded to Behring Island. On the way a protocol was drawn up in Russian stating the time of seizure, nothing as to the place except the number of hours the steamer had been in reaching the "Rosie Olsen," the number of skins on board, and the Proclamation of the Governor-General of Eastern Siberia forbidding hunting in Russian waters. This the master was asked to sign, and refused, protesting against the seizure. He was then told that if he did not sign he would have to go to Vladivostock for trial, and that he might protest, but that if he made any lengthy protest he would have to go for trial. On this he signed an admission of the number of skins, but nothing as to sealing in Russian waters, and stated that he was in the North Pacific at the time of seizure. M. Grebnitzky on reading this said there was no North Pacific, it was all Russian waters. The "Kotik" with the "Olsen" in tow reached Behring Island about 11 P.M. At the end of his affidavit the master swears that at no time during the voyage was he within 15 miles of Russian territory, nor when his boats were out sealing was he at any time within 20 miles of land, and that his schooner was always nearer to land than his boats when out sealing. The mate says no sealing was done within 10 miles of Russian territory. The captain also denies that the log of the vessel showed that they had been any nearer the land in those Russian waters—presumably than the 15 miles stated in his first affidavit.	Book "Russia No. 2 (1893)"), one was seized after the master had gone on board the "Kotik" by M. Grebnitzky as he was on his way to the "Rosie Olsen" (p. 46), and that after the vessel was in tow the "Kotik" steamed round and picked up the others. As nothing appears to have been said as to the vessel being seized on account of the proceedings of the boats, this discrepancy is inexplicable; the Canadians could therefore have had no reason for framing a circumstantial account of the proceedings of the boats so entirely apocryphal if M. Grebnitzky's allegations are true. Then all the report of the conversations between M. Grebnitzky and the master and mate of the vessel has no place in M. Grebnitzky's account. His doubts as to seizing the vessel, and his statement that the North Pacific was "all Russian waters" are not noticed in the Russian account. If the vessel was so near land when seized, and there was no time wasted in picking up boats, as the Canadians allege, how was it that the "Kotik" did not get into port till 11 o'clock at night, the seizure having taken place about 2 o'clock in the afternoon? Is it probable that the vessel's log would bear on the face of it a statement that the vessel had been for thirteen days hanging round the islands, sending her boats into territorial waters to hunt? If the boats were seized as stated, how was it that even under threat of being sent to Vladivostock the master refused to admit that he had been sealing in Russian waters, and states positively that his boats were always to seaward of his vessel when out sealing? The Russian statement that the vessel was seen within territorial waters, and then made off, having signalled to her boats, is flatly contradicted by the Canadian statement that the vessel was becalmed and had been so for four hours before the "Kotik" was seen. If the boats were caught *flagrante delicto* as alleged, why was the fact not mentioned at the time, and what was the cause of M. Grebnitzky's doubts and hesitation as to seizing the vessel? Why was it necessary for him to go on board the "Olsen" and examine her skins, if he had already absolute proof of her guilt? In this case as well as the previous one the protocols and documents asked for have not been furnished. The decision of the Commission was arrived at, in so far as it was not based on these contemporaneous records and documents, entirely on the statements of the captor, who had every opportunity of knowing the evidence on behalf of the vessel, and whose statements were made in the absence of any one representing the defence, and subject to no cross-examination. It is impossible, therefore, for Her Majesty's Government to accept the decision of the Commission, and they must continue to press the claim of the owners for compensation for the loss of the voyage.
"CARMOLITE."		
Pages 13 and 14 of Blue Book "Russia No. 3 (1893)":— This vessel was captured by the flag-ship "Vitiaz" on the 17th (29th) August, 1892. She was first sighted by the cruiser on the other (*i.e.*, east) side of the isthmus at the south end of Copper Island, being then about 3 miles from a rookery. She sighted the cruiser, and at once set sail and gained the open sea, the cruiser having to pass round the long reef at X the south-east extremity of the island. After a chase of an hour and a-half she was seized 8 miles from the nearest land in north latitude 54° 29′, east longitude 168° 2′. The ship's papers showed that	Affidavits (pp. 71 and 92–94 of Blue Book "Russia No. 2 (1893)"). The vessel reached the sealing-grounds about the 10th July, and continued sealing 60 miles to north and 60 to 120 miles south of Copper Island for five weeks, all the time out of sight of land, and at no time sealing within 20 miles of land. The master, thinking his chronometer was out, stood in towards land to test it, passing Copper Island, bearing west-north-west about 12 miles distant, when the cruiser was sighted, and the vessel bore away to the east	Here the two accounts are in conflict, but only as to the distance of the vessel from land when sighted by the cruiser. According to the Russian statement the vessel when sighted was on the east side of Copper Island, about 3 miles from land; by the Canadian statement she was 10 or 12 miles east of the island. The documents now received from Russia—the protocol and the Admiral's Report—do not strengthen the Russian case, and show that the Commission have misunderstood the evidence of the Russian

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she had been since the 29th July in the waters of the Commander Islands, and the Captain declared that the 608 skins found on board had been taken near Behring and Copper Islands, in contradiction, it is stated, to his declaration that the capture of seals had only taken place at a distance of 60 miles from land. The log-book had not been posted for two days. *Protocol of Seizure.* In the protocol of the 17th (29th) August, now received, it is stated that the "Vitiaz," "when in latitude 54° 29′ north, and longitude 168° 2′ east (south point of Copper Island, bearing N.E. 42° 5 miles off), saw a sailing-vessel to the E.N.E. about 8 miles, steering S.S.W., the approximate position of the vessel might have been 4 miles to the east of south point of Copper Island. The aforesaid sailing-vessel, after having sighted the cruiser, tacked on port, set all sails, and ran to the east. After one hour and thirty-five minutes' chase, at 3·10 P.M., the cruiser overtook the vessel, and after having fired a gun, obliged her to tack and hove-to. . . . The schooner was visited, duly examined by us. and confiscated both vessel and cargo, as found guilty of illegal seal-hunting within the limits of the Russian waters." *Report of "Vitiaz."* In the extract from the Report of the 29th September the following account is given: . . . . "We put on more sail, and the cruiser made for the southern rookery under sail. At 1·35 P.M., while we were holding a N.N.E. course, we saw on the horizon at point E.N.E. the mast of a schooner going, apparently, in a south-westerly direction, at a distance of 8 to 9 miles from the cruiser. The cruiser 'Vitiaz' was at that time to the west of a reef jutting out from the Southern Cape, and at a distance of 5 miles from the latter; the schooner was on the east side of the same reef, and was making round it; consequently, she could not have been more than from 3 to 4 miles from the shore, going towards the rookery. As soon as the schooner sighted the cruiser, she tacked on port, set all sails, and ran to the east. When I noticed the manœuvre I ordered the schooner to be chased, and all steam to be put on. The 'Vitiaz' had hitherto used four boilers only, but on this morning, foreseeing the possibility of a chase, I had ordered steam to be got up in two boilers more. With six boilers and fore and aft sails the cruiser made 12 knots an hour, and at that speed would come up with the schooner in about an hour and three-quarters. When we got within 2 miles of her, we fired a blank shot, and she at once tacked and hove-to, hoisting the English flag. The wind was at that time a top-gallant breeze, but there was a considerable swell. When we came up with the schooner I sent a boat with two officers and two quartermasters to examine the schooner, and to send the master with his papers, if any seal-skins and arms were found on board. Such articles were found, and the log-book had not been kept at all for the last two days. The master was therefore requested to come on board the cruiser with all the ship's papers. It appeared from the log-book that most of the seals had been killed at Copper Island, and as therefore the cruiser had sighted the schooner when the latter was within our territorial waters, I ordered the master to be informed that his schooner and her whole cargo were confiscated for having exercised a prohibited industry in Russian waters. . . . The master did not protest against the seizure of the schooner, but when signing the protocol he made the observation that he calculated the distance of the schooner from the shore when she ran to the east to be 10 miles, which	with a 6-knot breeze. In about an hour and a-half the cruiser came up and compelled the vessel, then about 25 miles to the east of the south end of Copper Island, to heave-to, and declared her seized. The Russians admitted the error in the chronometer. No boats were out, and no attempt made to take seals on the day that the vessel was seized.	officers laid before them. According to the protocol, the cruiser sighted the vessel when she (the cruiser) was in latitude 54° 29′ north and longitude 168° 2′ east. According to the Report of the Commission, following the entry made by the captor in the vessel's log, the vessel was seized in longitude 168° 2′ east and latitude 54° 29′ north. Yet it is stated that there was a chase of an hour and three-quarters, or thereby, the cruiser going at the rate of 12 knots an hour in pursuit of a vessel going due east. But if the protocol is right, it is clearly impossible that a vessel which, according to their own statements, was "3 to 4," or "approximative 4," miles to the east of the south point of Copper Island when she tacked and went east to escape the cruiser, should, after a chase of such duration, have been taken 5 miles or more to the west of the south point of Copper Island, in the position where the cruiser was when the vessels are said to have sighted each other. The Commission has, in fact, by mistake taken the position of the cruiser when she sighted her prey as the position where the capture took place. Moreover, as will be seen from the tracing annexed, the "Carmolite," if she was E.N.E. of the "Vitiaz" when sighted, could not, if the latter was in latitude 54° 29′ north, longitude 168° 2′ east, have had the reef between her and that vessel. The position of the cruiser when she sighted the vessel, 54° 29′ north latitude, and 168° 2′ east longitude, is, according to the small-scale Russian chart, 8 miles from Copper Island, according to the chart facing p. 72 of Blue Book "Russia No. 2 (1893)" 5 miles, but according to the large-scale chart of the Board of Admiralty, only a little over 4 miles, and if the "Carmolite" was then 8 to 9 miles from the cruiser, she must have been clearly beyond territorial waters. If the cruiser was in the position stated, viz.: south point of Copper Island bearing N.E. 42°, 5 miles off, and the schooner was east of the south point of Copper Island, and E.N.E. from the cruiser, the intersection of these bearings would place the schooner, according to the chart opposite p. 72 of Blue Book "Russia No. 2 (1893)" (facing p. 6 herewith), at a distance of 6½ miles from the south point of Copper Island, and 10½ miles from the cruiser. As to the pursuit, according to the protocol it lasted one hour and thirty-five minutes, when the cruiser fired a gun and the schooner hove-to. The Admiral's Report says it lasted about an hour and three-quarters, but as it also says the gun was fired when the cruiser came within 2 miles, the discrepancy is probably explained by the time occupied by the cruiser in coming up to the vessel after the latter hove-to. The cruiser, according to her own statement, was going 12 knots an hour, and she must have covered in the pursuit a distance of 21 knots, and if the south point of Copper Island was 42° north-east at a distance of 5 miles, or a little over 4 according to the Admiralty, when she started in pursuit, she must at that time have been about 3½ or 4 miles west of that point, and the position of the "Carmolite" when the capture took place must have been about 17 miles east from the same point. From the statement of the mate (p. 93, Blue Book "Russia No. 2 (1893)"), the "Carmolite" fled with about a 6-knot breeze—the Russian calls it "a top-gallant breeze." From the Report of the "Vitiaz," however, it appears that the schooner did not alter her course till after the "Vitiaz" had started in pursuit, and must therefore, in a period of less than an hour and thirty-five minutes, if she was within territorial waters when sighted, have done at least 13 knots, or about 8½ knots an hour. This is improbable, and as the statement of the times is more reliable than a guess as to the distance between the vessels, it is obvious that unless the "Carmolite" was more than even 9 miles from the cruiser she would have been overhauled in less than

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is disproved by the fact that the schooner could not have been seen from the cruiser if she had been 15 miles distant." The entry made by the Commander of the "Vitiaz" in the "Carmolite's" log states, "On the 17th (29th) August, 1892, the schooner 'Carmolite' was seized in 54° 29′ north latitude, 168° 2′ east longitude.		the time stated, and must have been considerably more than even 4 miles from land when first sighted. The inference to be drawn from the facts of the pursuit thus confirms what has been said above as to the position of the "Carmolite" as fixed by the bearings given in the "Vitiaz" Report. A glance at the tracing will show that the statement of the Commission that the "Carmolite," "taking advantage of the fact that the latter (the cruiser), in order to reach her, was obliged to pass round a long reef situated at the south-eastern extremity of the island, set sail and gained the open sea," is unfounded. The "Vitiaz" Report states that the schooner was rounding the reef when sighted, going south according to her own account, and S.S.W. according to the cruiser, and then made due east, so that the course of the cruiser in pursuit, starting from a point south-west of the reef, could not have been interrupted by the reef, and, indeed, in none of the papers is this stated, so that it must have been an inference of the Commission from the fact of the reef having been mentioned as between the cruiser and the vessel when they sighted each other. They state also that the "Carmolite" was thus about 3 miles from a seal rookery. This is a mistake; the Report of the "Vitiaz" states that the vessel was making round the reef, "consequently she could not have been more than from 3 to 4 miles from the shore, going towards the rookery." The rookery in fact is on the south-west side of the island, the opposite side to that on which the vessel was when sighted. Now, what are the grounds upon which the vessel was seized? Captain Zarin states in his Report: "It appeared from the log-book that most of the seals had been killed at Copper Island, and therefore, as the cruiser had sighted the schooner when the latter was

		within territorial waters, I ordered the master to be informed that his schooner and her whole cargo were confiscated for having exercised a prohibited industry in Russian waters." But according to the statements of the officers of the cruiser the vessel was "3 to 4," or "aproximative 4," miles from land when sighted, and, as already shown, must have in reality been further. She was not, therefore, *within territorial waters*. Moreover, she was not sealing at the time,* nor is it alleged that she had been doing so immediately before, so that there was no offence to justify pursuit even if she was sighted in territorial waters. If the statement that the log-book showed "that most of the seals had been killed at Copper Island" is put forward to justify the capture, it can only be on the assumption that it shows that seals were taken within 3 miles of Russian territory. A list† of the daily positions of the "Carmolite," taken from the log-book, is annexed, and also an extract from the chart of the North Pacific. From the latter it will at once be seen that any position outside the parallelogram bounded by north latitude

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* The mate, in his affidavit (p. 93, Blue Book "Russia No. 2 (1893)"), asserts that no boats were out or seals taken on the day when the vessel was taken, and the Russians do not contradict this statement.

† Daily Position of "Carmolite."

Date.			Lat. N.		Long. E.	
			°	′	°	′
July 11	..	..	53	58	165	33
12	..	..	54	42	165	51
14	..	..	53	51	167	11
15	..	..	54	22	168	40
16	..	..	54	20	168	40
Sunday, July 17	..	..	54	47	168	54
19	..	..	54	37	168	58
20	..	..	54	30	..	
21	..	..	54	21	168	45
22	..	..	54	30	..	
23	..	..	54	36	..	

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54° 30′, east longitude 165° 30′, and north latitude 55° 30′, and east longitude 168° 30′, is well outside the territorial waters of the Commander Islands, and from the daily positions of the "Carmolite" it will be seen that only on one occasion—12th July—was she inside that parallelogram. Her position at noon on that day was 54° 42′ north latitude, 165° 51′ east longitude, and it will be seen that the distance from Behring Island was 14 miles. There is no foundation, therefore, for the statement that her log showed that she had caught seals within territorial waters, and the master's statement that his seals were all caught 20 to 60 miles from land is undoubtedly well founded.

Date.		Lat. N.		Long. E.	
		°	′	°	′
Sunday, July	24	54	42	168	47
	25	54	30	168	45
	26	54	28	168	46
	27	53	47	167	33
	28	53	58	167	7
	29	53	53	166	55
Sunday, July	31	55	55	166	59
Aug.	1	53	56	166	52
	2	52	40	166	10
	3	52	36	166	15
	4	52	48	165	45
	5	53	1	165	24
	6	52	54	164	54
Sunday, Aug.	7	53	5	165	33
	8	52	25	166	55
	9	53	14	166	16
	10	53	5	165	47
	11	53	5	166	0
	12	53	45	165	25
	13	55	40	164	25
Sunday, Aug.	14	56	20	164	45
	15	55	32	166	25
	16	56	35	167	0
	17	56	17	167	0
	18	56	5	167	31
	19	55	59	168	1
	20	55	53	168	11
Sunday, Aug.	21	56	5	168	0
	22	56	20	167	45
	23	56	0	167	30
	24	56	1	167	32
	25	55	31	167	52
	27	54	40	169	22

There is therefore no defence for the seizure of the vessel. She was not within territorial waters when sighted, was committing no offence, nor had committed any offence during the whole time of her presence in the neighbourhood of the Commander group, the pursuit was therefore illegal *ab initio*, and the capture unjustifiable, and the claim for compensation is unimpeachable.

"VANCOUVER BELLE."

Page 14 of Blue Book "Russia No. 3 (1893)":—

This vessel was captured by the "Zabiaka" on the 31st July (12th August), 1892, in north latitude 54° 17′, east longitude 168° 12′, 17 miles from Copper Island. The Commander of the cruiser, having been informed by coastguards that this schooner was sealing on the coast, proceeded towards her. On the way he found three boats of the "W. P. Sayward" sealing* within 3 miles of land, which it took him about two hours to seize and take in tow, the "Vancouver Belle" taking advantage of the delay to make for the open sea.

When seized it was found that no entry had been made in her log for twenty-four hours, but the entries found showed that she had on two occasions been engaged in sealing close to the shore in the straits between the islands.

We have received an affidavit by the master and crew of the vessel, dated the 6th April last, answering in detail the statements in the Russian account.

1. As to the statement that the "Zabiaka" was informed by coastguardsmen that the vessel was sealing on the coast, the master points out that on the 11th August, the day before the seizure, he was in latitude 54° 15′ north, and longitude 166° 30′ east, a distance of 60 miles W.S.W. from the south end of Copper Island. Bearing east at 8 A.M. the south end of the island was N.N.E., distance 35 miles. An observation at 12 noon gave the latitude as 54° 20′ north, and the south end of Copper Island was north, placing the vessel at a distance of 20 miles* from land. The vessel was then tacked head off shore on a south-east wind, and the vessel hove-to,

There is much discrepancy in this case, not only between the English and Russian versions, but between the various Russian versions, and it would appear that the Commission have seriously misunderstood the documents submitted to them by the Russian officers.

In the Report of the Commission it is stated (paragraph 4) that the Captain of the "Zabiaka" was "informed by coastguardsmen that this schooner was sealing on the coast," and that he "proceeded towards her." In paragraph 5, however, it appears that the information received was "that several foreign boats had landed at the rookery, and, after killing a certain number of seals, had put to sea again." The Commander in his own Report states he was "informed after midday by a signal from the shore that a sailing-vessel had been seen on the western side of the island." This latter account

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* In the Report of the 31st July (11th August), 1892, he says: "I saw at a distance of 3 miles from the shore."

* According to the Admiralty calculation, the distance is only about 12 miles.

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It is added that as only two hours elapsed from the time the cruiser was sighted till the vessel was captured, she could not have proceeded further than 14 miles seawards. In the first Russian account the seizure is said to have taken place 18 miles from land. *Protocol of Seizure.* In the protocol of the seizure drawn up on board the "Zabiaka," which has now been received from Canada, the account is as follows:— "This 31st day of July, 1892, we, cruizing near the Commander Islands, and holding a course of 50° 49′, observed, at four minutes past 3 o'clock, on our right, a sailing-vessel making for the open sea, in consequence of which we made towards her, taking a course of S.W. 45°. "At 4·23 we approached the vessel, and fired a blank shot from a 9-pounder, slackening speed. "At 4·30 we came close up to the ship, which proved to be an English vessel, the 'Vancouver Belle.' We stopped the engine and hailed the master. From an examination of the papers and log-book it appeared that the ship left Vancouver in February, and in the latter part of July came very close to the Commander Islands and killed seals in the strait of the islands. The ship and her cargo, consisting of salt and about 600 seal-skins, were declared to be seized." *Report of "Zabiaka."* The fuller account given in the Report by the Commander of the cruizer "Zabiaka," received from Russia, is as follows:— "On the 31st July, when to the east of the southern extremity of Copper Island, and hidden by it, I was informed after midday by a signal from the shore that a sailing-vessel had been seen on the western side of the island. Having taken the cruiser round the cape, I saw at a distance of 3 miles from the shore three sails making for the open sea. On coming closer I found that they were three poaching boats making away from the cruiser. Having come up with the boats, which belonged to the schooner 'Sayward,' I ordered them to be seized. The boats, with nine poachers, their guns, and eight seals just killed, were taken on to the cruiser and confiscated. The boats and guns were sold by auction in the village of Nikolsky for 200 roubles. On being questioned, the foreigners showed me where their schooner was, in the direction of S.W. 45°. I proceeded to that quarter and soon sighted a schooner, coming up to her at 4·30. I sent for the master, and he came on board with his papers; but I found I had been deceived, the poachers had indicated a wrong direction. The schooner proved to be the British vessel 'Vancouver Belle,' master W. H. Copp, with a crew of twenty-three. On board were about 600 seal-skins, salt, gunpowder, and arms. I ordered the schooner to be confiscated, as it appeared from her log-book that some of the seals had been killed in the strait between the islands. I took the master and crew on board the cruiser, and ordered Lieutenant Koltshak to take the schooner to Petropaulovski. Immediately after the seizure of the schooner a thick fog came on, which prevented me from looking for the schooner 'Sayward.'"	and the *boats* put overboard, about 1 P.M. *heading off shore* towards the south-west. After lying-to for half-an-hour she proceeded to follow her boats. 2. With regard to the statement as to the "W. P. Sayward's" boats, Captain Copp gives the statement made to him at the time by the Captain of the "Zabiaka." The cruiser was lying in a sheltered cove on the east of Copper Island, and close to the south end, when the coastguard brought word that a schooner had been seen sealing close to the shore on the east side, and near the south point of the island, but had stood off to the E.N.E. The cruiser gave chase in this direction, but when a few miles out observed the "W. P. Sayward's" boats in shore, and, *steaming back*, picked up three of them at a distance of less than 3 miles from the coast. The crews of these boats informed the Captain of the cruiser that their vessel had gone south, and after steaming south for an hour the cruiser sighted the "Vancouver Belle." When asked if that was their vessel, they said they did not know, and when within 3 miles of the "Vancouver Belle" that it was not their ship. 3. It was at 2 o'clock, as stated, that the smoke of the cruiser was first seen, and a signal was put up to summon the boats, the one which was furthest from the ship being at a distance of 1½ miles from the schooner. The boats were on board at 3·30 P.M. (3 P.M. according to earlier affidavit, p. 109, Blue Book "Russia No. 2 (1893)"). At 4 P.M. the cruiser fired a gun, being about 4 miles away, and the schooner hove-to. Between 12 noon and the hour of seizure the vessel did not proceed seaward more than 4 miles. 4. As to the absence of any log entry for twenty-four hours, and the entries showing that she had sealed close to the islands, the master observes that sealers are not required to carry a certificated mate whose duty it is to keep the log. That notes had been made for future entries according to custom, while, as he pointed out to the Captain of the "Zabiaka" at the time the incriminating entries were made by the unqualified mate by mistake from dead reckoning, the correct position of the vessel being shown by remarks in the side column showing the distance from land by cross bearings, which were the work of the master, and calculated from the chart.	tallies with what the master of the "Vancouver Belle" says as to his conversation with the Captain of the cruiser as to the circumstances which led up to the seizure of his vessel (pp. 107, 108 of "Blue Book Russia No. 2 (1893)," and affidavit printed above). He had started in pursuit of the boats, and no doubt also of the vessel to which they belonged, and after he had seized the boats, proceeded to seize the first vessel he came across. The protocol drawn up at the time of seizure says nothing at all about the boats, but simply states that when the Commander was cruising about he sighted the vessel and made after her. Long before he came up to her he was aware that the boats did not belong to her, and the question immediately arises—What right had he in those circumstances to proceed either to search or seize the vessel? The statement of the Commission that the schooner was sealing on the coast is therefore clearly a mistake. The Commission observe that "It appeared from Captain Copp's own statement that it was 2 o'clock when he caught sight of the cruiser. As it was 4* o'clock when the 'Zabiaka' came up with the schooner, the latter could not have proceeded further than 14 miles seaward." Of course not, and, as a matter of fact, having to pick up her boats, she could not have gone anything like that distance, and must therefore have been well outside territorial waters when pursuit began, even if we accept the Russian statement that she was seized only 17 or 18 miles from land. The latitude and longitude of the seizure are not given either in the protocol or the Report of the "Zabiaka," and it is impossible to reconcile the figures given by the Commission with the statements made in these documents, and by the Commission itself in paragraph 5. The position latitude 54° 17′ north and longitude 168° 12′ east is almost due south (17 or 18 miles) of the southern extremity of Copper Island. Now, Captain de Levron says in his Report that he took the cruiser round the cape (*i.e.*, round to the west side of the isle), and then saw three boats making for the open sea, 3 miles from the shore. He pursued and captured them 9 miles from the south-eastern extremity of the island (paragraph 5, Commission Report). Then, on the misleading information of the boats' crews, he turned his course to S.W. 45°* (protocol and "Zabiaka" Report). He started about midday (Report of "Zabiaka"), and took about two hours to seize the boats, so that it must have been about 2 o'clock when he started on this course—being then 9 miles south of Copper Island. As he kept on this S.W. course in search of the "Sayward" till 4·30 (Report of "Zabiaka"), he must have been some distance to the west of the island, and by that time much more than 17 miles from the island. The only possible explanation is that in this case, as in the previous one of the "Carmolite," the Commission has taken the position of the cruiser at the time she sighted the schooner as the place of seizure. The schooner was sighted at four minutes past 3 o'clock (protocol), when, if the boats of the "Sayward" were seized about 2 o'clock, 9 miles from the S.E. end of Copper Island, the cruiser might have been in the position indicated in the Report of the Commission as the position of seizure. But as she then pursued the vessel till 4·30 in a S.W. direction (protocol, paragraph 2), this would bring her very near the position given by the master of the "Vancouver Belle," south end of Copper Island, N. by E. 24 miles, at p. 107 of the Blue Book. The Captain of the "Zabiaka" made no objection to that statement, and it is therefore most probably the real position at the time of seizure. If so, and the fact that the wind was S.E. and only very light at the

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* The Captain of the "Zabiaka" in his own account says 4·30, and in the protocol says he approached the vessel at 4·23.

* In the protocol it is said he was holding a course of 50° 49′ when he sighted the "Vancouver Belle.'

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		time is borne in mind (p. 106 of Blue Book), it is obvious that the vessel could have fled only a short distance, must have been more than 17 miles from land when sighted by the cruiser, and still farther of course when captured. From the time when the boats were taken to the seizure of the "Vancouver Belle" 2½ hours elapsed, and it is inconceivable that in that time the "Zabiaka" only made 8 miles. The whole of paragraph 4 of the Report of the Commission is based on the assumption that the case reported to the cruiser was that of the "Vancouver Belle," whereas, from paragraph 5, it is clear that it was the boats of the "W. P. Sayward," and that the boarding of the "Vancouver Belle" was illegal to begin with, as she was outside territorial waters, and had not been within them, when pursuit began, and there was therefore no hot pursuit to justify interfering with the vessel on the high seas. The statement of Captain de Levron to Captain Copp (p. 109 of the Blue Book) that his instructions were to seize all vessels east of the line of demarcation and north of a line on a parallel of latitude running 3 miles south of the southernmost Aleutian Island to the Kamschatkan coast, would have been quite gratuitous if, as is implied by the Commission, the vessel was seized in hot pursuit from an offence committed in territorial waters. The contemporaneous record, the protocol, says nothing of any immediate offence, nor as to the position of the vessel when sighted. It frankly admits that the vessel was seen, chased, and boarded and searched for the purpose of finding something incriminating, and it gives the result of that search as the sole justification for the seizure. Even if such search had revealed that an offence had previously been committed, the seizure cannot be justified by evidence obtained by violating a foreign flag on the high seas.

		The statement of Captain Copp as to the attempts of the "W. P. Sayward's" boats to mislead the cruiser is borne out by the entirely independent statement of the captain of the "W. P. Sayward" as to the intentions of his hunters in case they were seized by the Russians (p. 68 of Blue Book), and confirmed by the extract from the Report of the Commander of the "Zabiaka," dated the 11th August, 1892, now received from Russia. As already pointed out the sole reason given in that statement for the capture is that "it appeared from her log-book that some of the seals had been killed in the strait between the islands." A list of the daily positions from the log-book is attached,* and it appears that the only occasion on which this

* Daily Position of "Vancouver Belle."

Date.	Lat. N.		Long. E.	
	°	′	°	′
July 1	52	19	171	29
2	53	47	170	15
3	53	57	168	57
4	54	11	168	52
5	54	0	167	15
6	54	8 (12)	166	35
7	54	1	168	33
8	54	22 (23)	169	9
9	54	12	169	33
10	54	16	169	23
11	54	26	169	32
12	54	22	169	32
13	54	43	169	30
14	54	34	168	30
15	54	45	168	20
16	55	25	167	20
17	55	40	166	10
18	55	50	166	10
19	55	7 (2)	167	43 (40)
20	55	16 (14)	168	24
21	55	47 (48)	167	46
22	57	42	168	27
23	57	26 (47)	170	5
24	57	8	170	58
25	55	28 (35)	170	24 (15)
26	55	9 (13)	169	8 (5)

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		took place was on the 9th August, three days before the seizure took place, and the vessel's position on that day is given as 54° 43′ north latitude, 167° 24′ east longitude, a position 8 miles from the nearest land. The position of the vessel on that day and on the four other occasions on which she found herself inside the parallelogram referred to in the remarks on the case of the "Carmolite" is marked on the extract from the chart, and it will be at once seen that on every occasion the vessel was well outside territorial waters. On the 14th and 15th July she was 12 miles from land, and on the 19th July 11 miles. There is not a scrap of evidence to show that the vessel was ever nearer than that to the land, and the seizure is based, not on her having taken seals within territorial waters, but in the strait between the islands. The so-called strait is, on the face of it, not a strait at all. At their nearest points the islands

Date.	Lat. N.	Long. E.
	° ′	° ′
July 27	53 56	..
28	53 56	..
29	53 56	..
30	54 7	167 0
31	54 15	167 0
Aug. 1	54 4	167 10
2	54 10	167 10
3	54 20	167 33
4	54 12	167 26 (20)
5	53 54	..
6	54 15	167 20
7	54 13	167 23
8	54 20 (21)	167 1
9	54 43	167 24
10	54 22	166 6
11	54 15	..

are 30 miles apart, and a claim to regard the whole extent of sea between the islands as territorial waters is absolutely untenable.

The claim in respect of the vessel is therefore irresistible—

1. Because it is not alleged that she was engaged or had immediately before been engaged in committing an offence within Russian jurisdiction.

2. Because at the time of alleged offence on which she was seized she was more than 9 miles from Russian territory.

3. The log-book does not state that she caught any seals when in that position, and there is no other evidence adduced to support the charge.

4. The alleged offence was committed three days before, and was only discovered when the vessel was illegally boarded, and there was therefore no hot pursuit; indeed, the Commander of the cruiser was admittedly pursuing another vessel, whose boats he had captured, and only after seizing them 9 miles from land was he, in consequence of the false statements of the boats' crews, put on the track on which he accidentally discovered the "Vancouver Belle."

5. The vessel was well outside territorial waters when sighted, and the pursuit was therefore illegal *ab initio*, and cannot be defended as a case of "hot pursuit."

"C. H. TUPPER."

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Page 14 of Blue Book "Russia No. 3 (1893)":— This vessel was seized by the "Zabiaka" on the 29th July (10th August), 47 miles from Behring Island, on suspicion of being one of the vessels whose boats had been seized in Russian territorial waters. As the suspicion was not confirmed by positive proofs, though 274 skins were found on board, the "Zabiaka" confined herself to warning the vessel not to engage in sealing in the Russian	Affidavit of March (pp. 74, 75 of Blue Book "Russia No. 2 (1893)"). On the 10th August, in latitude 53° 50′ north, longitude 166° 7′ east, the vessel was boarded by an officer from the "Zabiaka," and the master ordered on board the cruiser with his ship's papers. Captain de Levron then proceeded with the log-book and chart to locate the vessel daily from the time of entering Asiatic	The pretext alleged to justify the arrest of this vessel will not bear examination. It is stated that she was seized on the suspicion that she was one of those whose boats had been seized in territorial waters. No hint of this was given at the time of the arrest, and it appears from the papers that there were three different seizures of boats, those of the "E. B. Marvin," "W. P. Sayward," and

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waters round the Commander Islands. The warning was entered in the log-look of the vessel. The Commission add that "as for the assertion of the master of the 'C. H. Tupper' that the Commander of the 'Zabiaka' made use of threats towards him, and forbade him to hunt seals in the open sea, it is not supported by proofs. On the contrary, the seal-skins found on board the schooner were not seized, and the master's statement that the seizure resulted in loss to him is without foundation."	waters. This examination showed that at no time had the "C. H. Tupper" been nearer to land than 60 miles. Captain de Levron entered the position at the time of seizure in the log, and told the master he could go home with his vessel, but that the skins would be taken, saying: "Your Government stopped sealing on your side, we stopped sealing on this side." The master replied that sealing was stopped in Behring Sea, but not in the Pacific Ocean, and that he had been sealing along the Alaskan coast. This Captain de Levron doubted, as he was under the impression that sealing had been stopped there, but the master informed him that he had entered and cleared at the United States' port of Sand Point with skins caught in the Pacific, and that he was still in the Pacific. After again going over the vessel's positions, Captain de Levron informed the master that he would allow him to proceed home, but that if caught again both vessel and skins would be seized, at the same time producing a Proclamation prohibiting seal-hunting in the Okhotsk Sea and Russian waters. On being asked to define Russian waters, he replied, "Never mind limits. No seal catch. You can navigate these waters, but no seal catch. You came here, you steal seals." The master was also told that, having been warned, he would be seized if found by any other Russian cruiser. The entry made in the vessel's log was:— "The warning was delivered from the Russian man-of-war cruiser 'Zabiaka,' which proclaimed the prohibition of seal-hunting in Russian waters, and near the Commander Islands."	"Annie Moore." The first of these seizures—that of the "E. B. Marvin's" boat, was made on the 5th August, at a time when the "Zabiaka" was at Petropaulovski (see affidavits in cases of "Rosie Olsen," "Ariel," and "Willie McGowan"), which place she did not leave at least till the 9th August (p. 34 of Blue Book "Russia No. 2 (1893)"), the day the "Majestic" sailed, as on the 8th late at night she was seeing to the shipment of the crews on board that vessel (p. 26). She could not possibly have gone to Copper Island and heard of the boat seizures and got back to the position in which she came across the "C. H. Tupper" in one day, and she must therefore have fallen in with the "C. H. Tupper" on her way back from Petropaulovski to the islands. As there is no telegraphic communication, nor even mail communication, with the islands, it is practically impossible that Captain de Levron could have heard of the seizures before he left Petropaulovski and fell in with the "C. H. Tupper." Indeed, from the statement in paragraph 5, the only possible inference is that the cruiser started in pursuit of the boats immediately she heard of their being on the coast. That was on the 12th, two days after she had overhauled the "C. H. Tupper," and on that day, as we know from Captain Copp (p. 107), she had the crews of the captured boats on board. If that had been the case on the 10th, the master of the "C. H. Tupper" would have seen and remarked it. Even if the Commander of the "Zabiaka" had heard of the seizure of the "E. B. Marvin's" boat, that afforded no justification for overhauling on the high seas the first British vessel she came across in order to find out whether she was connected with the offence. No apology is made for this, and though, owing to the statement made by the Captain of the cruiser that if the "C. H. Tupper" did not at once give up her sealing she would be seized,

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		the "C. H. Tupper" ceased sealing and made for home, thereby losing a great part of her voyage, it is asserted that she suffered no loss, as the skins on board were not confiscated. The claim for loss was not for skins seized, but for the breaking up of the voyage illegally. It is stated that there is no proof of the threats used by the Captain of the cruiser, but the entry made in the log-book was not merely, as asserted by the Commission, a prohibition of sealing in the waters washing the Commander Islands, but of *seal-hunting in Russian waters and near the Commander Islands*, and the term "Russian waters" was interpreted to the captain of the "C. H. Tupper" as a prohibition of pelagic sealing altogether, and the proof of that is that he immediately sailed for home. In this case, therefore, Her Majesty's Government have a clear right, not only to an apology for the violation of our flag by illegal boarding and search on the high seas, but to compensation for the loss to the owners by the vessel being driven from the sealing-grounds. It is to be noted that the menaces are said to be devoid of "proof," not of "truth."
"W. P. HALL." Page 15 of Blue Book "Russia No. 3 (1893)":— The schooner "W. P. Hall" was found on the 5th (17th) August in 54° 33′ north latitude, and 166° 10′ east longitude, engaged in sealing at sea 17 miles from Behring Island. Although 325 skins were found on board, there was no direct proof that the schooner had been sealing in Russian territorial waters. The vessel was therefore only warned "to continue to abstain from sealing on the Russian shore."	Affidavit (pp. 98, 99 of Blue Book "Russia No. 2 (1893)"). About 1 o'clock on the 17th August the "W. P. Hall" was 25 miles south-west of Behring Island, lying becalmed, when she was hailed by the "Zabiaka," and the master ordered to come on board and bring his papers. He did so, and the papers and chart on which the daily positions were marked. The Captain of the "Zabiaka" was apparently satisfied with the results of his examination, and told the master to depart out of Russian waters forthwith. The master asked what were the limits of Russian waters, and the Captain of the cruiser marked the chart with a	The case of the "W. P. Hall" is similar to that of the "C. H. Tupper." She was boarded by the "Zabiaka" apparently when that vessel was on her way to Petropaulovski with the crews of the "Vancouver Belle" and the captured boats (see p. 108 of Blue Book "Russia No. 2 (1893)"). There is no pretence that she had in any way committed an offence, and with regard to what the Commander of the "Zabiaka" entered in her log, the Commission say that the warning was that the vessel "devait continuer à s'abstenir de chasser l'otarie sur la côte Russe," an interpretation which the actual words cannot by any stretch be made to bear. The actual entry was:

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	line from Cape Chalutka, on the coast of Kamschatka, to the most southerly point of the Aleutian Islands. Captain de Levron also entered in the official log of the "W. P. Hall" as follows:— "*August* 17, 1892. "British schooner 'Walter P. Hall' was within Russian waters for sealing. The captain of the schooner, J. B. Brown, received warning not to cross Russian waters any more, and have signed the notice of Russian Government. (Signed) "B. DE LEVRON," &c. The Captain of the cruiser having asserted this wide extension of Russian authority, the master of the "W. P. Hall," finding it was useless to refuse in face of a threat of seizure, signed a document to relieve his vessel, and departed for home without attempting further sealing.	"17th August, 1892, British schooner 'Walter P. Hall' was within Russian waters for sealing (p. 101 of Blue Book). The captain of the schooner, J. B. Brown, received warning not to cross Russian waters any more, and have signed the notice of Russian Government." Now this is neither more nor less than an assertion that a vessel sealing at 17 miles from the coast was within Russian waters; and, further, when asked to define Russian waters, Captain de Levron himself drew a line from Cape Chalutka, on the coast of Kamschatka, to the most southerly point of the Aleutians as the boundary of Russian waters, and the chart with this mark on it has been sent to Russia. The statement that though she had 325 skins on board the Russian cruiser confined himself to this warning, and did not seize her, is no justification, unless it is meant that seals can only be caught in Russian territorial waters, which is absurd on the face of it. The facts remain uncontradicted that the vessel was illegally arrested, and was forced to abandon her sealing altogether, as the area prescribed by the cruiser covered the whole area within which seals are to be found at that period. The claim for compensation is therefore well founded, and Her Majesty's Government must press it.

SIAM.

No. 26 A. **[Colonial Office.]**

[August 12, 1896.]

The Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, August* 12, 1896.

Extradition between the Straits Settlements and Kedah.

WE were honoured with your commands signified in Mr. Fairfield's letter of the 31st ultimo, stating that you had directed him to lay before us the inclosed copies of correspondence with the Governor of the Straits Settlements on the subject of a proposal for the mutual extradition between that Colony and Kedah of labourers who had broken their contracts of service in the Colony and escaped to Kedah, or *vice versâ*, and of previous correspondence on the same subject in 1888.

That by the law of the Straits Settlements and by the law of Kedah certain breaches of labour contracts were criminal offences. That the planters in the Colony would suffer great loss if the labourers employed under contract could abscond with impunity by escaping into Kedah. That therefore the authorities in Kedah had surrendered such fugitives, but that it could not be expected that they would continue to do so unless the Colonial authorities would reciprocally surrender labourers who absconded from plantations in Kedah and escaped into the Colony.

That by the Straits Extradition Order in Council of the 19th August, 1889, the Governor of the Colony was empowered to extradite to foreign States—in the case to which "The Extradition Act, 1870," did not apply—persons accused or convicted of certain crimes committed in such States, and that in the case of the native States in the Malayan Peninsula which were under British protection, and in the case of Johore, breach of contract of service, which would be punishable in the Colony by fine or imprisonment if committed there, was made an extradition crime.

That the Governor's proposal was that the Order in Council should be amended by extending the latter provision to the case of Kedah.

That Kedah was part of the dominions of the King of Siam, and that Article V of the Treaty between Great Britain and Siam of the 6th May, 1869, contained an Agreement for the mutual extradition of persons convicted of, or charged with, certain crimes escaping from British territory into Kedah or *vice versâ*.

That it had been suggested that a further Agreement might be made with Siam extending Article V of the Treaty of 1869 so as to add criminal breach of contract of service to the extradition crimes specified therein, but that the Foreign Office considered that extradition arrangements with foreign States should be confined in their operation to the crimes specified in the Extradition Acts, 1870 and 1873, and that there were objections to negotiating Extradition Treaties with countries in which the Queen exercised extra-territorial jurisdiction over her own subjects.

That the Foreign Office also objected to the proposed extension of the Straits Order in Council so as to authorize extradition to Kedah for the offence of breach of contract on the ground that, in the absence of an Extradition Agreement, extradition to Kedah would not be justifiable, and they suggested that as most of the labourers employed under contract in Kedah were said to be British subjects the matter might be arranged so far as such British subjects were concerned by the operation of "The Fugitive Offenders Act, 1881."

That the Queen exercised jurisdiction in Siam under the Foreign Jurisdiction Act, and the exercise of that jurisdiction was regulated by "The Siam Order in Council, 1889," and Courts under that Order had been established in Kedah.

That by "The Siam Order in Council, 1889" (Article 57), "The Fugitive Offenders Act, 1881," was applied to Siam, as if Siam were a British possession, subject to certain qualifications, one of which was, that it should apply only in the case of British subjects, and Siam and the Colony of the Straits Settlements were declared to be deemed to be one group of British possessions for the purposes of Part II of the Act. That it was presumed, therefore, that a British subject charged with an offence committed in Kedah and punishable under the Siam Order in Council could be ordered to be returned from the Colony to Kedah under the Fugitive Offenders Act,

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That breach of contract of service did not appear to be an offence punishable under the Siam Order in Council as defined in Article 33, as it was not punishable in England on indictment, and was not declared by the Siam Order in Council, or by any Regulation made by virtue of that Order to be punishable as an offence against that Order; but it was suggested that a Regulation might be made under Article 84 of the Order constituting a breach of contract of service which was an offence against the local law, an offence punishable under the Order, and that if this were done the object desired by the Governor of the Straits, and the Sultan of Kedah might, in the case of British subjects, be obtained through the machinery of the Fugitive Offenders Act.

That by 37 & 38 Vict., cap. 38, crimes and offences committed at any place in the Malayan Peninsula extending southward from the 9th degree of north latitude (which includes Kedah) by British subjects were cognizable in the Criminal Courts of the Colony, but it was presumed that, having regard to section 33 of the Fugitive Offenders Act, the existence of this jurisdiction would not preclude the rendition of a British subject to Kedah under that Act.

Mr. Fairfield was to request that we would favour you with our opinion upon the following questions:—

1. Whether it would be proper to amend "The Straits Extradition Order in Council, 1889," so as to empower the Governor of the Straits Settlements to surrender to the authorities of Kedah persons accused or convicted of having committed in Kedah a breach of contract of service which, if committed in the Colony, would be an offence punishable with fine or imprisonment, or both.

2. Whether the rendition from the Colony to Kedah of persons who commit in Kedah a breach of contract of service which is punishable by the law of Kedah, and which, if committed in the Colony, would be punishable by the law of the Colony, could be obtained under "The Fugitive Offenders Act, 1881."

(1.) As the law now stands.

(2.) If a regulation were made under Article 84 of the Siam Order in Council constituting such breach of contract an offence against that Order.

(3.) Whether such a regulation could properly be made.

(4.) Whether in any other manner the extradition desired by the Governor of the Straits and the Sultan of Kedah can be effected.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

1. That there are, in our opinion, objections to dealing with the question raised as a matter of extradition.

The offences are not of the serious character which usually form the subject of extradition arrangements, and the relations which exist between Great Britain and Siam under the Order in Council of the 28th November, 1889, make it better to deal with the matter, so far as British subjects are concerned, under the Foreign Jurisdiction Act. If the matter were dealt with as one of extradition, it would not be confined to British subjects, and it might be impracticable to secure that the native Courts in Kedah did not deal with the fugitives surrendered to them in a manner which would be regarded in this country as cruel and barbarous. Apparently all practical purposes will be served by dealing with the case of British subjects in Kedah.

2. As the law now stands, persons guilty of the offences in question could not be properly dealt with, or handed to the authorities of Kedah, but if a proper regulation were made under clause 84 of the Siam Order in Council, such breach of contract would be made an offence against the Order, and offenders being British subjects, could then be handed back under the powers of clause 57 for trial in the British Courts in Kedah under the Siam Order in Council.

3 and 4. In our opinion such a regulation may properly be made.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

SPAIN.

No. 27.

[February 26, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 30, 1896.

Mr. Gowrie's arrest, imprisonment and expulsion by Spanish authorities during Cuban insurrection.

I HAVE the honour to transmit to you, by direction of the Secretary of State for Foreign Affairs, the papers noted in the accompanying list which relate to the case of a British subject named William Gowrie, who was apprehended at the instance of the military authorities of Guantanamo, in Cuba, for alleged complicity in the insurrection in that island.

It appears from the accompanying despatches (Papers B and G) from Mr. Ramsden, Her Majesty's Consul at Santiago de Cuba, who enters very fully into the details of the case, that Mr. Gowrie, who was the Chief Engineer of the Guantanamo Railway, was (with others) denounced to the authorities for assisting the rebels, arrested by General Cancellos, the Spanish Military Commander there, on the 28th October last, and consigned to the Morro Fortress at Santiago de Cuba on the 30th of that month.

Of the truth of the accusation Her Majesty's Government are not at present in a position to judge, but the evidence as yet produced against Mr. Gowrie appears at first sight to be extremely slight, consisting in the discovery in his house of a small revolver and of some empty cartridge cases of the new Mauser pattern. Mr. Gowrie states that the former had been in his possession for purposes of defence for twelve years past, and that the latter had been picked up by his children and used by them as playthings.

Mr. Ramsden himself appears to be convinced of the prisoner's innocence, and to have made every endeavour to get the case summarily dealt with by the local authorities. As, however, his efforts in this direction proved unavailing, the case was reported to the Secretary of State, who, in view of the delay which had already occurred and which frequently characterizes Spanish legal proceedings, instructed Her Majesty's Ambassador at Madrid to bring the facts to the notice of the Spanish Government, and to urge them to send orders to Cuba with a view to the immediate trial of Mr. Gowrie.

As the result, it would seem, of this action, Mr. Gowrie was, on the 12th December last, up to which date he had remained a prisoner in the Morro Fortress, handed over to the British Consul, by whom he was informed that, by the orders of General Martinez Campos, he was released, but that he must leave the island immediately, and would not be permitted to return to it.

Mr. Gowrie has now forwarded through the Consul the accompanying Protest (Inclosure in Paper K), complaining of his arrest on a charge which has never been made known to him; of his detention in prison for more than six weeks without any form of trial; of his summary expulsion from Cuba; and of the damage entailed upon him by this arbitrary treatment, which has involved the loss of a situation wherein he was earning 218 Spanish gold dollars per month, and the expenses necessarily accompanying his detention.

No formal claim for compensation has yet been advanced by Mr. Gowrie, but it seems reasonable to suppose that such a step may be taken by him at no distant date.

The case of Mr. Gowrie appears in its general character to have considerable analogy to the cases of British subjects arrested without definite charge, detained without trial, and finally arbitrarily expelled from Hawaii, for alleged complicity in the Royalist Insurrection, which are submitted to you by the Secretary of State in another reference of same date with this letter. In the present case, however, there is no complaint of violence at the time of arrest, or of harsh treatment during the period of detention.

In these circumstances the question would seem to arise, whether Her Majesty's Government could properly put forward a claim (1) that Mr. Gowrie should be allowed to return to Cuba, and (2) for compensation in respect either of his arrest and imprisonment, or of his expulsion, or both; and, in the event of the answer to the latter question being in the affirmative, it will further become necessary to consider what approximate amount of compensation will fairly meet the merits and redress the injuries in this case.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour the Marquess of Salisbury with your opinion on the questions submitted in this letter, and with any general observations which you may have to offer on the case.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) Mr. Gollan	(No. 32)	November 8, 1895
(B.) Consul Ramsden	(No. 49)	November 2, „
(C.) To Mr. Gollan	(No. 5)	November 28, „
(D.) To Sir H. Wolff	(No. 167)	November 28, „
(E.) Mr. Gollan	(No. 33)	November 21, „
(F.) Ditto	(No. 36)	
(G.) Consul Ramsden	(No. 13. Telegraphic)	November 15. „
(H.) Sir H Wolff	(No. 316)	December 4, „
(I.) Ditto	(No. 334)	December 21, „
(K.) Consul Ramsden	(No. 14. Telegraphic)	December 16, „

Report.

In our opinion, a claim for compensation should be presented. Whether it can properly be pressed must depend on the question whether the Spanish Government are able to give explanations which may alter the aspect which the case at present bears.

As an insurrection actually existed in Cuba, the Spanish authorities were justified in arresting and imprisoning for a reasonable time any one whom they might reasonably suppose to be co-operating with the insurgents, and it does not appear that the proceedings against Mr. Gowrie were, in the first instance, taken otherwise than in good faith. Moreover, the British Consul rather invited proceedings by martial law instead of the dilatory proceedings of the regular Courts. We, therefore, do not think that any claim can be properly maintained in respect of the arrest and imprisonment.

As regards Mr. Gowrie's expulsion from the island, it cannot, we think, be denied that, apart from express Convention or Treaty, the Government of a State is not guilty of any infraction of international law by refusing to admit aliens, or requiring them to withdraw. Such a right ought, however, in the case of subjects of friendly States, to be exercised reasonably; and if there are grounds for alleging that the subject of a friendly State, after having been allowed to settle in the country, has been arbitrarily expelled, we think that a case arises for diplomatic representation by his Government.

Mr. Gowrie had been allowed to settle in Cuba, and upon the statements before us it certainly appears that there was an absence of any evidence to sustain the charge on which he had been imprisoned, and that he was required to leave the island merely by way of putting an end to the proceedings which must have ended in his acquittal. So far as the papers before us go, there does not appear to be the slightest reason to suppose that his continued residence in Cuba could have been regarded as involving danger to the State.

We think that a claim may fairly be put forward that Mr. Gowrie should be paid six months' salary, and a sum which will cover the cost of the removal of himself and his family from the island. As he has lost his post in Cuba, it does not appear to us that it would be advisable in his interest to ask that he should be allowed to return to the island. Having regard to his chance of obtaining other employment elsewhere, we think that the scale we have indicated may be adopted in fixing the amount which Her Majesty's Government should endeavour to obtain for him from the Spanish authorities.

We should, however, again point out, that if the Spanish Government is able to

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TURKEY.

No. 27*a*. [Home Office.]

[June 23, 1896.]

In *re* "To-Day" newspaper of 6th June, 1896.

Complaint of Turkish Ambassador.

Opinion of the Law Officers of the Crown.

Incitement to murder Sultan in "To-Day."

WE do not think that a Government prosecution in this case is advisable.

A libel upon a foreign Sovereign may undoubtedly form the subject of an indictment or a criminal information. But in the present case the attack upon the Sultan is mainly with reference to his public conduct in connection with the Armenians, and, in our opinion, it would be very improbable that a conviction could be obtained upon a prosecution for libel in respect of these paragraphs.

A graver question arises upon the suggestion contained in one of these paragraphs that the Sultan should be assassinated.

Inciting to murder any person, whether a subject of Her Majesty or not, is an offence both at Common Law and under 24 and 25 Vic., cap. 100, S. 4; and the case of Reg. *v* Most (7 Q.B.D. 244) shows that the offence may be committed by the publication of a newspaper article, although the incitement is not directed to any person in particular.

If the paragraph in question can be regarded as seriously inciting the Armenians to kill the Sultan, the publisher would undoubtedly be punishable for inciting to murder. But upon the whole we think, having regard to the fact that the publication is in English and took place in England, that a jury would come to the conclusion that the paragraph is rather a very forcible expression of the abhorrence which the writer appears to entertain for the Sultan, than a serious incitement to his murder. It would not probably be read by any persons who would be likely to be affected by it.

These paragraphs are undoubtedly in the worst possible taste, but we do not think that any proceedings can be taken upon them with reasonable prospect of success.

(Signed) RICHARD E. WEBSTER,
ROBERT B. FINLAY.

Law Officers' Department,
June 23, 1896.

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explain his expulsion by showing that they had reason to suppose that it was ordered in the interest of public peace, the case would present a totally different aspect from that which it bears on Mr. Gowrie's statement; and if such explanation should be given, we do not think that the claim could be properly pressed.

(Signed) RICHARD E. WEBSTER
ROBERT B. FINLAY.

Royal Courts of Justice,
February 26, 1896.

TURKEY.

No. 28.

[August 27, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 12, 1896.

Scandals in Constantinople Consular Court. Appearance of Judge Tarring as witness and defendant.

I AM directed by the Marquess of Salisbury to lay before you the papers enumerated in the inclosed list relating to certain judicial proceedings in the Supreme Consular Court at Constantinople, in which the Judge, as well as several officers of the Court and Consulate, are directly or indirectly involved.

The origin of these proceedings may be traced back to a dispute which arose in 1894 between Mr. Henry Silley, at that time Chief Clerk of the Consular Court, on the one hand, and Mr. Vice-Consul Sarell, Mr Charles Hamson, Consular Clerk, and Mr. William Thompson, Harbour-master and Inspector of Police—all three equally officers of the Court—on the other hand, concerning the conduct of a wine business carried on by the "Société Vinicole de Turquie (Limited)," of which the several gentlemen were partners

The nature of the dispute, the interference of the Ambassador and that of the Secretary of State in the matter, which eventually led to the removal of Mr. Silley from the service, are briefly set forth in the Memorandum marked (A).

Since his removal Mr. Silley has made a series of complaints against his former superiors and colleagues, whom he accuses of having intrigued and conspired together for the purpose of obtaining his removal from his official position.

In numerous letters addressed by Mr. Silley and by his friends and relations, both to Her Majesty's Embassy at Constantinople and direct to the Foreign Office, grave charges have been brought forward against Mr. Tarring and Mr. Sarell, and the Secretary of State has been called upon to order an official inquiry to be made into the matter. As a number of law-suits connected with the affairs of the Société Vinicole were actually pending in the Consular Court, the Secretary of State was not disposed to sanction the institution of such an inquiry pending a settlement of the legal issues. No replies having been returned to the communications received from Mr. Silley and his friends beyond formal acknowledgments of receipt, further letters followed, reiterating the charges against the two officials, asking for information as to the exact grounds for Mr. Silley's removal from the service, threatening to publish the correspondence relating to that removal, and finally foreshadowing the institution of further proceedings in the Supreme Court These letters also have been merely acknowledged or left unanswered.

On the 23rd July Mr. Silley filed a petition in the Supreme Court, in which he claims heavy damages from Messrs. Tarring, Sarell, Hamson, and Thompson for alleged malicious conspiracy. The text of this petition (inclosure in M. Mizzi's letter of the 30th July, 1896, Paper P), states in detail the various charges advanced by Mr. Silley.

Meanwhile, as will be seen from the annexed despatch from Mr. Herbert, Her Majesty's Chargé d'Affaires at Constantinople, No. 44, Consular, of the 21st July, 1896 (Paper Q), a number of actions connected with the Société Vinicole have been

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finally disposed of in the Consular Court. These need not, therefore, be at present considered. But there is one suit still pending in that Court bearing directly upon the conduct of Mr. Tarring and Mr. Sarell in a matter which forms the subject of some of Mr. Silley's most serious charges against them. This is an action brought against Mr. Sarell by the "Constantinople Mutual Benefit Building Society," respecting which some particulars are given in the Memorandum marked (R). The plaintiffs in this action charge Mr. Sarell with fraud, and complain of the conduct of Mr. Tarring, and in a letter addressed to the Secretary of State on the 23rd July, 1896 (Paper V), the Building Society urge that another Judge may be appointed to try this case, since they, as plaintiffs in the action, desire to have Mr. Tarring's evidence, and since the latter's previous connection with the incidents out of which the action has arisen might produce an impression of bias, should he preside over the trial.

The question raised by this request is one requiring consideration equally in connection with the action which, as stated above, is being brought by Mr. Silley against Messrs. Tarring, Sarell, Hamson, and Thompson.

Being required to appear as witness for the plaintiff in one case and as a defendant in the other, Mr. Tarring cannot, obviously, try either of them in his capacity as Judge.

It must be considered in the first instance:

1. Whether it is necessary or desirable, or indeed practicable, that Mr. Tarring should be called as witness in the case of the Building Society *v.* Sarell, and that he should defend the action brought against him (and others) by Mr. Silley.

According as this question is answered in the negative or in the affirmative, the further questions will arise:

2. If it be decided that Mr. Tarring should not appear as witness or defendant, on what ground should this decision be based, and in what manner should effect be given to it? Or,

3. In the contrary case, how should the Court be constituted for the purpose of trying those cases in which Mr. Tarring would have to appear?

In regard to these three questions, I am directed to offer the following observations:—

It is most desirable in the interest of the public service that the scandal created by the continued litigation in which the officials of the Supreme Consular Court at Constantinople are involved, should, if possible, be put a stop to. It is probable that this end would be best and soonest attained if every facility were given for trying at once the two actions in which the principal issues appear to be clearly raised.

From this point of view it may be considered that the fact of Mr. Tarring being a Judge should not be taken advantage of, in order, in one case, to deprive the parties of his evidence, if it is essential to their case, and, in the other case, to stop altogether the action to which it is intended that he should be a party.

On the other hand, it may be urged that the mere fact of a Judge appearing in his own Court, first, as witness in a case in which the plaintiffs, by whom he is to be called, allege irregular conduct on his part, in his administrative capacity, and, secondly, as one of the defendants in a suit in which he is charged with a number of dishonourable and fraudulent acts, cannot fail to add to the scandal, and to seriously lower the dignity of the Court in the eyes of the public.

The latter view of the matter is the one evidently taken by Mr. Tarring himself, since in a letter addressed by him to Mr. Davidson, Q.C., the Legal Adviser to this Department, on the 23rd July last (Paper W), he explains the attitude which he proposes to adopt with the view of preventing any action being brought in his Court to which he himself is to be a party.

It should be explained in this connection that Mr. Tarring is at this moment in England on leave. During his absence from his post it was necessary to appoint an Acting Judge to preside over the Supreme Court at Constantinople, and by a special arrangement with the Colonial Office the services of Mr. Lucie Smith, District Court Judge at Nicosia (Cyprus) have been secured for this purpose.

If it be held advisable that Mr. Tarring should not appear as a witness in the case of the Building Society *versus* Sarell, it would probably be found most convenient to grant him an extension of his leave for a sufficient period to allow the action to be meanwhile tried by Mr. Lucie Smith, who would continue to sit as Acting Judge.

In regard to the petition filed by Mr. Silley against Messrs. Tarring, Sarell, Hamson, and Thompson, it is presumed that Mr. Tarring is right in stating (in his letter to Mr. Davidson, Paper W) that the Acting Judge at Constantinople has no power to order service of any petition on a person in England, as being beyond the jurisdiction of his Court. It is further presumed that without such service the action against Mr. Tarring cannot proceed, but that it must be deferred until Mr. Tarring returns within the jurisdiction of the Court. But as Mr. Tarring, on eventually returning to Constantinople, will at once resume the presidency of his Court, superseding the Acting Judge, any application in the case will have to be made to himself, and such application he expresses the intention (in his letter of the 23rd July, Paper W) not to entertain in any case to which he is, or is proposed to be, a party.

In the event of its being considered both practicable and desirable that Mr. Tarring should appear respectively as a witness and as a defendant in actions to be tried in his own Court, it will remain to determine the constitution of the Court on these occasions.

Under the provisions of paragraph 6 of the Order in Council of the 8th March, 1895 (of which a copy is annexed hereto—Paper X), Mr. Lucie Smith has been appointed to act as Judge of the Supreme Court during Mr. Tarring's absence "from the Consular district of Constantinople." This acting appointment would, it is apprehended come to an end automatically with the return of Mr. Tarring to Constantinople, even though he went back not to preside over his Court as Judge, but only in order to appear as witness and as defendant respectively in two civil actions.

If this view be correct, it would become necessary to appoint a Judge specially for the purpose of trying cases at the time when Mr. Tarring himself is at his post.

The appointment of persons to be, or act as, Judges of the Supreme Consular Court at Constantinople is regulated by the provisions of the Ottoman Dominions (Courts) Order in Council, 1895 (Paper X), which, in accordance with section 11 of the said Order, "shall be construed as one with the Ottoman Orders in Council, 1873, 1882, and 1890." (Copies annexed hereto, Paper Y.)

The Order in Council of 1895 provides, in section 6, for the appointment of an Acting Judge in case of the death or illness, or the absence or intended absence, from the Consular district of Constantinople of the Judge of the Supreme Court, and in section 2 for the appointment of an Additional Judge for the purpose of, conjointly with the Judge, hearing appeals, and rehearing cases.

But no provision appears to be made in the Order in Council empowering the Additional Judge, sitting alone, to try ordinary civil suits and proceedings. Such, however, would have to be the function of whoever may be appointed to act as Judge of the Supreme Court in those cases in which Mr. Tarring would have to appear as witness and as defendant respectively.

I am directed by the Marquess of Salisbury to request that you will take the correspondence submitted herewith into your consideration and favour his Lordship with your opinion on the three questions stated above, which it will be convenient here to restate more definitely, viz.:—

1. Supposing it to be technically possible that Mr. Judge Tarring should appear in his own Court as a witness for the plaintiffs in the case of the Building Society *v.* Sarell, and as a defendant in the action brought against him and others by Mr. Silley, would it be desirable, having regard to the interests of justice, and those of Her Majesty's Consular service, that special arrangements should be made for facilitating such a course?

2. In the event of its being decided that Mr. Tarring cannot, or should not, appear in his own Court as a witness and as a defendant respectively in the two cases above referred to, on what grounds should such decision most properly be based, and in what manner should effect be given to it?

3. In the event of a contrary decision, what procedure should, in view of the provisions of the Ottoman Dominions (Courts) Order in Council, 1895, be adopted in appointing a Judge to preside over the Supreme Consular Court at Constantinople during the trial of the two actions in which Mr. Tarring, who holds the office of Judge of that Court, would have to appear?

As a subsidiary point connected with Question 3, I am further to ask:—

4. Whether it would, in your opinion, be desirable and proper that in the case of Silley *v.* Tarring, Sarell, Hamson, and Thompson, Her Majesty's Government should defend the action on Mr. Tarring's behalf, and, if so, what steps should be taken for this purpose.

Lord Salisbury would also be glad to receive any observations or suggestions which you may wish to offer generally upon the whole case.

I am directed by his Lordship to add that the Lords Commissioners of the Treasury have been requested to instruct Mr. Albert Gray, through their solicitor, to

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place his services at your disposal, in case you should desire to avail yourselves of his special knowledge on the subject of the bearing and construction of the several Orders in Council which regulate the Consular jurisdiction in the Ottoman dominions.

In conclusion, I am to express the hope that you may be able to consider and report at an early date upon the subject of this reference, as, in view of the fact that proceedings are now actually pending in the Supreme Court at Constantinople, a decision in the matter appears to the Secretary of State to be urgently called for.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Memorandum		August	10, 1896.
(B.)	Sir P. Currie	(No. 14. Consular)	February	24, "
(C.)	"	(No. 18. ")	April	4, 1895.
(D.)	To Sir P. Currie	(No. 35. ")	May	3, "
(E.)	Sir P. Currie	(No. 37. ")	July	20, "
(F.)	"	(No. 38. ")	"	20, "
(G.)	To Treasury		August	9, "
(H.)	Treasury		"	13, "
(I.)	To Sir P. Currie	(No. 57. Consular)	"	26, "
(K.)	Mr. Herbert	(No. 49. ")	October	25, "
(L.)	To Treasury		November	30, "
(M.)	Treasury		December	9, "
(N.)	To Sir P. Currie	(Telegraphic)	January	8, 1896.
(O.)	Sir P. Currie	"	February	20, "
(P.)	Dr. Mizzi		July	30, "
(Q.)	Mr. Herbert	(No. 44. Consular)	"	21, "
(R.)	Memorandum		August	10, "
(S.)	Sir P. Currie	(No. 8. Consular)	January	29, "
(T.)	Judge Tarring		February	22, "
(U.)	Vice-Consul Sarell		July	29, "
(V.)	Constantinople Mutual Benefit Building Society		"	23, "
(W.)	Mr. Tarring		"	24, "
(X.)	Order in Council	(Confidential No. 2354)	1895.	
(Y.)	Orders in Council	(Confidential No. 2354)	1874, 1875, 1876, 1882, 1890, 1891.	

List of Papers subsequently referred to the Law Officers for consideration with those sent in the Foreign Office letter of August 12. 1896.

Mr. Tarring		August	10, 1896.
"		"	12, "
"		"	14, "
"		"	25, "
To Mr. Herbert	(Telegraphic)	"	7, "
Mr. Herbert	"	"	8, "
To Mr. Herbert	"	"	12, "
Mr. Herbert	"	"	15, "

Report.

Upon a full consideration of all the circumstances of this case, we think it desirable that special arrangements should be made for the trial of these causes, which will admit of Mr. Tarring being called as a witness, and appearing as a defendant.

It is clear that an inquiry of some kind must be made into these matters. We see no reason for thinking that the charges against Mr. Tarring are otherwise than frivolous, but it is, of course, impossible that he should try the charges made against himself or the other defendants in the action in which he has been joined, and it is undesirable that he should try the action in which it has been proposed that he should be called as a witness. A complete inquiry would be best held by a competent Judge sitting at Constantinople, and this is the course which seems to us, on the whole, best calculated to promote the interests of justice.

Some prejudice to the discipline of the Consular service may be apprehended as likely to result from such a trial. But it appears to us, on a consideration of all the circumstances, that greater prejudice might result if a trial were refused. It would, no doubt, be said by Mr Silley that this had been arranged in the interests of Mr. Tarring. An executive inquiry might be held, but this could not dispose of the claim for damages.

We think that a trial in open Court on the spot is the best way of exploding this scandal, and that it is undesirable in the interests of the public service that any pretext should be given for saying that Mr. Tarring is keeping out of the way.

Mr. Tarring should therefore, we think, return, when he otherwise naturally would do so, to Constantinople. His return will, *ipso facto*, put an end to the authority of Mr. L. Smith as Acting Judge. Under the Order in Council of 1895 there is no power to appoint an Acting Judge except in case of illness or absence. This should be remedied by a fresh Order in Council, and some gentleman of high professional standing and complete independence should be appointed to act on the trial of these actions. As there might be an application for a rehearing, this Acting Judge might have to sit along with the additional Judge for this purpose.

We think that Her Majesty's Government should provide Counsel and other legal assistance for Mr. Tarring. His conduct in his official position is assailed, and, so far as at present appears, the attack is a vexatious one.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 27, 1896.

Annex (A).

Memorandum.

A DETAILED account of the circumstances which led to the formation of the "Société Vinicole de Turquie (Limited)," and of the subsequent disputes which culminated in the legal proceedings before the Supreme Consular Court at Constantinople, is given in the despatch which Mr. Vice-Consul Sarell addressed to Her Majesty's Ambassador on the 20th February, 1896 (Inclosure in Sir P. Currie's despatch No. 14, Consular, of the 24th February, 1896), marked (B).

The attention of Her Majesty's Ambassador was formally called to the dispute by Vice-Consul Sarell in January 1895. The contending parties had agreed to submit their difference to Mr. Tarring, Judge of the Supreme Consular Court, for arbitration, but while the Award given by the latter was accepted by Messrs. Sarell, Hamson, and Thompson, it was rejected by Mr. Silley, as bad in law and unjust. Mr. Silley, moreover, refused to consent to any amicable arrangement being negotiated between the parties jointly with Mr. Tarring, and insisted on instituting proceedings in the Court for upsetting the Award. A motion was accordingly made and heard in Court in January 1895, as a result of which Mr. Tarring, as Judge, ordered the Award to be referred back to himself, as Arbitrator, to be amended. He admitted the force of some technical objections raised by Mr. Silley, but considered that it would be easy to amend the Award on this point and thus render it valid.

At this stage the Ambassador interfered. Seeing that the quarrel had become a public scandal and serious obstacle to the efficient working of the Court and Consular business, his Excellency notified his decision that he must enforce the rule that members of the public service should not engage in trade. He, therefore, called upon the four officials to take immediate steps for severing their connection with the Société Vinicole. In view of this intimation, Mr. Tarring addressed a letter to the four disputants, stating his opinion that, in order to comply with the Ambassador's directions, it was necessary to wind up the Company, and adding that, in these circumstances, he must retire from his position as Arbitrator.

Meanwhile, Mr. Silley had transferred all his shares and interest in the Company to various relatives and friends, who now opposed the measures taken by Messrs. Sarell, Hamson, and Thompson with the view to the liquidation of the Company. As there appeared to be thus no prospect of the litigation being stopped, the Ambassador directed two members of his staff to inquire into the whole matter and effect a settlement. No such settlement was, however, effected, and the failure was ascribed by the gentlemen who had conducted the inquiry to the attitude adopted by Mr. Silley.

The several steps taken by the Ambassador will be found explained in detail in the despatches—

From Sir P. Currie, No. 18, Consular, of the 4th April, 1895 (Paper C);
To Sir P. Currie, No. 35, Consular, of the 3rd May, 1895 (Paper D); and
From Sir P. Currie, Nos. 37 and 38, Consular, of the 20th July, 1895 (Papers E and F).

The Foreign Office, to whom the Ambassador had referred the matter, decided to lay the case before the Treasury in order to obtain from the Lords Commissioners an expression of opinion whether any of the officers concerned had acted in a manner disqualifying them for employment in the public service. (Letter to the Treasury of the 9th August, 1895 (Paper G).

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The view of the Treasury, set forth in their reply of the 13th August, 1895 (Paper H), was that it was clear from the correspondence that Mr. Silley had from the first adopted a very hostile attitude towards his colleagues, and had shown a serious want of consideration and respect for Mr. Tarring and for the superior officers deputed to inquire into the matter in dispute; that it might still be possible that Mr. Silley was able and willing to insure the discontinuance of the litigation and consequent scandal; but that, failing this, the Lords Commissioners regarded it as open to serious question whether the confirmation of Mr. Silley in his appointment was consistent with the efficient discharge of its duties and the maintenance of harmonious relations between the Chief Clerk and his superiors and colleagues.

Mr. Silley was accordingly warned that his continuance in the service would depend on his insuring the discontinuance of all further litigation in the case (despatch to Sir P. Currie No. 57, Consular, of the 26th August, 1895 (Paper I) and despatch from Mr. Herbert, No. 49, Consular, of the 25th October, 1895 (Paper K).

As, in spite of an undertaking given by Mr. Silley, the litigation did not cease, the Secretary of State recommended to the Treasury that Mr. Silley should be removed from his appointment on the ground of his inability to discharge efficiently the duties of his office (to Treasury, 30th November, 1895, Paper L). The Lords Commissioners concurred in this suggestion, holding that an officer, "by persistent quarrelling with his colleagues," might become unable to efficiently discharge his duties, within the meaning of section 2 of "The Superannuation Act, 1887" (Treasury letter of the 9th December, 1895, Paper M).

The decision of the Secretary of State was communicated to Mr. Silley through the Embassy on the 8th January, 1896, and carried out on the 20th of that month (Telegram to Sir P. Currie of the 8th January, 1896, Paper N). (Telegram from Sir P. Currie, 20th February, 1896 Paper O).

Annex (R).

Memorandum.

Action of "Constantinople Mutual Benefit Society" v. *Sarell.*

THIS action, so far as can be judged from the information in the possession of the Foreign Office, is brought to recover the balance of a loan of 1,850*l.* made by the Society to Mr. Sarell in 1894 on the security, mainly, of a house in Pera, of which the plaintiffs allege the title-deeds to be defective, to the knowledge of Mr. Sarell. The plaintiffs, in their petition, charge Mr. Sarell with fraud in connection with these title-deeds.

In order briefly to explain the nature and origin of these charges, which, indirectly, also touch Mr. Tarring, the Judge of the Supreme Consular Court, reference may be made to the accusations brought forward by Mr. Silley (who is believed to be a Director of the Building Society) in a Memorandum of the 14th January, 1896, which he communicated to Her Majesty's Ambassador (inclosed in Sir P. Currie's despatch No. 8, Consular, of the 29th January, 1896, Paper S). These accusations are, in outline, as follows:—

In November 1888, Mr. Vice-Consul Sarell—it is alleged—surreptitiously affixed the Embassy seal to a certificate (called an "Ilmi-haber"), in which are said to occur four fraudulent statements concerning the title of a property in which he was interested. On the security of this property Mr. Sarell obtained, in February 1894, a loan of 1,850*l.* from the Constantinople Mutual Benefit Building Society. A correspondence took place between the Turkish Foreign Office and the Consular Court at the end of 1895, in the course of which it is alleged that a serious irregularity occurred, with the connivance of Mr. Tarring.

The fraudulent character of the "Ilmi-haber" is stated to have rendered worthless the security on which Mr. Sarell had obtained the loan of 1,850*l.* from the Building Society. The Society addressed a letter to Judge Tarring on the 5th December, 1895, peremptorily calling upon him to open an inquiry into the matter, at which they should assist, as their interests were concerned.

Mr. Tarring, after communicating with the Embassy, declined to allow the Building Society to interfere in the discipline of Her Majesty's Consular officials, but pointed out to them that they could protect their interests, if infringed, by legal proceedings in the usual way (despatch from Mr. Tarring No. 9, Judicial, 22nd February, 1896, Paper T). The Society accordingly commenced their action against Mr. Sarell, demanding the rescission of the contract and the return of the money, on the grounds of concealment of material fact and misrepresentation. Arrangements are now being made for setting down the case for hearing on the 14th September next (letter from Mr. Sarell, 29th July, 1896, Paper U).

No. 29.

[October 14, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, September 28, 1896.

THE Marquess of Salisbury has considered your Report of the 27th ultimo, respecting certain judicial proceedings at Constantinople, and has decided, in accordance with your advice, to submit to the Queen in Council an Order providing for the appointment of a competent person to act temporarily as Special Judge of the Supreme Consular Court.

Order in Council as to Appointment of Special Judge at Constantinople.

I have now the honour to submit to you, by his Lordship's direction, the draft of an Order in Council, which has been prepared for the purpose by Mr. Albert Gray; and I am to request that his Lordship may be informed whether, in your opinion, it may properly be laid before the Queen in Council, in its present shape, for Her Majesty's approval.

I have, &c.
(Signed) F. H. VILLIERS.

Report.

As initialled by us, the draft Order in Council may properly be submitted to the Queen in Council for Her Majesty's approval.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 14, 1896.

Annex.

WHEREAS by Treaty, Capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within the Ottoman Dominions:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. Her Majesty may from time to time, when she thinks fit, appoint a competent person to act temporarily as Special Judge of the Supreme Consular Court at Constantinople. He shall be a person qualified to be appointed Judge of the Supreme Court under the provisions of the Ottoman Orders in Council, and shall be appointed in like manner.

2. The Secretary of State may by order assign any case, civil or criminal, and whether pending at, or commenced after, the passing of this Order, to be tried by or before the Special Judge, and in relation to any case so assigned, all the powers, authority, and jurisdiction of the Judge of the Supreme Court under the Ottoman Orders in Council shall be vested in and exercised by the Special Judge, and the Judge of the Supreme Court shall not exercise any jurisdiction therein.

3. If any case so assigned is set down for rehearing, the same shall be reheard before the Special Judge and the additional Judge of the Supreme Court.

4. This Order may be cited as "The Ottoman Dominions (Supreme Court) Order in Council, 1896," and shall be construed as one with the Ottoman Orders, 1873, 1882, and 1890, and "The Ottoman Dominions (Courts) Order in Council, 1895."

And the Most Honourable the Marquess of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State is to give the necessary directions herein.

(Initialled) R. E. W.
R. B. F.

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UNITED STATES.

No. 30.

[February 18, 1896.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, February* 7, 1896.

Complaints against U. S. revenue-cruisers in Behring Sea and N. Pacific.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the draft of a despatch to Her Majesty's Ambassador at Washington, requesting his Excellency to bring to the notice of the United States' Government complaints which have been made against the action of their revenue cruisers during the sealing season of 1895 in Behring Sea and the North Pacific Ocean.

I am also to inclose the correspondence and documents enumerated in the accompanying list, and I am to request that Lord Salisbury may be favoured with your opinion as to whether the instructions to Sir J. Pauncefote are such as may properly be issued, or whether they may advantageously be modified or amended in any, and, if so, in what respects.

His Lordship will at the same time be glad to be favoured with any observations of a general nature which you may desire to offer on the papers now submitted to you.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Admiralty	November 21, 1895.
(B.)	Ditto	December 6, „
(C.)	Colonial Office	December 23, „
	Ditto	December 24, „
(D.)	Ditto	January 6, 1896.
(E.)	Behring Sea Award Act, 1894 (57 Vict., cap. 2).	
(F.)	Order in Council (Confidential No. 6480*), April 30, 1894.	
(G.)	Admiralty Instructions.	
(H.)	Colonial Office	January 28, 1896.

N.B.—The United States' Act the President's Proclamation, and the Regulations issued thereunder, are attached to Paper (A).

Report.

In our opinion the instructions to Sir J. Pauncefote are such as may properly be issued.

The only suggestion we have to make is that on the sixth page of the draft despatch there should be added after the word "forfeiture" the following sentence:—

"Even by the United States' law no general power is conferred to board and search vessels without specific ground for suspicion."

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 18, 1896.

Annex.

The Marquess of Salisbury to Sir J. Pauncefote.

(No. .)

Sir, *Foreign Office, February* , 1896.

I INCLOSE, for your Excellency's information, copies of correspondence, as marked in the margin,* respecting the sealing season of 1895, and the proceedings of the United States' revenue-cruisers in searching and seizing British vessels without sufficient cause.

You are authorized to communicate to the United States' Government copies of the letter from the Collector of Customs at Victoria of the 15th October, the declaration of Isaac A. Gould, and the list of boardings; which are annexed to the Colonial Office letter of the 24th December, marked (A).

It appears from those papers that out of twenty-nine vessels which had then returned from Behring Sea, no less than twenty-six had been boarded by United States' officers, and these, in the aggregate, eighty-two times. The average was, therefore, more than three boardings for each vessel, and in one case, that of the "Sapphire," the vessel was boarded six times in the course of twenty-four days. In nearly every instance the seal-skins were overhauled and examined and left in confusion, and on each occasion they had to be repacked in salt by the crews. The net result of all this labour and annoyance was that the entries in the log-book of the "Beatrice" were found to be a few days in arrear, and that a hole was discovered in one seal-skin out of a cargo of 386 on board the "E. B. Marvin," which, in the opinion of the United States' naval officer, had the appearance of being a shot wound. Both these vessels were seized, and were subsequently sent to Victoria for trial.

Admiral Stephenson and the Officer Commanding Her Majesty's ship "Pheasant," have also commented on the frequency with which the vessels were visited, and on the manner in which the search was conducted. These two officers state, moreover, that the men who command the sealing-schooners are most anxious to carry out all Regulations to the letter.

Her Majesty's Government have also been informed that the United States' naval officers considered themselves authorized by their instructions to board indiscriminately all British sealers.

Your Excellency will observe from the foregoing summary that the complaints of the sealing-vessels against the United States' revenue-cruisers belong to three different categories:—

1. The seizure of vessels for alleged offences on evidence obviously insufficient.
2. The exercise of the right of search in cases where no suspicion exists as to an offence having been committed.
3. Vexatious and inquisitorial interference.

With regard to the question of seizure, it was pointed out in a telegram No. 58 from the Earl of Kimberley to your Excellency of the 28th April, 1894, and it has since been notified to the United States' Government on several occasions, that the United States' cruisers are only empowered by the British Order in Council to seize British vessels contravening the provisions of the British Act of Parliament, which contains no provision similar to section 10 of the United States' Act, and that the United States' naval officers have therefore no power to seize British vessels merely on the ground that they have sealing apparatus or implements on board. The British Act of Parliament only gives a power to seize where an offence has been committed, and the Order in Council authorizes the seizure and detention of any British vessel which has become liable to be forfeited. Even by the United States' law, no general power is conferred to board and search vessels without specific grounds of suspicion. I have already requested your Excellency, in my despatch No. 157 of the 27th September last, to inform the United States' Government that British naval officers will in future decline to take over any British vessel seized by an American cruiser unless the declaration alleges a specific offence which is a contravention of the British Act of Parliament.

There appears to have been some misconception on the part of the United States' naval officers, who have attempted to apply United States' law to British vessels, as is shown by the clearance certificate granted to the "E. B. Marvin" by Lieutenant Carmine, United States' navy, in which the Proclamation of the President and the United States' Regulations are quoted. A copy of this certificate is inclosed in the Admiralty letter of the 21st November. It should be brought to the notice of the United States' Government, with the request that the naval officers may be informed that their powers, as far as British vessels are concerned, exist solely in virtue of the British Act of Parliament, and the Order in Council issued under it, and are restricted within the limits of the provisions by which those powers are therein defined.

The exercise of the right of search is likewise subject to restrictions.

The Act of Parliament contains no section enabling an officer to stop and examine any vessel such as existed in the Seal Fishery Acts of 1891 and 1893. The Arbitration Award required that the offences specified in Articles I and II should be prohibited, but did not require any preventive action before the commission of the offence. If an officer has reasonable cause to suspect a vessel of having committed an offence, it is open to him to stop and examine her, but he is clearly not justified, in the absence of any specific ground for suspicion, in stopping and examining every vessel he meets as a purely precautionary or preventive measure.

In any case, the vexatious and uncalled-for interference reported during the past season

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* Admiralty, November 21 and December 6: Colonial Office, December 23 (A) and 24 (B), 1895, and January 6, 1896.

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gives just cause for complaint. Amongst the points agreed to by the Secretary of the Treasury with reference to the instructions to the United States' naval officers in May 1894 were the following:—

That the masters of the sealing-vessels should be protected from inquisitorial examination; that no sealing-vessel should be seized by reason of the absence of a licence or of fishery implements being found on board; that the United States' naval instructions as to the mode of dealing with sealing-vessels should be similar to the British naval instructions; and that the naval officer who examines a sealing-vessel shall leave a certificate with her master for his protection against interference.

These provisions, which had special reference to the arrangement for sealing up arms in 1894, show the spirit in which the instructions for carrying out the Award were issued, and it is essential that an international Agreement involving questions of so delicate a nature should be administered with mutual forbearance and moderation.

Her Majesty's Government feel sure that it is not the intention or desire of the United States' Government that men engaged in a perfectly legitimate occupation, who, according to both British and American reports, are most anxious to observe strictly the Regulations imposed for public reasons on that occupation, should be treated as if they were continually engaged in trying to evade and break the law, and subjected to unnecessary loss and trouble. The right of searching British vessels was conferred on United States' officers on the assumption that they would exercise their powers with the same consideration as would in like circumstances be shown to such vessels by Her Majesty's naval officers, and Her Majesty's Government have no doubt that, when the matter is brought to the notice of the United States' Government, they will issue such orders as will put an end to an interference with British vessels on the high seas, which has given rise to so many complaints, and which is not warranted by the provisions of British law.

Your Excellency will address a note to the United States' Government in the sense of this despatch, and make such further representations as you may deem advisable.

No. 31.

[March 9, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 6, 1896.

Gentlemen,

Convention with U. S. for settlement of British Behring Sea claims.

I HAVE the honour to transmit to you herewith, by direction of the Marquess of Salisbury, papers relating to the Convention between Great Britain and the United States, signed on the 8th ultimo, for the settlement of the claims set forth in the Schedule attached to the British Case in the Behring Sea Arbitration.

The findings of fact with regard to these claims were agreed to on both sides, and were appended to the Award of the Arbitration Tribunal (Paper A).

The Convention (Paper B) which provides for the appointment of a Commission to adjudicate on the claims, has recently been submitted to the United States' Senate with a view to its ratification, and a Committee of the Senate has recommended certain alterations, which have been communicated privately to Her Majesty's Ambassador by the United States' Secretary of State, and are specified in Sir J. Pauncefote's telegram No. 19 of yesterday (Paper C).

Lord Salisbury would be glad to be favoured with your opinion as to whether any of these alterations, and, if so, which of them, should be resisted by Her Majesty's Government, and I am to call your special attention to the departure from the terms of the findings of fact referred to above, and found by the Tribunal to be true, which would be entailed by the modifications proposed in the second sentence of Article III of the Convention.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) Award (Confidential No. 6383*) .. .. .. August 15, 1893.
(B.) Convention (Treaty No. 989) .. .. .. February 8, 1896.
(C.) Sir J. Pauncefote .. .. (No. 19. Telegraphic) March 5, „

Report.

We will deal with the proposed alterations in the order in which things occur.

Preamble.—As regards the recital which brings in the claims in respect of the "Wanderer," "Winifred," "Henrietta," and "Oscar and Hattie," it is so obviously important that all claims arising out of seizures prior to the award should be dealt with at the same time, that every effort should be made to retain words including these claims in the reference.

It is to be noted that the words in Article I dealing with the same claims are not referred to in Sir Julian's telegram, but no doubt the Senate intended to strike them out.

We have no information as to whether any special grounds exist which the United States can urge against the inclusion of the claims in respect of these four ships; apart from any valid reason, we think the terms of the Convention should be adhered to.

Article II.—The alteration in Article II may lead to great delay and expense if the Commission is compelled to sit at San Francisco, as well as Victoria. In our opinion the discretion given by Article II, as it stood, was far better, and would meet the justice of the case, but there is no matter of principle involved in the proposed alteration.

Article III.—The proposed alteration in the second paragraph of this Article cannot possibly be accepted. It would open the door to endless delay and question: the introduction of the words "legal or equitable" is obviously intended to suggest a line of argument which would be both unfair and objectionable. Beyond this there is a grave question of principle involved.

Findings of fact were contemplated by Article VIII of the Treaty.

The references are to the recent American edition.

It was the right of either party to ask for them. Vol. iv, p. 8.

The findings originally asked for by Great Britain will be found in the Protocol of the 31st May; No. 1 as presented contained no words corresponding to those now under discussion.

Vol. i, p. 33, Art. I. Protocol 30, (p. 111). See proceedings, vol. xiii, p. 397, British paging 1196.

On the 8th June (see Protocol) the United States presented their proposed findings. No. 1 contained the words in question, "in whole or in part the actual property of American subjects."

Vol. i, pp. 37, 38, Protocol 35 (p. 131).

These words were suggested by the Agent and Counsel of the United States themselves.

See proceedings, vol. xiii, p. 621. British paging 1457.

Upon these proposals considerable negotiation ensued, which resulted in the agreed finding (see Protocol of the 26th June) presented by the British Agent by agreement with the United States' Agent.

Vol. i, p. 43, Protocol 41 (p. 151).

See also discussion thereon.

Proceedings, vol. xiv. p. 269. British paging 1779.

No. 1, containing the words "wholly or in part the actual property of citizens of the United States," which had been inserted at the request of the Agent of the United States from their original proposals.

This agreed statement was unanimously adopted by the Tribunal.

See Award, p. 14 of C. 7107, vol. i, p. 83.

In the face of these facts, it is, in our opinion, not only undesirable but improper to alter the second paragraph of Article III in the way proposed.

As regards the alteration of the words "in the Award of" to "by," we think these words should be retained, as the Award is the only authentic record of the questions determined by the Tribunal.

The proposal to substitute the words "shall have the right" for the words "it shall be open" to the United States' Government, "if it thinks fit," is not material, though we think here, also, it is better to follow the words of the Award.

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Third Paragraph.—The alteration in the third paragraph is not material, and may be agreed to if it be thought desirable.

Schedule.—We have already dealt with.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 9, 1896.

No. 32.

[March 12, 1896.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 3, 1896.

Gentlemen,

Trial of "Shelby." Seized by U.S. cruiser in Behring Sea.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, relating to the seizures of certain British sealing-vessels by United States' cruisers in Behring Sea.

The Secretary of State for the Colonies, in a letter dated the 25th ultimo (Paper B), has called attention to the Judgment given in the case of the "Shelby." Mr. Chamberlain points out that the Judge appears to him to have founded his decision (Paper A, pp. 58 and 59) partly on the North Pacific Seal Fishery Act of 1893 (Paper C), although the fishery in the north-eastern part of the Pacific Ocean, where the "Shelby" was seized, is regulated only by the Behring Sea Award Act of 1894 (Paper D).

The evidence of a contravention of the Act of 1894 does not seem to the Secretary of State for the Colonies to be very conclusive, and he fears that the Judgment may be reversed if an appeal is carried to the Supreme Court.

Lord Salisbury requests that you will take the matter into your consideration, and that you will favour him with your opinion as to whether, in the circumstances mentioned, the condemnation of the "Shelby," her equipment and everything on board of her, and the proceeds thereof, in the sum of 100*l.* and the costs of the prosecution therein, is legally sustainable; and, if not, what action Her Majesty's Government should take in the event of an appeal against the conviction being carried to the Supreme Court by the owners of the "Shelby."

His Lordship will be glad at the same time to be favoured with your views on the other points specially raised in the Colonial Office letter of the 25th ultimo (Paper B), and with any observations of a general nature which you may desire to offer on the papers now submitted to you.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) Admiralty	January 3, 1896.
(B.) Colonial Office	February 25, „
(C.) North Pacific Seal Fishery Act, 1893 (56 & 57 Vict., cap. 23).	
(D.) Behring Sea Award Act, 1894 (57 Vict., cap. 2).	
(E.) Order in Council, 1894 (Confidential No. 6480*).	

Report.

The only evidence tending directly to show that the offence had been committed in the case of the "Shelby" is that of Lorensen, who states that the skins appeared to him to be "fresh salted" and bloody. This evidence is in itself of very little value, and is opposed to the evidence of several witnesses who swear that there had been no seal-hunting since the 30th April.

But there is strong evidence to show that the vessel could not have been where she was seized on the 11th May if she had ceased hunting on the 30th April and

started for Victoria. It appears to us that it is extremely probable that this can be accounted for only on the supposition that the vessel was not coming straight back, but was engaging in digressions in search of seals. The excuses made by the mate are utterly futile, and seem only to cast doubt on his denial of seal-hunting after the 30th April.

It is certainly a most suspicious circumstance that the master was not called; the excuse for not calling him is not satisfactory, and we should have expected, if the defence was a good one, that an adjournment would have been asked for to call him, especially after the extraordinary evidence of the mate.

The Judgment certainly cannot be supported on the ground put in the first place by the learned Judge; it is quite clear that the statutory presumption created by section 1, sub-section 6 of the Act of 1893 has no application whatever to this case.

But it does appear that the vessel had been hanging about in the waters closed to hunting after the 1st May—the master is not called, and the mate's explanations are falsehoods. What was she doing there if not pursuing seals?

We, on the whole, think that the conviction was right, but the evidence is of such a nature that it is impossible to feel any confidence as to the result of the appeal, especially having regard to the fact that the Judge has in part based his conclusion on a ground of law which cannot be supported.

We do not advise that the fine should be remitted; we believe it to have been rightly inflicted, and we think that the owner ought to be left to his remedy by appeal if he is so advised.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 12, 1896.

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[This Document is the Property of Her Britannic Majesty's Government.]

Printed for the use of the Foreign Office. October 1898.

CONFIDENTIAL.

(7058.)

REPORTS

BY THE

LAW OFFICERS OF THE CROWN, &c.

1897.

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[This Report should have appeared before No. 1, page 1.]

AFRICA.

No. 1a. [Colonial Office.]

[March 1, 1897.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, March 1, 1897.

Sir,

WE were honoured with your commands, signified in Mr. Wingfield's letter of this day's date, stating that, with reference to our Report of the 9th December, 1896, he was directed to transmit to us a copy of a despatch from the High Commissioner for South Africa regarding the Aliens Immigration Law of the South African Republic and the draft of the reply which, if we concurred, he proposed to send to the High Commissioner.

Aliens Immigration Law of the South African Republic.

In obedience to your commands we have the honour to

Report—

That, subject to the slight alterations in *italics*, we approve of the draft despatch.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Draft of Despatch from Mr. Chamberlain to High Commissioner Sir A. Milner.

Downing Street, March , 1897.

My Lord,

I HAVE the honour to acknowledge the receipt of your Confidential despatch of the 27th January, inclosing a copy of one from the British Agent at Pretoria covering a translation of the reply of the Government of the South African Republic to the representations of Her Majesty's Government on the subject of the Alien Immigrants Law, No. 30, of 1896.

The State Secretary in this reply contends that the terms of Article XIV of the London Convention in no way exclude the application of Police Laws which the competent authority in the State may consider necessary for the maintenance of order and the protection and peace of its inhabitants, and that the requirement embodied in the words "conforming themselves to the laws of the South African Republic," in Article XIV, supports his contention, as amongst such laws Police Laws, as well as Law No. 30 of 1896, take the foremost place.

Her Majesty's Government regret that they are entirely unable to accept the view that Law No. 30 of 1896 is an ordinary Police Law within the terms of Article No. XIV of the Convention. That Article declares that all persons other than natives conforming themselves to the laws of the South African Republic shall have full liberty to enter, travel, or reside in any part of the Republic. Law No. 30 of 1896 provides that such persons shall not be at liberty to enter or reside in the Republic unless they can show affirmatively that they have the means or ability to support themselves. The only condition imposed by the Convention is that they should conform to the laws of the Republic; but the new Law imposes a further condition of a burthensome nature, which it might be difficult for many of the poorer, though perfectly respectable, immigrants to satisfy. This condition is to be fulfilled by the production of a passport, certifying means or ability, granted

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by the Government of the country to which the immigrant belongs, and viséd by a Consular official of the Republic, or by proof to the satisfaction of the Field-Cornet or other official that the immigrant is possessed of such means or is able to support himself.

Articles 5, 6, and 8 also impose positive burdens upon an alien travelling or residing in the Republic in excess of the condition laid down in the Convention. Articles 5 and 6 require an alien to take out a passport every three months or every year, according as he is a passing traveller or a resident, and Article 8 requires him to show such passport on demand to any of the officers named thereon.

Her Majesty's Government cannot but feel that to admit the validity of the State Secretary's argument would be to admit that the Government of the South African Republic could by the passing of Laws override the provisions and defeat the objects of the London Convention. It must be admitted that Law No. 30 ~~at least~~ places great difficulties in the way of the free entrance of foreigners into the Republic and their freedom of residence within it, and it is not difficult to imagine further conditions being imposed by Law, or even the conditions imposed by Law No. 30 ~~having~~ *operating so as to have* the effect of making the entrance or residence of foreigners impossible.

Her Majesty's Government fully appreciate the difficulties which may be caused to the South African Republic by a possible influx of immigrants of the lowest class and without any means of subsistence, the prevention of which is, according to the State Secretary's despatch, the object of Law No. 30, and although they are not in possession of any information showing that such an influx has up to the present time taken place, or is likely to take place in the near future, they ~~have already informed you~~ *must adhere to the view* that ~~the proper course would have been in such a case for~~ the Government of the South African Republic ~~to~~ *should have* approach*ed* Her Majesty's Government with a view of arriving at an understanding, and not ~~to~~ *have* take*n* the matter into their own hands without regard to the terms of the London Convention.

The State Secretary has replied that if Her Majesty's Government has another practical measure to propose for the exclusion of undesirable aliens the Government of the South African Republic will be ready with gratitude to give its full consideration to such measure.

It would appear, however, that it is ~~hardly the duty of~~ *not for* Her Majesty's Government at this stage to suggest the details of any measure for the purpose to the Government of the South African Republic; but in the hope of arriving at a satisfactory solution, Her Majesty's Government are prepared to authorize Her Majesty's Agent at Pretoria to discuss the matter with a Representative of the South African Republic Government, and if they can agree on any proposals, to submit them for the consideration of the two Governments.

In the meantime, however, Her Majesty's Government must, for the reasons given in this despatch, adhere to their view that the Law No. 30 of 1896 constitutes a violation of the London Convention. As I have stated in my telegram of the 15th December, they appreciate the repeated assurances of President Krüger that the Government of the South African Republic have no intention of departing from the terms of that Convention, and they assume that the Government of the South African Republic admit that the provisions of the Convention, which are mutually binding on both Governments, cannot be altered by either for its own convenience in the slightest detail without the previous consent of the other. They regret, therefore, to learn that, despite their contention that Law No. 30 is an infringement of the Convention, and notwithstanding the expression of their willingness to consider other proposals for attaining the object desired by the South African Republic Government, the Law was put into force on the appointed day, and that British subjects have actually been temporarily refused admission to the Republic.

Her Majesty's Government now expect that, in view of the elucidation of the matter contained in the present despatch, the Government of the South African Republic will at once repeal or formally suspend the operation of Law No. 30 pending a final arrangement being made in the manner herein indicated.

I request that you will instruct Mr. Greene to communicate a copy of this despatch to the Government of the South African Republic.

(Initialled) R. E. W.
R. B. F.

Printed for the use of the Foreign Office. October 1898.

CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c: 1897.

AFRICA.

No. 1.

[June 8, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 29, 1897.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers mentioned in the accompanying list, which relate to the question whether certain Regulations made by the Royal Niger Company are, or are not, contrary to those provisions of the Act of Berlin, which deal with the navigation of the River Niger in West Africa.

Royal Niger Company's Navigation Regulations and Berlin Act.

The General Act of the Conference of Berlin, a copy of which will be found marked "A" among the inclosed papers, lays down the following Rules for the regulation of navigation on the River Niger:—

"Article 26. The navigation of the River Niger, without excepting any of its branches and outlets, is and shall remain entirely free for the merchant-ships of all nations equally, whether with cargo or ballast, for the transportation of goods and passengers. It shall be regulated by the provisions of this Act of Navigation, and by the Rules to be made in pursuance of this Act.

"In the exercise of this navigation the subjects and flags of all nations shall be treated, in all circumstances, on a footing of perfect equality, not only for the direct navigation from the open sea to the inland ports of the Niger, and *vice-versâ*, but for the great and small coasting trade, and for boat trade on the course of the river.

"Consequently, on all the course and mouths of the Niger there will be no distinction made between the subjects of the Riverain States and those of non-Riverain States, and no exclusive privilege of navigation will be conceded to Companies, Corporations, or private persons.

"These provisions are recognized by the Signatory Powers as forming, henceforth, a part of international law.

"Article 27. The navigation of the Niger shall not be subject to any restriction or obligation based merely on the fact of navigation.

"It shall not be exposed to any obligation in regard to landing-station or depôt, or for breaking bulk, or for compulsory entry into port.

"In all the extent of the Niger, the ships and goods in process of transit on the river shall be submitted to no transit dues, whatever their starting-place or destination.

* * * * * *

"Article 30. Great Britain undertakes to apply the principles of freedom of navigation, enunciated in Articles 26, 27, 28, and 29, on so much of the waters of the Niger as are or may be under her sovereignty or protection.

"The Rules which she may establish for the safety and control of navigation shall be drawn up in a way to facilitate, as far as possible, the circulation of merchant-ships.

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"It is understood that nothing in these obligations shall be interpreted as hindering Great Britain from making any Rules of navigation whatever, which shall not be contrary to the spirit of these engagements.

"Great Britain undertakes to protect foreign merchants and all the trading nationalities on all those portions of the Niger which are or may be under her sovereignty or protection as if they were her own subjects, provided always that such merchants conform to the Rules which are or shall be made in virtue of the foregoing."

Regulations have been made by the Niger Company under Article 30 of the Berlin Act, quoted above, and approved of by the Secretary of State.

By that Article Great Britain is permitted to make any Rules of navigation whatever which shall not be contrary to the spirit of the previous Articles. The object of the present reference is to ascertain whether, in your opinion, this engagement has been fulfilled, or whether the Regulations which have been adopted are justly stigmatized by foreign Governments as being at variance with the spirit of the Act of Berlin.

The following two Regulations especially require attention:—

Regulation XI (B) of 1886.

"No vessel, boat, canoe, or other craft, shall touch, load, or discharge at, from, or into any part of the Niger Territories except the established ports of entry and export, whereof the provisional list is given in the Schedule (A) hereto, and whereof an amended list may be from time to time made and publicly notified by the Agent-General or an Acting Senior Executive officer, and on such public notification such amended list shall take the place of Schedule (A) without otherwise affecting the validity of this Regulation."

Regulation XVIII of 1887, *C.* (2).

Document (C).

"No foreigner or foreign Company shall, either directly or through an agent or agents, sell or barter, or expose for sale or barter by retail, any merchandize within the Niger Territories without a retail trade licence. Each of such licences shall be annual, and shall be valid until the 31st day of December next following the date of its issue, and shall be procurable at any of the Company's stations on and after the 30th day of June, 1887, on which date this Regulation shall first come into force. The cost of one annual licence for one factory, station, or other place of trade, shall be 50*l.*, together with a further sum of 10*l.* for every additional factory, station, or place of trade occupied by the same trader or Trading Company, in the Niger Territories . . . . . ."

It is undoubtedly true that these Regulations leave the navigation of the Niger entirely free for persons who are not occupied in commerce, that is to say, for tourists or explorers; but a foreign merchant is only free so long as he remains upon the water itself. He is forbidden to touch for the purposes of commerce at any part of the Niger Territories except certain parts specified by the Company, and he is forbidden, under heavy penalties, to sell any merchandize on any part of the banks of the Niger without previously paying a licence fee of 50*l.*

The question for consideration is whether it is permissible, in construing the Act of Berlin, to apply it only to transactions taking place upon the water itself, or whether the language of the Act must be held to point to the entire commercial traffic conducted on the banks of the Niger to which the actual transport upon the water is ancillary, and from which alone it derives any commercial value.

The Act of Berlin speaks expressly of the navigation remaining free for the merchant-ships of all nations equally for the transportation of goods and passengers. Can it be held that that transportation was limited by the water's edge, and that when the goods were carried over the water's edge the freedom guaranteed to them by the Act of Berlin ceased to operate? It is not a question merely of importation and of duties levied upon importation: the penalties of the Regulations would affect any barter of goods between vessels coming up or down the Niger if that barter took place upon the bank.

There seems to be this important distinction between a tax levied by way of licence on every trader and a tax levied by way of duty on all imported or exported goods. In the latter case the goods are there themselves to furnish the tax, as a portion of their own value; but the licencee would have to pay his 50*l.* on pure speculation, and out of capital, though no transaction might have passed which would furnish him with any portion of the means for paying it.

If it be said that the general power of Regulation permits the levying of a licence fee of 50*l.* for every one attempting to trade, and that this is no such restriction as is permitted by the Act of Berlin, it would follow that the same legitimacy would attach to a much more elevated licence fee, and that a fee of 500*l.*, though it would be practically prohibitory, and would make the Niger an absolutely close river, would yet be in harmony with the spirit of the Act. There is reason to believe that, as a matter of fact, the fee of 50*l.* has gone very far to make the Niger a monopoly.

In this connection attention should be paid to the words in Article 26 of the Act, which provides that the subjects of all nations shall be treated in all circumstances on a footing of perfect equality, not only for the direct navigation from the open sea to the inland ports of the Niger, but for the great and small coasting trade and for boat trade on the course of the river. It seems difficult to conceive that this language was intended to refer only to traders who were capable of paying a 50*l.* licence fee before they began to trade.

The above questions have reference to the Regulations of the Company as they affect all persons who desire to trade upon the Niger. But separate attention must be given to the provision that selling without a licence is specially forbidden to foreigners or foreign Companies. It is submitted that this provision is, in any case, at variance with the Act of Berlin. The language used negatives again and again the idea that any distinction can be drawn in favour of any nation adversely to any other nation.

A copy of the Charter of the Royal Niger Company, marked (D), under the authority of which the Company has issued the Regulations which form the subject of the present reference, will be found among the papers sent herewith.

A map, marked (E), showing approximately the position of the different native States and foreign Protectorates touched by the waters of the Niger and its affluents is likewise inclosed.

I have the honour to request that you will take the papers forwarded herewith into your consideration, and that you will favour Lord Salisbury with your opinion as to whether the Niger Company is justified, in view of the terms of the Act of Berlin, in restricting the trade of the Niger in either of the two ways to which your attention has been called; that is to say, either, firstly, by limiting that trade to persons who have a capital of 50*l.*; or, secondly, by limiting free traffic to persons whom the Company describes as not being foreigners or foreign Companies.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) The General Act of the Conference of Berlin. (Treaty 757) .. February 26, 1885.
(B.) Regulation XI of 1886.
(C.) Regulation XVIII of 1887.
  (To the last-mentioned Regulation is attached Regulation XXI of 1887, amending the Regulation XVIII of 1887.)
(D.) Niger Company's Charter. (Confidential 5269*.)
(E.) Map of the Niger region.

Report.

In our opinion the Regulations in question do *not* infringe the terms of the Act of Berlin.

The Articles relied on by those who allege infringement are Articles XXVI and XXVII. These Articles do not provide that there shall be complete freedom of trade in the basin of the Niger, but merely that the navigation shall be untrammelled.

We agree that the right of navigation includes the right of embarkation and debarkation for passengers and merchandize. If the ports of entry and export fixed under Regulation XI (B) of 1886 are unreasonably few, this would, we think, constitute an interference with the right of navigation, and consequently a breach of the Act of Berlin. But it does not appear that this is the case, and it seems to us quite impossible to suppose that the right of free navigation excludes the right of the

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Powers owning the Territory through which the river flows to fix suitable ports of entry and export. In the absence of anything to show that this power has been abused by unduly restricting the number of such ports so as to fetter navigation, we think that Regulation XI (B) of 1886 does not violate the Act of Berlin.

There remains for consideration Regulation XVIII of 1887 (C) (2). This Regulation does *not*, in our opinion, interfere with navigation. It is a restriction not upon navigation, but upon the right of retail trade within the Territories of the Company. It imposes no burthen upon vessels for navigating the river, nor upon goods in respect of loading or unloading. We cannot see that it is in any way unlawful for the Company to impose a fee of 50*l.* upon all retail traders in the Niger Territory, or to exempt from that fee traders who are not foreigners or foreign Companies.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 8, 1897.

No. 2.

[April 13, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, January 21, 1897.

East Africa and Zanzibar O.s in C.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the drafts of two Orders in Council (1) for Zanzibar and (2) for East Africa which have been prepared by Mr. Gray, in consultation with Mr. Hardinge, Her Majesty's Agent in Zanzibar and Commissioner in East Africa, and with this Department.

The Orders, when issued, will respectively replace (1) the existing Zanzibar Orders in Zanzibar dominions and (2) "The Africa Order in Council, 1889," in the territories comprised in the East Africa Protectorate as defined in the draft Order.

Various points to which Mr. Gray deems it desirable that your attention should be specially directed are set forth in the Memorandum contained in his letter of the 5th instant.

I am to request that you will take the drafts into your consideration, and favour Lord Salisbury with your opinion as to whether they can properly be submitted to Her Majesty in Council in their present form; and, if not, to indicate such amendments and modifications as you may consider necessary or desirable.

A map illustrating the districts comprised within the scope of operation of the Orders is sent herewith.

I have, &c.
(Signed) FRANCIS BERTIE.

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, January 29, 1897.

With reference to my letter of the 21st instant, submitting for your consideration the drafts of two Orders in Council (1) for the East Africa Protectorate and (2) for Zanzibar, I have the honour to state, by direction of the Marquess of Salisbury, that it was thought well to call the attention of the Colonial Office and of the India Office to clause 12 (iv) (*d*) in each draft Order, which provides that the territories therein enumerated respectively shall, for the purposes of Part II of "The Fugitive Offenders Act, 1881," be deemed to be one group of British possessions, and to inquire whether there were, on the part of those Departments, any objections to the provision in question.

The reply of the India Office has not yet been received, but it shall be transmitted to you without delay as soon as it reaches this Department.

It will be seen from the accompanying communication from the Colonial Office* that that Department has no objection to the proposed sub-clause, but that

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* Colonial Office, January 22, 1897.

Mr. Secretary Chamberlain suggests that an addition should be made in clause 12, sub-clause (iv) (*a*), of each draft similar to the terms of Article 85 (2) (*c*) of "The Pacific Order in Council, 1893."

A copy of the Pacific Order in Council is inclosed.* The Article referred to by the Colonial Office relates to the right of an accused person to apply for a *habeas corpus* in a British possession to which he may be conveyed.

I have the honour to request you to consider this suggestion in connection with the draft Orders referred to you in my above-mentioned communication, and to favour Lord Salisbury with your opinion thereon.

I have, &c.
(Signed) FRANCIS BERTIE.

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, February 13, 1897.

With reference to my letter of the 29th ultimo on the subject of the two draft Orders in Council for East Africa and Zanzibar respectively, which are at present under consideration, I have the honour to inform you that the expected communication from the India Office which was therein alluded to has been received, and that it appears that the Secretary of State for India in Council has no objection to the provision contained in sub-clause 12 (iv) (*d*) of each draft Order to the effect that the territories therein enumerated respectively shall, for the purposes of Part II of "The Fugitive Offenders Act, 1881," be deemed to be one group of British possessions.

Lord George Hamilton at the same time suggests that the words "or Protectorates" might be added after the word "dominions" in Article 49 of the East Africa Protectorate Order, and in Article 51 of the Zanzibar Order; and I am to request that you will take this suggestion into your consideration in connection with the draft Orders now before you.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

We think that these draft Orders, initialled by us, may properly be submitted for Her Majesty's approval, subject to the following remarks:—

Zanzibar Order, Article 5 (2) (*c*).—If foreign Powers consent to jurisdiction in the terms of this Order, no difficulty will arise as to this provision, which is in itself most desirable. If, however, the consent is merely to jurisdiction over foreigners resident in Zanzibar, this provision would be a considerable extension.

Ibidem, Article 12 (4) (*a*).—We see no objection to Mr. Chamberlain's proposal.

Ibidem, Article 12 (4) (*d*).—This should be worded as in the East African draft.

Ibidem, Article 17 (2).—We think this clause should stand as in the draft. The extension suggested for consideration in Mr. Gray's Memorandum of the 5th January is not, in our opinion, desirable.

Ibidem, Article 20.—The powers of this Article are most desirable. As the object is prevention, we think it would be very difficult to preserve its efficacy if the right to a criminal trial is to be interposed.

It would be unfortunate if it has to be confined to British subjects, but this may be necessary, as foreign Powers may refuse to consent to confer on the Consul-General an arbitrary power of this description over their subjects.

We also think that the suggestion of Mr. Gray to introduce a clause into the Zanzibar Order similar to Article 13 of the East Africa draft Order is a good one.

Some of the above observations apply also to the draft as to East Africa.

We entirely approve of the clauses (Article 50 *et seq.*) as to Native Courts, and of the provision as to Crown suits (Article 42 (5)).

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 13, 1897.

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* "Pacific Order in Council, 1893." (Confidential 6307*.)

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Annex 1.

East Africa Protectorate.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction within the territories comprised within the limit of this Order;

Now, therefore, Her Majesty by virtue, and in exercise of the powers on this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise, in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Part I.—*Preliminary.*

1. This order may be cited as "The East Africa Order in Council, 1897."

The limits of this Order are the territories comprised in the East Africa Protectorate, which includes the territories bounded on the north by the River Juba, on the east by the Indian Ocean, on the south by the German sphere, on the west by the Uganda Protectorate, and also all adjacent islands between the mouths of the Rivers Juba and Umba, but does not include the Islands of Zanzibar and Pemba.

If Her Majesty is pleased to direct that any other territories, for the time being under the protection of Her Majesty, shall form part of the East Africa Protectorate, those territories shall, from and after a date fixed by an order of the Secretary of State, be deemed to be within the limits of this Order.

2. This Order is divided into Parts, as follows:—

Part I. Preliminary.
Part II. Application and effect of Order.
Part III. Constitution of Courts.
Part IV. Application of law of British India and of the United Kingdom.
Part V. Criminal matters.
Part VI. Civil matters.
Part VII. Miscellaneous.
Part VIII. Repeal and Transitory Provisions.

3. In this Order—

(i.) "The Protectorate" means the territories for the time being comprised in Her Majesty's East Africa Protectorate;

(ii.) "Zanzibar" means the dominions and territorial waters of His Highness the Sultan of Zanzibar which are not comprised within the limits of this Order;

(iii.) "The Secretary of State" means one of Her Majesty's Principal Secretaries of State;

(iv.) "The Commissioner" means Her Majesty's Commissioner and Consul-General for the territories comprised within the limits of this Order, including a person acting temporarily, with the approval of the Secretary of State, as or for the Commissioner.

(v.) "British subject" includes a British-protected person, that is to say, a person who either (*a*) is a native of any other Protectorate of Her Majesty, and is temporarily in the East Africa Protectorate, or (*b*) by virtue of "The Foreign Jurisdiction Act, 1890," or otherwise enjoys Her Majesty's protection in the Protectorate;

(vi.) "Resident" means having a fixed place of abode in the Protectorate;

(vii.) "Native" means a native of the Protectorate, not being a British subject or a person of European or American race or parentage;

(viii.) "Foreigner" means a subject or citizen of a State in amity with Her Majesty, not being a native;

(ix.) "Native Court" means a Court for the administration of justice to or between natives:

(x.) "Treaty" includes any Convention, Agreement, or Arrangement with any State or Government, King, Chief, people, or tribe, made by or on behalf of Her Majesty, or to the benefits of which Her Majesty has succeeded;

(xi.) "Administration" means (unless a contrary intention appears from the context) letters of administration, including the same with will annexed, or granted for special or limited purposes, or limited in duration.

(xii.) "Ship" includes any vessel used in navigation, however propelled, with her tackle, furniture, and apparel, and any boat or other craft;

(xiii.) "Offence" means any act or omission made punishable by any law for the time being in force;

(xiv.) "Imprisonment" means imprisonment of either description, as defined in the Indian Penal Code;

(xv.) "Month" means calendar month;

(xvi.) "Will" means will, codicil, or other testamentary instrument;

(xvii.) "Person" includes Corporation;

(xviii.) "Full Court," with reference to the Court for Zanzibar, means that Court when constituted by the Judge and Assistant Judge thereof sitting together;

(xix.) Words importing the plural or the singular may be construed as referring to one person or thing, or to more than one person or thing, and words importing the masculine as referring to females (as the case may require).

4.—(1.) Where this Order confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2.) Where this Order confers a power or imposes a duty on the holder of an office, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by the holder of the office for the time being, or by a person duly appointed to act for him.

(3.) Where this Order confers a power to make rules, regulations, or orders, the power shall be construed as including a power, exercisable in the like manner and subject to the like approval and conditions (if any) to rescind, revoke, amend, or vary the rules, regulations, or orders.

Part II.—*Application and Effect of Order.*

5. The powers conferred by this Order shall extend to the persons and matters following in so far as by Treaty, grant, usage, sufferance, or other lawful means, Her Majesty has jurisdiction in relation to such persons and matters, that is to say: (*a*) British subjects; (*b*) Foreigners; (*c*) the property and all personal or proprietary rights and liabilities in the Protectorate of British subjects and foreigners, including ships with their boats, and the persons and property on board thereof, or belonging thereto; and (*d*) Natives, in the cases and according to the conditions specified in this Order, and not otherwise.

Provided that in the Zanzibar territory included within the limits of this Order the said powers shall not extend to foreigners (or their ships) being subjects of any Government which, on the 1st day of July, 1895, exercised any jurisdiction in that territory similar to the jurisdiction conferred by this Order, unless that Government shall consent to the exercise of jurisdiction under this Order.

Provided also that jurisdiction over any foreign ships under this Article shall not be exercised otherwise than according to the practice of the High Court of England in the exercise of jurisdiction over foreign ships.

6. All Her Majesty's jurisdiction exercisable in the Protectorate for the hearing and determination of suits, or for the maintenance of order, or for the control or administration of persons or property, or in relation thereto, shall be exercised under and according to the provisions of this Order, so far as this Order extends and applies.

Part III.—*Constitution of Courts.*

7.—(1.) There shall be and there is hereby established a Court styled "Her Majesty's Court for East Africa," in this Order referred to as "The Protectorate Court" and "The Court."

(2.) Subject to the other provisions of this Order, Her Majesty's jurisdiction in the Protectorate shall be, and is hereby, vested in the Protectorate Court.

(3.) The Protectorate Court shall ordinarily sit at Mombasa, but may also sit at any other place or places within the Protectorate appointed by the Commissioner, with the previous or subsequent consent of the Secretary of State.

(4.) The Protectorate Court shall be held by an officer, styled "Her Majesty's Judicial Officer for the East Africa Protectorate," in this Order referred to as "the Judicial Officer."

(5.) A person appointed to be Judicial Officer must be a member of the Bar of England, Scotland, or Ireland, of not less than three years' standing. He shall be appointed by Her Majesty by warrant under the Royal Sign Manual.

(6.) The Judicial Officer shall hold office during the pleasure of Her Majesty, and, in the event of a revocation of his warrant, until such revocation is notified to him by the Secretary of State.

(7.) In case of the illness or temporary absence of the Judicial Officer, the Commissioner may appoint either a person qualified to be appointed Judicial Officer, or an officer employed in the civil administration of the Protectorate, to act as Judicial Officer.

(8.) Each of the Judges of the Court for Zanzibar shall be an additional Judicial Officer for the East Africa Protectorate, and when so acting may hold a Protectorate Court with the same powers, authority, and jurisdiction as the Judicial Officer, but shall not so act unless the Commissioner, having regard to the state of business in the Protectorate Court, requests him to act.

(9.) The Court shall have a seal bearing the style of the Court and a device approved by the Secretary of State; but until such a seal is provided, a stamp bearing the words "East Africa Court" may be used instead thereof.

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8. Subject to the directions of the Secretary of State, the Commissioner may appoint such and so many persons to be Clerks, Bailiffs, Interpreters, and other officers of the Court as he thinks fit, and remove from office any person so appointed.

Any officer of the Court designated on this behalf by the Commissioner may administer oaths, and take affidavits, declarations, and affirmations.

9. Provincial Courts shall be held at such places, for such areas, and by such officers of the Protectorate or other persons as the Secretary of State may appoint.

The Secretary of State may direct that a Provincial Court shall exercise criminal jurisdiction only, or both criminal and civil jurisdiction, and subject to any such directions, and to any exceptions or modifications made by the Secretary of State, a Provincial Court shall exercise the jurisdiction conferred by this Order on a Provincial Court, and on persons appointed to hold such Courts.

The Secretary of State may determine the description and number of the officers to be attached to a Provincial Court, and the mode of their appointment and removal, and their duties and remuneration, and any matters incident to any of the above-mentioned purposes.

10. The Court for Zanzibar shall have such appellate jurisdiction in regard to matters arising in the Protectorate as is provided by this Order.

PART IV.—*Application of Law of British India and of the United Kingdom.*

11.—(*a.*) Subject to the other provisions of this Order, and to any Treaties for the time being in force relating to the Protectorate, Her Majesty's criminal and civil jurisdiction in the Protectorate shall, so far as circumstances admit, be exercised on the principles of, and in conformity with, the enactments for the time being applicable as hereinafter mentioned of the Governor-General of India in Council, and of the Governor of Bombay in Council, and according to the course of procedure and practice observed by, and before, the Courts in the Presidency of Bombay beyond the limits of the ordinary original jurisdiction of the High Court of Judicature at Bombay according to their respective jurisdiction and authority, and so far as such enactments, procedure, and practice are inapplicable, shall be exercised under, and in accordance with, the common and statute law of England in force at the commencement of this Order.

(*b.*) The enactments mentioned in the Schedule to this Order are hereby made applicable to the Protectorate as from the commencement of this Order.

(*c.*) Any other existing or future enactments of the Governor-General of India in Council, or of the Governor of Bombay in Council, shall also be applicable to the Protectorate, but shall not come into operation until such times as may in the case of any of such enactments respectively be fixed by the Secretary of State.

(*d.*) Any Act of the Governor-General of India in Council, or of the Governor of Bombay in Council, whether passed before or after the commencement of this Order, amending or substituted for any Act of either of those Legislatures which is by or under this Order made applicable to and brought into operation in the Protectorate, shall, subject to the provisions of this Article, also apply to the Protectorate.

(*e.*) For the purpose of facilitating the application of any such enactments as before mentioned—

(i.) The Court may construe any such enactment, with such alterations not affecting the substance, as may be necessary or proper to adapt the same to the matter before the Court;

(ii.) The Secretary of State may by order direct by what authority any jurisdiction, powers, or duties incident to the operation of any such enactment, and for the exercise or performance of which no convenient provision has been otherwise made, shall be exercised or performed;

(iii.) The Secretary of State may by order modify, for the purposes of this Order, any provision of any of the said enactments, or of any amending or substituted enactment relating to civil or criminal procedure, or to procedure in bankruptcy;

(iv.) Any order of the Secretary of State made in pursuance of this Article shall be published in the Protectorate and in India in such manner as he directs, and shall have effect as from a date to be specified in the order.

12. The enactments described in the First Schedule to "The Foreign Jurisdiction Act, 1890," shall apply to the Protectorate as if it were a British Colony or possession, but subject to the provisions of this Order, and to the exceptions, adaptations, and modifications following, that is to say:—

(i.) The Commissioner is hereby substituted for the Governor of a Colony or British possession, and the Protectorate Court is hereby substituted for a Superior Court or Supreme Court and for a Magistrate or Justice of the Peace of a Colony or British possession.

(ii.) For the portions of the Merchant Shipping Acts, 1854 and 1867 referred to in the said Schedule shall be substituted Part XIII of "The Merchant Shipping Act, 1894."

(iii.) In section 51 of "The Conveyancing (Scotland) Act, 1874," and any enactment for the time being in force amending the same, the Protectorate Court is substituted for a Court of Probate in a Colony.

(iv.) With respect to "The Fugitive Offenders Act, 1881,"—

(*a.*) So much of the 4th and 5th sections of the said Act as relates to sending a report of the issue of a warrant, together with the information, or a copy thereof, or to the sending of a certificate of committal and report of a case, or to the information to be given by a Magistrate to a fugitive, shall be excepted.

(*b.*) So much of the 6th section of the said Act as relates to *habeas corpus*, and as requires the expiration of fifteen days before issue of a warrant, shall be excepted.

(*c.*) The Commissioner shall not be bound to return a fugitive offender to a British possession unless satisfied that the proceedings to obtain his return are taken with the consent of the Governor of that possession.

(*d.*) For the purposes of Part II of the said Act, the Protectorate, Zanzibar, the Uganda Protectorate, British India, Mauritius, and all British possessions and Protectorates in Africa south of the Equator, shall be deemed to be one group of British possessions.

13. The Secretary of State may, by Order published in such manner as he directs, declare that any of the Laws or Ordinances for the time being in force in any African possession of Her Majesty, and not inconsistent with this Order, shall have effect and be administered in the Protectorate, with such modifications or adaptations as may be necessary; and therefore such Laws or Ordinances as so modified or adapted shall have effect as if they had been applied by this Order.

PART V.—*Criminal Matters.*

14. Subject to the other provisions of this Order, the Code of Criminal Procedure and the other enactments relating to the administration of criminal justice in India, for the time being applicable to the Protectorate, shall have effect as if the Protectorate were a district of a Presidency of India; and every officer appointed to hold a Provincial Court under this Order shall be deemed to be a Magistrate of the Second Class; the Judicial Officer shall be deemed to be and have the powers of Sessions Judge; the full Court for Zanzibar shall be deemed to be the High Court; and the powers both of the Governor-General in Council and of the Local Government under those enactments shall be exercisable by the Secretary of State, or, with his previous or subsequent assent, by the Commissioner.

15. When any person is committed to the Court for Zanzibar for trial, the Court shall, in accordance with any arrangements made by the Commissioner in this behalf, send him to Zanzibar for trial; and shall bind over such of the proper witnesses as are British subjects or foreigners, or any of them, in their own recognizances, to appear and give evidence on the trial.

16. If any person subject to this Order smuggles or imports into or exports from the Protectorate any goods whereon any duty is charged or payable to the Government of the Protectorate, with intent to evade payment of the duty, he shall be punished with imprisonment for a term which may extend to two months, or with fine which may extend to 1,000 rupees, or with both.

17. Any act which, if done in British India, would be an offence against the law for the time being in force in British India relating to trade-marks, merchandize marks, copyright, designs, or invention, shall, if done in the Protectorate by a person subject to this Order, be an offence, whether such act is done in relation to any property or right of a person subject, or of a person not subject, to this Order; and any person convicted of such offence shall be punished with imprisonment for a term which may extend to two months, or with a fine which may extend to 1,000 rupees, or with both.

18.—(1.) In cases of murder or culpable homicide, if either the death or the criminal act which wholly or partly caused the death happened in the Protectorate, a Court acting under this Order shall have the like jurisdiction over any person subject to this Order who is charged either as a principal offender or as an abettor, as if both the criminal act and the death had happened in the Protectorate.

(2.) In the case of any offence committed on the high seas, or within the Admiralty jurisdiction, by any person subject to this Order who at the time of committing such offence was on board a British ship, or on board a foreign ship to which he did not belong, a Court acting under this Order shall have jurisdiction as if the offence had been committed within the Protectorate.

(3.) In cases tried under this Article no different sentence can be passed from the sentence which could be passed in England if the offence were tried there.

19.—(*a.*) The Commissioner may, if he thinks fit, by general order, prescribe the manner in which, and the places in the Protectorate at which, sentences of imprisonment are to be carried into execution.

(*b.*) The Commissioner may, if he thinks fit, in any case, by warrant under his hand and official seal, cause an offender convicted and sentenced to imprisonment before the Court to be sent and removed to, and imprisoned in, any place either in the Protectorate or in Zanzibar.

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20. When an offender convicted before the Court is sentenced to imprisonment, and the Commissioner, proceeding under section 7 of "The Foreign Jurisdiction Act, 1890," authority in that behalf being hereby given to him, considers it expedient that the sentence should be carried into effect within Her Majesty's dominions, the place shall be a place in some part of Her Majesty's dominions out of the United Kingdom, the Government whereof consents that offenders may be sent thither under this Article.

21.—(1.) Where it is shown by evidence on oath, to the satisfaction of the Commissioner, that any person subject to this Order has committed, or is about to commit, an offence against this Order, or is otherwise conducting himself so as to be dangerous to peace and good order in the Protectorate, or is endeavouring to excite enmity between the people of the Protectorate and Her Majesty, or is intriguing against Her Majesty's power and authority in the Protectorate, the Commissioner may, if he thinks fit, by order under his hand and official seal, prohibit that person from being in the Protectorate, during any time therein specified, not exceeding two years.

(2.) If the person named in the order of prohibition fails to obey, or acts in contravention of the order—

(i.) He shall be guilty of an offence against this Order, and, on conviction thereof, shall be liable to imprisonment for any time not exceeding two years, without prejudice to the operation of the order of prohibition.

(ii.) Whether the offender has been convicted of, or imprisoned for, that offence or not, the Commissioner may, if he thinks fit, by order under his hand and official seal, authorize and direct that he be taken into custody, and be removed in custody to some place named in the order of removal, being a place to which a person can under this Order be deported beyond the limits specified in the order of prohibition;

(iii.) The offender shall be taken into custody and removed accordingly, and in such removal force may be used if necessary; and he shall be discharged from custody at the place named in the order of removal.

(3.) In any case in which the Commissioner can, under this Order, make an order of prohibition, he may, if he thinks fit, in lieu of such order, make and execute an order of deportation in like manner, and with all the like consequences, as an order of deportation can under this Order be made and executed in the case of a person who, after conviction of an offence, has failed to give security for good behaviour.

(4.) An appeal shall not lie against an order of prohibition, or removal, or deportation made under this Order.

(5.) The Commissioner, by order under his hand and official seal, may vary any order of prohibition (not extending the duration thereof), and may revoke any order of prohibition or removal.

(6.) The Commissioner shall forthwith report to the Secretary of State every order made by him under this Article, and the grounds thereof, and the proceedings thereunder.

22. Where a person subject to this Order is convicted of an offence, the Court before which he is convicted may, if it thinks fit, require him to give security to the satisfaction of the Court for his future good behaviour, and for that purpose may, if it thinks fit, cause him to come or be brought before the Court.

23.—(*a.*) If any person required by an order under the last preceding Article, or under the law relating to criminal procedure for the time being in force, to give security for good behaviour or for keeping the peace, fails to do so, the Court may, if it thinks fit, with the approval of the Commissioner, order that he be deported from the Protectorate.

(*b.*) The Court, on making an order of deportation, shall forthwith report to the Commissioner the order and the grounds thereof.

(*c.*) Thereupon the person ordered to be deported shall, if the Commissioner thinks fit, be, as soon as practicable, and in the case of a person convicted, either after execution of the sentence, or while it is in course of execution, removed in custody, under the warrant of the Commissioner, to the place named in the warrant.

(*d.*) The place shall be a place in that part (if any) of Her Majesty's dominions out of the United Kingdom to which the person belongs, or in some other part of those dominions, the Government whereof consents to the reception therein of persons deported under this Order, or a place under the Protectorate of Her Majesty, or in the country out of Her Majesty's dominions to which the person belongs.

(*e.*) The Court, on making an order of deportation, may, if it thinks fit, order the person to be deported to pay all or any part of the expenses of his deportation, to be fixed by the Court in the order.

(*f.*) The Commissioner shall forthwith report to the Secretary of State every order of deportation made under this Order, and the grounds thereof and the proceedings thereunder.

(*g.*) If a person deported under this Order returns to the Protectorate without permission in writing of the Commissioner or Secretary of State, he shall be punished with imprisonment for a term which may extend to two months, or with fine which may extend to 1,000 rupees, or with both.

(*h.*) He shall also be liable to be again deported under the original or a new order and a fresh warrant of the Commissioner.

24. Where a person entitled to appeal to the Court for Zanzibar from any Judgment or order passed in the exercise of criminal jurisdiction under this Order desires so to appeal, he shall present his Petition of appeal to the Protectorate Court, and the Petition shall with all practicable speed, be transmitted by the Protectorate Court to the Court for Zanzibar with certified copies of the charge (if any) and proceedings, of all documentary evidence admitted or tendered, of the depositions, of the notes of the oral testimony, and of the Judgment or order, and any argument on the Petition of appeal that the appellant desires to submit to the Court for Zanzibar.

25. The Protectorate Court shall postpone the execution of the sentence pending the appeal, and shall, if necessary, commit the person convicted to prison for safe custody, or detain him in prison for safe custody, or shall admit him to bail, and may take security, by recognizance, deposit of money, or otherwise, for his payment of any fine.

26.—(*a.*) Where, under this Order, a person is to be sent, or removed, or deported from the Protectorate, he shall, by warrant of the Commissioner under his hand and seal, be detained, if necessary, in custody, or in prison, until a fit opportunity for his removal or deportation occurs, and then if he is to be deported beyond sea, be put on board one of Her Majesty's vessels of war, or, if none is available, then on board some other British or other fit vessel.

(*b.*) The warrant of the Commissioner shall be sufficient authority to the person to whom it is directed or delivered for execution, and to the Commander or master of the vessel, to receive and detain the person therein named, in the manner therein prescribed, and to send, or remove, and carry him to the place therein named, according to the warrant.

(*c.*) In case of sending or removal for any purpose other than deportation, the warrant of the Commissioner shall be issued in duplicate, and the person executing it shall, as soon as practicable after his arrival at the place therein named, deliver, according to the warrant, with one of the duplicates of the warrant, to a constable, or proper officer of police or keeper of a prison, or other proper authority or person there, the person named in the warrant, to be produced on the order of the proper Court or authority there, or to be otherwise dealt with according to law.

27. Where a warrant or order of arrest is issued by a competent Judicial authority in Zanzibar or in the Uganda Protectorate for the apprehension of a person who is accused of crime committed in Zanzibar or Uganda, and who is, or is supposed to be, within the East Africa Protectorate, and that warrant or order is produced to any Court acting under this Order, the Court may back the warrant or order, and the same, when so backed, shall be sufficient authority to any person to whom it was originally directed, and also to any constable or officer of the Court by whom it is backed, and to any person named on the back of the warrant or order, to apprehend the accused person at any place within the limits of this Order, and to carry him to and deliver him up within the jurisdiction of the authority issuing the warrant or order.

PART VI.—*Civil Matters.*

28. The Protectorate Court shall hear and determine all civil questions, claims, or disputes in which the defendant or any defendant is a person subject to this Order.

29. Subject to the other provisions of this Order, the Code of Civil Procedure, "The Bombay Civil Courts Act, 1869," the Indian Succession Act, and the other enactments relating to the administration of civil justice for the time applicable to the Protectorate, shall have effect as if the Protectorate were a district in the Presidency of Bombay: the Judicial Officer shall be deemed to be the District Judge of the district, and the Protectorate Court the District Court or Principal Civil Court of Original Jurisdiction in the district; the Court for Zanzibar shall be deemed to be the highest Civil Court of Appeal for the district, and the Court authorized to hear appeals from and to revise the decisions of the District Court; and the powers, both of the Governor-General in Council and the Local Government, under those enactments shall be exercisable by the Secretary of State, or, with his previous or subsequent assent, by the Commissioner.

Every Provincial Court constituted by this Order and appointed to exercise civil jurisdiction shall, subject to any directions of the Secretary of State, exercise the powers of a Court for small causes under the Civil Procedure Code.

30. The following enactments of "The Colonial Courts of Admiralty Act, 1890," that is to say, section 2, sub-sections (2) to (4), sections 5 and 6, section 16, sub-section (3), shall apply to the Protectorate Court as if in the said sections the said Court were mentioned in lieu of a Colonial Court of Admiralty, and the Protectorate were referred to in lieu of a British possession.

31.—(*a.*) The Court shall endeavour to obtain, as early as may be, notice of the death of every person subject to this Order dying in the Protectorate leaving property to be administered, and all such information as may serve to guide the Court with respect to the securing and administration of his property.

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(*b.*) On receiving notice of the death of such a person the Court shall put up a Notice thereof at the Court-house, and shall keep the same there until probate or administration is granted, or, where it appears to the Court that probate or administration will not be applied for, or cannot be granted, for such time as he thinks fit.

(*c.*) The Court shall, where the circumstances of the case appear so to require, as soon as may be, take possession of the property in the Protectorate of the deceased, or put it under his seal (in either case, if the nature of the property or other circumstances so require, making an inventory), and so keep it until it can be dealt with according to law.

(*d.*) All expenses incurred by the Court in so doing shall be the first charge on the property of the deceased, and the Court shall, by sale of the property, or part thereof, or otherwise, provide for the discharge of these expenses.

32. Where a person subject to this Order dies in the Protectorate intestate, his property shall, until administration is granted, vest in the Judicial Officer.

33. If a person named executor in a will, to the establishment of whose title, as such, it is necessary to obtain probate of that will, takes possession of and administers or otherwise deals with, any part of the property of the deceased, and does not obtain probate within one month after the death, or after the termination of any proceeding respecting probate or administration, he shall be liable to be punished with fine, which may extend to 1,000 rupees.

34. If any person, other than the person named executor, or the administrator, or a person entitled to represent the deceased without obtaining probate or letters of administration, or an officer of the Court, takes possession of and administers, or otherwise deals with, any part of the property of the deceased, he shall, as soon as practicable, notify the fact and the circumstances to the Court, and shall furnish to the Court all such information as the Court requires, and shall conform to any directions of the Court in relation to the custody, disposal, or transmission of the property, or the proceeds thereof, and, in case of any contravention of this Article, he shall be liable to be punished with fine, which may extend to 1,000 rupees.

35.—(1.) When the peculiar circumstances of the case appear to the Court so to require, for reasons recorded in its proceedings, the Court may, if it thinks fit, of its own motion, or otherwise, grant letters of administration to an officer or practitioner of the Court.

(2.) The person so appointed shall act under the direction of the Court, and shall be indemnified thereby; and, if he is a practitioner, he shall not act otherwise than as administrator in relation to the estate.

(3.) He shall publish such notices, if any, as the Court thinks fit, in the Protectorate, Zanzibar, the United Kingdom, and elsewhere.

(4.) The Court shall require and compel him to file, in the proper office of the Court, his accounts of his administration at intervals not exceeding three months.

(5.) The accounts shall be audited under the direction of the Court.

(6.) All expenses incurred in behalf of the Court in execution of this Article shall be the first charge on the estate of the deceased in the Protectorate; and the Court shall, by the sale of the estate, or otherwise, provide for the discharge of those expenses.

36.—(*a.*) Every agreement for reference to arbitration to which a person subject to this Order is a party, may, on the application of any party, be filed for execution in the proper office of the Court.

(*b.*) The Court shall thereupon have authority to enforce the agreement and the award made thereunder, and to control and regulate the proceedings before and after the award, in such manner and on such terms as the Court may think fit.

37.—(*a.*) Where it is desired to commence a suit in which one party is, and the other is not, a person subject to this Order, the Court shall entertain the same, and shall hear and determine it.

(*b.*) Provided that the person not subject to this Order, if so required by the Court, first obtains and files in the proper office of the Court the consent, in writing, of the competent authority (if any) on behalf of his own nation, to his submitting, and that he does submit, to the jurisdiction of the Court, and, if required by the Court, gives security to the satisfaction of the Court, and to such reasonable amount as the Court thinks fit, by deposit or otherwise, to pay fees, costs, and damages, and abide by, and perform, the decision to be given by the Court or on appeal.

(*c.*) A cross-suit shall not be brought in the Court against a plaintiff being a person not subject to this Order, who has submitted to the jurisdiction, by a defendant without leave of the Court first obtained; but the Court may, as a condition of entertaining the plaintiff's suit, require his consent to any cross-suit or matter of set-off being entertained by the Court.

(*d.*) The Court, before giving leave, may require proof from the defendant that his claim arises out of the matter in dispute, and that there is reasonable ground for it, and that it is not made for vexation or delay.

(*e.*) Nothing in this Article shall prevent the defendant from bringing, in the Court, against a person not subject to this Order, after the termination of the suit in which the latter is plaintiff, any suit which he might have brought in the Court if no provision restraining cross-suits had been inserted in this Order.

(*f.*) Where a person not subject to this Order obtains in the Court an order against a defendant being a person subject to this Order, and in another suit the latter is plaintiff and the former is defendant, the Court may, if it thinks fit, on the application of the first-mentioned defendant, stay the enforcement of the order pending that other suit, and may set off any amount ordered to be paid by one party in one action against any amount ordered to be paid by the other party in the other action.

(*g.*) Where the plaintiff, being a person not subject to this Order, obtains an order in the Court against two or more defendants jointly, being persons subject to this Order, and in another suit one of them is a plaintiff and the first mentioned plaintiff is defendant, the Court may, if it thinks fit, on application, stay the enforcement of the order pending that other action, and may set off any amount ordered to be paid by one party in one action against any amount ordered to be paid by the other party in the other action, without prejudice to the right of the plaintiff in the second suit to obtain contribution from his co-defendants in the first suit.

38.—(*a.*) Where any person entitled to appeal to the Court for Zanzibar from any Decree or order made by the Protectorate Court in the exercise of civil jurisdiction under this Order desires so to appeal, he shall present his Memorandum of Appeal to the Protectorate Court, and, subject to the provisions hereinafter contained, that Court shall receive the same for transmission to the Court for Zanzibar in manner hereinafter provided.

(*b.*) The appellant shall, within such time as the Court directs, give security to the satisfaction of the Court, and to such amount as the Court thinks reasonable, for prosecution of the appeal, and for payment of any costs that may be ordered by the Court for Zanzibar on the appeal to be paid by the appellant.

(*c.*) The appellant shall pay into the proper office of the Protectorate Court such sum as the Court thinks reasonable, to defray the expense of the making up and transmission to the Court for Zanzibar of the record.

39. The appellant may, with his Memorandum of Appeal, file any argument which he desires to submit to the Court for Zanzibar in support of the appeal.

40.—(*a.*) The memorandum of appeal, and the argument (if any) shall be served on such persons as respondents as the Protectorate Court directs.

(*b.*) A respondent may, within seven days after service, file in the Protectorate Court such arguments as he desires to submit to the Court for Zanzibar against the appeal.

(*c.*) Copies thereof shall be furnished by the Protectorate Court to such persons as that Court thinks fit.

41.—(*a.*) On the expiration of the time for the respondent filing his argument, the Protectorate Court shall, without the application of any party, make up the record of appeal, which shall consist of the memorandum of appeal and the arguments (if any), and certified copies of the following, namely, the plaint, written statements (if any), all proceedings, all written and documentary evidence admitted or tendered, the notes of the oral evidence, the Judgment, and the Decree or order.

(*b.*) The several pieces shall be fastened together consecutively numbered, and the whole shall be secured by the seal of the Court, and be forthwith forwarded to the Court for Zanzibar.

(*c.*) The Court may, if for special reasons it seems fit, send any portion of the documentary evidence in original to the Court for Zanzibar.

PART VII.—*Miscellaneous.*

42.—(1.) Notwithstanding anything in this Order, the Protectorate Court or a Provincial Court shall not exercise any jurisdiction in any proceeding whatsoever over the Commissioner or his official or other residences, or his official or other property.

(2.) Notwithstanding anything in this Order, the Protectorate Court or a Provincial Court shall not exercise, except with the consent of the Commissioner, signified in writing to the Court, any jurisdiction in a civil action or proceeding over any person attached to or being a member of Her Majesty's Consulate-General for the Protectorate, or being a domestic servant of the Commissioner.

(3.) If, in any case under this Order, it appears to any Court that the attendance of the Commissioner, or of any person attached to or being a member of Her Majesty's Consulate-General, or being a domestic servant of the Commissioner, to give evidence before the Court, is requisite in the interest of justice, the Court may address to the Commissioner a request in writing for such attendance.

(4.) A person attending to give evidence before the Court shall not be compelled or allowed to give any evidence or produce any document if, in the opinion of the Commissioner, signified by him personally or in writing to the Court, the giving or production thereof would be injurious to Her Majesty's service.

(5.) This Article shall not operate in bar of any proceeding against the Commissioner in his official capacity, where it is sought to establish any liability of the Government of the Protectorate.

43. Subject to the approval of the Secretary of State, the Court may, with the approval of the Court for Zanzibar, frame Rules of Procedure and other Rules, consistent with this Order, for the better execution of the provisions herein contained in respect of civil or criminal proceedings, and for regulating the conditions on which persons other than parties may be permitted to

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practice as advocates or solicitors in any Court, and for suspending or excluding (subject to a right of appeal to the Secretary of State) such persons from practice in case of misconduct: provided that any scale of remuneration fixed by such Rules shall have been sanctioned by the Treasury.

44. The Commissioner may make Regulations (to be called Queen's Regulations) for the following purposes, that is to say:—

(i.) For the regulation of all matters relating to customs, inland revenue, post office, land, highways, railways, money, agriculture, and public health.

(ii.) For the establishment of a Constabulary or other force to be employed in the maintenance of order or (either within or without the limits of this Order) in defence of the Protectorate.

(iii.) For securing the observance of any Treaty for the time being in force relating to the Protectorate, or of any native or local law or custom; and

(iv.) Generally for the peace, order, and good government of the Protectorate in relation to matters not provided for in this Order.

Any Regulations under this Article may provide for forfeiture of any goods, receptacles, or things in relation to which, or to the contents of which, any breach is committed of such Regulations, or of any Treaty or any native or local law or custom, the observance of which is provided for by the Regulations.

Any Regulations under this Article shall, when allowed by the Secretary of State, and published as he directs, have effect as if contained in this Order.

Any breach of the Regulations shall be an offence against this Order, and any person guilty thereof, shall, on conviction, be liable to a fine which may extend to 1,000 rupees, or to imprisonment which may extend to two months, or both, in addition to any forfeiture as aforesaid.

45. The Commissioner may also make Queen's Regulations for the governance, visitation, care, and superintendence of prisons in the Protectorate, and for the infliction of corporal or other punishment on prisoners committing offences against the prisons Regulations.

Any Regulations under this Article shall, when allowed by the Secretary of State, have effect, as if contained in this Order, and copies thereof shall be exhibited in every prison to which they apply in such manner as the Commissioner may direct.

Any breach of Regulations under this Article, committed by any officer of a prison, or by any other person (not being a prisoner), shall be punishable in like manner as a breach of Queen's Regulations, under the last preceding Article.

46.—(*a.*) From and after the commencement of any Rules to be made as in this Article mentioned a non-testamentary instrument to which any person subject to this Order is a party, purporting or operating to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent to, in, or over immovable property situate in the Protectorate, shall not affect any immovable property comprised therein, or be received as evidence of any transaction affecting that property, unless it has been registered at such time and place and in such manner as may be prescribed by Rules made by the Commissioner and approved by the Secretary of State, and for the time being in force.

(*b.*) Provided that nothing in this Article shall make any instrument inadmissible in evidence in any criminal proceedings.

47.—(*a.*) The Commissioner may, with the approval of the Secretary of State and concurrence of the Treasury, make rules imposing fees leviable in respect of any proceedings in, or processes issued out of, any Court established under this Order, and in respect of the registration of any instrument under this Order.

(*b.*) But the Court may in any case if it thinks fit, on account of the poverty of a party, or for any other reason, dispense in whole or in part with the payment of any fee chargeable in respect of such matter.

(*c.*) The Court shall in every such case forthwith report the dispensation to the Commissioner, and he shall give such directions thereon as he thinks fit.

(*d.*) Nothing in this Order shall affect any Order in Council prescribing a table of fees to be taken by Consular officers; and, where a fee is taken under that Order, no fee shall be taken in respect of the same matter under this Order.

48.—(*a.*) All fees, charges, expenses, costs, fines, damages, and other money payable under this Order, or under any law made applicable by this Order, may be enforced under order of the Court by attachment and sale of goods, and in case of deficiency by imprisonment which may extend to one month.

(*b.*) Any bill of sale or mortgage, or transfer of property, made with the view of avoiding such attachment or sale, shall not be effectual to defeat the provisions of this Order.

(*c.*) All fees, penalties, fines, and forfeitures levied under this Order, shall be paid to the public account; and shall be applied in such manner as the Secretary of State, with the consent of the Treasury, may direct.

49. Subject to the other provisions of this Order, all expenses of removal of prisoners and others, and the expenses of deportation, and of the sending of any person to Zanzibar, or to any part of Her Majesty's dominions or Protectorates, including expenses of maintenance, shall be defrayed in such manner as the Secretary of State, with the concurrence of the Treasury, directs.

50. Every criminal charge against a native, and every civil proceeding against a native, except a proceeding in which the native is co-defendant with a person subject to this Order, shall be heard and determined in the proper Native Court, and the Protectorate Court shall not exercise any jurisdiction therein.

51. The Commissioner may, with the consent of the Secretary of State, make rules and orders for the administration of justice in Native Courts, and in particular may thereby:—

(*a.*) Establish or abolish any Native Court.

(*b.*) Define the local limits within which any Native Court is to exercise jurisdiction.

(*c.*) Alter or modify the operation of any native law or custom in so far as may be necessary in the interests of humanity and justice.

(*d.*) Regulate the jurisdiction of and procedure in Native Courts.

(*e.*) Make such provision as seems fit for the re-hearing of cases, the revision of sentences, and the hearing of appeals from Native Courts.

(*f.*) For any of the purposes aforesaid, or for any other purposes of justice, direct that any law of British India, or of the United Kingdom, shall apply to and be administered in Native Courts with such exceptions or modifications as may seem proper.

52.—(*a.*) Where it is proved that the attendance of a person subject to this Order to give evidence, or for any other purpose connected with the administration of Justice, is required before a Native Court, the Protectorate Court may, it it thinks fit in a case and in circumstances in which the Protectorate Court would require the attendance of that person before itself, order that he do attend as required. The order may be made subject to conditions as to payment or tender of expenses or otherwise.

(*b.*) If the person ordered to attend, having reasonable notice of the time and place at which he is required to attend, fails to attend accordingly, and does not excuse his failure to the satisfaction of the Protectorate Court, or if when so attending to give evidence he wilfully gives false evidence, or refuses to be sworn or to give evidence, he shall, independently of any other liability, be liable to be punished with imprisonment for a term which may extend to two months, or with fine which may extend to 1,000 rupees, or with both.

53. If a person subject to this Order—

(i.) Wilfully obstructs, by act or threat, a Native Court in the performance of its duty: or

(ii.) Within or close to the room or place where such a Court is sitting wilfully misbehaves in a violent, threatening, or disrespectful manner, to the disturbance of the Court or to the intimidation of suitors or others resorting to the Court; or

(iii.) Wilfully insults any member or officer of such a Court in his going to, or returning from, any place of sitting or office of the Court;

He shall, on conviction before a Court established under this Order, be liable to be punished with imprisonment for a term which may extend to two months, or with fine which may extend to 1,000 rupees, or with both.

54.—(*a.*) If an officer of any Court employed to execute an order loses, by neglect or omission, the opportunity of executing it, then, on complaint of the person aggrieved and proof of the fact alleged, the Court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof.

(*b.*) The order may be enforced as an order directing payment of money.

55.—(*a.*) If a Clerk or officer of any Court, acting under pretence of the process of authority of the Court, is charged with extortion, or with not paying over money duly levied, or with other misconduct, the Court may, if it thinks fit, inquire into the charge in a summary way, and may for that purpose summon and enforce the attendance of all necessary persons as in an action, and may make such order for the repayment of any money extorted, or for the payment over of any money levied, and for the payment of such damages and costs, as the Court thinks fit.

(*b.*) The Court may also, if it thinks fit, on the same inquiry, impose on the clerk or officer a fine not exceeding 50 rupees for each offence.

(*c.*) A clerk or officer punished under this Article shall not, without the leave of the Protectorate Court, be liable to an action in respect of the same matter; and any such action, if already or afterwards begun, may be stayed by the Court in such manner and on such terms as the Court thinks fit.

(*d.*) Nothing in this Article shall be deemed to prevent any person from being prosecuted under any other law for any Act or omission punishable under this Article, or from being liable under that other law to any higher punishment or penalty than that provided by this Article. Provided that no person shall be punished twice for the same offence.

56. The Commissioner, or any officer of the Protectorate Government appointed by him in that behalf, may exercise any power conferred on any Justices of the Peace within Her Majesty's dominions by any Act of Parliament, for the time being in force, regulating merchant seamen or the mercantile marine.

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57. If a question arises whether any place is or is not within the Protectorate for the purposes of this Order, it shall be referred to the Commissioner, and a certificate under his hand and seal shall be conclusive on the question, and judicial notice thereof shall be taken by every Court constituted by or under this Order, and by the Court for Zanzibar.

58. Not later than 31st March in each year the Commissioner shall send to the Secretary of State a report on the operation of this Order, up to 31st December in the previous year, showing for the then last twelve months the number and nature of the proceedings, criminal and civil, taken under this Order, and the result thereof, and the number and amount of fees received, and containing an abstract of the list of British subjects, and such other information, and being in such form as the Secretary of State from time to time directs.

PART VIII.—*Repeal and Transitory Provisions.*

59. On the commencement of this Order, the Zanzibar and Africa Orders in Council shall cease to apply to territories included within the limits of this Order.

60.—(*a*.) Nothing in this Order shall :—

(i.) Affect the past operation of the Zanzibar and Africa Orders in Council, or any regulation, rule, or appointment made, or any right, title, obligation, or liability accrued, or the validity or invalidity of anything done or suffered, under those Orders respectively, before the making of this Order;

(ii.) Interfere with the institution or prosecution of any proceeding or suit, criminal or civil, in respect of any offence committed against, or forfeiture incurred, or liability accrued under, or in consequence of any provision of those Orders respectively, or any regulation made thereunder;

(iii.) Take away or abridge any protection or benefit given or to be enjoyed in relation thereto.

(*b*.) Every regulation, rule, appointment, and other thing in this Article mentioned shall continue in force and have effect throughout the Protectorate, as if this Order had not been made, but so that the same may be revoked, altered, or otherwise dealt with under this Order, as if it had been made or done under this Order.

61. Criminal or civil proceedings begun under the Zanzibar or Africa Orders, and pending at the commencement of this Order, shall, from and after that time, be regulated by the provisions of this Order, as far as the nature and circumstances of each case admit.

62. This Order shall commence and have effect as follows :—

(1.) As to the making of any warrant or appointment under this Order, immediately from and after the date of this Order.

(2.) As to the framing of Rules of Procedure or Regulations, and the approval thereof by the Secretary of State, immediately from and after the date of this Order.

(3.) As to all other matters and provisions comprised and contained in this Order, immediately from and after the expiration of one month after this Order is first exhibited in the public office of the Protectorate at Mombasa ; for which purpose the Commissioner is hereby required forthwith, on receipt by him of a copy of this Order, to affix and exhibit the same conspicuously in his public office, and he is also hereby required to keep the same so affixed and exhibited during one month from the first exhibition thereof ; and notice of the time of such first exhibition shall, as soon thereafter as practicable, be published in Mombasa in such manner as the Commissioner directs ; and, notwithstanding anything in this Order, the time of the expiration of the said month shall be deemed to be the time of the commencement of this Order.

(4.) Proof shall not in any proceeding or matter be required that the provisions of this Article have been complied with, nor shall any act or proceeding be invalidated by any failure to comply with any of such provisions.

63. A copy of this Order shall be kept exhibited conspicuously in the Court and in the principal office of the Protectorate at Mombasa.

Printed copies shall be provided and sold at such reasonable price as the Commissioner directs.

And the Most Honourable the Marquess of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

R. E. W.
R. B. F.

Annex 2.

ZANZIBAR.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction within the dominions of His Highness the Sultan of Zanzibar ;

Now, therefore, Her Majesty, by virtue, and in exercise of the powers on this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise, in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :—

PART I.—*Preliminary.*

1. This Order may be cited as "The Zanzibar Order in Council, 1897."

The limits of this Order are the Islands of Zanzibar and Pemba, including the territorial waters thereof, and any islets within those waters, which islands and waters are in this Order (except when the context requires a different construction) included in the expression "Zanzibar."

2. This Order is divided into Parts, as follows :—

Part I. Preliminary.
Part II. Application and effect of Order.
Part III. Constitution of Courts.
Part IV. Application of law of British India and of the United Kingdom.
Part V. Criminal matters.
Part VI. Civil matters.
Part VII. Zanzibar and Foreign Subjects and Tribunals.
Part VIII. Miscellaneous.
Part IX. Repeal and transitory Provisions.
Schedules.

3. In this Order—

(i.) "The Secretary of State" means one of Her Majesty's Principal Secretaries of State ;

(ii.) "Treasury" means the Commissioners of Her Majesty's Treasury ;

(iii.) "The Consul-General" means Her Majesty's Consul-General for Zanzibar, including a person acting temporarily, with the approval of the Secretary of State, as or for the Consul-General ;

(iv.) "British subject" includes a British-protected person, that is to say, a person who (*a*) being a native of any place beyond the limits of this Order which is under the Protectorate of Her Majesty is temporarily in Zanzibar ; or (*b*) by virtue of "The Foreign Jurisdiction Act, 1890," or otherwise, enjoys Her Majesty's protection in Zanzibar ;

(v.) "Resident" means having a fixed place of abode in Zanzibar ;

(vi.) "Zanzibar subject" means a subject of the Sultan of Zanzibar resident within the limits of this Order ;

(vii.) "Foreigner" means a subject or citizen of a State in amity with Her Majesty, other than Zanzibar ;

(viii.) "Zanzibar or foreign Court" means a Court of the Government of Zanzibar or of any foreign State in amity with Her Majesty exercising lawful jurisdiction in Zanzibar, and includes every member or officer of such a Court ;

(ix.) "Treaty" includes any Convention, Agreement, or Arrangement made by or on behalf of Her Majesty with any State or Government, King, Chief, people, or tribe, whether the Sultan of Zanzibar is or is not a party thereto ;

(x.) "Administration" means (unless a contrary intention appears from the context) letters of administration, including the same with will annexed, or granted for special or limited purposes, or limited in duration ;

(xi.) "Ship" includes any vessel used in navigation, however propelled, with her tackle, furniture, and apparel, and any boat or other craft ;

(xii.) "Offence" means any act or omission made punishable by any law for the time being in force ;

(xiii.) "Imprisonment" means imprisonment of either description, as defined in the Indian Penal Code ;

(xiv.) "Month" means calendar month ;

(xv.) "Will" means will, codicil, or other testamentary instrument ;

(xvi.) "Oath" or "affidavit" includes affirmation or declaration :

(xvii.) "Person" includes Corporation :

(xviii.) Words importing the plural or the singular may be construed as referring to one

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person or thing, or to more than one person or thing, and words importing the masculine as referring to females (as the case may require).

4.—(1.) Where this Order confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2.) Where this Order confers a power or imposes a duty on the holder of an office, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by the holder of the office for the time being, or by a person duly appointed to act for him.

(3.) Where this Order confers a power to make rules, regulations, or orders, the power shall be construed as including a power exercisable in the like manner, and subject to the like approval and conditions (if any), to rescind, revoke, amend, or vary the rules, regulations, or orders.

PART II.—*Application and Effect of Order.*

5.—(1.) This Order extends to British subjects and to foreigners with respect to whom the Government whose subjects they are has, by Treaty or otherwise, agreed with Her Majesty for, or consented to, the exercise of power or authority by Her Majesty; and the expression "person subject to this Order" shall be construed accordingly.

(2.) This Order also extends to (*a*) the property and all personal or proprietary rights and liabilities in Zanzibar of persons subject to this Order; (*b*) British ships, with their boats, and the property on board thereof; and (*c*) foreign ships belonging to persons who are, or if they were in Zanzibar would be, persons subject to this Order, so, however, that jurisdiction over such foreign ships shall not be exercised otherwise than according to the practice of the High Court in England in the exercise of jurisdiction over foreign ships.

(3.) This Order also extends, in the cases and according to the conditions specified in this Order, to Zanzibar subjects and to foreigners not otherwise subject to this Order.

6. All Her Majesty's jurisdiction exercisable in Zanzibar for the hearing and determination of suits, or for the maintenance of order, or for the control or administration of persons or property, or in relation thereto, shall be exercised under and according to the provisions of this Order, so far as this Order extends and applies.

PART III.—*Constitution of Courts.*

7.—(1.) There shall be, and there is hereby established, a Court styled "Her Britannic Majesty's Court for Zanzibar," hereinafter referred to also as "the Court for Zanzibar," and "the Court."

(2.) Subject to the other provisions of this Order, Her Majesty's jurisdiction in Zanzibar shall be, and is hereby, vested in the Court for Zanzibar.

(3.) The members of the Court shall be the Judge and the Assistant Judge, but as respects the Assistant Judge, subject to the provisions of this Order and to such exceptions and directions as the Secretary of State from time to time thinks fit to make.

(4.) A person appointed to be Judge or Assistant Judge must be a member of the bar of England, Scotland, or Ireland, and must be of not less than five years' standing on appointment as Judge, and of not less than three years' standing on appointment as Assistant Judge.

(5.) The Judge and the Assistant Judge shall be appointed by Her Majesty by warrant under her Royal Sign Manual. Each of them shall hold office during the pleasure of Her Majesty, and, in the event of a revocation of his warrant, until such revocation is notified to him by the Secretary of State.

(6.) In case of the illness or temporary absence of the Judge, the Consul-General may appoint either a person qualified to be appointed Judge, or the Assistant Judge, or a person appointed to hold a Subordinate Court under this Order, or a commissioned Consular officer, to act as Judge.

(7.) In case of the illness or temporary absence of the Assistant Judge, or of his temporary appointment as Judge, the Consul-General may appoint either a person qualified to be appointed Assistant Judge, or a person appointed to hold a Magistrate's Court under this Order, or a commissioned Consular officer, to act as Assistant Judge.

8. The Court shall have a seal bearing the style of the Court and a device approved by the Secretary of State; but until such a seal is provided, a stamp bearing the words "Court for Zanzibar" may be used instead thereof.

9. Subject to the directions of the Secretary of State, the Consul-General may appoint such and so many persons to be Registrars, Clerks, Bailiffs, Interpreters, and other officers of the Court as he thinks fit, and remove from office any person so appointed.

Any Registrar of the Court, and any other officer of the Court designated in this behalf by the Consul-General, may administer oaths, and take affidavits, declarations, and affirmations.

10. The Secretary of State may, if he thinks fit, appoint Subordinate Courts to be held at places in Zanzibar, and may appoint a competent person to hold any such Court, under such

designation and with such remuneration as he may direct, and may assign to any such Court such of the powers and jurisdiction by this Order conferred on the Court for Zanzibar, to be exercised by the Court so constituted, as he may think fit, and may assign the district in and for which each such Court shall act, and may determine the description and number of the officers to be attached to any such Court and the mode of their appointment and removal and their duties and remuneration, and any matters incident to any of the above-mentioned purposes.

Any person appointed under the provisions of this Article shall be removable by authority of the Secretary of State.

PART IV.—*Application of Law of British India and of the United Kingdom.*

11.—(*a.*) Subject to the other provisions of this Order, and to any Treaties for the time being in force relating to Zanzibar, Her Majesty's criminal and civil jurisdiction in Zanzibar shall, so far as circumstances admit, be exercised on the principles of, and in conformity with, the enactments for the time being applicable as hereinafter mentioned of the Governor-General of India in Council, and of the Governor of Bombay in Council, and according to the course of procedure and practice observed by, and before, the Courts in the Presidency of Bombay beyond the limits of the ordinary original jurisdiction of the High Court of Judicature at Bombay according to their respective jurisdiction and authority, and so far as such enactments, procedure, and practice are inapplicable, shall be exercised under, and in accordance with, the common and statute law of England in force at the commencement of this Order.

(*b.*) The enactments described in the First Schedule to this Order are hereby made applicable to Zanzibar.

(*c.*) Any other existing or future enactments of the Governor-General of India in Council, or of the Governor of Bombay in Council, shall also be applicable to Zanzibar, but shall not come into operation until such times as may in the case of any such enactments respectively be fixed by the Secretary of State.

(*d.*) Any Act of the Governor-General of India in Council, or of the Governor of Bombay in Council, whether passed before or after the commencement of this Order, amending or substituted for any Act of either of those Legislatures which is by or under this Order made applicable to and brought into operation in Zanzibar, shall, subject to the provisions of this Article, also apply to Zanzibar.

(*e.*) For the purpose of facilitating the application of any such enactments as before mentioned—

(i.) The Court may construe any such enactments, with such alterations not affecting the substance, as may be necessary or proper to adapt the same to the matter before the Court.

(ii.) The Secretary of State may by order direct by what authority any jurisdiction, powers, or duties incident to the operation of any such enactment, and for the exercise or performance of which no convenient provision has been otherwise made, shall be exercised or performed.

(iii.) The Secretary of State may by order modify, for the purposes of this Order, any provision of any of the before-mentioned enactments, or of any amending or substituted enactment relating to civil or criminal procedure, or to procedure in bankruptcy.

(iv.) Any order of the Secretary of State made in pursuance of this Article shall be published in Zanzibar and in India in such manner as he directs, and shall have effect as from a date to be specified in the order.

12. The enactments described in the First Schedule to "The Foreign Jurisdiction Act, 1890," shall apply to Zanzibar as if Zanzibar were a British Colony or possession, but subject to the provisions of this Order and to the exceptions, adaptations, and modifications following, that is to say:—

(i.) The Consul-General is hereby substituted for the Governor of a Colony or British possession, and the Court for Zanzibar is hereby substituted for a Superior Court or Supreme Court and for a Magistrate or Justice of the Peace of a Colony or British possession.

(ii.) For the portions of the Merchant Shipping Acts, 1854 and 1867, referred in the said Schedule, shall be substituted Part XIII of "The Merchant Shipping Act, 1894."

(iii.) In section 51 of "The Conveyancing (Scotland) Act, 1874," and any enactment for the time being in force amending the same, the Court for Zanzibar is substituted for a Court of Probate in a Colony.

(iv.) With respect to "The Fugitive Offenders Act, 1881,"—

(*a.*) So much of the 4th and 5th sections of the said Act as relates to sending a report of the issue of a warrant, together with the information, or a copy thereof, or to the sending of a certificate of committal and report of a case, or to the information to be given by a Magistrate to a fugitive, shall be excepted.

(*b.*) So much of the 6th section of the said Act as relates to *habeas corpus*, and as requires the expiration of fifteen days before issue of a warrant, shall be excepted.

(*c.*) The Consul-General shall not be bound to return a fugitive offender to a British possession unless satisfied that the proceedings to obtain his return are taken with the consent of the Governor of that possession.

(*d.*) For the purposes of Part II of the said Act, Zanzibar, the East Africa, Uganda, and British Central Africa Protectorates, British India, Mauritius, Natal, and the Cape of Good Hope, shall be deemed to be one group of British possessions.

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PART V.—*Criminal Matters.*

13. Subject to the other provisions of this Order, the Code of Criminal Procedure and the other enactments relating to the administration of criminal justice in India, for the time being applicable to Zanzibar, shall have effect as if Zanzibar were a district in the Presidency of Bombay, and the Assistant Judge shall be deemed to be the Magistrate of the district; the Judge shall be deemed to be the Sessions Judge; the High Court of Judicature at Bombay (hereinafter called the High Court of Bombay) shall be deemed to be the High Court; and the powers both of the Governor-General in Council and of the Local Government under those enactments shall be exercisable by the Secretary of State, or, with his previous or subsequent assent, by the Governor-General of India in Council.

14. When any person is committed to the High Court of Bombay for trial, the Consul-General may, under and in accordance with the provisions of section 6 of "The Foreign Jurisdiction Act, 1890," send him to Bombay for trial; and in such case the Court may, if it thinks fit, bind over such of the proper witnesses as are British subjects, or any of them, in their own recognizances, to appear and give evidence on the trial.

15. If any person subject to this Order smuggles or imports into or exports from Zanzibar any goods whereon any duty is charged or payable to the Government of Zanzibar, with intent to evade payment of the duty, he shall be punished with imprisonment for a term which may extend to two months, or with fine which may extend to 1,000 rupees, or with both.

16. Any act which if done in British India would be an offence against the law for the time being in force in British India relating to trade-marks, merchandize-marks, copyright, designs, or inventions, shall, if done in Zanzibar by a person subject to this Order, be an offence, whether such act is done in relation to any property or right of a British subject, or of a foreigner or native, or otherwise; and any person convicted of such offence shall be punished with imprisonment for a term which may extend to two months, or with a fine which may extend to 1,000 rupees, or with both.

17.—(1.) In cases of murder or culpable homicide, if either the death or the criminal act which wholly or partly caused the death happened in Zanzibar, a Court acting under this Order shall have the like jurisdiction over any person subject to this Order who is charged either as a principal offender or as an abettor, as if both the criminal act and the death had happened in Zanzibar.

(2.) In the case of any offence committed on the high seas, or within the Admiralty jurisdiction, by any person subject to this Order who at the time of committing such offence was on board a British ship, or on board a foreign ship to which he did not belong, a Court acting under this Order shall have jurisdiction as if the offence had been committed within Zanzibar.

(3.) In cases tried under this Article no different sentence can be passed from the sentence which could be passed in England if the offence were tried there.

18.—(*a.*) The Consul-General may, if he thinks fit, by general order, prescribe the manner in which, and the places in Zanzibar at which, sentences of imprisonment are to be carried into execution.

(*b.*) The Consul-General may, if he thinks fit, in any case, by warrant under his hand and official seal, cause an offender convicted and sentenced to imprisonment before the Court to be sent and removed to, and imprisoned in, any place in Zanzibar or in the East Africa Protectorate.

19. Where an offender convicted before the Court is sentenced to imprisonment, and the Consul-General, proceeding under section 7 of "The Foreign Jurisdiction Act, 1890," authority in that behalf being hereby given to him, considers it expedient that the sentence should be carried into effect within Her Majesty's dominions, the place shall be a place in some part of Her Majesty's dominions out of the United Kingdom the Government whereof consents that offenders may be sent thither under this Article.

20.—(1.) Where it is shown by evidence on oath, to the satisfaction of the Consul-General, that any person subject to this Order has committed, or is about to commit, an offence against this Order, or is otherwise conducting himself so as to be dangerous to peace and good order in Zanzibar, or is endeavouring to excite enmity between the Sultan or people of Zanzibar and Her Majesty, or is intriguing against Her Majesty's power or authority in Zanzibar, the Consul-General may, if he thinks fit, by order under his hand and official seal, prohibit that person from being in Zanzibar during any time therein specified, not exceeding two years.

(2.) If the person named in the order of prohibition fails to obey, or acts in contravention of the order—

(i.) He shall be guilty of an offence against this Order, and, on conviction thereof, shall be liable to imprisonment for any time not exceeding two years, without prejudice to the operation of the order of prohibition;

(ii.) Whether the offender has been convicted of, or imprisoned for, that offence or not, the Consul-General may, if he thinks fit, by order under his hand and official seal, authorize and direct that he be taken into custody, and be removed in custody to some place named in the order of removal, being a place to which a person can under this Order be deported beyond the limits specified in the order of prohibition;

(iii.) The offender shall be taken into custody and removed accordingly, and in such removal force may be used if necessary; and he shall be discharged from custody at the place named in the order of removal.

(3.) In any case in which the Consul-General can, under this Order, make an order of prohibition, he may, if he thinks fit, in lieu of such order, make and execute an order of deportation in like manner, and with all the like consequences, as an order of deportation can, under this Order, be made and executed in the case of a person who, after conviction of an offence, has failed to give security required for good behaviour.

(4.) An appeal shall not lie against an order of prohibition, or removal, or deportation made under this Order.

(5.) The Consul-General, by order under his hand and official seal, may vary any order of prohibition (not extending the duration thereof), and may revoke any order of prohibition or removal.

(6.) The Consul-General shall forthwith report to the Secretary of State every order made by him under this Article, and the grounds thereof, and the proceedings thereunder.

21. Where a person subject to this Order is convicted of an offence, the Court before which he is convicted may, if it thinks fit, require him to give security to the satisfaction of the Court for his future good behaviour, and for that purpose may, if it thinks fit, cause him to come or be brought before the Court.

22.—(*a.*) If any person required by an order under the last preceding Article, or under the law relating to criminal procedure for the time being in force, to give security for good behaviour, or for keeping the peace, fails to do so, the Court may, if it thinks fit, with the approval of the Consul-General, order that he be deported from Zanzibar.

(*b.*) The Court, on making an order of deportation, shall forthwith report to the Consul-General the order and the grounds thereof.

(*c.*) Thereupon the person ordered to be deported shall be, as soon as practicable, and in the case of a person convicted, either after execution of the sentence, or while it is in course of execution, removed in custody, under the warrant of the Consul-General, to the place named in the warrant.

(*d.*) The place shall be a place in that part (if any) of Her Majesty's dominions out of the United Kingdom to which the person belongs, or in some other part of those dominions the Government whereof consents to the reception therein of persons deported under this Order, or a place under the Protectorate of Her Majesty, or in the country out of Her Majesty's dominions to which the person belongs.

(*e.*) The Court, on making an order of deportation, may, if it thinks fit, order the person to be deported to pay all or any part of the expenses of his deportation, to be fixed by the Court in the order.

(*f.*) The Consul-General shall forthwith report to the Secretary of State every order of deportation made under this Order, and the grounds thereof and the proceedings thereunder.

(*g.*) If a person deported under this Order returns to Zanzibar without permission in writing of the Consul-General or Secretary of State, he shall be punished with imprisonment for a term which may extend to two months, or with fine which may extend to 1,000 rupees, or with both.

(*h.*) He shall also be liable to be again deported under the original or a new order and a fresh warrant of the Consul-General.

23.—(*a.*) Where a person entitled to appeal to the High Court of Bombay from any Judgment or order passed in the exercise of criminal jurisdiction under this Order desires so to appeal, he shall present his Petition of appeal to the Court for Zanzibar, and the Petition shall with all practicable speed be transmitted by the Court for Zanzibar to the High Court, with certified copies of the charge (if any) and proceedings, of all documentary evidence admitted or tendered, of the depositions, of the notes of the oral testimony, and of the Judgment or order, and any argument on the Petition of appeal that the appellant desires to submit to the High Court.

24. The Court for Zanzibar shall postpone the execution of the sentence pending the appeal, and shall, if necessary, commit the person convicted to prison for safe custody, or detain him in prison for safe custody, or shall admit him to bail, and may take security, by recognizance, deposit of money, or otherwise, for his payment of any fine.

25.—(*a.*) Where, under this Order, a person is to be sent, or removed, or deported from Zanzibar, he shall, by warrant of the Consul-General under his hand and seal, be detained, if necessary, in custody, or in prison, until a fit opportunity for his removal or deportation occurs, and then be put on board one of Her Majesty's vessels of war, or, if none is available, then on board some other British or other fit vessel.

(*b.*) The warrant of the Consul-General shall be sufficient authority to the person to whom

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it is directed or delivered for execution, and to the Commander or master of the vessel, to receive and detain the person therein named, in the manner therein prescribed, and to send, or remove, and carry him to the place therein named, according to the warrant.

(*c.*) In case of sending or removal for any purpose other than deportation, the warrant of the Consul-General shall be issued in duplicate, and the person executing it shall, as soon as practicable after his arrival at the place therein named, deliver, according to the warrant, with one of the duplicates of the warrant, to a constable, or proper officer of police or keeper of a prison, or other proper authority or person there, the person named in the warrant, to be produced on the order of the proper Court or authority there, or to be otherwise dealt with according to law.

26. When a warrant or order of arrest is issued by a competent judicial authority in the East Africa Protectorate or in the Uganda Protectorate for the apprehension of a person who is accused of crime committed in that Protectorate, and who is, or is supposed to be, within Zanzibar, and that warrant or order is produced to any Court acting under this Order, the Court may back the warrant or order, and the same, when so backed, shall be sufficient authority to any person to whom it was originally directed, and also to any constable or officer of the Court by whom it is backed, and to any person named on the back of the warrant or order, to apprehend the accused person at any place within the limits of this Order and to carry him to and deliver him up within the jurisdiction of the authority issuing the warrant or order.

PART VI.—*Civil Matters.*

27. Subject to the other provisions of this Order, the Code of Civil Procedure, "The Bombay Civil Courts Act, 1869," the Indian Succession Act, and the other enactments relating to the administration of civil justice for the time applicable to Zanzibar, shall have effect as if Zanzibar were a district in the Presidency of Bombay; the Judge shall be deemed to be the District Judge, and the Assistant Judge, the Joint District Judge, of the district, and the Court for Zanzibar, the District Court or Principal Civil Court of Original Jurisdiction in the district; the High Court of Bombay shall be deemed to be the highest Civil Court of Appeal for the district, and the Court authorized to hear appeals from and to revise the decisions of the District Court; and the powers, both of the Governor-General in Council and the Local Government, under those enactments shall be exercisable by the Secretary of State, or, with his previous or subsequent assent, by the Governor-General of India in Council.

28. The Court for Zanzibar shall, for and within Zanzibar, and for vessels and persons coming within Zanzibar, have all such jurisdiction as is for the time being conferred on the Court by "The Consular Courts (Admiralty) Order in Council, 1894," or by any other Order in Council under section 12 of "The Colonial Courts of Admiralty Act, 1890."

The Assistant Judge shall be the Admiralty Registrar of the Court, but when he acts as Judge the Consul-General may appoint a competent person to be Acting Registrar.

29.—(*a.*) The Court shall endeavour to obtain, as early as may be, notice of the death of every person subject to this Order dying in Zanzibar and leaving property to be administered, and all such information as may serve to guide the Court with respect to the securing and administration of his property.

(*b.*) On receiving notice of the death of such a person, the Court shall put up a Notice thereof at the Court-house, and shall keep the same there until probate or administration is granted, or, where it appears to the Court that probate or administration will not be applied for, on cannot be granted, for such time as the Court thinks fit.

(*c.*) The Court shall, where the circumstances of the case appear so to require, as soon as may be, take possession of the property in Zanzibar of the deceased, or put it under the seal of the Court (in either case, if the nature of the property or other circumstances so require, making an inventory), and so keep it until it can be dealt with according to law.

(*d.*) All expenses incurred by the Court in so doing shall be the first charge on the property of the deceased, and the Court shall, by sale of the property, or part thereof, or otherwise, provide for the discharge of these expenses.

30. When a person subject to this Order dies in Zanzibar intestate, his property shall, until administration is granted, vest in the Judge.

31. If a person named executor in a will, to the establishment of whose title, as such, it is necessary to obtain probate of that will, takes possession of and administers, or otherwise deals with any part of the property of the deceased, and does not obtain probate within one month after the death, or after the termination of any proceeding respecting probate or administration, he shall be liable to be punished with fine, which may extend to 1,000 rupees.

32. If any person other than the person named executor, or the administrator, or a person entitled to represent the deceased, without obtaining probate or letters of administration, or an officer of the Court, takes possession of and administers, or otherwise deals with, any part of the property of the deceased, he shall, as soon as practicable, notify the fact and the circumstances to the Court, and shall furnish to the Court all such information as the Court requires, and shall conform to any directions of the Court in relation to the custody, disposal, or transmission of the property, or the proceeds thereof, and, in case of any contravention of this Article, he shall be liable to be punished with fine, which may extend to 1,000 rupees.

33.—(1.) When the peculiar circumstances of the case appear to the Court so to require, for reasons recorded in its proceedings, the Court may, if it thinks fit, of its own motion, or otherwise, grant letters of administration to an officer or practitioner of the Court.

(2.) The person so appointed shall act under the direction of the Court, and shall be indemnified thereby; and if he is a practitioner, shall not act otherwise than as administrator in relation to the estate.

(3.) He shall publish such notices, if any, as the Court thinks fit in Zanzibar, Bombay, the United Kingdom, and elsewhere.

(4.) The Court shall require and compel him to file, in the proper office of the Court, his accounts of his administration, at intervals not exceeding three months.

(5.) The accounts shall be audited under the direction of the Court.

(6. All expenses incurred in behalf of the Court in execution of this Article shall be the first charge on the estate of the deceased in Zanzibar; and the Court shall, by the sale of the estate, or otherwise, provide for the discharge of those expenses.

34.—(*a.*) Where any person entitled to appeal to the High Court of Bombay from any Decree or order made by the Court for Zanzibar in the exercise of civil jurisdiction under this Order desires so to appeal, he shall present his Memorandum of Appeal to the Court for Zanzibar, and, subject to the provisions hereinafter contained, that Court shall receive the same for transmission to the High Court in manner hereinafter provided.

(*b.*) The appellant shall, within such time as the Court directs, give security to the satisfaction of the Court, and to such amount as the Court thinks reasonable, for prosecution of the appeal, and for payment of any costs that may be ordered by the High Court of Bombay on the appeal to be paid by the appellant.

(*c.*) The appellant shall pay into the proper office of the Court for Zanzibar such sum as the Court thinks reasonable to defray the expense of the making up and transmission to the High Court of Bombay of the record.

35. The appellant may, with his Memorandum of Appeal, file any argument which he desires to submit to the High Court of Bombay in support of the appeal.

36.—(*a.*) The Memorandum of Appeal and the argument (if any) shall be served on such persons as respondents as the Court for Zanzibar directs.

(*b.*) A respondent may, within seven days after service, file in the Court for Zanzibar such arguments as he desires to submit to the High Court of Bombay against the appeal.

(*c.*) Copies thereof shall be furnished by the Court for Zanzibar to such persons as that Court thinks fit.

37.—(*a.*) On the expiration of the time for the respondent filing his argument the Court shall, without the application of any party, make up the record of appeal, which shall consist of the Memorandum of Appeal and the arguments (if any), and certified copies of the following, namely, the plaint, written statements (if any), all proceedings, all written and documentary evidence admitted or tendered, the notes of the oral evidence, the Judgment, and the Decree or order.

(*b.*) The several pieces shall be fastened together consecutively numbered, and the whole shall be secured by the seal of the Court, and be forthwith forwarded to the High Court of Bombay.

(*c.*) The Court may, if for special reasons they think fit, send any portion of the documentary evidence in original to the High Court.

PART VII.—*Zanzibar and Foreign Subjects and Tribunals.*

38.—(*a.*) The Court for Zanzibar shall hear and determine all civil questions, claims, or disputes arising between any Zanzibar subject and any person subject to this Order in which the former is plaintiff or complainant.

(*b.*) The High Court of Bombay shall not exercise jurisdiction in any such suit.

39.—(*a.*) Where it is desired to commence a suit in which one party is, and the other party is not, a person subject to this Order, the Court shall entertain the same, and shall hear and determine it.

(*b.*) Provided that the person not subject to this Order, if so required by the Court, first obtains and files in the proper office of the Court the consent, in writing of the competent authority (if any) on behalf of his own nation, to his submitting, and that he does submit to the jurisdiction of the Court, and, if required by the Court, gives security to the satisfaction of the Court, and to such reasonable amount as the Court thinks fit, by deposit or otherwise, to pay fees, costs, and damages, and abide by, and perform, the decision to be given by the Court or on appeal.

(*c.*) A cross-suit shall not be brought in the Court against a plaintiff, being a person not subject to this Order, who has submitted to the jurisdiction, by a defendant, without leave of

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the Court first obtained; but the Court may, as a condition of entertaining the plaintiff's suit, require his consent to any cross-suit or matter of set-off being entertained by the Court.

(*d.*) The Court, before giving leave, may require proof from the defendant, that his claim arises out of the matter in dispute, and that there is reasonable ground for it, and that it is not made for vexation or delay.

(*e.*) Nothing in this Article shall prevent the defendant from bringing, in the Court, against a person not subject to this Order, after the termination of the suit in which the latter is plaintiff, any suit which he might have brought in the Court if no provision restraining cross-suits had been inserted in this Order.

(*f.*) Where a person not subject to this Order obtains in the Court an order against a defendant being a person subject to this Order, and in another suit the latter is plaintiff and the former is defendant, the Court may, if it thinks fit, on the application of the first-mentioned defendant, stay the enforcement of the order pending that other suit, and may set off any amount ordered to be paid by one party in one action against any amount ordered to be paid by the other party in the other action.

(*g.*) Where the plaintiff, being a person not subject to this Order, obtains an order in the Court against two or more defendants jointly, being persons subject to this Order, and in another suit one of them is a plaintiff and the first mentioned plaintiff is defendant, the Court may, if it thinks fit, on application, stay the enforcement of the order pending that other action, and may set off any amount ordered to be paid by one party in one action against any amount ordered to be paid by the other party in the other action, without prejudice to the right of the person plaintiff in the second suit to obtain contribution from his co-defendants under the joint liability.

40.—(*a.*) Where it is proved that the attendance of any person subject to this Order to give evidence, or for any other purpose connected with the administration of justice, is required before any Court of Justice in Zanzibar other than a Court established by this Order, the Court for Zanzibar may, if it thinks fit, in a case and in circumstances in which the Court for Zanzibar would require the attendance of that person before the Court, order that he do attend as required. The order may be made subject to conditions as to payment or tender of expenses or otherwise.

(*b.*) If the person ordered to attend, having reasonable notice of the time and place at which he is required to attend, fails to attend accordingly, and does not excuse his failure to the satisfaction of the Court for Zanzibar, or if when so attending to give evidence he wilfully gives false evidence, or refuses to be sworn to give evidence, he shall, independently of any other liability, be liable to be punished with imprisonment for a term which may extend to two months or with fine which may extend to 1,000 rupees, or with both.

41. If a person subject to this Order—

(i.) Wilfully obstructs, by act or threat, any Court in Zanzibar not established under this Order in the performance of its duty; or

(ii.) Within or close to the room or place where such a Court is sitting wilfully misbehaves in a violent, threatening, or disrespectful manner, to the disturbance of the Court or to the intimidation of suitors or others resorting to the Court; or

(iii.) Wilfully insults any member or officer of such a Court in his going to, or returning from, any place of sitting or office of the Court;

He shall, on conviction before the Court for Zanzibar, be liable to be punished with imprisonment for a term which may extend to two months, or with fine which may extend to 1,000 rupees, or with both.

42.—(*a.*) Every agreement for reference to arbitration between a person subject to this Order on the one hand, and a person not subject to this Order on the other hand, may, on the application of any party, be filed for execution in the proper office of the Court.

(*b.*) The Court shall thereupon have authority to enforce the agreement and the award made thereunder, and to control and regulate the proceedings before and after the award, in such manner and on such terms as the Court may think fit.

(*c.*) Provided that the person not subject to this Order first obtains and files, in the proper office of the Court, the consent, in writing, of the competent authority (if any), on behalf of his own nation, to his submitting, and that he does submit, to the jurisdiction of the Court, and, if required by the Court, gives security to the satisfaction of the Court, and to such reasonable amount as the Court thinks fit, by deposit or otherwise, to pay fees, damages, costs, and expenses, and abide by and perform the award.

(*d.*) If a person subject to this Order wilfully gives false evidence in an arbitration, he shall, on conviction before the Court for Zanzibar, be liable to the same punishment as if he were convicted of giving false evidence in a proceeding in that Court.

PART VIII.—*Miscellaneous.*

43.—(1.) Notwithstanding anything in this Order, the Court for Zanzibar shall not exercise any jurisdiction in any proceeding whatsoever over Her Majesty's Consul-General, or his official or other residences, or his official or other property.

(2.) Notwithstanding anything in this Order, the Court for Zanzibar shall not exercise, except with the consent of the Consul-General, signified in writing to the Court, any jurisdiction in a civil action or proceeding over any person attached to or being a member of Her Majesty's Consulate-General in Zanzibar, or being a domestic servant of the Consul-General.

(3.) If, in any case under this Order, it appears to the Court for Zanzibar that the attendance of the Consul-General, or of any person attached to or being a member of Her Majesty's Consulate-General in Zanzibar, or being a domestic servant of the Consul-General, to give evidence before the Court, is requisite in the interest of justice, the Court for Zanzibar may address to the Consul-General a request in writing for such attendance.

(4.) A person attending to give evidence before the Court shall not be compelled or allowed to give any evidence or produce any document if, in the opinion of the Consul-General, signified by him personally or in writing to the Court, the giving or production thereof would be injurious to Her Majesty's service.

44. Subject to the approval of the Secretary of State, the Court may frame Rules of Procedure and other Rules, consistent with this Order, for the better execution of the provisions herein contained in respect of civil or criminal proceedings, and for regulating the conditions on which persons other than parties may be permitted to practise as advocates or solicitors in any Court, or for suspending or excluding such persons from practice in case of misconduct: Provided that any scale of remuneration fixed by such rules shall have been sanctioned by the Treasury.

45. The Consul-General may make Regulations (to be called Queen's Regulations) for the following purposes, that is to say:—

(i.) For the peace, order, and good government of British subjects, and other persons subject to this Order, in relation to matters not provided for in this Order.

(ii.) For securing the observance of any Treaty for the time being in force relating to Zanzibar, or of any native or local law or custom.

(iii.) For requiring Returns to be made of the nature, quantity, and value of articles exported from or imported into Zanzibar, or any part thereof, by or on account of any British subject or person subject to this Order, and for prescribing the times and manner at or in which, and the persons by whom, such Returns are to be made.

Any Regulations under this Article may provide for forfeiture of any goods, receptacles, or things in relation to which, or to the contents of which, any breach is committed of such Regulations, or of any Treaty, or any native or local law or custom, the observance of which is provided for by the Regulations.

Any Regulations under this Article shall, when allowed by the Secretary of State, and published as he directs, have effect as if contained in this Order.

Any breach of the Regulations shall be an offence against this Order, and any person guilty thereof, shall, on conviction, be liable to a fine which may extend to 1,000 rupees, or to imprisonment which may extend to two months, or both, in addition to any forfeiture as aforesaid.

46. The Consul-General may also make Regulations for the governance, visitation, care, and superintendence of prisons in Zanzibar, and for the infliction of corporal or other punishment on prisoners committing offences against those Regulations.

Any Regulation under this Article shall, when allowed by the Secretary of State, have effect, as if contained in this Order, and copies thereof shall be exhibited in every prison to which they apply in such manner as the Consul-General may direct.

Any breach of Regulations under this Article, committed by any officer of a prison, or by any other person (not being a prisoner), shall be punishable in like manner as a breach of Queen's Regulations, under the last preceding Article.

47.—(*a.*) A non-testamentary instrument to which a British subject is a party, executed after the 28th day of November, 1893, and purporting or operating to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent to, in, or over immovable property situate in Zanzibar, shall not affect any immovable property comprised therein, or be received as evidence of any transaction affecting that property, unless it has been registered at such time and place and in such manner as may be prescribed by Rules made by the Consul-General and approved by the Secretary of State, and for the time being in force.

(*b.*) Provided that nothing in this Article shall make any instrument inadmissible in evidence in any criminal proceeding.

48.—(*a.*) The Consul-General may, with the approval of the Secretary of State and concurrence of the Treasury, make rules imposing fees leviable in respect of any proceedings in, or processes issued out of, any Court established under this Order, and in respect of the registration of any instrument under this Order.

(*b.*) But the Court may in any case, if it thinks fit, on account of the poverty of a party, or for any other reason, dispense in whole or in part with the payment of any fee chargeable in respect of such matter.

(*c.*) The Court shall in every such case forthwith report the dispensation to the Consul-General, and he shall give such directions thereon as he thinks fit.

(*d.*) Nothing in this Order shall affect any Order in Council prescribing a Table of fees to be taken by Consular officers; and, where a fee is taken under that Order, no fee shall be taken in respect of the same matter under this Order.

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49.—(*a.*) All fees, charges, expenses, costs, fines, damages, and other money payable under this Order, or under any law made applicable by this Order, may be enforced under order of the Court by attachment and sale of goods, and, in case of deficiency, by imprisonment, which may extend to one month.

(*b.*) Any bill of sale or mortgage, or transfer of property, made with the view of avoiding such attachment or sale, shall not be effectual to defeat the provisions of this Order.

(*c.*) All fees, penalties, fines, and forfeitures levied under this Order, except such as may under Treaty be paid to the Sultan of Zanzibar, shall be paid to the public account, and shall be applied in such manner as the Secretary of State, with the concurrence of the Treasury, may direct.

50. Subject to the other provisions of this Order, all expenses of removal of prisoners and others, and the expenses of deportation, and of the sending of any person to Bombay, or to any part of Her Majesty's dominions, including expenses of maintenance, shall be defrayed in such manner as the Secretary of State, with the concurrence of the Treasury, directs.

51.—(*a.*) If an officer of the Court employed to execute an order loses, by neglect or omission, the opportunity of executing it, then, on complaint of the person aggrieved, and proof of the fact alleged, the Court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof.

(*b.*) The order may be enforced as an order directing payment of money.

52.—(*a.*) If a clerk or officer of the Court, acting under pretence of the process of authority of the Court, is charged with extortion, or with not paying over money duly levied, or with other misconduct, the Court may, if it thinks fit, inquire into the charge in a summary way, and may for that purpose summon and enforce the attendance of all necessary persons as in an action, and may make such order for the repayment of any money extorted, or for the payment over of any money levied, and for the payment of such damages and costs, as the Court thinks fit.

(*b.*) The Court may also, if it thinks fit, on the same inquiry, impose on the clerk or officer a fine not exceeding 50 rupees for each offence.

(*c.*) A clerk or officer punished under this Article shall not, without the leave of the Court, be liable to an action in respect of the same matter; and any such action, if already or afterwards begun, may be stayed by the Court in such manner and on such terms as the Court thinks fit.

(*d.*) Nothing in this Article shall be deemed to prevent any person from being prosecuted under any other law for any act or omission punishable under this Article, or from being liable under that other law to any higher punishment or penalty than that provided by this Article. Provided that no person shall be punished twice for the same offence.

53. The Consul-General, or any Consular officer appointed by him in that behalf, may exercise any power conferred on any Justices of the Peace within Her Majesty's dominions by any Act of Parliament for the time being in force, regulating merchant seamen or the mercantile marine.

54. Not later than the 31st March in each year the Consul-General shall send to the Secretary of State a Report on the operation of this Order up to the 31st December in the previous year showing, for the then last twelve months, the number and nature of the proceedings, criminal or civil, taken under this Order, and the result thereof, and the number and amount of fees received, and containing an abstract of the list of registered British subjects, and such other information, and being in such form as the Secretary of State from time to time directs.

PART IX.—*Repeal and Transitory Provisions.*

55.—(*a.*) From the commencement of this Order, the Orders in Council described in the Second Schedule to this Order shall be repealed as to Zanzibar, but this repeal shall not—

(i.) Affect the past operation of any of the repealed Orders, or any Regulation, Rule, or appointment made, or any right, title, obligation, or liability accrued, or the validity or invalidity of anything done or suffered, under any of those Orders before the commencement of this Order;

(ii.) Interfere with the institution or prosecution of any proceeding or suit, criminal or civil, in respect of any offence committed against, or forfeiture incurred, or liability accrued under, or in consequence of any provision of the repealed Orders, or any regulation made thereunder;

(iii.) Take away or abridge any protection or benefit given or to be enjoyed in relation thereto.

(*b.*) Notwithstanding the repeal of the Orders in Council aforesaid, or any other thing in this Order, every Regulation, Rule, appointment, and other thing in this Article mentioned, shall continue and be as if this Order had not been made, but so that the same may be revoked, altered, or otherwise dealt with under this Order, as if it had been made or done under this Order.

AFRICA.

No. 2A. **[Council Office.]**

[June 25, 1897.]

The Law Officers of the Crown to Sir C. L. Peel.

Royal Courts of Justice, June 25, 1897.

Sir,

As to Zanzibar and East Africa Orders in Council being Statutory Rules.

WE were favoured with your letter of the 17th instant, stating that you were directed by the Lord President of the Council to transmit to us the drafts of proposed Orders in Council under "The Foreign Jurisdiction Act, 1890," entitled, "The Zanzibar Order in Council, 1897," and "The East Africa Order in Council, 1897," which were forwarded to the Privy Council Office by the Secretary of State for Foreign Affairs on the 31st ultimo for submission to Her Majesty.

That having regard to the Report of the Law Officers of the Crown of the 29th April, 1895, as to whether a draft Order in Council entitled, "The Foreign Marriages Order in Council, 1895," came within the provisions of section 1 of "The Rules Publication Act, 1893," it appeared to the Lord President that inasmuch as the draft Orders in Council referred to seemed to embody Regulations which were subsidiary to the Act under which they were proposed to be made, they came within the scope of "The Rules Publication Act," and accordingly a letter was addressed to the Foreign Office on the 3rd instant to that effect, and stating that notice of the intention to submit these draft Orders in Council to Her Majesty would be published in the "London Gazette" at the earliest possible date, unless Lord Salisbury saw any objection to that course, and that as no such objection was made before the 11th instant, the Notices were published in the "Gazette" of that day.

That a letter had, however, been received from the Foreign Office directing attention to the Report of the Law Officers of the 26th February, 1895, &c., with reference to a proposed Order in Council under "The Foreign Jurisdiction Act, 1890," and stating that, in the opinion of Lord Salisbury, the present draft Orders came within the language of that Report, and, consequently, was outside section 1, sub-section 4, of the "Rules Publication Act."

That, in these circumstances, the Lord President requested that we would be pleased to inform his Grace whether, in our opinion, these draft Orders came within the scope of "The Rules Publication Act, 1893."

In compliance with the request contained in your letter, we have the honour to

Report—

That, in our opinion, the Orders in Council in question are not Statutory Rules within the meaning of "The Rules Publication Act, 1893," and do not require to be dealt with under that Act.

We are, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

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56. Criminal or civil proceedings begun under any Order in Council repealed by this Order, and pending at the commencement of this Order, shall, from and after that time, be regulated by the provisions of this Order, as far as the nature and circumstances of each case admit.

57. This Order shall commence and have effect as follows:—

(1.) As to the making of any warrant or appointment under this Order, immediately from and after the date of this Order.

(2.) As to the framing of Rules of Procedure or Regulations, and the approval thereof by the Secretary of State, immediately from and after the date of this Order.

(3.) As to all other matters and provisions comprised and contained in this Order, immediately from and after the expiration of one month after this Order is first exhibited in the public office of the Consul-General; for which purpose he is hereby required forthwith, on receipt by him of a copy of this Order, to affix and exhibit the same conspicuously in his public office, and he is also hereby required to keep the same so affixed and exhibited during one month from the first exhibition thereof; and notice of the time of such first exhibition shall, as soon thereafter as practicable, be published in Zanzibar in such manner as the Consul-General directs; and, notwithstanding anything in this Order, the time of the expiration of the said month shall be deemed to be the time of the commencement of this Order.

(4.) Proof shall not in any proceeding or matter be required that the provisions of this Article have been complied with, nor shall any act or proceeding be invalidated by any failure to comply with any of such provisions.

58. A copy of this Order shall be kept exhibited conspicuously in the Court and in the Consulate at Zanzibar.

Printed copies shall be provided and sold at such reasonable price as the Consul-General directs.

And the Most Honourable the Marquess of Salisbury, K.G., and the Right Honourable Lord George Hamilton, two of Her Majesty's Principal Secretaries of State, are to give the necessary directions herein as to them respectively appertain.

R. E. W.
R. B. F.

No. 3.

[September 22, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August 23, 1897.*

Acquisition of land for Uganda Railway.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers marked in the accompanying list which relate to the question whether the lands acquired for the purposes of the Uganda Railway in the East Africa and the Uganda Protectorates should be vested in Her Majesty, her heirs and successors.

It will be seen from this correspondence that a belt of land on each side of the track of the Uganda Railway has been reserved for the purposes of the railway by a Proclamation issued by Her Majesty's Commissioner and Consul-General in the East Africa Protectorate, and that Her Majesty's Acting Commissioner and Consul-General in Uganda has been instructed to issue a similar Proclamation as regards the land in that Protectorate. The Proclamation issued in the East Africa Protectorate (Document A) will be found in Sir A. Hardinge's despatch No. 99 of the 10th May last (Document B), and the instruction in regard to Uganda in the draft despatch No. 56 to Major Ternan of the 31st May last (Document C).

In this despatch Sir A. Hardinge inquires whether the belt of land reserved to the railway should be assigned or transferred to Her Majesty, and, if not, to whom it should be transferred. This question was referred to Mr. Albert Gray, whose reply forms Document (D). The Lords Commissioners of Her Majesty's Treasury, to whom the question was thereupon referred, suggested that the matter was one on which your opinion should be obtained.

Copies of the Land Regulations for the East Africa Protectorate and of "The East Africa Order in Council, 1897," are transmitted herewith (Documents E and F respectively), together with the Regulations or Orders enacting in the East Africa Protectorate the Indian Land Acquisition Act (Document H).

It may be mentioned that at the time the Proclamation reserving the belt of land was issued in the East Africa and Zanzibar Protectorates those Protectorates were respectively under "The Africa Order in Council, 1889" (Document J) and "The

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Zanzibar Order in Council, 1884" (Document K). "The Africa Order in Council, 1889," is still applicable to the Uganda Protectorate.

I have the honour to request that you will take into your consideration the papers now submitted to you, and that you will favour Lord Salisbury with your opinion as to whether the land thus reserved for the purposes of the Uganda Railway should be vested in Her Majesty, her heirs and successors, or, if not, in whom it should be vested; and, generally, with any observations which, in your opinion, will be of use to his Lordship in dealing with this question.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

To Mr. Gray		March 26, 1897.
Mr. Gray		April 7, „
To Sir A. Hardinge	(No. 31. Telegraphic)	May 1, „
To Treasury		May 10, „
Treasury		May 17, „
Sir A. Hardinge	(No. 99.) (C) contains (A)	May 10, „
To Sir A. Hardinge	..(No. 141)	May 31, „
To Major Ternan	(No. 56.) (B)	May 31, „
To Mr. Gray		June 5, „
Mr. Gray..	(D)	June 24, „
To Treasury		July 17, „
Treasury		July 27, „

Land Regulations for East Africa. (E.)
"Africa Order in Council, 1889." (J.) (Confidential 5846**.)
"Zanzibar Order in Council, 1884." (K.) (Confidential 5029*.)
"East Africa Order in Council, 1897." (F.) (Confidential 6933*.)
"Zanzibar Order in Council, 1897." (G.) (Confidential 6934*.)
Order enacting the Indian Land Acquisition Act in East Africa (Zanzibar Dominions). (H.)

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, September* 10, 1897.

With reference to my letter of the 23rd ultimo respecting land in the East Africa Protectorate, I have the honour, by direction of the Marquess of Salisbury, to transmit to you the accompanying correspondence* with the India Office relating to the authority to be assigned to the various officers of the East Africa Protectorate for the purpose of administering Indian law as applied to the Protectorate.

The India Office letter of the 26th August deals with points raised in Mr. A. Gray's letter of the 24th June now before you.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

In our opinion, the land should be vested in trustees to be appointed by Her Majesty's Government, who should have power to remove trustees and name fresh trustees as may be necessary. Should, at any time, it be possible to vest the land in any Corporation or Company, it would be convenient, as the reappointment of new trustees would be avoided and transfers simplified, but until this can be arranged the land should be vested in trustees appointed by Her Majesty's Government.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 22, 1897.

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* To India Office, July 17; India Office, August 26, 1897.

No. 4.

[September 28, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, September* 14, 1897.

Succession duty in British Central Africa Protectorate.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list which relate to the question whether succession duty is due to the Treasury of the British Central Africa Protectorate on real property situated in that Protectorate, and forming part of the estate of a deceased British subject, or of any other person assimilated to a British subject in regard to such a matter.

Your opinion is requested in order that his Lordship may reply to the inquiry made in Messrs. Stibbard, Gibson, and Wills' letter of the 17th October last (document A).

The British Central Africa Protectorate is a Protectorate in the sense in which the term is ordinarily used at the present time. The territory comprised in it is recognized by Great Britain and by other Powers as being within the sphere of influence of Great Britain and under her protection. But every portion of the territory is, with more or less regularity, placed under the immediate sovereignty of native Rulers, who have, however, tacitly or explicitly delegated to the Queen the power necessary for enabling her to exercise within their several sovereignties administrative and legislative authority over all persons other than their respective immediate subjects. These functions are exercised by the Queen, in conformity with the provisions of the Foreign Jurisdiction Acts, by means of Orders of Her Majesty in Council, the most important of which, and probably the only one that you need consider for the purpose of the present reference, is "The Africa Order in Council, 1889" (document B).

Article 13 of this Order provides that, subject to the other provisions of the Order, the civil and criminal jurisdiction exercisable in any place under the Order shall, so far as circumstances admit, be exercised upon the principles of and in conformity with the substance of the law for the time being in force in and for England; and the fee Table annexed to the instructions (document C), issued under the Order in Council, directs that the fee payable on probate, &c., shall be the like sum as is payable for the time being in England for stamp duty in like case, not exceeding a certain fixed limit.

It does not appear that the Foreign Jurisdiction Acts, the above-mentioned "Africa Order in Council, 1889," or any other Acts or Orders in Council, make provision for the exercise of jurisdiction by Her Majesty in regard to real property situated without her immediate dominions, whether it be situated in the British Central Africa Protectorate or not.

Lord Salisbury has been advised that such a matter as the succession and the taxation of such property on transfer by succession or otherwise is held in English law to be governed by the *lex loci rei sitæ*; it is therefore consonant with this principle that the Foreign Jurisdiction Acts and the Orders in Council issued thereunder should abstain—as it is thought they do—from making provision for the exercise by the Queen of jurisdiction in regard to the succession to or succession duties on real property situated without Her Majesty's immediate dominions.

It is therefore conceived that, so far as concerns the principles and substance of English law, succession to and succession duties on real property in the British Central Africa Protectorate must be held to be governed by the particular native law applicable to the property.

It does not appear that Her Majesty has acquired technically the power to legislate on the subject of the succession to and succession duties on real property situated in the Protectorate, and forming part of the estates of British subjects, neither does it appear that Her Majesty's Representative in the Protectorate has, on the assumption that he possessed such authority, issued any legislative provisions purporting to regulate such matters.

I have the honour to request you to take the papers sent herewith into your consideration, and to favour Lord Salisbury with your opinion on the following points:—

1. Is succession duty on real property in the British Central Africa Protectorate, when it forms part of the estate of a deceased British subject or other person

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assimilated to a British subject in regard to such matters, leviable according to the provisions of the law on the subject for the time being in force in England, or according to any legislative provision issued under the authority of the Foreign Jurisdiction Acts, and applied in the proper manner to the Protectorate; or should succession to and succession duties on such real property be held to be subject to native custom.

2. Would it be competent to the Queen or to Her Majesty's Representative in the Protectorate to regulate such matters in accordance with English law or otherwise on receiving a delegation of authority for the purpose from the native Ruler within whose sovereignty the property is situated.

I have also the honour to request you to favour his Lordship with any observations on the case generally which would, in your opinion, be of use to him in dealing with it.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Messrs. Stibbard, Gibson, and Wills .. .. .. October 17, 1896.
(B.) "Africa Order in Council, 1889." (Confidential 5846**.)
(C.) Fee Table annexed to the Instructions of July 31, 1891.

Report.

The English law as to succession duty is not applied to the British Central Africa Protectorate by the Order in Council of 1889. We cannot read clause 13 of that Order as imposing this tax.

Native custom is not applicable for the purpose of succession to and succession duty on real property of British subjects in the Protectorate. There is no settled system of native law in respect of real property to which it can be supposed that British subjects have submitted themselves. These matters ought to be regulated by Order in Council.

Her Majesty in substance and in fact exercises dominion in these territories subject to the rights of the Chiefs over their own followers, and the tribal usages observed by them.

We are of opinion that Her Majesty has authority to regulate succession to real property of British subjects and the succession duties payable. Great confusion would result if these matters were to be decided by ill-defined native usages—probably quite inapplicable to Europeans—prevailing in different territories of very uncertain boundaries.

We therefore recommend that an Order in Council should be issued dealing with these matters. At present no succession duty is payable.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 28, 1897.

No. 5.

[December 3, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November* 23, 1897.

Anglo-French Declaration of Aug. 5, 1890. Meaning of Say-Barruwa line.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list with reference to a question which has arisen as to the meaning to be attached to the Declarations exchanged on the 5th August, 1890, between Her Majesty's Government and the Government of France with respect to certain territories in Africa. The points on which your opinion is sought arise on the interpretation of the words used with regard to the line of demar-

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AFRICA.

No. 4 *a*. **[Colonial Office.]**

[September 30, 1897.]

Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, September*, 30, 1897.

Submission of Treaties of South African Republic for Queen's approval.

WE were honoured with your commands signified in Mr. Wingfield's letter of the 18th instant, stating that with reference to our Report of 27th April, 1896, respecting the submission of Treaties by the South African Republic for the Queen's approval under Article IV of the London Convention, he was directed by you to transmit to us a copy of the material part of the correspondence on the subject which had passed since our Report was made.

That Mr. Wingfield was also to transmit to us copies of two despatches which you had addressed to the High Commissioner for South Africa on the 6th March last, dealing with certain breaches of the London Convention. That the former of those was sent in pursuance of our Reports of the 9th December, 1896, and 1st March, 1897, on the subject of the Aliens Immigration Law of the South African Republic. That the latter contained a statement of the case generally in regard to breaches of the Convention, and included further observations on the submission of Treaties under Article IV.

That the reply of the Government of the South African Republic to those two despatches would be found in the despatch from the High Commissioner of the 12th May last.

That Mr. Wingfield was to submit to us the draft—prepared in the Colonial Office and approved by the Foreign Office—of a despatch which it was proposed to send to the High Commissioner, containing the answer of Her Majesty's Government to the letters of the Government of the South African Republic of the 8th April and 7th May last.

That Mr. Wingfield was to draw our attention particularly to the last part of paragraph 12 of the draft despatch, and to the observations upon it in the Foreign Office letter, and to the alternative words suggested in *italics* by the Colonial Office, and that he was to explain that the main object was to prevent Treaties negotiated by the South African Republic with a Foreign State being submitted to the Legislature of that Foreign State before the Treaty had been submitted for the Queen's approval.

That Mr. Wingfield was to inquire whether we concurred in the draft despatch as amended at the Foreign Office and Colonial Office, or whether we had any further amendments to suggest; and that he was especially to request that we would advise you as to the wording of paragraph 12, with the view of meeting the objections pointed out in the Foreign Office letter of the 27th August, and, at the same time, attaining the object in view.

We have taken the papers into our consideration, and, in obedience to your commands, have the honour to

Report—

That we are of opinion that in paragraph 12 of the draft despatch it would be better simply to adhere to the view that the Treaty must be submitted to Her Majesty as soon as it has been signed by the Plenipotentiairies, without making any alternative proposal.

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If, however, an alternative proposal is to be made, we prefer the draft in black ink as last prepared by the Colonial Office. We think that the objections raised by the Foreign Office to the original draft are sound, as the proposal there made would be attended with difficulty in its working.

We do not understand the inverted commas in paragraph 21. We presume the passage included therein is cited from some official document. They do not occur in the Convention of 1884, and, while we agree in their substance, if—as we gather—they are only intended to give the effect of the Convention of London, the inverted commas should be omitted. If they are taken from some other official covering document, the date should be given.

We have made a slight alteration in paragraph 22.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Annex.

Draft of Despatch from Mr. Chamberlain to High Commissioner Sir A. Milner.

(South Africa. No. .)

Downing Street, September , 1897.

Sir,

HER Majesty's Government have carefully considered the note of the Acting State Secretary of the South African Republic of the 7th May, a translation of which you transmitted with your despatch No. 446 of the 12th May, conveying the reply of the Government of the Republic to my despatches Nos. 92 and 93 of the 6th March of this year.

2. They have learned with much satisfaction that the Volksraad, on the recommendation of the Government of the South African Republic, has repealed the Alien Immigrants Law (No. 30 of 1896), and thus removed a serious ground of complaint on the part of Her Majesty's Government in connection with the London Convention. They note that the reason assigned for its repeal is not that it conflicts with the Convention, but that it has exposed the inhabitants of the neighbouring States and Colonies to inconvenience, an admission which proves that Her Majesty's Government had substantial grounds for objecting to it on its merits, and independently of the fact that its enactment without the assent of Her Majesty's Government constituted a clear breach of the Convention.

3. The Government of the South African Republic decline the proposal of Her Majesty's Government for a friendly discussion between themselves and Her Majesty's Agent at Pretoria, with a view to agreeing upon the terms of a measure which, while securing the objects which they had in view in enacting the law now repealed, might justify Her Majesty's Government in waiving the strict interpretation of Article XIV of the Convention; but they propose to endeavour to come to an agreement with other Governments in South Africa as to the principles of legislation for the purpose of excluding dangerous or detrimental immigrants.

4. Her Majesty's Government consider that a Conference on this subject of the several South African Governments is desirable, but they cannot withdraw their claim to be consulted before any legislation is introduced in the South African Republic derogating from the rights secured by the Convention, to which the other South African Governments are not parties.

5. Her Majesty's Government cannot accept the restricted construction which the Government of the South African Republic seek to give Article XIV of the Convention. That Article contains one of the essential conditions upon which the internal independence of the South African Republic was accorded by Her Majesty; its terms are clear and comprehensive, expressly including all persons, other than natives, without any other qualification than that of conforming to the laws of the Republic; and Her Majesty's Government maintain that, without their consent, the Government of the South African Republic are precluded from imposing any restriction upon the entrance of aliens other than natives. At the same time they have expressed their willingness to consider and confer with the Government of the South African Republic upon any proposed measure for effecting such restriction as may be shown to be necessary for the safety or good government of the Republic.

6. Her Majesty's Government must remind the Government of the South African Republic that when they desire to enact a law excluding Asiatic immigrants they were advised by Dr. Leyds, then State Attorney, that such a law would be contrary to the London Convention.

7. The words in Article 14, which make conformity with the laws of the Republic a condition of the right to enter, travel, and reside therein, do not, in the opinion of Her Majesty's

Government, give an implied power to the South African Republic to legislate for the purpose of excluding persons who would otherwise be entitled to the benefit of the Article, by imposing conditions which it is impossible for them to fulfil. Such an implication would enable the Republic to reduce the Article to a nullity.

8. The arguments adduced in the note of the Acting State Secretary, based on the general principles of international law as applied to ordinary Treaties between independent Powers, and on the actual or proposed legislation of other nations (including the United Kingdom), do not, in the view of Her Majesty's Government, apply to the case under consideration, which is not that of a Treaty between two States on an equal footing, but a declaration by the Queen of Great Britain and Ireland of the conditions upon which she accorded the internal independence of the South African Republic subject to her suzerainty, these conditions having been accepted by the Delegates of the South African Republic and subsequently ratified by the Volksraad.

9. Her Majesty's Government maintain that the South African Republic is bound to adhere strictly to the terms of those conditions, and is not entitled to import into them any qualifications based on rights of nations which are not bound by similar obligations arising out of similar circumstances.

10. The Alien Immigrants Law having been repealed, Her Majesty's Government do not think it necessary to discuss further the details of its provisions to which objection was taken by them.

11. The note proceeds to comment on the cases mentioned in my despatch No. 93, in which, in the opinion of Her Majesty's Government, the Government of the South African Republic have failed to observe the requirements of Article IV of the Convention. The views of the Government of the South African Republic upon these cases have also been stated in the letters of the 8th April and the 7th May, translations of which were transmitted with your despatches No. 378 of the 16th April and No. 465 of the 14th May.

12. As regards the Extradition Treaties with the Netherlands and Portugal, the point of difference between the two Governments lies in the meaning to be assigned to the word "completion" in Article IV of the Convention. From the context it is certain that the word is not used in the sense of final conclusion, and Her Majesty's Government must adhere to the view that it refers to the stage at which a Treaty first assumes a complete shape, viz., the signature of the Plenipotentiaries or other negotiators. It has been already pointed out in previous despatches that the submission of a Treaty for the approval of the Queen before it is submitted for confirmation by the Volksraad or by the Legislature of the other Contracting State obviates the risk in the one case of friction with the Volksraad, and in the other of any complaint of a breach of international comity which might arise in the event of Her Majesty declining to approve a Treaty after it had been confirmed by the Volksraad or by the foreign Legislature, and for this reason Her Majesty's Government have attached importance to the maintenance of what they held to be the correct interpretation of Article IV; but they would be prepared in the case of Treaties which require ~~the approval of the Volksraad (a condition which does not apply to Extradition Treaties such as those which are immediately in question) to raise no objection to the Treaty not being submitted for the Queen's approval until after its acceptance by the Volksraad, provided that it is so submitted before being presented to the Legislature of the other Contracting State. This can be secured by obtaining the approval of the Volksraad before the Treaty is signed~~ *to be confirmed by the Legislatures of the Contracting States, and which contain or have appended to them a declaration that they will not come into force until they have been either expressly approved by the Queen or submitted to Her Majesty's Government for her approval and not objected to within six months after such submission, to waive their strict rights and be satisfied if such Treaties are submitted to them immediately after having been confirmed by the Legislatures of the Contracting States.*

13. The passage cited in the note of the Acting State Secretary from Lord Derby's letter of the 15th February, 1884, does not appear to have any bearing on the question of the stage at which a Treaty is to be submitted for the approval of Her Majesty.

14. In the matter of the accession of the South African Republic to the Geneva Convention, Her Majesty's Government, while they maintain that the London Convention required the Government of the South African Republic to obtain the Queen's approval of such accession, are willing to admit that the language of Article IX of the Geneva Convention may have led the Government of the South African Republic to infer that such approval might be assumed; but they desire to point out that the Geneva Convention was signed in 1864. Twenty years afterwards the London Convention was concluded, under which certain restrictions were laid down in regard to the engagements into which the Republic could enter with foreign States. It would seem, therefore, to follow that the terms of the Geneva Convention in its relation to the South African Republic must be read in conjunction with the London Convention, and with due regard to the limitations imposed on the Republic thereby. With reference, however, to the remark in the Acting State Secretary's letter of the 7th May, inclosed in your despatch No. 465, that the accession of the South African Republic to the Geneva Convention was not in conflict with the interests of Great Britain, it must be observed that the objections taken by Her Majesty's Government have not been to the substance of the Treaties or engagements in question, but to the methods by which the Government of the South African Republic have appeared to them to seek to avoid the provisions of Article IV of the Convention.

15. The Aliens Expulsion Law and the Press Law, which form the next subject of discussion in the note of the Acting State Secretary, were referred to in my despatch No. 93, not as in

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themselves necessarily conflicting with the London Convention, but as containing provisions which, if applied to foreigners not shown to have failed to conform to the laws of the Republic, might amount to breaches of that Convention.

16. Her Majesty's Government have been glad to learn that the Volksraad has passed a Resolution in favour of an amendment of the former of these laws, which they trust may be of such a nature as to remove the danger of a breach of the Convention. As regards the Press Law, as has been stated in my despatch No. 93, a case has already occurred under it which it appears to justify the objection taken to it.

17. Her Majesty's Government note with satisfaction that the Government of the South African Republic see in the fulfilment of the mutual obligations under the London Convention one of the best guarantees for the maintenance of a mutual understanding and for the promotion of reciprocal confidence. Her Majesty's Government have uniformly fulfilled these obligations on their part, and they must strongly protest against what appears to be an implication in the note under consideration that the incursion of Dr. Jameson can be considered as either a breach of the Convention by Her Majesty's Government or a grievance against them. That incursion was the act of private individuals unauthorized by Her Majesty's Government, and was repudiated by them immediately it became known. The immense importance to the Government of the South African Republic of that repudiation, and of the Proclamation issued by the High Commissioner under instructions from Her Majesty's Government, is recognized throughout South Africa.

18. Her Majesty's Government maintain strongly that since the Convention of 1881 there has never been any breach or even any allegation of a breach on their part of that or the subsequent Convention, and, as the subject has been raised by the implied accusation contained in the note under consideration, Her Majesty's Government feel constrained to contrast their loyal action in the case of the Jameson raid with the cases in which they have had cause to complain that the Government of the South African Republic failed to interfere with, if they did not countenance, invasions of the adjacent territories by its burghers in violation of the Convention, and they feel bound to remind the Government of the Republic that in one of these cases Her Majesty's Government were compelled to maintain their rights by an armed expedition at the cost of about 1,000,000*l*., for which no compensation has ever been received by them.

19. Finally, the Government of the South African Republic propose that all points in dispute between Her Majesty's Government and themselves relating to the Convention should be referred to arbitration, the Arbitrator to be nominated by the President of the Swiss Republic.

20. In making this proposal the Government of the South African Republic appear to have overlooked the distinction between the Conventions of 1881 and 1884 and an ordinary Treaty between two independent Powers, questions arising upon which may properly be the subject of arbitration.

21. By the Pretoria Convention of 1881 Her Majesty, as Sovereign of the Transvaal territory, accorded to the inhabitants of that territory complete self-government, subject to the suzerainty of Her Majesty, her heirs, and successors, upon certain terms and conditions, and subject to certain reservations and limitations set forth in thirty-three Articles, and by the London Convention of 1884 Her Majesty, "while maintaining the preamble of the earlier instrument, directed and declared that certain other Articles embodied therein should be substituted for the Articles embodied in the Convention of 1881." The Articles of the Convention of 1881 were accepted by the Volksraad of the Transvaal State, and those of the Convention of 1884 by the Volksraad of the South African Republic.

22. Under these Conventions, therefore, Her Majesty holds towards the South African Republic the relation of a Suzerain who has accorded to the people of that Republic self-government, subject to her suzerainty, upon certain conditions, and it would be incompatible with ~~her honour and dignity as the Suzerain~~ *that position* to submit to arbitration the construction of the conditions on which she accorded self-government to the Republic.

23. One of the main objects which Her Majesty's Government had in view in retaining the suzerainty under the Conventions was the prevention of the interference of any foreign Power between Her Majesty and the South African Republic, a matter which they then held, and which Her Majesty's present Government hold, to be essential to British interests, and this object would be defeated by the course now proposed.

24. The clear intention of Her Majesty's Government at the time of the London Convention, that questions in relation to it should not be submitted to arbitration, is shown by the fact that when the Delegates of the South African Republic, in the negotiations which preceded that Convention, submitted to Her Majesty's Government in the first instance (in a letter of the 26th November, 1883, which will be found on p. 9 of the Parliamentary Paper, C. 3947 of 1884) the draft of a Treaty or Convention containing an arbitration clause, they were informed by the Earl of Derby that it was neither in form nor in substance such as Her Majesty's Government could adopt.

25. The Government of the South African Republic put forward as a precedent for the proposed arbitration the provision in Article I of the London Convention for the settlement of the details of the line to be fixed as the boundary of the Republic; but there can be no comparison between the fixing of the exact details, which could not be ascertained before the signature of the Convention, of a boundary which had been agreed upon in principle and the construction of the conditions laid down in the Convention itself.

26. The other case relied on as a precedent is one in which Her Majesty's Government agreed to submit to the arbitration of the Chief Justice of the Orange Free State a question arising out of the construction of a Law which had been passed by the Volksraad. It is essential, however, to the proper conception of this transaction to point out that this Law had only been passed by the Volksraad on the prior and voluntary assurance of Her Majesty's Government that Her Majesty would, for the occasion, waive the rights she had reserved to herself under the Convention in respect of the Law proposed; and, as a matter of fact, the construction of the Law and not of the Convention (though it had some bearing on the question in dispute) was the subject of arbitration.

27. Her Majesty's Government, therefore, for the foregoing reasons, cannot consent to submit questions as to the infringement of the Convention to the arbitration of any foreign State or of the nominee of any foreign State.

28. I request that you will instruct Her Majesty's Agent at Pretoria to communicate a copy of this despatch to the Government of the South African Republic.

I have, &c.

R. E. W.
R. B. F.

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cation which, by the second of the two Declarations, is to be drawn between Say on the Niger and Barruwa on Lake Tchad.

The despatches and other documents which have been written on the subject, and the several meanings which it has been sought to attach to the Declaration regarding the Say-Barruwa line, are discussed in the inclosed Memorandum (Document A).

I have the honour to request you to take these papers into your consideration, and to favour Lord Salisbury, at your earliest convenience, with your opinion on the following points:—

1. Does the Declaration of the 5th August, 1890, assure to Great Britain all that lies east of a line drawn from Say due south to meet the coast, or to the point where such line drawn southward would meet some other and intermediate boundary-line recognized by Great Britain and France? or

2. Does the Declaration in question assure to Great Britain only such territory as lies east of the Niger? and

3. I have the honour to request you to favour his Lordship with any observations on the meaning of the Declaration generally.

Other interpretations of the Declarations besides the two in regard to which your opinion is now more especially sought have at various times been put forward. It would be difficult to eliminate from the papers and considerations submitted to you the documents and portions of documents relating to these other interpretations, and they will doubtless be of use to you in advising his Lordship generally on the meaning of the Declaration.

It will, moreover, be seen that the most important statements by Her Majesty's Government have been made in denial of the several interpretations put forward by France, and that they would not be intelligible without full consideration of the opinions which they were intended to refute.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Memorandum on Declaration of August 1890, Foreign Office ..		November 23, 1897.
(B.)	Mr. Phipps	(No. 163)	August 8, 1893.
(C.)	To Mr. Phipps	(No. 179)	August 26, „
(D.)	Lord Dufferin	(No. 37)	February 10, 1894.
(E.)	„ „	(No 64)	March 4, „
(F.)	To Lord Dufferin	(No. 78)	March 9, „
(G.)	„ „	(No. 33)	February 7, 1896.
(H.)	„ „	(No 139)	May 12, „
(J.)	Anglo-French Agreement	(Treaty No. 965)	January 21, 1895.
	Three Maps.		

Report.

In our opinion, the Declaration of the 5th August, 1890, assures to Great Britain the territory to the south of the Say-Barruwa line only so far as it lies to the east of the Niger.

This appears to us to be the effect of the second Article of the Declaration, taken as a whole.

The first clause of that Article, if it stood alone, would, in our opinion, assure to Great Britain the whole of the territories to the south of the Say-Barruwa line, whether to the west or the east of the Niger. It seems to us impossible to construe this Article as unilateral only. By necessary implication it recognizes the rights of Great Britain to the south of the Say-Barruwa line as against the French, from whatever direction they might advance, and it is not confined to the Kingdom of Sokoto.

As regards the territory to the east of the Niger, the Article is unqualified, and, indeed, the provision at the end of the Article as to the determination of the respective spheres of influence in the region which extends to the west and south of the Middle and Upper Niger shows, in our opinion, that the delimitation to the east of the Niger was considered as settled by the Say-Barruwa line.

But as regards the territory to the west of the Niger, this provision at the end of the second Article appears to us to show that no definite arrangement had been arrived at. The Commissioners are to determine the spheres of influence of the two countries

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in the region which extends to the west and the south of the Middle and Upper Niger. Although the extent of the Middle Niger is perhaps not capable of very exact geographical definition, it appears impossible to contend that the Middle Niger does not extend to a point far below Say. Apparently, it extends to a point somewhere about Rabba.

The boundary between French Dahomey and the British territory of Lagos had been delimited by the fourth Article of the Arrangement of the 10th August, 1889, from the coast as far as the ninth degree of north latitude, but no further.

We do not see that it could be successfully contended that the Commissioners, under the last clause of the second Article, are not at liberty to include in the area to be delimited by them the territory between the Middle Niger and a line drawn to Say from the point on the ninth degree of north latitude marking the boundary between French Dahomey and the British territory to the east.

This is inconsistent with the idea that the Declaration treats as British territory what is included in the triangle in question.

The rights of the two countries to the territory in this triangle must be determined by other considerations. We do not think that the effect of the Declaration, taken as a whole, is to recognize British influence as paramount in the district between the Middle Niger and a line drawn southward from Say.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 3, 1897.

No. 6.

[December 28, 1897.]

Foreign Office to the Law Officers of the Crown.

Treaties made by Royal Niger Company with native Chiefs.

Gentlemen, *Foreign Office, December* 4, 1897.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list, which relate to a point raised by the French Minister for Foreign Affairs during the progress of the Niger negotiations, which, as you will doubtless be aware, are now proceeding at Paris.

M. Hanotaux, in the course of conversation with Her Majesty's Ambassador, adverted to certain objections which he said he might have occasion to raise as to the validity of the various Treaties made from time to time in West Africa by the agents of the Royal Niger Company on the ground of their having been concluded by persons not in the direct employment of Her Majesty's Government, but by the agents of a trading Company.

This conversation is recorded in Sir E. Monson's despatch No. 330, Africa, of the 22nd ultimo (Paper A).

M. Hanotaux was, as will be seen, informed, in reply, that Her Majesty's Government could admit no discussion on this point, and nothing more has been said with regard to it; but in view of the probability of the point being again raised, it is thought desirable that Her Majesty's Ambassador should be furnished in anticipation with a full answer to it from a legal point of view.

The following appear to be the most important facts bearing on the case in so far as they can be stated within a brief compass:—

By Article XXX of the Act of Berlin (Paper B), Great Britain undertook in 1885 to apply the principle of freedom of navigation on so much of the waters of the Niger, its affluents, branches, and outlets as were or might be under her sovereignty or protection.

Then, as now, the only jurisdiction exercised by this country in those parts was exercised solely through the Company, the status of which, as representing the Protecting Power, may thus be said to have been recognized implicitly, if not explicitly, by the European Powers.

In 1886 a Royal Charter was granted to the Company (Paper C).

The Charter recognized various acts of cession, as specified in a Schedule annexed thereto, by which certain Kings and Chiefs had ceded territories or rights to the Company, while by Article 12 power was given to the Company, subject to the approval of the Secretary of State, to acquire any rights, interests, authorities, or powers of any kind or nature whatever in, over, or affecting other territories, lands, or property in the region aforesaid, and to hold, use, enjoy, and exercise the same for the purposes of the Company and on the terms of the Charter.

The Charter thus not only recognized such Treaties as had already been made by the Company at the time of its being granted, but gave the fullest authority for the conclusion of such others as the Company might deem desirable.

The Charter appears to establish in the clearest manner that the Company is not solely a trading Company, as contended by M. Hanotaux.

The Treaties more immediately under consideration when M. Hanotaux made the above-mentioned observation to Sir E. Monson were those negotiated by Major Lugard, who acted under the instructions from the Royal Niger Company, copy of which is inclosed (Paper D).

The following is the form of approval which he attached to these Treaties:—

> "I, Captain Lugard, for and on behalf of the Company, do hereby approve and accept the above Treaty, and hereby affix my hand.
>
> (Signed) "F. D. LUGARD, *Captain,*
> *"Commanding Borgu Expedition."*

It appears, however, to Lord Salisbury that the validity of the Treaties, from the international point of view, is derived, not so much from the Powers held by the negotiator from the Company, as from the Treaties, when concluded, being recognized first by the Company and then by Her Majesty's Government.

In 1887 a Notification (Paper E) was published in the "London Gazette" proclaiming a British Protectorate over the "Niger districts," which it defined as consisting, in the first place, of "the territories on the line of coast between the British Protectorate of Lagos and the right or western river bank of the mouth of the Rio del Rey;" and, secondly, of "all territories in the basin of the Niger and its affluents" which were or might be, for the time being subject to "the Government of the National African Company (Limited) (now called the Royal Niger Company), in accordance with the provisions of the Charter of the said Company, dated the 10th July, 1886."

The British Protectorate in the Niger districts is, therefore, extended, *pari passu*, with the extension of the territories under the Government of the Company.

Since the date of the above-mentioned Notice a large number of Treaties have been concluded by the Company, by whom they have been regularly submitted for the approval of Her Majesty's Government.

In 1894, negotiations commenced between M. Hanotaux, on the part of France, and Mr. Phipps, acting for this country, with a view to arriving at a settlement of various outstanding West African questions. No definite result was achieved, but during the course of the negotiations the Treaties concluded by the Niger Company frequently formed the subject of discussion, and though repeatedly called in question by the French Commissioners as being invalid in form or subsequent in date to those concluded by French officials, these Treaties were never challenged on the ground of their having been made by agents of the Company as distinguished from Agents directly accredited by Her Majesty's Government.

The negotiations were resumed in 1896, but with a like abortive result. No objection, however, was raised by the French Government to the Niger Company's Treaties on the last-mentioned ground.

It appears to Lord Salisbury that the facts as set forth above would be sufficient to establish that, in the conclusion of their Treaties, the agents of the Niger Company were to all intents and purposes Agents of Her Majesty's Government, and that the Treaties so concluded are as valid from the point of view of bringing the territories they affect under British protection as though they had been concluded by Agents directly accredited by Her Majesty's Government.

I have the honour to request you to take the accompanying papers into your consideration, and to favour his Lordship with your opinion as to the reply that should be made to the contention put forward by M. Hanotaux, as recorded in the above-mentioned despatch (Paper A) from Sir E. Monson, and also with any observations which you may consider will be useful to his Lordship in instructing Her Majesty's Ambassador or Her Majesty's Representatives on the Niger Commission as to the

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language they should use in the event of this contention being again brought forward.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Sir E. Monson	(No. 330)	November 22, 1897
(B.)	Berlin Act. (Treaty No. 757.)		
(C)	Niger Company's Charter. (Confidential 5269*.)		
(D.)	In Niger Company		October 26, "
(E.)	"Gazette" Notice, 1887–88.		

Foreign Office to the Law Officers of the Crown.

Foreign Office, December 13, 1897.

Gentlemen,

With reference to my letter of the 4th instant on the question of the validity of Treaties made with native African Rulers by the Agents of the Royal Niger Company, I have the honour, by the direction of the Marquess of Salisbury, to transmit to you the accompanying papers,* which relate to a further question connected with these Treaties, which is intimately allied with that already before you, namely, whether, and, if so, in what manner, the interest of the Company in such Treaties can be conveyed to Her Majesty's Government in the event of the Company's Charter being revoked.

The facts which it is desired specially to bring to your notice in regard to this matter are, briefly, as follows:—

The National African Company (Limited) was incorporated in 1882 under "The Companies Acts, 1862 to 1880."

The Memorandum of Association declared the objects of the Company to be (among others) "to acquire and hold any Charters, Acts of Parliament, privileges, monopolies, patents, or other rights or powers from the British Government or any potentate or local or other authority."

The Company entered into Treaties with potentates and other local authorities.

In July 1886 a Royal Charter was granted to the Company, which thereupon, with the sanction of the Secretary of State, changed its name to the Royal Niger Company, Chartered and Limited.

Under powers given or confirmed by the Charter, the Company have since entered into Treaties with potentates and local authorities.

Of these Treaties, whether made before or after the grant of the Charter, some are made by and with the Company (Forms 5, 7, 8), and the remainder by and with the Company, its heirs, administrators, or assigns (Forms 1, 2, 3, 4, 6, 9, 10).

Her Majesty's Government are now engaged in negotiations with the Company, which may result in the revocation of the Charter, and I have the honour to request you to take into consideration the papers herewith transmitted to you, and also those which accompanied my above-mentioned letter of the 4th instant, and to ask you to favour Lord Salisbury with your opinion.

1. Will the said Treaties or any of them lapse on the revocation of the Charter?

2. If not, will the Treaty rights remain in the Company?

3.—(*a*.) Can the Company, before the revocation of the Charter, transfer those rights to their heirs, administrators, or assigns, so that such rights shall remain in them after the revocation? and

(*β*.) Can the Company constitute Her Majesty's Government their heirs, administrators, or assigns?

4. Would such transfer require the assent of the potentate or local authority with whom the Treaty was made?

5. In the possible alternative that the present Charter will not be revoked, but will be modified by a Supplementary Charter, taking over from the Company its rights of administration and leaving to it its rights as a commercial Company, would the answers to the foregoing questions be modified, and if so, in what respect?

The terms of the Memorandum of Association of the National African Company are recited in the Charter (inclosed in my letter of the 4th instant).

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* Confidential No. 642. Niger Company's Treaties, showing various forms used.

All Treaties made by the Company, whether before or after the grant of the Charter, are in one or other of the forms given in Hertslet's "Africa by Treaty," vol. i, pp. 450–479 herewith.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

The Royal Niger Company is not a mere trading Company, but has also power to acquire, retain, and govern territory. It resembles the East India Company, the position of which was explained by Chief Justice Tindal in the case of Gibson *v.* East India Company, 5 Bingham, New Cases (Common Pleas Reports), p. 273.

The late Mr. Hall, in his book upon international law (4th Edition, note on pp. 133, 134), takes the view that territory acquired by the Royal Niger Company is part of British dominions, and in the note on p. 110 of the same work he treats as obvious the proposition that the acts of such a Company as the East African Company are to be classed in point of competence with those of commissioned Agents of the State.

It appears to us that these views are correct. The Royal Niger Company must be regarded as a British subject, and it has acquired territory and a Charter from the British Crown.

Chief Justice Tindal, in the case already cited, at p. 272, said that the principle that all conquests made by subjects must belong to the Crown is a general principle pervading the law both of this and other States.

The same rule must, in our opinion, apply to the case of territory ceded or acquired by Treaty, and it appears to us to be quite clear that Treaties granted to the Niger Company are as effective for the purpose of establishing British rights as if they had been granted to a commissioned officer of the Crown.

Subject, of course, to the rights of the Company under the Charter, we have no doubt that, as a matter of British Constitutional Law, the Crown is entitled to assume to itself the benefit of these Treaties, just as all acquisitions made by the East India Company were regarded as being at the disposal of the nation.

We do not think that the Company has any general right to assign these Treaties. We attach no importance to the variation in the terms of the Treaties. In many cases they are expressed to be made with the Company alone, or with the Company and its administrators, which means the same thing. Even in cases where the Treaty was made with the Company and its asssigns, we do not think that this conferred a general power of assignment upon the Company, as this would be inconsistent with the terms of the Charter, which conferred upon the Company personally the right to acquire and administer territory, and with the nature of the transaction embodied in the Treaty with the native Chief.

The title of the Crown to these Treaty rights depends not on any power of assignment given to the Company by the terms of the Treaty, but on the paramount rights of the Crown when a British subject has acquired territory abroad.

We do not think that any general answer can be given to the question whether any fresh consent by the African Chief or other authority should be regarded as necessary to confer on the Crown a valid title as against him. The answer might depend upon that which took place when the Treaty was signed.

In view of the questions which we understand France has raised, or may raise, as to the validity and effect of these Treaties, and the circumstances under which they were made, it is in our opinion very undesirable to take any course which might give the French any apparent ground for disputing the continued validity of these Treaties.

If the Company were dissolved or reduced to the position of a mere trading Corporation, it might be contended by the French Government that the Treaty rights lapsed, that they had been conferred upon the Company personally, and that when the Company came to an end or ceased itself to administer these rights, the Chief was in the same position as if no Treaty had been entered into.

In any event, if any action is taken it should, in our opinion, be in the direction of control by Imperial Officers over the administration by the Company of its territory.

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By arrangement with the Company the Government may acquire from it such rights in land as are necessary for Government purposes.

The above Report appears to us to answer all the questions submitted to us, and we have only to add that we think it very undesirable that any change in the position of the Company, such as is suggested, should be made while the questions now pending with the French are unsettled.

(Signed) RICHARD E. WEBSTER
ROBERT B. FINLAY.

Royal Courts of Justice,
December 28, 1897.

BELGIUM.

No. 7.

[January 21, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 11, 1897.

Gentlemen,

Expulsion of Mr. Ben Tillett from Antwerp.

I HAVE the honour, by the direction of the Marquess of Salisbury, to inform you that representations, based on the opinions expressed in your Report of the 3rd November, were made by Her Majesty's Minister at Brussels to the Belgian Government on the subject of the manner in which the expulsion of Mr. Ben Tillett from Antwerp was carried out in August last.

L.O.R. 1896 (Conf. 6918), p. 20.

I am now to transmit to you a despatch which has been received from Her Majesty's Chargé d'Affaires at Brussels containing the reply of the Belgian Government, and other despatches from Mr. Adam forwarding documents relative thereto.

The Belgian Government maintain that the circumstances attending the arrest and expulsion of Mr. Tillett were fully justified, and they decline to recognize that there was anything in the treatment accorded to him which could afford just ground for complaint.

Lord Salisbury will be glad to learn whether, after due consideration of the arguments advanced and of the precedents quoted by M. de Favereau in support of the action of the Belgian Government, you are disposed in any way to modify the opinions formulated by you in answer to his Lordship's previous reference on the subject; and whether, in your opinion, Her Majesty's Representative at Brussels should be instructed to make any further, and if so what, representations on behalf of Mr. Tillett.

Copies of the letter of reference addressed to you from this Department on the 26th October last in connection with this case, and of your Report, dated the 3rd November last, in reply thereto, are inclosed herewith.

The inclosures which accompanied the reference of the 26th October, and which are rather numerous and bulky, are also annexed in a separate packet, in case you should desire again to refer to them.

I have, &c.
(Signed) GEORGE N. CURZON.

List of Papers.

Mr. Adam	(No. 211. Commercial)	December 19, 1896.
Ditto	(No. 213. Commercial)	December 27, „
Ditto	(No. 214. Commercial)	December 28, „
To Law Officers	.. .. ..	October 26 „
List with inclosures (sent separately).		
Law Officers. (Confidential 6918, p. 20)	.. .. ..	November 3, „

Report.

In our opinion the arguments advanced, and the precedents quoted by M. Favereau, are not such as to require any modification of the opinion already given by us.

The right of the Belgian Government to expel Mr. Tillett was never disputed, nor has it ever been asserted that detention, reasonably necessary for securing expulsion, would be unjustifiable.

The Belgian Government appear to contend that the treatment of foreigners in Belgium is a matter entirely in the discretion of the Government, and that they may not only be expelled, but subjected to arbitrary imprisonment.

It appears to us that Her Majesty's Government ought not to acquiesce in the position thus asserted.

If the powers of the Belgian Government are used in such a way as to inflict unnecessary and unjustifiable hardship upon a foreigner, the Government of his country are justified in demanding redress. It appears to us that in the present case these powers were so exercised, and that Her Majesty's Government should maintain the position already taken up.

How far further representations should be pushed is a question of policy. The nature of Mr. Tillett's mission to Belgium was probably such as to deprive him of sympathy on the part of a great many people in Belgium as well as in this country; but he was, in our opinion, undoubtedly treated with unnecessary harshness.

The claim so peremptorily put forward by the Belgian Government involves principles which are, in our opinion, of great importance, and we think that Her Majesty's Government should at least again put on record the fact that they decline to admit them.

If it could be arranged, the claim of Mr. Tillett to redress is one which might well be referred to the arbitration and decision of some independent jurist of eminence.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 21, 1897.

No. 8.

[June 18, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 10, 1897.

Gentlemen,

Draft Convention with Belgium respecting arrest, &c., of Mr. Ben Tillett.

I HAVE the honour, by direction of the Marquess of Salisbury, to inform you that further representations in the sense of your opinion of the 21st January last were addressed to the Belgian Government on the subject of the arrest and imprisonment of Mr. Ben Tillett, and that, in the event of the Belgian Government being unable to fall in with the views of Her Majesty's Government, it was proposed to refer the question to the arbitration of some independent jurist of eminence. The Belgian Government replied by accepting the suggestion of arbitration.

A draft Convention between Great Britain and Belgium "for submitting to arbitration a claim for compensation arising out of Mr. Tillett's arrest and imprisonment in Belgium" has accordingly been prepared, and is transmitted herewith.

I have the honour to request that Lord Salisbury may be favoured with your opinion as to the terms of the proposed Agreement, and with any general observations which you may have to offer on the subject.

I have, &c.
(Signed) F. H. VILLIERS.

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Report.

Subject to the addition in red ink,* initialled by us, we approve the terms of the proposed Convention.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 18, 1897.

Annex.

Draft Agreement between Great Britain and Belgium.

WHEREAS on the 21st day of August, 1896, Mr. Ben Tillett, a British subject, was arrested at Antwerp, in pursuance of orders issued by the Belgian Minister of Justice, was detained, and was subsequently expelled from the country;

Whereas it is alleged by the aforesaid Mr. Ben Tillett that the said detention occasioned to him expense and loss of time, that it was accompanied with circumstances of unjustifiable indignity and hardship, and that his health has suffered in consequence of the treatment to which he was subjected;

Whereas Her Majesty's Government, while not contesting the right of the Government of Belgium to expel Mr. Tillett, are nevertheless of opinion that his arrest and detention, and the various circumstances of hardship by which they were attended, were altogether in excess of anything that could be justified as incidental to the right of expulsion, and that, consequently, some expression of regret, as well as some tangible compensation is due by the Belgian Government to Mr. Tillett;

And whereas the Belgian Government, on their part, are unable to share this opinion:

Now, therefore the Governments of Her Britannic Majesty and of the King of the Belgians, being desirous that the difference of opinion between them should be settled in a just and equitable manner, have agreed that the aforesaid difference shall be submitted to the examination and decision of an Arbitrator.

Article 1. The Governments of Her Britannic Majesty and of His Majesty the King of the Belgians agree to invite his Excellency the President of the French Republic to name a French Jurist to act as Arbitrator in the matter aforesaid.

Art. 2. It shall be the duty of the Arbitrator to consider whether the claim for a pecuniary indemnity, advanced by Her Majesty's Government on behalf of Mr. Tillett, is well founded, and if so, to determine the amount of such indemnity

Art. 3. Her Majesty's Government shall forward to the Arbitrator, through the diplomatic channel, within a period of one month after the signature of the present Agreement, a Memorandum in support of their claim on behalf of Mr. Ben Tillett, and shall at the same time furnish a copy thereof to the Belgian Government.

Within a period of one month after receiving such copy the Belgian Government shall forward to the said Arbitrator a Counter-Memorandum, of which they shall at the same time furnish a copy to Her Majesty's Government.

Within a period of three weeks after receipt of this copy Her Majesty's Government may, if they think it expedient, forward to the Arbitrator a reply, of which they shall, at the same time, furnish a copy to the Belgian Government.

Art. 4. After the exchange of these Memoranda no communication, either written or verbal, shall be made to the Arbitrator unless the latter should address himself to the Parties to this Agreement in order to obtain from them, or from one of them, further information in writing.

The Party which may give such information shall immediately furnish a copy thereof to the other Party, and the latter may, if they think well, within a month after the receipt of such copy, communicate in writing to the Arbitrator any observations to which it may give rise. These observations shall likewise be concurrently furnished, in copy, to the other Party.

The Arbitrator may, if he thinks fit, require evidence to be laid before him, in such manner as he may direct, on any point on which the Parties are in conflict.

Art. 5. The Arbitrator shall, thereafter, give his Award as soon as possible, and shall likewise determine the amount of necessary costs incident to the arbitration, and settle which of the Parties shall defray them. These costs, the amount of which it is clearly understood shall be limited as much as possible, may be adjudged to either Party in whole or in part.

Art. 6. The High Contracting Parties mutually engage to accept as final the decision pronounced by the Arbitrator within the limits of the present Agreement, and to submit to it unreservedly.

Art. 7. If at any time before the case be decided the Arbitrator should cease to act as such, from other than temporary causes, his Excellency the President of the French Republic shall be requested to appoint a substitute to proceed with the arbitration in his stead.

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* Italics in print.

Art. 8. The amount of indemnity (if any) awarded by the Arbitrator shall be paid to Her Majesty's Government within one month of the Award.

In witness whereof, &c.

R. E. W.
R. B. F.

No. 9.

[September 28, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 13, 1897.

Gentlemen,

Draft Agreement with Belgium as to Arbitration respecting arrest, &c., of Mr. Ben Tillett.

I HAVE the honour, by the direction of the Marquess of Salisbury, to transmit to you further documents respecting the draft Agreement between Great Britain and Belgium referring to arbitration the questions arising from the arrest and detention of Mr. Ben Tillett on the occasion of his expulsion from Antwerp in August 1896.

The British draft Agreement, as corrected in accordance with your Report of the 18th June, was submitted by Her Majesty's Minister at Brussels to M. de Favereau, the Belgian Minister for Foreign Affairs; and Sir F. Plunkett's despatch No. 125, Commercial, of the 14th August (Paper A) contains M. de Favereau's counter-draft and a copy of a note from his Excellency explaining the views of the Belgian Government on the terms of the Agreement. For facility of comparison the British draft Agreement and the Belgian counter-draft have been printed in parallel columns, and the amendments and additions made in the latter are marked in red ink.

The first point in the counter-draft to which I am to call your attention is the addition in the preamble of the substance of the case of the Belgian Government; and I am to request your particular consideration of the interpretation which M. de Favereau in the latter portion of his note to Sir F. Plunkett of the 13th August (inclosure in Paper A) desires to put in the language employed in that part of the preamble in which the attitude of the British Government is set forth.

M. de Favereau draws attention to the words "son arrestation et sa détention ainsi que certaines circonstances rigoureuses dont elles ont été entourées, excèdent absolument tout ce qui peut être justifié comme une conséquence du droit d'expulsion . . . ." and he states that it would appear from this language that the fact itself of the arrest and detention of Mr. Ben Tillett, apart from the circumstances attending them, is considered by the British Government as excessive, and going beyond the powers incidental to the right of expulsion.

His Excellency maintains that the Belgian Government have never admitted that their sovereign rights in the matter of the expulsion of foreigners could be so questioned, and he proceeds to quote, in support of his attitude, the words used by Sir F. Plunkett, and taken from your Report of the 21st January, "nor has it ever been asserted that detention reasonably necessary for securing expulsion would be unjustifiable."

M. de Favereau also informed Sir F. Plunkett in conversation (see Paper A), that the Belgian Government cannot admit any doubt as to their sovereign right to arrest and detain a person whom they have reason to expel, and that what they have agreed to submit to arbitration in the present case is only whether any excessive hardship or other improper treatment attended the arrest and detention of Mr. Ben Tillett such as to justify compensation.

It might be understood from the above that the Belgian Government would consider that any question as to the arrest and detention of Mr. Ben Tillett—apart from the circumstances attending them—being in excess of anything which could be justified as incidental to the right of expulsion would be beyond the cognizance of the Arbitrator, and his Lordship would be glad to be favoured with your view as to how far this limitation of the case to be decided by the Arbitrator is compatible with the opinions expressed by you in your Reports of the 3rd November, 1896, and the 21st January, 1897, wherein considerable emphasis is laid on the doubtful necessity of Mr. Tillett's arrest, and the unjustifiable duration of the detention to which he was subjected.

L.O.R. 1896 (Conf. 6918), p. 20.

The second point to which I am to call your attention, is the addition which has been made by M. de Favereau to Article 3, and which gives to the Belgian Government, as defendants in the case, the right to make the final rejoinder. Procedure analogous to this, was followed in the "Costa Rica Packet" and Antioquia Railway Arbitration cases, and the point appears to Lord Salisbury one that may justly be conceded to the Belgian Government.

Article 8, dealing with the payment of the indemnity, if any, is altered to meet the necessities of the Belgian Constitution. Lord Salisbury proposes to insert a provision binding the Belgian Government to call upon the Chambers, on the first possible occasion, to vote the money in the event of an Award unfavourable to the Belgian Government.

The other alterations in the preamble are a matter of form, and may, in Lord Salisbury's opinion, be accepted.

The substitution of "étranger" for "French" in Article 1, seems an improvement.

The omission in the Belgian text of the words "at the same time," in Article 3, is probably due to a clerical error which should be rectified.

In Article 5, the word "thereafter" appears superflous, and might be omitted.

I am to request that you will take these papers into your consideration, and favour Lord Salisbury with your opinion—

1. As to whether the reserve made by M. de Favereau with regard to the interpretation of the wording of the preamble, can be accepted by Her Majesty's Government, or, if not, whether it would meet the case to alter the portion of the preamble in question so that it should read as follows: whereas Her Majesty's Government, while not contesting the right of the Government of Belgium to expel Mr. Tillett, nor asserting that detention reasonably necessary for securing expulsion would be unjustifiable, are nevertheless of opinion that the circumstances of his arrest and detention, and the hardships by which they were attended, were altogether in excess of anything that could be justified as incidental to the right of expulsion, &c.

2. Whether there is any objection to the amended form of Article 3 giving right of final rejoinder to the Belgian Government.

Lord Salisbury will also be glad to receive any observations you may have to make on the other alterations made by the Belgian Government in the draft Agreement, and on the Belgian draft Agreement as a whole.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

1.	Sir F. Plunkett	(No. 125. Commercial)	August 14, 1897.
2.	British draft Agreement and Belgian counter-draft in parallel columns.		
3.	Law Officers' Report. (Confidential 6918, p. 20) ..	..	November 3, 1896
4.	Ditto	..	January 21, 1897.

Report.

The reserve made by M. de Favereau as to the wording of the preamble ought not, in our opinion, to be accepted by Her Majesty's Government. The alteration proposed may properly be adopted, inserting after the words "are nevertheless of opinion," the following additional words, "that his arrest and detention were unnecessary, and." We have altered the draft accordingly.

There is, in our opinion, no objection to the amended form of Article 3 giving the right of final rejoinder to the Belgian Government.

The Belgian Government should contract to pay the amount of the Award, if any, to Her Majesty's Government; the date of payment to be within one month after the Chambers have voted the money.

We have no further observations to make.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 28, 1897.

Annex.

British Draft Agreement between Great Britain and Belgium.

WHEREAS on the 21st day of August, 1896, Mr. Ben Tillett, a British subject, was arrested at Antwerp, in pursuance of orders issued by the Belgian Minister of Justice, was detained, and was subsequently expelled from the country;

Whereas it is alleged by the aforesaid Mr. Ben Tillett that the said detention occasioned to him expense and loss of time, that it was accompanied with circumstances of unjustifiable indignity and hardship, and that his health has suffered in consequence of the treatment to which he was subjected;

Whereas Her Majesty's Government, while not contesting the right of the Government of Belgium to expel Mr. Tillett, *nor asserting that detention reasonably necessary for securing expulsion would be unjustifiable*, are nevertheless of opinion that his arrest and detention ~~and~~ *were unnecessary, and that* the various circumstances of hardship by which they were attended, were altogether in excess of anything that could be justified as incidental to the right of expulsion; and that, consequently, some expression of regret, as well as some tangible compensation, is due by the Belgian Government to Mr. Tillett; and whereas the Belgian Government, on their part, are unable to share this opinion:

R. E. W.
R. B. F.

No. 10.

[December 16, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, December 14, 1897.

Gentlemen,

Arbitration Agreement with Belgium in Ben Tillett Case.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, a despatch from Her Majesty's Chargé d'Affaires at Brussels,* transmitting a note from the Belgian Minister for Foreign Affairs, assenting to the form of the preamble of the Agreement for arbitration in the Ben Tillett case, which was suggested in your Report of the 28th September last.

The French version given by M. de Favereau in his note, it is thought, is slightly more emphatic in its wording than the English text, but his Lordship is, at the same time, disposed to think that Mr. Ben Tillett's interests will not be in any appreciable way prejudiced or damnified by its acceptance.

Lord Salisbury proposes, therefore, unless you see any objection to so doing, to accept the wording suggested by the Belgian Government without demur.

I have, &c.
(Signed) F. H. VILLIERS.

P.S.—Previous papers bearing on this question are inclosed for convenience of reference.

F. H. V.

List of Papers.

1.	Foreign Office to Law Officers		June 10, 1897.
2.	Law Officers to Foreign Office		June 18, "
3.	Foreign Office to Sir F. Plunkett ..	(No 32. Commercial)	June 29, "
4.	Sir F. Plunkett	(No. 125. Commercial)	August 14, "
5.	Foreign Office to Law Officers		September 13, "
6.	Law Officers to Foreign Office		September 28, "
7.	Foreign Office to Sir F. Plunkett ..	(No. 61. Commercial)	October 14, "
8.	Mr. Welby	(No. 162. Commercial)	November 28, "

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* Mr. Welby, No. 162, Commercial.

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Report.

We see no objection to the wording suggested by the Belgian Government.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 16, 1897.

DENMARK.

No. 11.

[February 25, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 20, 1897.

Gentlemen,

Interference of Icelandic authorities with British trawlers.

I COMMUNICATED to the Board of Trade, by direction of the Marquess of Salisbury, your Report of the 28th December last, containing observations on the legal aspects of the recent interference of the Icelandic authorities with British trawlers in waters adjacent to the coasts of Iceland.

L.O.R. 1896 (Conf. 6918), p. 38.

I have now the honour to inclose a copy of a letter from the Board, recording their views and the construction which they place upon that Report; and I am to request that you will be so good as to take their communication into your further consideration, and to favour Lord Salisbury with any general criticisms or observations which you may be disposed to offer thereupon.

I have, &c.
(Signed) GEORGE N. CURZON.

Report.

The summing up in the letter from the Board of Trade, of what they understand to be the effect of our opinion, appears to rest on the assumption that that opinion was directed to some point other than the questions specifically asked in the letter of the 10th December, 1896, from the Foreign Office, in reply to which we expressed our opinion.

We are unable to accept that summing up as a correct statement of our opinion. We were not asked to advise, and did not advise, on the points as to the Icelandic Law which are raised by the Board of Trade.

There is, of course, nothing in the opinion given by us which implies that the Icelandic authorities would be justified in enacting a law which goes so far as to forbid the mere innocent, and possibly unintentional, presence of British trawlers in territorial waters.

We based our opinion upon the view that there is no obligation of international law upon any State to permit the use of its ports by foreign vessels. The criticisms of the Board of Trade upon that opinion appear to rest, to some extent at all events, upon the assumption that there is such an obligation. Upon this point we refer to our former Report.

Of course, the refusal, without reason, to permit access to any port would be a breach of international comity, but such a refusal appeared to us to be justified by the facts disclosed in the papers then laid before us. It does not appear to us to be a tenable proposition that the fact that the trawling outside the territorial waters is not illegal by international law makes a refusal of access by trawlers to ports a breach of the comity of nations. Such a refusal may by justified if it be the case that the trawling off the coast of Iceland, though outside the territorial waters, is attended with the consequences to the Icelandic fishermen which were described in the papers previously before us.

(Signed) RICHARD E. WEBSTER
ROBERT B. FINLAY

Royal Courts of Justice,
February 25, 1897.

Annex.

Board of Trade to Foreign Office.

Board of Trade, February 11, 1897.

Sir,

I AM directed by the Board of Trade to acknowledge the receipt of copy of the Report from Her Majesty's Attorney-General and the Solicitor-General containing their observations upon the legal aspect of the recent interference of the Icelandic authorities with British trawlers in waters adjacent to the coast of Iceland.

The assistance of the Law Officers was desired in order to ascertain whether the Icelandic Act, which formed the ground of such interference, amounted in itself to an infringement of international law or international comity in declaring it to be a criminal offence for a vessel to be found within the territorial waters of Iceland having a trawl on board, although not actually engaged in fishing at the time.

With a view to elicit the views of the Law Officers upon that question, they were requested to advise whether it is a matter of international obligation either of international law or international comity and right conduct—

1. To permit the innocent passage of merchant-vessels through the territorial waters of a State for the purpose of navigation;
2. To permit commercial intercourse with another State;
3. To permit the presence of trawlers within the territorial waters when not fishing or intending to fish or to trade.

Having regard to the fact that the Icelandic Law is directed against the presence of trawlers in territorial waters, the substance of these questions may be conveniently stated as follows:—

Whether it is a matter of international obligation—

1. To permit the presence of trawlers in territorial waters for innocent passage through them;
2. To permit their presence there for the purpose of trading, apparently described by the Law Officers as making the Icelandic ports a "base of operations" for trawling;
3. To permit their presence there when without intention to trade or to fish.

The Board of Trade note that, with respect to the first question, the opinion of the Law Officers is in accordance with the views expressed by the Board of Trade in their letter of the 1st October last, viz., that it is an accepted principle of international law that the innocent passage of merchant-vessels for the purposes of navigation should be permitted through territorial waters.

It is clear and admitted on all hands that no objection can be reasonably urged against a law requiring that trawlers passing through territorial waters should have their trawls properly stowed, and not ready to be shot. It follows that the Icelandic Act, which is not limited to the imposition of "reasonable restrictions" of this kind, but forbids the passage of trawlers altogether, is an infringement of the "accepted principle of international law" to which the Law Officers refer.

In dealing with the second question, the Board of Trade observe that the Law Officers further concur with them in the view that it would be a violation of international comity and of right conduct as between civilized States to forbid commercial intercourse without some adequate reason.

Reading the Law Officers' answer to the third question, in combination with, and by the light of, their answer to the second question, the Board of Trade understand it to mean that, although a State may lawfully take measures of precaution "to prevent the right of access and intercourse from being used to its injury," still, apart from the question of injury, it is not in accordance with international comity to forbid the presence of trawlers within territorial waters even when intending to trade, and *à fortiori*, therefore, when (in terms of the third question put to the Law Officers) they are present in those waters without intending to trade. Notwithstanding the admitted right of trawlers in ordinary circumstances to resort to the territorial waters of a foreign State, the Law Officers are understood to advise that the injury in the present case, in view of which the Althing have declared it to be a punishable offence for a trawler to be found within territorial waters, although not fishing at the time, is such as to justify a refusal of commercial intercourse, and the enforcement of that refusal by means of penalties.

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The Law Officers, however, base this opinion upon the assumption that the injury caused by the operations of the trawlers outside territorial waters is so great that they are "making a prosecution of the line fishery by the Icelanders impossible, and destroying the fishery beds," an assumption to which the Board of Trade are not prepared wholly to assent. But even if the case could be put so high, the Law Officers fully concede the right of the trawlers to prosecute their industry outside territorial waters, notwithstanding that "it may inflict injury and entail ruin upon the Icelandic fishermen." The injury suggested as a justification for the Icelandic Act is, therefore, the legal exercise by British trawlers of an undoubted international right on the high seas, a right which they share in common with the Icelandic fishermen themselves, and with all the world. If the trawlers are admittedly acting within their rights, can they properly be said to be doing the Icelanders an injury which justifies reprisals or harsh and unusual enactments?

In these circumstances, the Board of Trade entertain a doubt whether it might not be an inconvenient precedent to accept without further consideration the proposition that lawful acts done upon the high seas outside the territorial waters of a State, and outside its jurisdiction, constitute a valid and adequate reason on the part of that State for repudiating its obligations in international law or comity, and for passing a municipal law which treats the mere presence of fishing-boats with their gear in its territorial waters as a crime.

Although, however, the Law Officers are of opinion that the Icelandic authorities are justified in excluding trawlers from their ports when they use them as a base of operations, the Board of Trade do not understand the Law Officers to mean that the Icelandic authorities are justified in enacting a law which goes so far as to forbid the mere innocent and even unintentional presence of British trawlers in territorial waters.

If the innocent passage of trawlers through territorial waters is a matter of international right, subject to the restriction of stowing their trawls while so passing, their mere presence there at anchor under a similar restriction is obviously also a matter of international right.

The opinions of the Law Officers may, therefore, be summed up as follows:—

1. The Icelandic Act contravenes the law of nations because it forbids altogether the innocent passage of trawlers, instead of permitting it subject to the restriction that their trawls must be stowed, and not ready to be shot.

2. The Icelandic Act violates international comity by forbidding commercial intercourse, but exclusion from such intercourse is justifiable in the present case because British trawling on the high seas, although perfectly lawful in itself, in fact injures the competing Icelandic fishermen by its superior method of fishing.

3. The Icelandic Act violates international right because it forbids altogether the innocent presence of trawlers, instead of permitting it under the restriction of stowing their trawls.

It is important to form a correct judgment upon these points, for it has been assumed by the Icelandic authorities that British trawlers have no right in international law to be present in territorial waters, even for the purpose of innocent passage or shelter, and that the Icelandic authorities are, therefore, justified not only in refusing passage through their territorial waters and the hospitality of their ports, but in treating the presence of British trawlers there as a criminal offence.

If the views of the Law Officers have been correctly summarized, these, and not the assumptions of the Icelandic authorities, should, in justice to British trawlers, be made the true basis for a negotiation with the Danish Government.

If that which is a matter of right be treated as a matter of grace and concession, it seems possible that the interests of the trawlers may be to a certain extent prejudiced.

That is one of the points to which the Board of Trade deemed it right to draw the attention of Lord Salisbury in their letter of the 1st October last. The other point had reference to the abrogation or alteration of the Icelandic Act. It now seems perfectly clear that it is an infringement of international law. It is directed almost entirely against British trawlers, and has been enforced by the Icelandic authorities with what is alleged to be some harshness.

The Board of Trade, therefore, retain the opinion already expressed, and would suggest that in any efforts which may be made to arrive at a comprehensive arrangement with the Danish Government, it will be desirable for Lord Salisbury to consider the propriety of pressing for a modification of the Act in the coming Session of the Althing in July next, so as to provide that the presence of British trawlers in the territorial waters of Iceland shall be a punishable offence only when their trawls are not stowed, and thus to bring the enactment into conformity with the requirements of international law.

I have, &c.
(Signed) COURTENAY BOYLE.

EGYPT.

No. 12.

[June 30, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, June* 19, 1897.

Position of Mixed Tribunals in Egypt.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to the position of the Mixed Tribunals in Egypt.

It will be seen from the former of Lord Cromer's two despatches (Paper A) that the quinquennial period for which the existence of these Tribunals was last renewed expires on the 1st February, 1899, and that the Egyptian Government propose to issue a Circular, of which a copy is inclosed (see Inclosure No. 1 in Paper A), to the Representatives of the Powers who were parties to the establishment of the Mixed Tribunals, stating that, if certain amendments which are considered necessary in two Articles of the existing Charter, or "Règlement d'Organisation" (see Paper C) are accepted by the Powers before the expiration of the current quinquennial period, the Egyptian Government will be ready to maintain the institution of the Tribunals for a further period of five years.

Full particulars as to the origin and working of these Courts and of the proposed alterations in the existing Charter will be found in a Memorandum by Sir John Scott, the Legal Adviser to the Egyptian Government (see Inclosure No. 2 in Paper A).

Lord Cromer points out that the real question at issue is whether the Egyptian Government have the right to refuse their assent to the continuance of the Mixed Tribunals if they should consider it desirable to do so. The Egyptian Government hold that they possess this right. They assume it to exist in the first paragraph of their proposed Circular to the Powers, and their view is supported by Sir John Scott, whose arguments on this point are set forth in a separate Memorandum (see Inclosure No. 3 in Paper A).

But as this right has been, and possibly will again be, contested, Lord Cromer asks what is the view which, as a matter of strict right, Her Majesty's Government take as to the powers of the Egyptian Government in this respect.

I am to request that you will favour Lord Salisbury with your opinion on this point and with your views on the proposed alterations in the existing Charter as well as with any general observations you may have to offer on the whole question.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Lord Cromer	(No. 70)	April 30, 1897.
(B.)	Lord Cromer	(No. 71)	" "
(C.)	"Règlement d'Organisation Judiciaire pour les Procès Mixtes d'Égypte."		

Report.

We are clearly of opinion that Egypt can, at the end of the period, withdraw from the system of Mixed Tribunals.

That system came into force only by virtue of the consent of Egypt. That consent was given for a limited period only, and when it expires the system falls to the ground unless renewed by like consent.

There is no agreement by Egypt with the Powers that there is to be a renewal at the option of the Powers. The 40th Article, to which it would appear that such a construction has been attributed, merely provides that the Powers may, at the end of the period, either return to the old system of Consular Courts, or try to make new arrangements with Egypt.

We approve of the terms of the proposed Circular; but we do not quite under-

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stand why the plural "des droits" has been employed instead of the singular, as in the former Article; the object being, as we understand, to confine the jurisdiction of the Court to the cases of damage sustained by particular individuals and not of a class.

We further think that the words "soit par des Traités, soit par des Lois, soit par des Conventions" should be omitted unless there is good reason for their retention, as also pointing to rights given to classes and not to individuals.

There may, however, be reasons for the language chosen, and we only submit the observations on the wording for consideration.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 30, 1897.

Annex.

Draft Circular.

M. le Ministre,

LA dernière prorogation des pouvoirs des Tribunaux Mixtes prendra fin le 1er Février, 1899. L'expérience ayant démontré que des améliorations devraient être apportées à leur fonctionnement pour le rendre plus conforme au texte et à l'esprit tant du Règlement d'Organisation Judiciaire que des Conventions qui les ont établis, le Gouvernement de Son Altesse serait disposé, si ses propositions étaient acceptées, avant la fin de la période en cours, à maintenir l'institution de ces Tribunaux pour une nouvelle période de cinq ans.

Ces améliorations devraient viser les points suivants :—

1. Interprétation de l'Article 11, Titre I, du Règlement d'Organisation Judiciaire :
2. Interprétation de l'Article 9, même Titre, du même Règlement.

Interprétation de l'Article 11.

Cet Article a été très discuté par la Commission de 1869. Les diverses Commissions qui l'ont suivie s'en sont occupées aussi, sur la demande du Gouvernement Égyptien, et la Commission de 1884 avait approuvée une nouvelle rédaction qui n'a pas eu de suite.

Néanmoins, il est certain que les membres de la Commission de 1869 n'ont voulu, par cet Article, que donner aux Tribunaux Mixtes le même droit qui est accordé aux Tribunaux Ordinaires dans les pays d'Europe où il n'existe pas de Tribunaux administratifs. C'est ainsi que M. Mancini, dans son Rapport présenté à la Chambre Italienne en 1874, compare le dit Article 11 à la Loi Italienne du 20 Mars, 1865, Articles 2, 4, et 5.

Contrairement à l'esprit qui a dicté cet Article et au principe de la séparation des pouvoirs, les Tribunaux Mixtes se sont crus en droit de statuer sur tous les actes du Gouvernement Égyptien, sans distinguer entre les actes de souveraineté destinés à assurer le fonctionnement régulier de l'État et l'accomplissement de ses fins naturelles, actes qui par cela même doivent échapper à leur compétence, et les mesures qui ne sont que des actes individuels pouvant léser des droits acquis en vertu du Code Civil.

Déjà en 1880, le Baron de Ring, tout en faisant l'éloge des Tribunaux Mixtes, signalait à la Commission Internationale l'esprit trop envahissant de la Cour et déclarait qu'elle n'a pas toujours su échapper au soupçon d'avoir donné place à la politique dans ses préoccupations (séance du 9 Décembre, 1880, pp. 6 et 7).

Malgré les services éminents rendus par les dits Tribunaux, ce même reproche a pu malheureusement dans la suite être formulé de nouveau non sans quelque apparence de raison, tant en ce qui regarde l'administration générale du pays qu'en ce qui concerne la gestion par le Gouvernement des intérêts financiers.

Les intérêts des créanciers de l'Égypte, ayant été mis d'après les arrangements internationaux sous la sauvegarde de la Caisse de la Dette, il devrait être expliqué clairement que c'est seulement dans le cas où la Caisse de la Dette intenterait une action contre le Gouvernement pour prétendu violation des dits arrangements, que les Tribunaux seraient compétents. Quant aux mesures que le Gouvernement Khédivial aurait prises sur l'avis conforme de la Caisse, elles ne peuvent, en aucun cas, être appréciées par les dits Tribunaux, ni faire l'objet d'une discussion quelconque de leur part.

Il serait donc utile, à tous égards, afin d'arrêter cette tendance des Tribunaux, de donner à cet Article une rédaction aussi claire et aussi nette que possible.

Aussi s'inspirant du principe même de la séparation des pouvoirs, ainsi que d'un Jugement du Tribunal d'Alexandrie confirmé par la Cour (Arrêt Sursock, 22 Avril, 1880) le Gouvernement de Son Altesse propose-t-il la rédaction suivante comme respectant d'avantage ce principe fondamental :—

"Article 11. Ces Tribunaux ne pourront pas statuer sur la propriété du domaine public.

"Le Gouvernement n'est pas justiciable de ces Tribunaux pour les mesures prises par lui

dans les intérêts généraux de l'Égypte, ni pour les actes qu'il pose en vue de l'exécution ou de l'application des lois et règlements d'Administration Publique.

"Mais, sans pouvoir interpréter ou arrêter l'exécution d'une mesure administrative, ils sont compétents pour juger des atteintes qu'un acte d'administration peut porter à des droits individuels acquis, reconnus aux étrangers, soit par des Traités, soit par des Lois, soit par des Conventions.

"Ces Tribunaux ne connaîtront, ni directement, ni indirectement, sous quelque forme que ce soit, des mesures prises par le Gouvernement pour l'organisation ou la disposition des finances publiques, sauf dans le cas où une action serait intentée et portée devant eux par la Caisse de la Dette. Ils ne peuvent, en aucun cas et sous quelque forme que ce soit, connaître d'une mesure prise sur l'avis conforme de la Caisse de la Dette, lorsque cet avis est exigé par les arrangements internationaux. Ils ne pourront non plus rechercher ou apprécier la valeur de cet avis."

Interprétation de l'Article 9.

Nonobstant le texte de cet Article aussi précis et formel, qui ne laisse subsister aucun doute sur l'intention du législateur de déterminer la compétence des Tribunaux d'après la nationalité du plaideur et non d'après les intérêts qu'il peut représenter, ces Tribunaux se sont déclarés compétents pour connaître des cas où il n'y avait en cause que des indigènes, sous prétexte qu'il y avait en jeu un intérêt étranger.

C'est ainsi qu'ils ont déclaré la Daïra Sanieh et les Chemins de Fer, Administrations purement gouvernementales, justiciables des Tribunaux Mixtes dans les affaires avec les indigènes.

De même ils ont déclaré, que les causes dans lesquelles étaient engagées les Sociétés et les Compagnies Égyptiennes avec des indigènes, étaient de leur compétence et ce, au mépris des Articles 46 et 47 du Code de Commerce Mixte, qui disposent que toutes les Compagnies fondées en Égypte sont de nationalité Égyptienne.

La Municipalité d'Alexandrie, qui n'est qu'une émanation du pouvoir central et qui a été déclarée constituer "une personnalité civile de nationalité indigène" (Article 13 du Décret du 5 Janvier, 1890) a été néanmoins considérée par la Cour comme une personnalité mixte.

Il résulte de là, que si ces Tribunaux suivaient cette jurisprudence jusqu'au bout, rien ne les empêcherait de faire entrer dans leur compétence les contestations des indigènes avec le Gouvernement et toutes ses Administrations.

D'un autre côté, et en contradiction avec leur jurisprudence susmentionnée, ces mêmes Tribunaux se sont déclarés compétents pour statuer sur des affaires dans lesquelles n'était engagé aucun intérêt étranger. Ils ont décidé, en effet, qu'un indigène peut choisir un prête-nom parmi les étrangers afin de porter son action contre un autre indigène devant les Tribunaux Mixtes. Cette doctrine, qui est le renversement de l'ordre des juridictions, porte un préjudice énorme aux parties en les obligeant à soumettre leurs différends à une juridiction autre et une législation autre que celles sous le régime desquelles elles avaient contracté. Or, il est de principe, et la Cour l'a d'ailleurs proclamé elle-même, que l'ordre des juridictions constitue une question d'ordre public, et qu'il ne saurait y être dérogé par des conventions particulières. Cependant, au mépris de ce principe elle permet (par l'intervention d'un prête-nom sans intérêt au procès) à une des parties de faire par sa simple volonté ce qu'elle ne pourrait pas faire avec l'assentiment de la partie adverse. Il est vrai que la Cour, après avoir consacré l'admissibilité du prête-nom par deux Arrêts différents en 1892 et 1893, est revenu sur sa jurisprudence par un Arrêt daté du 1er Mai, 1895 ; mais rien n'empêcherait la Cour d'adopter de nouveau la première jurisprudence.

En 1890 le Gouvernement avait fait des réserves sur la tendance de la Commission Internationale, qui voulaït rendre les Tribunaux Mixtes compétents dans les matières réelles immobilières entre indigènes. Ces réserves avaient été approuvées par plusieurs Puissances. De son côté la Cour d'Appel a, par plusieurs Arrêts, proclamé son incompétence pour trancher les questions immobilières entre indigènes et n'a pas depuis modifié sa jurisprudence.

Pour consacrer cette jurisprudence et obvier aux inconvénients signalés plus haut, il serait donc nécessaire de donner à l'Article 9 une rédaction nouvelle, indiquant clairement la compétence des Tribunaux Mixtes en matière immobilière et précisant nettement que nonobstant l'intérêt que les parties en cause pourraient représenter, c'est la nationalité du plaideur en la qualité qu'il agit qui devrait fixer la compétence.

L'Article 9 pourrait dès lors être formulé comme suit :—

"Article 9. Ces Tribunaux connaîtront seuls des contestations en matière civile et commerciale entre indigènes et étrangers et entre étrangers de nationalité différente en dehors du statut personnel.

"Leur compétence sera déterminée uniquement par la nationalité des parties réellement en cause, sans avoir égard aux intérêts mixtes qui pourraient être indirectement engagés.

"Ils connaîtront seulement des actions réelles immobilières entre indigènes et étrangers, ou entre étrangers de même nationalité ou de nationalité différente."

Je me plais à espérer, M. , que le Gouvernement de , en portant son examen sur ces deux propositions, voudra bien se convaincre que le Gouvernement de Son Altesse n'a d'autres préoccupations que celles d'améliorer le fonctionnement des Tribunaux Mixtes, et je me permets de compter sur vos bons offices pour obtenir dans un bref délai l'adhésion de votre Gouvernement.

Veuillez, &c.

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FRANCE.

[Home Office.] *No. 12A.*

[February 8, 1897.]

Case for the Opinion of the Attorney- and Solicitor-General.

Trial of E. Arton for an offence other than those for which he was extradited.

L.O.R. 1896 (Conf. 6918), p. 51.

THE Law Officers of the Crown are requested to further advise the Secretary of State with reference to the case of Émile Arton whom the French Government propose to try for an offence other than those for which he was surrendered to France by Her Majesty's Government.

The opinion of the Law Officers on the case submitted to them in November 1896 (sent herewith for reference) having been communicated to the Foreign Office with an expression of the Secretary of State's concurrence with the reply which the Law Officers suggested to the French Minister's note, a note was addressed by the Marquess of Salisbury to M. Geoffray on the 1st December, 1896, in the following terms:—

"Sir, "*Foreign Office, December* 1, 1896.

"Her Majesty's Government have attentively considered your note of the 10th instant respecting the case of Émile Arton, who was surrendered in extradition to France, upon certain specific charges, in February last.

"It appears from that note that Arton desires voluntarily to renounce the benefit of Article IV of the Extradition Treaty of 1876 between Great Britain and France, whereby it is provided that a person surrendered by one country 'shall not be tried for any crime or offence committed in the other country before the extradition, other than the crime for which his surrender has been granted;' and that he claims the right to be tried on all the heads of accusation brought against him.

"In these circumstances you state that the obstacle presented by the terms of the Treaty is 'suppressed by the act of the person concerned,' and that the French Minister of Justice considers that Arton should be again arraigned on the charges which led to his condemnation, 'by default,' in 1893.

"You accordingly announce that Arton must appear before the Tribunal of the Seine in order to purge himself of his default, and to be tried afresh for the crime contemplated by the provisions of Article 177 of the French Penal Code.

"I have the honour to state to you, in reply, that, in the opinion of Her Majesty's Government, the trial of Arton on the charge in question cannot properly, having regard to the terms of the Treaty, take place without the consent, not merely of Arton himself, but of both of the High Contracting Parties thereto having been previously obtained; and that, accordingly, if such consent is desired, formal application should be made for it by the Government of the French Republic to that of Her Majesty.

"I have, &c.
(Signed) "SALISBURY.

"M. Geoffray,
"&c. &c. &c."

To this note the French Minister replied as follows:—

"M. le Marquis, "*Londres, le* 24 *Décembre*, 1896.

"Je n'ai pas manqué de communiquer à mon Gouvernement la lettre du 1er de ce mois par laquelle votre Seigneurie m'informant que, dans l'opinion du Gouvernement de la Reine, pour que le nommé Arton pût être jugé sur un chef d'accusation pour lequel son extradition n'a pas été expressément accordée, les termes du Traité d'Extradition Franco-Britannique exigent non seulement le consentement de l'inculpé mais encore le consentement des deux Gouvernements qui ont conclu la Convention.

"M. Hanotaux, après avoir pris connaissance de cette communication, en a référé à son collègue le Garde des Sceaux qui, après avoir soumis la question à un nouvel examen, n'a pas cru pouvoir se ranger à l'opinion exprimée par le Gouvernement de la Reine.

Le Gouvernement Français estime, en effet, que l'Article IV de la Convention du 4 Août, 1876, sur lequel est fondée l'argumentation contenue dans la lettre que vous avez bien voulu m'adresser, n'a pas la portée qui lui est attribuée par les autorités Britanniques.

"Cette disposition n'a d'autre objet que de consacrer un principe universellement admis en droit international, et d'après lequel le pouvoir judiciaire a le devoir strict de se conformer aux conditions de l'Acte d'Extradition en vertu duquel un inculpé lui est déféré.

"Mais elle laisse en dehors de ces provisions le cas où l'extradé, postérieurement à la remise, consent et demande formellement à être jugé sur un chef d'inculpation pour lequel son extradition n'a pas été originairement autorisée.

"Or, il importe précisément, dans l'espèce, de déterminer la valeur de ce consentement et la procédure à suivre, s'il y a lieu, pour lui faire produire son plein et entier effet.

"On chercherait vainement dans les dispositions du Traité de 1876 un texte qui permit d'éclairer utilement ce point.

"La Convention est muette à cet égard, et il n'apparaît pas qu'au cours des négociations qui ont précédé la conclusion du Traité, la question, qui se présente aujourd'hui, ait fait l'objet d'un examen entre les deux Gouvernements.

"Dans cette situation, il convient manifestement de se référer aux principes du droit international sur la matière.

"Il est généralement reconnu que l'extradé peut, s'il le demande, être poursuivi et jugé sur tous les chefs d'inculpation relevées contre lui, qu'ils soient ou non compris dans la nomenclature des infractions prévues par la Convention.

"Cette solution qui, ainsi que l'établit M. Billot (Traité d'Extradition, p. 363) ne porte aucune atteinte aux prérogatives des Puissances Contractantes, se justifie par le respect dû aux droits de l'extradé. Celui-ci, en passant la frontière, n'a perdu aucun des droits que les lois assurent aux accusés; il est donc libre d'apprécier s'il est de son intérêt de se prévaloir des garanties que peut lui offrir le Traité d'Extradition ou de les répudier pour invoquer le droit primordial de se défendre contre toute accusation portée contre lui. Admettre une solution contraire serait non seulement méconnaître les intérêts de l'accusé, mais encore lui faire une condition pire que celle qu'il aurait eue s'il s'était livré spontanément aux autorités de son pays.

"Cette théorie, consacrée en France par un arrêt de la Cour de Cassation du 24 Juin, 1847, et par plusieurs autres décisions de jurisprudence, n'a cessé, depuis lors, d'être appliquée dans tous nos rapports avec les Puissances étrangères et n'a motivé, de la part de ces dernières, aucune objection.

"De l'exposé qui précède, il ressort qu'aux termes de la jurisprudenc internationale actuelle la renonciation volontaire de l'extradé aux garanties du Traité d'Extradition a pour effet de permettre de le juger sur tous les chefs relevés à sa charge. Le Gouvernement qui a obtenu la remise n'a dans ce cas d'autre obligation que de fournir au Gouvernement requis la preuve de cette renonciation.

"C'est pour satisfaire à cette condition que j'ai été invité par mon Gouvernement à faire parvenir au Cabinet Britannique la lettre dans laquelle Arton déclare avoir 'résolu de renoncer volontairement au bénéfice du Traité d'Extradition.'

"J'ajouterai que cet extradé, interrogé le 3 de ce mois par M. le Président de la Cour d'Assizes de la Seine, a déclaré persister dans sa demande, ainsi qu'il résulte des termes d'un procès-verbal que m'a fait parvenir M. le Ministre des Affaires Étrangères et que je m'empresse de vous envoyer ci-joint.

"Dans ces conditions M. le Garde des Sceaux a pensé qu'il ne lui était pas possible de revenir sur la décision qu'il a prise antérieurement de donner satisfaction à la résolution d'Arton en le faisant juger à nouveau du chef de corruption de fonctionnaires publics.

"La thèse soutenue dans l'espèce par le Gouvernement Français a, d'ailleurs, été adoptée par les Gouvernements étrangers dans des cas indentiques. Ces Gouvernements ont toujours admis que la renonciation d'un extradé au bénéfice du Traité d'Extradition équivalent à un retour volontaire de celui-ci en France.

"Le Gouvernement de la République se plaît, dès lors, à espérer que votre Seigneurie, après examen des considérations que j'ai l'honneur de lui exposer, voudra bien reconnaître que la notification que j'ai été chargé de lui faire le 10 Novembre dernier, constituait une démarche à laquelle n'obligeaient pas les termes de la Conven-

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tion de 1876 et qu'elle était simplement dictée par une pensée de courtoisie à l'endroit des Ministres de la Reine.

" Veuillez, &c.
(Signé) " GEOFFRAY.

" Sa Seigneurie le Marquis de Salisbury,
" &c. &c. &c."

Copy of M. Geoffray's note having been communicated to the Home Office, it was referred by Sir Matthew Ridley to the Chief Magistrate, who has reported on the subject as follows :—

" Sir, " *Police Court, Bow Street, January* 7, 1897.

" With reference to the despatch of the French Ambassador to the Marquess of Salisbury, dated the 24th December, 1896, on the subject of the extradition of Arton, I beg to observe that the conclusion to be arrived at depends entirely on the proper interpretation of Article IV of the Treaty of 1876. The contention of the French Government is that Article IV is entirely dumb on the point in question, and it wishes the Article to be read as if the words " without his consent " had been inserted after the words " shall not be tried." This would be a material and important addition to the Article and ought not to be allowed, unless it is shown conclusively that it must have been intended by both the High Contracting Parties.

" In order to consider whether it was so intended I would call attention to the state of the law in England. In Sub-section 2 of Section 3 of " The Extradition Act, 1870," it is provided that a fugitive criminal shall not be surrendered to a foreign State unless provision is made by ' the law of that State or by arrangement that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign State for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is granted,' and therefore no fugitive criminal can be extradited unless the Treaty provides for the carrying into effect of this Subsection; for it is clear that the law of France did not make such a provision, and Article IV of the Treaty was framed to make by arrangement what was required by the law of England in order to surrender a fugitive criminal. I think it perfectly clear by our law that it would be impossible to construe Sub-section 2, Section 3, as if it contained the words ' without his consent ' after the words ' shall not.' Under these circumstances I think it is evident that, on the English side at any rate, the framer of Article IV never intended that it should be construed in the manner contended for by the French Government.

" It is said that the Treaty is ' dumb ' on the point, but Article IV is concise and free from any ambiguity both in French and English, and excludes the power of trying for all crimes whatsoever, committed prior to his surrender, for which the accused has not been extradited.

" I am not able to say whether the question was discussed at the time of negotiating the Treaty. I was not then Chief Magistrate, and there are no papers here which throw any light upon it. With regard to the contention that Article IV, as construed by the British Government, infringes the rights of the extradited person, it seems to me that the whole Law of Extradition infringes what were understood to be the original rights of individuals, and the Article, as drawn, is to a great extent framed for the protection and benefit of the extradited person, and it is in extremely few cases that a desire such as M. Arton evinces has been, or is likely to be, expressed by the person extradited.

I think it is unnecessary to consider the principles of international law on the subject, unless it could throw light on the proper construction of the Treaty; but I would refer to some of the dicta of the American Judge, Mr. Justice Miller, reported in ' Moore on Extradition (Limitations as to Trial),' vol. i, pp. 233–238. It is worthy of consideration as showing that the matter has been under discussion, that a Royal Commission in 1877 sitting to consider the subject of the amendment of the extradition laws, assumed that the law was the same as is now contended for by Her Majesty's Government, and came to the conclusion that they should recommend that accused persons might be tried for offences other than those for which they had been surrendered, political and local offences excepted. This opinion, however, was not acted upon. The matter has, however, been considered under two heads, first, whether a man could be tried by his own wish for extradition crimes other than those for which he was surrendered; and, second, whether he could be tried for any crime whatever by his own desire; but there has been no uniform international rule established en the subject. I would here point out that Arton was not extradited from this country for the crime for which he now wishes to be tried, not only because there was no sufficient evidence to establish the charge, but also because the offence (' corruption de fonctionnaires ') is not an extradition crime.

" I think I ought also to draw attention to the fact that there was for some time an idea, which was acted upon, that if a man ordered for extradition desired to give up his right not to be surrendered for fifteen days after his committal, he should be allowed to do so; but this was found in one case to have led to a condition of things which created a possibility of the accused escaping from justice, and it has never been allowed since. This shows the great importance of keeping strictly to the letter of the Treaty, which I submit should never be departed from.

" I am, &c.
(Signed) " JOHN BRIDGE.

" The Under-Secretary of State,
" Home Office."

The Secretary of State thinks it desirable to bring under the consideration of the Law Officers, with the Chief Magistrate's letter, a case which was laid before the Law Officers in 1882 (and which has come under consideration since the previous reference to them with respect to Arton) with reference to one Charlot who was extradited to Belgium.

Case and opinion of 1882 herewith.

It will be seen that the view of the French Government is, stated briefly, as follows :—

The object of Article IV of the Treaty of 1876 (which provides that a person surrendered by one country " shall not be tried for any crime or offence committed in the other country before the extradition other than the crime for which his surrender has been granted "), is to confirm a principle universally recognized in international law; but the Article makes no provison for the case where the person extradited after his surrender consents and formally applies to be tried on a charge for which his surrender has not been authorized.

The Treaty of 1876 being silent with respect to such a case, and there being nothing to show that it was considered in the course of the negotiations which preceded the conclusion of that Treaty, the French Government observe that the obvious course is to refer for guidance to the principles of international law upon this matter. They then proceed to argue that, according to those principles, Arton is entitled to be (again) tried for the offence of corrupting public functionaries, which was not included among the offences for which his extradition was granted (not so included, it may be observed, because, among other reasons, that offence is not one of those specified in the Treaty of 1876); and further, that the only obligation resting upon the French Government is to furnish Her Majesty's Government with the proof of Arton's voluntary renunciation of the safeguard assured to him by the IVth Article of the Treaty.

Passing by the apparent inconsistency between this last observation and that contained in the last paragraph of the French Minister's note, viz., that the notification contained in his note of the 10th November was an act of courtesy which was not required by the Treaty, it does not appear that the question arising in this case is one to be settled by reference to the theoretical principles of international law. If it could be so dealt with, it might be contended that there is no such uniformity of opinion among the authorities on this subject as the French Government appear to hold; though the arguments set forth in the French Minister's note would no doubt deserve great consideration if an Extradition Treaty were now in course of negotiation, and the point to be settled were what provisions should be embodied in it.

It is the case, as the French Government observe, that in the negotiations which led to the present Treaty no reference appears to have been made to such a case as the present; but in 1878, the year in which the Treaty came into operation, a Bill was introduced into the French Senate for the purpose of putting the practice of extradition upon a legal basis, and, to quote the words of the Minister who introduced it, of making known to foreign Governments the principles which guided the French Government in a matter previously decided by the Executive Power. The text of this Bill, and the speech of the Minister of Justice in introducing it, appear in the "Journal Officiel" of the 16th May, 1878; the Report of the Commission

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appointed to examine the Bill appears in the "Journal Officiel" of the 17th January, 1879; a fresh draft of the Bill appears in the issue of the 20th March, 1879; and the "Journal Officiel" of the 4th and 5th April, 1879, contains a report of the sittings of the Senate when the measure with certain amendments was adopted.

The following is a quotation from the "Journal Officiel" of the 5th April:—

"Suite de la deuxième délibération sur le Projet de Loi relatif à l'extradition des malfaiteurs.

"*M. le Président.*—L'ordre du jour appelle la suite de la deuxième délibération sur le Projet de Loi relatif à l'extradition des malfaiteurs.

"Le Sénat se souvient que la discussion s'est arrêtée hier à l'Article IV.

"La parole est à M. le Rapporteur.

"*M. Bertauld* (Rapporteur).—Messieurs, au nom de la Commission, je vous demande la modification de l'Article IV.

"Cet Article décide que l'extradé ne peut être jugé que pour les faits qui ont motivé l'extradition; toutefois il apporte une exception pour le cas d'nn consentement spécial donné dans les termes du Traité par le Gouvernement requis.

"La Commission demande de substituer aux mots 'dans les termes du Traité' ceux-ci, 'dans les conditions de la loi.'

"Voici la cause pour laquelle nous désirons ce changement.

"Les Traités peuvent toujours être modifiés par les Parties Contractantes. Par conséquent, tout consentement de la Puissance requise est valable en tant qu'il est conforme aux conditions de la loi. La Commission est unanime pour réclamer la modification dont je crois vous avoir montré l'intérêt.

"Le premier paragraphe de l'Article IV se trouverait donc ainsi rédigé:—

"'L'extradition ne sera demandée ou accordée qu'à la condition que l'individu extradé ne sera ni poursuivi, ni puni pour une infraction autre que celle ayant motivé l'extradition *à moins d'un consentement spécial dans les conditions de la loi par le Gouvernement requis.*'

"*M. le Président.*—Il n'y a pas d'observations?

"Je mets aux voix le paragraphe de l'Article IV avec la modification proposée par la Commission.

"(Le paragraphe ainsi modifié est adopté.)

"*M. le Président.*—Je donne lecture du second paragraphe de l'Article IV:—

"'Sera considéré comme soumis, sans réserve, à l'application des lois de la nation requérante à raison d'un fait quelconque antérieur à l'extradition et différent de l'infraction qui a motivé cette mesure, l'individu livré qui aura eu pendant un mois depuis son élargissement définitif la faculté de quitter le territoire de cette nation.'

"Le paragraphe est mis aux voix et adopté."

The measure did not pass into law, but it appears to be an obvious inference from the tenor of the IVth Article, whether as introduced or adopted in the Senate, that if such an exceptional case as the present had been contemplated when the Treaty of 1876 was arranged, the consent of the surrendering Government would have been made a preliminary condition to the trial of a person extradited for an offence other than that for which he had been surrendered, unless, indeed, he had been allowed before such trial an opportunity of quitting the country to which he had been surrendered.

The Law Officers are requested to advise the Secretary of State whether, in view of the considerations now submitted to them, they see reason to modify in any respect the opinion they gave on the 25th November, 1896.

Opinion.

We see no reason to modify in any respect our previous opinion.

By Article IV of the Convention the French Government agreed with the British Government that a person extradited for one crime should not be tried for another.

The Article does not say that he shall not be so tried "except with his consent," but that he shall not be so tried.

Her Majesty's Government can waive this stipulation if they are satisfied that the accused desires it. If the accused does not desire it (as in the case before the Law Officers in 1882) they cannot properly waive it, as they are morally bound to enforce it for his benefit.

Without the consent of Her Majesty's Government, the French Government cannot try Arton on another charge without a breach of the Convention. It seems to us a quite impossible contention that the consent of a prisoner in custody is to authorize such a proceeding. Any such practice is obviously capable of the gravest abuse.

The French Government obtained the surrender of Arton on the promise made, by the IVth Article of the Convention, to the British Government, that he should not be tried for any other offence. It is for the British Government to determine whether they will waive this stipulation, and, with a view to this, it is the British Government—not the French—that must be satisfied that Arton consents.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Law Officers' Department,
February 8, 1897.

No. 13.

[March 22, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 4, 1897.

Gentlemen,

British missionary property in Madagascar.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers enumerated in the accompanying list, in connection with certain questions which have arisen in regard to the tenure of land and houses by British Missionary Societies in Madagascar since the annexation of the island by France.

Paper A relates the circumstances in which a claim was put forward in the name of the Queen of Madagascar, to resume possession of a plot of land granted by her in 1889 to the London Missionary Society, and Friends' Foreign Missions Association.

The grant of the 4th February, 1889 (Inclosure 2 in Paper A) states that the land is to be used for no other than hospital purposes, that the buildings and land cannot be claimed for or indemnified under any circumstances, for they belong to the Queen of Madagascar, and that should the Societies cease to carry on hospital work on that land, whatever has been done by them shall remain the property of the Queen of Madagascar, and the Queen shall dispose of the buildings as she thinks fit. In November 1896 a letter reached the hospital authorities from the Queen which, after referring to the grant, ordered them to vacate "her land and buildings" in the shortest possible time.

Paper B (Inclosure 2) shows that on learning the contention advanced in the Queen's name, the British Vice-Consul at Antananarivo had represented to the French Resident-General that it was clear from the terms of the grant that it was only meant to bestow the rights of resumption upon the Queen if and when the grantees should cease to use the land for the purpose for which it was originally granted to them, and Paper C contains instructions in a similar sense to Her Majesty's Ambassador at Paris. No reply has been received to the representations made by the latter to the Government of the French Republic, and the Resident-General merely informed the Vice-Consul that his arguments could be urged by the interested parties at the proper time before the Court of competent jurisdiction.

On the 15th November (Paper B, Inclosure 5) the Resident-General issued an "Arrêté," which, after referring to various French laws, and amongst others to the French law declaring Madagascar to be a French Colony, stated that there was no sufficient hospital accommodation for the army of occupation, and ordered the hospital and its contents to be placed, within ten days, at the disposal of the military authorities. A Committee was appointed at the same time to settle the compensation due.

Paper D contains correspondence between the French Mayor of Antananarivo and the English Societies on the subject of the compensation awarded by the Committee, and a letter from the British Vice-Consul to the Resident-General on the same matter. The Societies declined to accept the amount awarded, on the ground of its total inadequacy, whereupon a summons was issued for them to appear before the Tribunal of 1st Instance of Antananarivo, in order that Judgments might be given against them for the sums tendered. The case was heard before the Tribunal, and

Judgment delivered on the 4th January, confirming the award, and condemning the Medical Mission in costs.

In considering the case presented in the foregoing summary, it is important to bear in mind the attitude assumed by Her Majesty's Government in regard to the general question of the effect on British Treaty rights in Madagascar of the French annexation of the island; and the Paper marked E will put you in possession of the position which has been reached in the negotiations with France.

I have to request that you will take the papers now submitted to you into your consideration, and favour Lord Salisbury with your opinion as to whether the facts are such as to justify Her Majesty's Government in making a representation to the French Government on behalf of the parties interested, and, if so, on what special grounds such a representation can most advantageously and properly be based.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Mr. Sauzier	(No. 73)	
(B.)	Ditto	(No. 75)	
(C.)	To Sir E. Monson	(No. 296)	December 30, 1896.
(D.)	Mr. Sauzier	(No. 7)	1897.
(E.)	To Mr. Howard	(No. 207. Africa)	August 4, 1896.
(F.)	Society for the Propagation of the Gospel		January 8, 1897
(G.)	London Missionary Society		January 14, ,,
(H.)	Ditto		January 16, ,,
(I.)	Friends' Foreign Missions Association		January 27, ,,
(J.)	Society for the Propagation of the Gospel		February 6, ,,
(K.)	Sir E. Monson	(No. 52)	February 18, ,,
(L.)	Mr. Sauzier	(No. 13)	January 30, ,,

Report.

We feel no doubt that on the true construction of the instrument the use of the land on which the hospital is built was granted by the Queen to the missionaries so long as it should be used for hospital purposes.

We cannot see any justification for the resumption, nominally by the Queen, of the land and buildings. It appears to us to be a mere act of spoliation.

It is difficult to suppose that any redress can be obtained in the Courts of Madagascar for what would probably be supported there as an act of the Royal prerogative.

We think that the matter is one for diplomatic representation. It should be based on the terms of the grant, and the inadequacy of the compensation offered.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 22, 1897.

No. 14.

[April 12, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, March 29, 1897.

Mining concessions granted by Malagasy Government to Harrison, Smith, and Co.

I HAVE the honour to submit herewith the papers marked in the margin, with reference to the attitude now being adopted by the French Government towards Messrs. Harrison, Smith, and Co., a British firm who have acquired certain mining rights in Madagascar, under concessions made to them by the Malagasy Government before the island came under French control.

The circumstances of the case appear briefly to be as follows:—

In November 1889 Messrs. Harrison, Smith, and Co. entered into a preliminary contract with the Malagasy Government, which resulted in the grant to them by that Government on the 18th May, 1893, of a mining concession (Paper A), in which the late Prime Minister of the island had an interest. By the terms of this document, Messrs. Harrison, Smith, and Co. were allowed to export the gold produced from their mines free of duty, and a special confirmatory authority to that effect was given them on the 8th September last, by M. Laroche, then Resident-General of France in Madagascar. On General Gallieni succeeding to the office of Resident-General, however, he applied, to the detriment of Messrs. Harrison, Smith, and Co., a Decree, which only came into force on tho 20th November, 1896, and which forbids the exportation of gold from a concession which has not been properly regularized. Messrs. Harrison, Smith, and Co.'s concessions have not yet been regularized, but until such time as the Governments of Great Britain and France shall have come to an arrangement with regard to the general question of foreign concessions in the island, that firm claim exemption from the operation of the Decree, on the ground that the special permission given to them by M. Laroche, the then French Resident-General, on the 8th September, 1896, was antecedent to the promulgation of the Decree which came into force only on the 20th November last.

I have the honour to request that you will take the papers sent herewith into your consideration, and will favour Lord Salisbury with your opinion as to whether his Lordship would be justified in addressing a formal representation to the French Government in regard to Messrs. Harrison, Smith, and Co.'s case, and, if so, on what grounds such a representation could, in your judgment, most advantageously and properly be based.

Lord Salisbury will at the same time be glad to receive any observations of a more general nature which you may think it desirable to offer on the papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Concessions in Harrison and Smith		December 11, 1896.
	Harrison, Smith, and Co.		October 3, ,,
	Ditto		October 14, ,,
	Sir E. Monson	(No. 221)	, ,,
	Harrison and Smith		February 21, 1897.
	Ditto		February 25, ,,
(B.)	Mr. Sauzier	(No. 10.)	, ,,
	Harrison and Smith		March 17, ,,
	Ditto		March 24, ,,

Report.

We think that Her Majesty's Government would be justified in addressing a formal representation to the French Government in regards to Messrs. Harrison, Smith, and Co.'s case.

The ore was extracted by them on the faith of the assurance given by M. Laroche that it might be exported.

It is not just that, in virtue of a subsequent "Arrêté," the export of the gold so extracted should be forbidden.

We think that the French Government may be fairly asked to give effect to the arrangement made by M. Laroche pending the regularization of the concession.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 12, 1897.

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No. 15.

[June 2, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 21, 1897.

Gentlemen,

Smith and Co.'s Banking Monopoly in Monaco.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, with regard to the treatment received at the hands of the French and Monégasque Courts, by Messrs. Smith and Co., a firm of British bankers carrying on business in Monaco, who are the grantees of a Concession for exclusive banking in that Principality.

By a decree of His Serene Highness the Prince of Monaco, dated the 15th September, 1887, this firm was granted for a period of twelve years, the monopoly of all banking operations in the Principality, under conditions which were laid down in a "Cahier des Charges."

(Paper A). This Concession was renewed and confirmed on the 4th March, 1891.

The "Cahier des Charges" declared that the exclusive rights thus granted included the collection of bills, and every operation which it is possible legitimately to include under the name of banking, in return for which, Messrs. Smith and Co., undertook to pay an annual royalty of 12,000 fr., and to submit to a permanent surveillance on the part of a Monégasque official.

Messrs. Smith found, however, in spite of this Decree that other banks, established on the Monaco frontier, were carrying on, in the Principality, every kind of banking business which did not actually necessitate the occupation of a building, and they eventually initiated proceedings against one of the offending banks, the "Banque Populaire de Menton," before the Tribunal de Commerce of that town in June 1892. This Court gave Judgment on the 12th July, 1892, in favour of the "Banque Populaire," against which Messrs. Smith appealed to the Court of Aix, which latter Court delivered Judgment on the 9th December, 1892, declaring that, although Messrs. Smith and Co., had, by the terms of the Concession, an exclusive privilege of banking in the Principality and the "Banque Populaire de Menton" had infringed that privilege, yet that freedom of commerce, having by the French Law of the 2nd March, 1791, become one of the fundamental privileges of the French Republic, a French Court could not uphold a monopoly. They, therefore, confirmed the Judgment of the Court of Mentone.

Messrs. Smith and Co., finding, however, that their case yet admitted of reference to the "Cour de Cassation" at Paris, took it to that ultimate Court, on the plea that the Law of 1791, even if prohibiting monopolies in France, was not applicable to a foreign country, namely, Monaco. The "Cour de Cassation," however, rejected their appeal, confirming the Judgment of the Court of Aix on the 29th May, 1894.

Encouraged, however, by the fact that the reason given for the adverse decisions of the French Courts was a purely juridical one and applicable only in France, and also by the opinions of Professors Lyon-Caen and Despagnet (Paper D), Mr. Unwin, who succeeded to Messrs. Smith's Concession, brought an action against the Crédit Lyonnais Bank in the Court of Monaco on the 8th June, 1895, once more decided against Messrs. Smith on the ground that, in their opinion, the privilege acquired by Messrs. Smith consisted only of the right of opening a bank in the Principality, but did not give them the exclusive right of carrying on banking operations therein.

The Judgment was immediately referred to the Court of Revision (the only Court of Appeal in the Principality).

This Court has apparently only consultative powers; it reports to the Prince of Monaco, who himself pronounces the confirmation, or, in the alternative, what is called the reformation, of His Highness' own Court.

In an "Ordonnance," dated Paris, the 1st September, 1896, the Prince rejected Mr. Unwin's appeal (Paper E), whereupon, having exhausted, as they contended, every legal remedy, Messrs. Smith laid the matter before Lord Salisbury (Paper F).

In view of the fact that questions of French and Monégasque Law were so largely involved, his Lordship requested Her Majesty's Ambassador at Paris to obtain the advice of an expert in those branches of law, and the papers were accordingly submitted by Sir E. Monson to Mᵉ Clunet, who advises Her Majesty's Embassy at Paris on such questions. In the opinion of Mᵉ Clunet (see Paper G), Mr. Unwin has no legal means left him to obtain redress; and he (Mᵉ Clunet) adds that the only remedy remaining would appear to be through diplomatic intervention, with a view to obtaining for Messrs. Smith some compensation, such as a prolongation of the Concession.

I have the honour to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion whether a representation on behalf of the concessionnaires can now properly be made through the diplomatic channel, and, if so, on what special grounds such representations might most suitably be based.

His Lordship would also be glad to be favoured with any general observations you may have to offer on the matter.

I have, &c.
(Signed) GEORGE N. CURZON.

List of Papers.

(A.) "Cahier des Charges de la Banque" (Smith and Co.).
(B.) Report on Trade, &c., of Nice, 1894–95.
(C.) Mémoire to His Serene Highness the Prince of Monaco.
(D.) Observations de MM. Lyon-Caen and Despagnet.
(E.) Sir J. Harris' despatch No. 4, Commercial, 1896.
(F.) Letter from Messrs. Smith and Co. to Sir J. C. Harris.
(G.) Sir E. Monson's despatch No. 155, Commercial, 1897.

Report.

If this case depended solely on the question whether the view as to the scope of the Concession taken by the French Court of First Instance and the Courts of Monaco, or that taken by the Court of Aix and the "Cour de Cassation," were correct, we should not advise diplomatic interference.

There is a good deal to be said for the former of these two views, and the matter has been decided in the Courts of Monaco by which the concessionnaire agreed to be bound.

It cannot be said that the decision is corrupt or outrageously wrong. But the matter does not rest there.

In the Mémoire of Messrs. Smith and Co., it is stated (pp. 13–14) that the Government of Monaco authorized the construction of a staircase to give access from the Casino to the Bank of the Crédit Lyonnais, just over the frontier. The Government of Monaco might not be able to prevent the erection of that Bank as it is on French soil.

But on the narrowest reading of the Concession, the Government of Monaco, even if they observed their obligations to the letter certainly did not observe them in spirit and substance when they gave facilities of this kind to attract custom to a rival bank set up just beyond the border and in the immediate vicinity of the Casino.

We think that a representation may be made to the Government of Monaco, as to the treatment which the concessionnaires have received. In that representation the views of the Superior French Courts as to the scope of the Concession may properly be cited.

It may further be pointed out that the Government of Monaco have, in the manner described in the Memorial, given facilities for the competition with the concessionnaires of the Crédit Lyonnais, and they may be fairly asked to make them some suitable allowance or compensation.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 2, 1897.

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GENERAL.

No. 16.

[August 6, 1897.]

Foreign Office to Law Officers of the Crown.

Gentlemen,

Foreign Office, July 29, 1897.

Removal of British subjects to Lunatic Asylums abroad.

I AM directed by the Marquess of Salisbury to transmit to you the correspondence and papers noted in the accompanying list, relating to the detention of a number of British subjects in a French lunatic asylum.

Lord Salisbury's attention was first called to this matter by the reports from Mr. Lethbridge, British Vice-Consul at Caen, forwarded by Her Majesty's Consul-General at Havre (see the Papers marked A, D, and E, in the inclosed list). These reports dealt mainly with the cases of two ladies who had apparently been taken from this country to Caen for the purpose of being confined in the Bon Sauveur Asylum at that place. Such information as Mr. Vice-Consul Lethbridge was able to obtain by application to the authorities of the asylum, and from personal interviews with the inmates, made it appear very doubtful whether the requirements both of French and of English law had been properly complied with in these cases.

Lord Salisbury therefore decided to communicate with the Commissioners in Lunacy in regard to the matter, and after some correspondence (see Papers marked F and G), it was arranged, with the concurrence of the French authorities, that two of the Commissioners should proceed in person to the asylum at Caen, for the purpose of examining all British subjects there detained. Before their arrival at Caen, however, one of the ladies, whose case had been specially reported upon by the Vice-Consul, and who is described in the correspondence as Sister Smith, had been discharged from the asylum, and sent to the Mill Hill Convent at Hendon, under circumstances which will be found explained in Consul-General Hertslet's despatches of the 18th, 19th, and 21st May (Papers H, I, and K).

As a result of their investigation, the two Visiting Commissioners were satisfied (see letter marked L) that all the British subjects then detained in the Bon Sauveur Asylum were of unsound mind, and were proper cases for detention, with the exception of Mrs. Crosby, who, although insane, might, in their opinion, if properly looked after, be treated out of an asylum. The Commissioners reported that "Although the Medical certificates upon which solely the patients were admitted into the asylum were much less explicit than would have been the case with such certificates under the English law, the arrangements under the French law which regulated their subsequent detention and discharge seemed to be sufficient to safeguard the liberty of the subject." On the other hand, they found that both Mrs. Crosby and Sister Smith —the only persons, apparently, from whom it was possible to gather any information on this point—were undoubtedly induced to leave England by misrepresentation. This aspect of the case appeared to Lord Salisbury sufficiently serious to call for some further investigation, and the Commissioners in Lunacy were accordingly consulted as to what further action, if any, could usefully be taken in the matter.

In reply to this inquiry, Lord Salisbury has received from the Commissioners a letter (Paper N), in which they suggest that before proceeding any further, it would be desirable to consider generally the question of the deportation from this country of British subjects who are of unsound mind, in order to determine exactly how far, if at all, such deportation is under any circumstances legal. The questions arising in this connection are, according to the Commissioners, the following, namely:—

1. Is it an offence against the English common law forcibly to remove to an asylum abroad, with a view to certification there, a person of unsound mind, who has not been certified as a lunatic in this country?

2. Is it an offence against the English common law forcibly to remove from this country a person of unsound mind, who has been so certified?

3. Is it an offence against the English common law to induce, by misrepresentation, a person of unsound mind, who is not under certificates, to leave this country with a view to place such person in an asylum abroad?

4. Is it an offence against the English common law to induce, by misrepresenta-

GENERAL.

[Director of Public Prosecutions.]

No. 15*.

[June 24, 1897.]

Case for the Opinion of the Law Officers of the Crown.

Foreign Marriage Act, 1892.

(55 & 56 Vict., cap. 23.)

Prosecution for false declaration at a Consular marriage.

THE following is a copy of a letter addressed to the Director of Public Prosecutions by the Foreign Office:—

"Sir,

"*Foreign Office, May* 13, 1897.

"I am directed by the Secretary of State for Foreign Affairs to transmit to you the correspondence noted in the accompanying list relative to a marriage solemnized at Her Majesty's Consulate General at Antwerp on the 23rd February last, between Charles Verner Wallace Russell and Mena Dorothea Dyas, both British subjects.

"The attention of the Secretary of State was first called to this case by the Registrar-General for Ireland in his letter of the 15th March, transmitting papers to show that at the time of the marriage ceremony at the English church at Antwerp, which is reported to have taken place on the 16th February, subsequently to the civil ceremony at the Consulate General under 'The Foreign Marriage Act, 1892,' Mr. Russell was a minor, and stating that the latter had previously attempted to obtain a marriage licence at Dublin, when, owing to his inability to produce the consent of his father to the intended marriage, his application was refused.

"The Secretary of State called upon Consul-General Perry for a Report on the matter, which was duly furnished in the despatch dated the 27th March. It appeared from this Report that the formal provisions of 'The Foreign Marriage Act, 1892,' and of 'The Foreign Marriages Order in Council, 1892,' were properly complied with, both parties (amongst other things) making a declaration that they were not under the age of 21 years.

"In the light of the information given in the letter from the Registrar-General for Ireland of the 14th ultimo, there seems little, if any, room for doubt that Mr. Russell knowingly and wilfully made a false declaration as to his age, thereby bringing himself within the scope of section 15 of the Act of 1892, in which it is provided that:—

"'If a person (*a*) knowingly and wilfully makes a false oath or signs a false notice under this Act . . . . . . such person shall suffer the penalties of perjury.'

"The case appears to the Secretary of State to be one of considerable aggravation, in which it may be desirable in the public interest to institute proceedings against Mr. Russell if an opportunity presents itself of doing so with a reasonable chance of success.

"I am therefore to request that you will take this correspondence into your consideration, and take such action in the case as you may think advisable.

"I am, &c.

(Signed) "F. H. VILLIERS.

"The Director of Public Prosecutions."

The documents forwarded with that letter are sent herewith, and disclose an offence against section 15 of the above Act by Charles V. W. Russell.

The case is of its kind rather a bad one, and the Director would probably have felt it his duty to institute proceedings, but on looking at the words of section 15, giving the English jurisdiction, it appeared to him doubtful whether process could be

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issued in England for the arrest of a person residing—as is the case here—in Ireland or residing in Scotland, so that the accused might be arrested on such warrant and brought from a place where he could not, to a place in which he could, be tried.

Having regard to this, the Director of Public Prosecutions conferred with Sir John Bridge on the subject, who wrote as follows:—

"My dear Cuffe, "*Police Court, Bow Street, May* 20, 1897.

"I think that no warrant for the apprehension of a man living at Dublin ought to be granted where the information shows only a false oath under 'The Foreign Marriage Act, 1892,' taken abroad, and does not show that the alleged offender is in the county where the warrant is applied for. Warrants can only be granted where the offence is committed within the jurisdiction of the Magistrate who grants it, or where the offender is within his jurisdiction (11 & 12 Vict., cap. 42, sec. 1). The words of section 15 of 'The Foreign Marriage Act, 1892,' do not authorize any such warrant, and if a warrant were issued an action would, in my opinion, lie against the Magistrate issuing it, and no prudent Magistrate would render himself liable to such an action unless it were absolutely necessary.

"Believe me, &c.
(Signed) "J. BRIDGE."

And the following letter, addressed to Mr. Davidson of the Foreign Office, states the views of the Director of Public Prosecutions, and the result of his communication with the Chief Magistrate:—

"Re *C. V. W. Russell.—Foreign Marriage Act*, 1892.

"Dear Davidson, "*Treasury, May* 21, 1897.

"With reference to the Foreign Office letter to me of the 13th May, asking me to take the above case into consideration, and take such action as I think advisable, I do not suppose the Foreign Office want any official report as to what I am doing, but I think it may be convenient to let you know how the matter stands. That an offence under section 15 of 'The Foreign Marriage Act, 1892' (55 & 56 Vict., cap. 23), has been committed appears to be clear, and the case is, of its kind, a bad one, so that if it were practicable to do so, I should have felt it my duty to institute proceedings in respect of that offence.

"When, however, I came to look at the words of the Statute, I felt considerable doubt whether it was possible for me to take any action. The offender lives in Ireland, and, for some reason which it is not quite easy to understand without knowing the history of the Statute, the jurisdiction for trying an offence under that section is limited to counties in England, so that no proceedings can be instituted against him by the Irish authorities in their Courts. The question then arose whether, under that section, a warrant could be issued by a Magistrate in England, sent to Ireland, and executed, and the accused brought within the jurisdiction of an English Court, in order to be tried there in due course of law.

"Where a general jurisdiction of this kind is given, there are generally some words of limitation, *e.g.*, in bigamy and forgery an offender may be tried wherever he may be apprehended or be in custody, and under the Foreign Enlistment Act for all purposes of trial and punishment the offence may be deemed to have been committed in any place within Her Majesty's dominions in which the person who committed such offence may be. No such words are to be found in section 15 of 'The Foreign Marriage Act, 1892,' and the question arose as to whether the concluding words of that section were sufficiently wide to admit of a Magistrate here issuing a warrant or other process under section 1 of 11 & 12 Vict., cap. 42.

"I thought the point by no means clear, but the inclination of my mind was that, although it was arguable that such a course might be adopted, the sounder view was that it would hardly be safe for a Magistrate to adopt this course.

"I therefore put the circumstances informally before Sir John Bridge, Chief Magistrate, and discussed it with him, and, to a certain extent, with Mr. Lushington, another Magistrate at Bow Street. He took time to consider the point, and now writes to me that, in his opinion, no warrant for the apprehension of a man living at Dublin ought to be granted where the information shows a false oath under 'The Foreign Marriage Act, 1892,' taken abroad, and does not show that the alleged offender is in the county where the warrant is applied for. He points out that, under section I of the Act of 1848, to which I have already referred, warrants can only be granted where the offence is committed within the jurisdiction of the Magistrate who grants it, or where the offender is within his jurisdiction, and is of opinion that the words of section 15 of the Foreign Marriage Act do not authorize any such warrant, so that, in his opinion, if a warrant were issued, an action would lie against the Magistrate issuing it.

"I do not remember whether you were at the Foreign Office at the time the Act was passed, but it would be interesting to know why the jurisdiction was limited to England, and whether the question of the insertion of any words of limitation, such as exist in the other Statutes to which I have referred, was considered by those who drew the Bill.

"Yours very truly,
(Signed) "H. CUFFE.

"W. E. Davidson, Esq., Q.C., C.B.,
"Foreign Office."

On receipt of the Director's letter, Mr. Davidson communicated with Sir Henry Jenkyns, and forwarded to the Director the following letter from Sir Henry:—

"*Office of the Parliamentary Counsel*,
"Dear Davidson, "3, *Whitehall Gardens, May* 25, 1897.

"Ilbert and I have looked at Cuffe's letter to you as to 'The Foreign Marriage Act, 1892.'

"You will recollect that the Act of 1892 was purely a Consolidation Act, and section 15 reproduced almost exactly the old section 16 of the Act of 1849 respecting the punishment of perjury.

"We have, of course, no information as to the reasons which, in 1848, led to the framing of that section in its present shape.

"We think, however, that it is quite open to argument that the effect of the section is to declare that the offence shall be deemed to have been committed within the jurisdiction of any Magistrate in England, and that, therefore, he can issue a warrant for the man's arrest as if the offence had been actually there committed.

"The matter is of so much importance that I suppose you will take the Law Officers' opinion on the subject.

"Yours truly,
(Signed) "H. JENKYNS."

If the section empowers a Magistrate of any county in England to issue a warrant, whether the alleged offender is or is not actually within the limits of his jurisdiction, he might not only do so in such a case as this, but, if the offender were living, say, in Cornwall, a prosecutor might get the warrant in Northumberland.

In fact, a prosecutor might choose any county he liked irrespective of any consideration of fairness to the prisoner, if the effect is such as is suggested here.

It would appear, unless there are any political or other considerations of expediency against it, that the simplest way out of the difficulty would be to substitute "United Kingdom" for "England," and give the jurisdiction wherever the accused may be.

The Attorney- and Solicitor-General are requested to advise—

Whether the view taken by the Chief Magistrate and the Director of Public Prosecutions should be accepted as the correct view.

If so, whether they recommend legislation on the subject.

Opinion.

We are of opinion that the view taken by the Chief Magistrate and the Director of Public Prosecutions is correct.

We recommend legislation in the sense proposed; the actual form of enactment should be carefully considered, so as to express clearly that proceedings may be taken in any county of the United Kingdom in which the person charged may happen to be.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Law Officers' Department,
June 24, 1897.

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tion, a person of unsound mind who is under certificates, to leave this country for the purpose of placing such person in an asylum abroad?

The Commissioners entertain but little doubt as to the correct answer to the first two of the above questions, calling attention in this regard to the case of Mary Ryan, referred to in the 19th Report of the Commissioners in Lunacy to the Lord Chancellor (1865), of which a copy will be found among the annexed papers (marked O).

I am to request that you will take the subject of this correspondence into your consideration, and favour Lord Salisbury with your opinion on the points raised in the four questions formulated by the Commissioners in Lunacy, and that you will at the same time add any other observations of a more general nature which you may desire to offer on the papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Consul-General Hertslet	(No. 9)	March	8,	1897.
(B.)	Mr. Crosby		„	20,	„
(C.)	„		April	3,	„
(D.)	Consul-General Hertslet	(No. 16)	„	10,	„
(E.)	„ „	(No. 17)	„	17,	„
(F.)	To Commissioners in Lunacy		May	1,	„
(G.)	Commissioners in Lunacy		„	5,	„
(H.)	Consul-General Hertslet	(No. 21)	„	18,	„
(I.)	„ „	(No. 22)	„	19,	„
(K.)	„ „	(No. 23)	„	21,	„
(L.)	Commissioners in Lunacy		June	4,	„
(M.)	To Commissioners in Lunacy		„	30,	„
(N.)	Commissioners in Lunacy		July	9,	„
(O.)	19th Report of Commissioners in Lunacy to Lord Chancellor ..		——		1865.

Report.

In our opinion the first and second of the questions formulated by the Commissioners must be answered in the affirmative.

The third and fourth questions as they are put must be answered in the negative. Such a misrepresentation could not by itself be made the subject of criminal proceedings. An indictment would, however, lie for a conspiracy by several persons to induce by misrepresentations a lunatic, whether certificated or not, to go abroad with a view to deprive him of the protection of English law, and have him confined in an asylum, by taking advantage of a system of foreign law less favourable, on this point, to the liberty of the subject, than the English law.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 6, 1897.

GERMANY.

No. 17.

[November 4, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, October 22, 1897.

I **HAVE** the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers relating to the detention and imprisonment of Mr. Philip Sidney Stott at Bocholt, in Westphalia, in the months of October and November 1895.

Imprisonment of Mr. P. S. Stott. Claim for compensation.

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Sometime in the early part of 1895, Mr. Stott was approached by Messrs. Summer and Co., of Manchester, Continental Agents, who requested him to prepare certain plans and designs for the erection of a cotton spinning mill at Bocholt, for M. Franz Bechmann.

Mr. Stott's instructions were merely to design the structure, for which purpose he was given the dimensions of the site, the number of floors of which the building was to consist, and a description of the machinery which it was proposed to set up; and he was informed that he was to make his calculations on the same basis as if he were designing a similar structure for erection on firm ground in England.

The plans were duly made, and forwarded by post to Messrs. Summer and Co. in Manchester. In the month of August 1895, Mr. Stott received payment for his services from Messrs. Summer and Co., and so far the transaction was accordingly completed. The whole of the contract was between Mr. Stott and Messrs. Summer, and Messrs. Summer's instructions were Mr. Stott's sole guide in designing his plans.

In the month of October 1895, Mr. Stott, being on business in Germany, decided to call at Bocholt to see the mill which had been erected from the plans he had thus furnished. No request had been made that he should undertake, nor was it any part of the arrangement, or of his duty to undertake, such a journey; and it was so undertaken entirely at his own cost, and merely to satisfy his personal desire for information.

On his arriving at Bocholt on the 9th October, 1895, he saw Bechmann, the owner, and with him went to the mill, and he was told by him that the mill was in every respect satisfactory. It has since appeared, however, that the building was erected on moving sand.

Whilst Mr. Stott was on the premises the building fell, and many persons were killed, and others injured.

The owner was arrested, and Mr. Stott was told that his evidence would be required at the Court of Inquiry, and that he must not leave the town. On the following day—10th October—he gave his evidence, and was informed that further evidence would be required of him, and that he must stay for a day or two longer. The following day—11th October—he was arrested and again examined; he was then told that he would be free to leave the town at the end of the week. By this time it was clearly in evidence that Mr. Stott had no control over the men on the building at the time of the accident, but be was nevertheless detained in the common gaol.

The reason assigned for Mr. Stott's detention was that he had rendered himself liable to two charges under the Imperial German Criminal Code of Procedure, viz:—

1. That in completing the design for the mill he had contravened the general well-known rules of architecture in such a manner as to entail danger to others.

2. That his negligence caused the death of several persons, and injury to others.

During the months of October and November Her Majesty's Embassy at Berlin, acting under instructions from the Marquess of Salisbury, applied to the German Secretary of State for Foreign Affairs for his good offices in order to obtain Mr. Stott's release, and informed his Excellency that Mr. Knott, Mr. Stott's solicitor, was personally prepared to undertake that his client would return to Germany when equired, and to give a bond to that effect to any amount deemed necessary.

The local authorities, however, in view of the very serious loss of life caused by the collapse of the cotton mill, and of the (in their view) strong presumption that Mr. Stott was wholly or in part responsible for the accident, were of opinion that it would be contrary to the provisions of the law to release Mr. Stott, whatever bail might be offered.

At this time Her Majesty's Chargé d'Affaires at Berlin questioned Mr. Knott as to Mr. Stott's treatment in prison, and he was assured that on this point there was no ground for complaint.

On the 11th November (1895) Mr. Gosselin was informed by an official of the German Foreign Office that the result of the preliminary inquiry into the case had proved so unfavourable to Mr. Stott that the examining Magistrate had ordered his committal for trial, and would not accept bail; and, according to a Memorandum communicated by the Prussian Minister of Justice, the actual condition of things on the scene of the disaster after the removal of the debris led the judicial experts to believe that the iron frame work for which Mr. Stott was considered responsible had in general been designed without sufficient care, and that the catastrophe was partly caused by a serious defect of construction, for which they also held Mr. Stott responsible, namely, the absence of ribs ("rippen") at the base of the supporting iron pillars.

The Memorandum further explained that, although everything was being done to press forward the inquiry, and to keep the investigation clear of side issues, it would presumably embrace a considerable range, as it was evident that a number of causes had contributed to the final catastrophe, and that the circumstances were besides by no means of a simple nature.

In a later Memorandum it was stated that efforts were still being made to hasten as much as possible the course of the inquiry, but that its termination could not be expected immediately, owing to the dimensions which it had now assumed; that the depositions of witnesses were being constantly taken; that specimens of masonry, concrete, &c., were being submitted to the examination of the Experimental School at Charlottenburg; that this and other information had to be obtained before the judicial experts could make a complete report; and that it had only been possible to carry on the preliminary inquiry systematically since the 29th and 30th October, when, after the removal of the debris, the facts of the case had been ascertained.

Instructions were, however, given to the State authorities to take Mr. Stott's petition for release on bail again into consideration, should the grounds of incrimination appear to be in any degree lessened in the course of the preliminary inquiry.

In consequence of the refusal to release Mr. Stott on bail, it was necessary to enter into the details of the plans and calculations which the German authorities stated to have been at fault. German and English engineers were employed on his behalf, numerous documents were prepared to prove him to be a capable designer and to have acted as architect for some of the largest cotton mills in Lancashire, and considerable expense was incurred in rebutting the charges.

On the 30th November Mr. Gosselin was able to announce that a renewed inspection of the locality and a further inquiry into the facts had somewhat weakened the case against Mr. Stott, that the judicial experts were no longer unanimous in the opinion that an error in construction, for which he could be held responsible, was partly the cause of the disaster, and that Mr. Stott had been released on bail on the 22nd of that month upon depositing a sum of 10,000 marks and upon giving his word of honour to present himself for trial when required.

On receipt of this announcement Mr. Gosselin was authorized, should he think it expedient, to offer the thanks of Her Majesty's Government to the German Government for their courtesy in keeping him informed of the proceedings and for their promise to continue to do so.

The next intelligence which reached this Office on the subject of the case was contained in a despatch from Mr. Gosselin, dated 9th May, 1896, which announced that proceedings against Mr. Stott for an offence against sections 330, 222, and 73 of the Imperial Criminal Code had been finally dropped, on the ground that the act of which he was accused was committed outside German territory.

In September 1896 Mr. Knott, Mr. Stott's solicitor, forwarded a general statement of the case, in the hope that the Secretary of State might find in it a sufficient cause for diplomatic intervention.

It appears from this statement that, after the preliminary proceedings already referred to, the Public Prosecutor drew up an indictment, and a trial took place before the Landsgericht at Münster in the month of March 1896. By the Judgment of that Court Mr. Stott was discharged from the case. The following is an extract from the Judgment:—

"The defendant, Philip Sidney Stott, architect, of Oldham, is struck out of the case as regards the charges brought against him under section 196 St. P. O. The warrant for his arrest is withdrawn."

* * * * * *

"As regards the two charges under sections 222 and 230 of the Imperial Code of Criminal Law, a causal connection between the death or the bodily injury of the persons named in sections 1 and 2 respectively and the acts and work of the defendants Stott and Cremer, judging from the reports of Professor Krohn, Government Building Inspector Hillenkamp, and Niermann of the Imperial Board of Works, is not proved and cannot be proved.

"Professor Krohn, on pp. 46–47 of his Report, says:

"'But owing to the circumstance that the foundation of the pillars (four) was still worse than the ironwork, we cannot really make Mr. Stott responsible for the disaster.'

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"And on pp. 51–52 :—

"'Accordingly, Mr. Stott cannot be made responsible, nor partially responsible, for the great extent of the disaster and the speed with which it took place.'

"Hillenkamp, the Inspector of Buildings, on p. 10 of his Report says :—

"'I also answer the question whether defects and mistakes in the plans occasioned or contributed to bring about the disaster in the negative.'

"Building inspector Niermann expresses it on p. 7 only as being probable that faults in the cast-iron portions assisted in bringing about and enlarging the extent of the disaster and the rapidity with which it happened.

"With regard to the accusation under section 330 of the Imperial Code of Criminal Law the defendant cannot be regarded as Manager and contractor in the sense of the aforesaid reading of the law.

"According to this, proof was no longer required as to whether, according to section 4 of the Criminal Code, a criminal prosecution of the defendant Stott was permissible in Germany. Nor was it necessary to allow the application made by the counsel for the defendants Stott and Cremer that an arrangement should be made for the receiving of evidence before a decision was arrived at concerning the opening of the trial, although this cannot be regarded as of no importance."

The Public Prosecutor thereupon appealed from that decision to the Oberlandesgericht at Hanau, and the President of this Court dismissed the appeal, and in giving Judgment not only confirmed the decision on the grounds then given, but also on the further and more important ground that the entire contract was performed and fully completed in England and outside the jurisdiction of the German Courts of Law.

It is contrary to custom in Germany to allow costs to successful litigants, and Mr. Stott has accordingly had to bear the whole heavy cost entailed on him by these proceedings.

According to the opinion of a very eminent counsel in Rhenish Prussia, no action could be had against the German authorities, but he advised that the case was one for diplomatic intervention.

In consequence of his imprisonment Mr. Stott suffered in health, and he also suffered heavily in a pecuniary way, through the interruption and loss of business, as well as in reputation through the stigma cast upon him by his arrest. It is estimated that his losses in actual payment out of pocket, combined with his loss in business, amount to over 2,500*l.*, and for that sum his solicitor suggests that a claim should be preferred against the German Government. It is contended that the arrest, and most certainly the continued detention, were improper and unwarrantable; that the German authorities throughout the whole of the negotiations with them have stated the reason or cause of detention to be the supposed fault in the plans drawn and calculations made by Mr. Stott, and that at the end of the proceedings it was advanced as a reason for his dismissal from the case, that the act of which he was accused was committed outside German territory: a plea adduced in defence at the outset.

In conclusion, Lord Salisbury feels that he cannot do better than to quote the concise expression of Dr. Bloem, the imminent counsel above alluded to, viz., that according to the judgment of the "Oberlandesgericht," no prosecution should have taken place, and that according to the decision of the "Straf-Kammer," no blame attached to Mr. Stott.

Lord Salisbury requests that you will be good enough to take these papers into consideration, and that you will favour him with your opinion as to whether, having regard to all the circumstances of the case, Her Majesty's Government may properly represent the matter to the Imperial German Government as one in regard to which Mr. Stott has an equitable claim for compensation at their hands; and (2) if so, what sum might fairly be put forward as reasonable; and (3) on what grounds could the claim be most advantageously supported.

His Lordship would also be glad to be favoured at the same time with any observations of a more general nature which you may have to offer on the matter.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

In our opinion Mr. Stott's claim cannot be pressed as a matter of right.

There is absolutely nothing to show that the proceedings against him were malicious.

Such a claim might be supported as against a foreign Government responsible for the acts of its officials, if the prosecution was the result of gross negligence on their part. It does not, however, appear to us that there is any sufficient evidence of such negligence.

The prosecutor appears to have been in the first instance informed by the experts that the disaster was the result of great negligence in the plans, and although this was disproved on further inquiry, he cannot be blamed for acting in accordance with the view of the experts who advised him.

The prosecution in the Court of Appeal broke down on the ground that as the plans were prepared in England, Mr. Stott could not be tried in Germany. The Court of First Instance abstained from expressing any opinion on the point, and the Court of Appeal treat it as one that had given rise to some difference of opinion.

The proposition that a man who, in one country, negligently prepares a plan which he sends to another country in order that the building may be there carried out, may be tried in the latter if death results from his negligence, is not, in our opinion, repugnant to common sense or international comity. We cannot say that we think that the facts before us show that there was such negligence on the part of the German Prosecutor in this respect as to justify Her Majesty's Government in pressing the claim for compensation as one of right.

The case is, no doubt, one of very great hardship. Mr. Stott was arrested and tried on a charge which turned out to be without foundation, and which, in the opinion of the Court of Appeal, would not have justified a prosecution even if true.

The German Government may think the case one for equitable consideration. But for the reasons we have given we do not regard Mr. Stott's claim as one that can be supported by diplomatic pressure by Her Majesty's Government.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 4, 1897.

GREECE.

No. 18.

[April 23, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, April* 20, 1897.

Turco-Greek War. Neutrality Proclamation, &c.

HER Majesty's Government have received intelligence from Her Majesty's Representatives at Constantinople and at Athens, as well as from the Turkish Ambassador at this Court, that war has unfortunately broken out between Turkey and Greece. Her Majesty being resolved to maintain the strictest neutrality between the belligerent Powers, I am directed by the Marquess of Salisbury to request that you will immediately take into your consideration the annexed draft (A) of a Royal Proclamation to be issued to that effect, and also draft (B) of letters to the Boards of Admiralty and Treasury, and to the Colonial Office, War Office, and India Office, announcing the same.

To facilitate the consideration of these documents, I am to transmit to you copies

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of those prepared in 1884* on the occasion of the hostilities then existing between France and China, which were approved by the Law Officers in their Report of the 2nd September, 1884, as well as of those prepared in 1894 on the occasion of hostilities then existing between China and Japan, which were approved by the Law Officers in their Report of the 2nd August, 1894.

L.O.R. 1884 (Conf. 5121), p. 40.

L.O.R. 1894 (Conf. 6641), p. 58.

It will be seen, on reference to the second paragraph of the draft Proclamation, marked (A), herewith inclosed, that the words "notwithstanding our utmost exertions to preserve peace between the two States" have been inserted. This phraseology appears to Lord Salisbury to be suitable to the circumstances that have preceded the present out break of hostilities. Language, somewhat similar, was employed in paragraph 2 of the Proclamation issued by Her Majesty in 1877 on the occasion of the outbreak of hostilities between Russia and Turkey. A copy of that Proclamation is also herewith inclosed.

Lord Salisbury would be glad to be informed, at your earliest convenience, whether the proposed drafts are, in your opinion, right and proper under the circumstances.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

In our opinion the drafts (A) and (B), as altered and initialled by us, are right and proper under the circumstances.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 23, 1897.

Annex (A).

BY THE QUEEN.

A PROCLAMATION.

VICTORIA R.

WHEREAS We are happily at Peace with all Sovereigns, Powers, and States:

And whereas, notwithstanding Our utmost Exertions to preserve Peace between the two Sovereign Powers, a State of War unhappily exists between His Imperial Majesty the Sultan of *Turkey* and His Majesty the King of the *Hellenes*, and between their respective subjects and others inhabiting within their Countries, Territories, or Dominions:

And whereas We are on Terms of Friendship and amicable Intercourse with each of these Sovereigns, and with their several Subjects and others inhabiting within their Countries, Territories, or Dominions:

And whereas great Numbers of Our loyal subjects reside and carry on Commerce, and possess Property and Establishments, and enjoy various Rights and Privileges, within the Dominions of each of the aforesaid Sovereigns, protected by the Faith of Treaties between Us and each of the aforesaid Sovereigns:

And whereas We, being desirous of preserving to our Subjects the Blessings of Peace, which they now happily enjoy, are firmly purposed and determined to maintain a strict and impartial Neutrality in the said State of War unhappily existing between the aforesaid Sovereigns:

We, therefore, have thought fit, by and with the Advice of Our Privy Council, to issue this Our Royal Proclamation:

And We do hereby strictly charge and command all our loving Subjects to govern themselves accordingly, and to observe a strict Neutrality in and during the aforesaid War, and to abstain from violating or contravening either the Laws and Statutes of the Realm in this behalf, or the Law of Nations in relation thereto, as they will answer to the contrary at their Peril:

And whereas in and by a certain Statute made and passed in a Session of Parliament holden in the 33rd and 34th year of Our Reign, intituled "An Act to Regulate the conduct of Her Majesty's Subjects during the Existence of Hostilities between Foreign States with which Her Majesty is at

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* Inclosure in Foreign Office to the Law Officers of the Crown, August 23, 1884; Inclosure in Foreign Office to the Law Officers of the Crown, August 1, 1894.

Peace," it is, amongst other things, declared and enacted as follows. This Act shall extend to all the Dominions of Her Majesty, including the adjacent territorial Waters:—

"*Illegal Enlistment.*

"If any Person, without the Licence of Her Majesty, being a British Subject, within or without Her Majesty's Dominions, accepts or agrees to accept any Commission or Engagement in the Military or Naval Service of any Foreign State at War with any Foreign State at Peace with Her Majesty, and in this Act referred to as a friendly State, or, whether a British Subject or not, within Her Majesty's Dominions, induces any other Person to accept or agree to accept any Commission or Engagement in the Military or Naval Service of any such Foreign State as aforesaid,—

"He shall be guilty of an Offence against this Act, and shall be punishable by Fine and Imprisonment, or either of such Punishments, at the Discretion of the Court before which the Offender is convicted; and Imprisonment, if awarded, may be either with or without Hard Labour.

"If any Person, without the Licence of Her Majesty, being a British Subject, quits or goes on board any ship with a view of quitting Her Majesty's Dominions, with intent to accept any Commission or Engagement in the Military or Naval Service of any Foreign State at War with a friendly State, or, whether a British Subject or not, within Her Majesty's Dominions, induces any other Person to quit or go on board any Ship with a view of quitting Her Majesty's Dominions with the like Intent,—

"He shall be guilty of an Offence against this Act, and shall be punishable by Fine and Imprisonment, or either of such punishments, at the Discretion of the Court before which the Offender is convicted; and Imprisonment, if awarded, may be either with or without Hard Labour.

"If any Person induces any other Person to quit Her Majesty's Dominions or to embark on any Ship within Her Majesty's Dominions under a Misrepresentation or false Representation of the Service in which such Person is to be engaged, with the Intent or in order that such Person may accept or agree to accept any Commission or Engagement in the Military or Naval Service of any Foreign State at War with a friendly State,—

"He shall be guilty of an Offence against this Act, and shall be punishable by Fine and Imprisonment, or either of such Punishments, at the Discretion of the Court before which the Offender is convicted; and Imprisonment, if awarded, may be either with or without Hard Labour.

"If the Master or Owner of any Ship, without the Licence, of Her Majesty, knowingly either takes on board, or engages to take on board, or has on board such Ship within Her Majesty's Dominions any of the following Persons, in this Act referred to as illegally enlisted Persons; that is to say,—

"(1.) Any Person who, being a British Subject within or without the Dominions of Her Majesty, has, without the Licence of Her Majesty, accepted or agreed to accept any Commission or Engagement in the Military or Naval Service of any Foreign State at War with any friendly State:

"(2.) Any Person, being a British Subject who, without the Licence of Her Majesty, is about to quit Her Majesty's Dominions with intent to accept any Commission or Engagement in the Military or Naval Service of any Foreign State at War with a friendly State:

"(3.) Any Person who has been induced to embark under a Misrepresentation or false Representation of the Service in which such Person is to be engaged, with the Intent or in order that such Person may accept or agree to accept any Commission or Engagement in the Military or Naval Service of any Foreign State at War with a friendly State:

"Such Master or Owner shall be guilty of an Offence against this Act, and the following Consequences shall ensue; that is to say,—

"(1.) The Offender shall be punishable by Fine and Imprisonment, or either of such Punishments at the Discretion of the Court before which the Offender is convicted; and Imprisonment, if awarded, may be either with or without Hard Labour; and

"(2.) Such Ship shall be detained until the Trial and Conviction or Acquittal of the Master or Owner, and until all penalties inflicted on the Master or Owner have been paid, or the Master or Owner has given Security for the Payment of such Penalties to the Satisfaction of Two Justices of the Peace, or other Magistrate or Magistrates having the Authority of Two Justices of the Peace; and

"(3.) All illegally enlisted Persons shall, immediately on the Discovery of the Offence, be taken on Shore, and shall not be allowed to return to the Ship.

"*Illegal Shipbuilding and Illegal Expeditions.*

"If any Person within Her Majesty's Dominions, without the Licence of Her Majesty, does any of the following Acts; that is to say,—

"(1.) Builds or agrees to build, or causes to be built, any Ship with Intent or Knowledge, or having reasonable cause to believe that the same shall or will be employed in the Military or Naval Service of any Foreign State at War with any friendly State; or

"(2.) Issues or delivers any Commission for any ship with Intent or Knowledge, or having reasonable cause to believe that the same shall or will be employed in the Military or Naval Service of any Foreign State at War with any friendly State; or

"(3.) Equips any Ship with Intent or Knowledge, or having reasonable cause to believe that the same shall or will be employed in the Military or Naval Service of any Foreign State at War with any friendly State; or

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"(4.) Dispatches, or causes or allows to be dispatched, any ship with Intent or Knowledge, or having reasonable cause to believe that the same shall or will be employed in the Military or Naval Service of any Foreign State at War with any friendly State:

"Such Person shall be deemed to have committed an offence against this Act, and the following Consequences shall ensue:

"(1.) The Offender shall be punishable by Fine or Imprisonment, or either of such Punishments, at the Discretion of the Court before which the Offender is convicted; and Imprisonment, if awarded, may be either with or without Hard Labour.

"(2.) The Ship in respect of which any such Offence is committed, and her Equipment, shall be forfeited to Her Majesty.

"Provided that a Person building, causing to be built, or equipping a ship in any of the Cases aforesaid, in pursuance of a Contract made before the commencement of such War as aforesaid, shall not be liable to any of the Penalties imposed by this Section in respect of such building or equipping if he satisfies the conditions following (that is to say),—

"(1.) If forthwith upon a Proclamation of Neutrality being issued by Her Majesty he gives Notice to the Secretary of State that he is so building, causing to be built, or equipping such Ship, and furnishes such Particulars of the Contract and of any Matters relating to, or done, or to be done under the Contract as may be required by the Secretary of State:

"(2.) If he gives such Security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for ensuring that such Ship shall not be dispatched, delivered, or removed without the Licence of Her Majesty until the termination of such War as aforesaid.

"Where any Ship is built by Order of or on behalf of any Foreign State when at War with a friendly State, or is delivered to or to the Order of such Foreign State, or any person who to the Knowledge of the Person building is an Agent of such Foreign State, or is paid for by such Foreign State or such Agent, and is employed in the Military or Naval Service of such Foreign State, such Ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed, and the Burden shall lie on the Builder of such Ship of proving that he did not know that the Ship was intended to be so employed in the Military or Naval Service of such Foreign State.

"If any Person within the Dominions of Her Majesty, and without the Licence of Her Majesty,—

"By adding to the number of the Guns, or by changing those on board for other Guns, or by the addition of any Equipment for War, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the warlike Force of any Ship which at the time of her being within the Dominions of Her Majesty was a Ship in the Military or Naval Service of any Foreign State at War with any friendly State,—

"Such Person shall be guilty of an Offence against this Act, and shall be punishable by Fine and Imprisonment, or either of such Punishments, at the Discretion of the Court before which the Offender is convicted; and Imprisonment, if awarded, may be either with or without Hard Labour.

"If any Person within the limits of Her Majesty's Dominions, and without the licence of Her Majesty,—

"Prepares or fits out any Naval or Military Expedition to proceed against the Dominions of any friendly State, the following consequences shall ensue:—

"(1.) Every Person engaged in such Preparation or fitting out, or assisting therein, or employed in any Capacity in such Expedition, shall be guilty of an Offence against this Act, and shall be punishable by Fine and Imprisonment, or other of such Punishments, at the Discretion of the Court before which the Offender is convicted; and Imprisonment, if awarded, may be either with or without Hard Labour.

"(2.) All Ships and their Equipments, and all Arms and Munitions of War, used in or forming Part of such Expedition, shall be forfeited to Her Majesty.

"Any Person who aids, abets, counsels, or procures the Commission of any Offence against this Act shall be liable to be tried and punished as a principal Offender."

And whereas by the said Act it is further provided that Ships built, commissioned, equipped, or dispatched in contravention of the said Act, may be condemned and forfeited by Judgment of the Court of Admiralty; and that if the Secretary of State or Chief Executive Authority is satisfied that there is a reasonable and probable cause for believing that a Ship within Our Dominions has been or is being built, commissioned, or equipped, contrary to the said Act, and is about to be taken beyond the Limits of such Dominions, or that a Ship is about to be dispatched contrary to the Act, such Secretary of State, or Chief Executive Authority, shall have Power to issue a Warrant authorizing the Seizure and Search of such Ship and her Detention until she has been either condemned or released by Process of Law. And whereas certain Powers of Seizure and Detention are conferred by the said Act on certain Local Authorities;

Now, in order that none of Our Subjects may unwarily render themselves liable to the Penalties imposed by the said Statute, We do hereby strictly command that no Person or Persons whatsoever do commit any Act, Matter, or Thing whatsoever contrary to the Provisions of the said Statute, upon pain of the several Penalties by the said Statute imposed, and of Our high Displeasure.

And We do hereby further warn and admonish all Our loving Subjects, and all Persons whatsoever entitled to Our Protection, to observe towards each of the aforesaid Sovereigns, their Subjects and Territories, and towards all Belligerents whatsoever with whom we are at Peace, the Duties of Neutrality; and to respect, in all and each of them, the Exercise of those Belligerent Rights which We and Our Royal Predecessors have always claimed to exercise.

And We hereby further warn all Our loving Subjects, and all Persons whatsoever entitled to Our Protection, that if any of them shall presume, in contempt of this Our Royal Proclamation, and of Our

high Displeasure, to do any Acts in derogation of their Duty as Subjects of a Neutral Sovereign in a War between other Sovereigns, or in violation or contravention of the Law of Nations in that Behalf, as more especially by breaking, or endeavouring to break, any Blockade lawfully and actually established by or on behalf of either of the said Sovereigns, or by carrying Officers, Soldiers, Despatches, Arms, Ammunition, Military Stores or Materials, or any Article or Articles considered and deemed to be Contraband of War according to the Law or modern Usages of Nations, for the Use or Service of either of the said Sovereigns, that all Persons so offending, together with their Ships and Goods, will rightfully incur and be justly liable to hostile Capture, and to the Penalties denounced by the Law of Nations in that Behalf.

And We do hereby give Notice that all Our Subjects and Persons entitled to Our Protection who may misconduct themselves in the Premises will do so at their Peril, and of their own wrong; and that they will in no wise obtain any Protection from Us against such Capture or such Penalties as aforesaid, but will, on the contrary, incur Our high Displeasure by such Misconduct.

Given at Our Court at , this day of April, in the year of Our Lord one thousand eight hundred and ninety-seven, in the sixtieth year of Our reign.

GOD SAVE THE QUEEN!

Annex (B).

*The Marquess of Salisbury to the Lords Commissioners of the Admiralty.**

My Lords, *Foreign Office, May* , 1897.

HER Majesty being fully determined to observe the duties of neutrality during the existing state of war between His Imperial Majesty the Sultan of Turkey and His Majesty the King of the Hellenes, and being, moreover, resolved to prevent, as far as possible, the use of Her Majesty's harbours, ports, and coasts and the waters within Her Majesty's territorial jurisdiction in aid of the warlike purposes of either belligerent, has commanded me to communicate to your Lordships, for your guidance, the following Rules, which are to be treated and enforced as Her Majesty's orders and directions:—

Her Majesty is pleased further to command that these Rules shall be put in force in the United Kingdom, the Isle of Man, and the Channel Islands, on and after the and in Her Majesty's territories and possessions beyond the seas six days after the day when the Governor or other chief authority of each of such territories or possessions respectively shall have notified and published the same; stating in such notification that the said Rules are to be obeyed by all persons within the same territories and possessions.

During the continuance of the present state of war, all ships of war of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom, the Isle of Man, or the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities for warlike equipment; and no ship of war of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or waters, subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war or a merchant-ship) shall have previously departed until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

2. If any ship of war of either belligerent shall, after the time when this Order shall be first notified and put in force in the United Kingdom, the Isle of Man, and the Channel Islands, and in the several Colonies and foreign possessions or dependencies of Her Majesty respectively, enter any port, roadstead, or waters belonging to Her Majesty, either in the United Kingdom, the Isle of Man, or the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs; in either of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been allowed to remain within British waters for the purpose of repair shall continue in any such port, roadstead, or waters, for a longer period than twenty-four hours after her necessary repairs shall have been completed. Provided, nevertheless, that in all cases in which there shall be any vessel (whether ships of war or merchant-ships) of the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war or merchant-ship) of the one belligerent and the subsequent departure therefrom of any ship of war of the other belligerent; and the time hereby limited for the departure of such ships of war respectively shall always, in case of necessity, be extended so far as may be requisite for giving effect to this proviso, but no further or otherwise.

3. No ship of war of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provi-

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* Similar letters to be addressed to the Treasury, Home Office, Colonial Office, War Office, and India Office.

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sions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination, and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.

4. Armed ships of either party are interdicted from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, the Isle of Man, the Channel Islands, or any of Her Majesty's Colonies or possessions abroad.

(Signed) SALISBURY.

No. 19.

[June 3, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 31, 1897.

Detention of British ss. "Naworth Castle" by Greek fleet.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list relating to the detention of the British steam-ship "Naworth Castle" by the Greek fleet.

It will be seen from the letter from the Glamorgan Coal Company (Paper A) that the "Naworth Castle" left Cardiff on the 22nd ultimo for Salonica with a full cargo of coal consigned to Inspector Steiner for the Ottoman Railway Company (Salonica-Monastir).

The vessel, according to the statement of the master, was stopped 2 miles off Cassandra Point on the 6th May at 10·15 A.M. by four Greek ships of war, and escorted by them to a bay 26 miles distant, where the master was taken to see the Greek Commander-in-chief. The latter, having ascertained from the master that he did not know that war had been declared between Turkey and Greece, sent the ship under escort to Volo Bay, and ordered the master to see the Greek Admiral who was stationed there. On arrival at Volo Bay on the 7th May the master saw the Admiral at 9 A.M. The Admiral first stated that he would have to commnnicate with his Government on the subject, but eventually an hour later on the same day he informed the Master verbally that he could go where he pleased provided he did not proceed to a Turkish port. The master then sailed for the Piræus, where he arrived on the 18th May, and delivered his cargo there.

The Glamorgan Coal Company inquire whether the Greek fleet acted within their rights in not only stopping the vessel, but in practically taking her into custody and preventing the delivery of the cargo at its destination according to the bill of lading.

It appears that the "Naworth Castle" was forcibly detained for about twenty-four hours after she was first stopped, and that when released she was forbidden to proceed to her port of destination.

It is also to be observed that the date on which the vessel was stopped (6th May) was two days previous to the date (8th May) on which the blockade of a portion of the littoral of the Gulf of Salonica was declared by the Greek Government to have been established (see notification in Supplement to "London Gazette," 14th May, 1897, Paper B), although it is gathered that the action of the Greek fleet was probably taken, and would possibly be justified, in connection with a search for contraband of war, rather than in connection with a blockade *jure gentium* of the Turkish coast-line.

The destination of the "Naworth Castle" was, *quâ* the arresting Greek fleet, undoubtedly hostile, and her cargo was at any rate *ancipitis usûs.*"

The circumstances of the case would, therefore, as is thonght, have justified the bringing in of the vessel for adjudication before a Prize Court and the condemnation of the cargo as contraband, if such a Tribunal had found that the presumable use to which it would be put was hostile and not peaceful.

But no attempt was made to bring the vessel and cargo in for adjudication, and it is difficult to see by what Tribunal other than a Prize Court the question whether the cargo was contraband or not could be authoritatively decided.

In these circumstances, although the Greek fleet may have been justified in stopping the "Naworth Castle" and in examining into her cargo and destination, and in subsequently, at their option, taking her in for adjudication before a properly constituted Greek Prize Court, should such exist, it appears doubtful how far they were justified in detaining her after their examination was completed, for over twenty-four hours, and in diverting her from her course and port of destination in the manner described.

I have the honour to request that you will take these papers into your consideration, and will favour Lord Salisbury with your opinion as to whether, having regard to all the circumstances it is desirable from the point of view of international law that Her Majesty's Government should protest against, or make any reservations in regard to the proceedings of the Greek ships of war, and the subsequent action of the Greek naval authorities in the matter, and, if so, in what terms such protest or reservations should be couched.

His Lordship will be glad at the same time to be favoured with any observations of a general nature which you may desire to offer on the papers.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Glamorganshire Coal Company .. .. (One Inclosure and separate Minute.)	May 17, 1897.
(B.)	Supplement to 'London Gazette." (Confidential 6896*) ..	May 14, „

Report.

In our opinion the proceedings of the Greek fleet with respect to the "Naworth Castle" were technically irregular.

The question whether the coal was contraband of war ought to have been decided by a Prize Court, and the Greek Commander had no right to forbid the landing of the coal at any Turkish port. It does not appear that the master of the "Naworth Castle" agreed to this to avoid being taken into port for adjudication.

The true doctrine with regard to coal appears to be that it may be contraband of war or not, according to its destination. It seems extremely probable that the coal in the present case was intended to be used in transporting the Turkish army to the front, and, if so, we think it would be held contraband of war just as much as coal intended to supply the enemy's men-of-war.

We cannot say that we think the case a strong one. If, as appears probable, the coal was contraband, the "Naworth Castle" was treated with leniency. On the other hand, the proceedings of the Greek fleet were technically irregular. But, on the whole, we do not think it a case in which Her Majesty's Government should make any representation to the Greek Government. It does not appear to be a case in which compensation could be insisted on, and it is hardly worth while formally to remonstrate against the technical irregularity which has been committed.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 3, 1897.

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ITALY.

No. 20.

[November 30, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 18, 1897.

Gentlemen,

Wreck of "Utopia." Proceedings against owners in Italian Courts.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the papers noted in the accompanying list, relative to certain legal proceedings in the Italian Courts at Naples against the firm of Henderson Brothers, of Glasgow, as managing owners of the British steam-ship "Utopia," which foundered in Gibraltar Bay after a collision with Her Majesty's ship "Anson" on the 17th March, 1891.

The circumstances in which the disaster occurred are set forth in some detail in the letter from Messrs. Henderson, of the 4th February, 1897 (Paper marked B). The vessel was bound from Naples to New York, and was carrying a large number of Italian emigrants, most of whom lost their lives and property when the ship went down. A Marine Court held immediately after the occurrence at Gibraltar expressed the opinion that the captain of the "Utopia" had committed a grave error in judgment on the fatal occasion, but considered it unnecessary to deal in any way with the certificate, which was accordingly returned to him. The finding of the Naval Court is quoted at p. 5 of the English translation of the sentence pronounced on the 27th February, 1896, by the Naples Tribunal (of First Instance) which forms the first inclosure in Messrs. Henderson's above-mentioned letter (Paper B). The sentence proceeds to relate the origin and result of the action instituted in the Naples Court in 1891, a few months after the disaster, against the managers of the "Utopia" by the survivors of the wreck, and by the heirs of those who were lost.

The Court of First Instance on that occasion declared that it had no jurisdiction in the case. But this decision was reversed on appeal, and the action eventually renewed in the lower Court, whose Judgment, given nearly five years after the first commencement of proceedings, is the one already referred to above (Inclosure 1 in Paper B). This sentence was adverse to the defendants on all the main issues. It was in turn confirmed by the Court of Appeal on the 18th June, 1897, an English translation of whose Judgment will be found inclosed in Messrs. Henderson's letter of the 3rd August last (Paper Q).

Whilst the proceedings in the Court of Appeal were still pending, Messrs. Henderson made repeated representations to Her Majesty's Embassy at Rome and to this Department complaining of the grave and palpable injustice with which they had been and were being treated by the Neapolitan Courts, the corruptness of the Judges, and the practical impossibility of obtaining redress or relief in Italy by the ordinary process of law.

To these representations the Marquess of Salisbury replied that until Messrs. Henderson had exhausted all the legal remedies which might be open to them in the Italian Tribunals, and in addition found themselves in a position to establish, as a result of such recourse, a *primâ facie* case of denial or miscarriage of justice, no official representation could properly be made to the Italian Government on the subject of their complaint (letter to Messrs. Henderson of the 10th July, 1897, Paper L); and this decision was maintained and repeated to Messrs. Henderson in reply to further communications from them, made subsequently to the date of the sentence of the Naples Court of Appeal (letter to Messrs. Henderson of the 6th August, 1897, Paper R). For it appeared that the sentence in question, while stated to be, according to Italian law, final as regards all findings of fact, was susceptible of yet further appeal to the Court of Cassation at Naples on points of law. It is understood that one of the most important issues raised in the proceedings and decided by the sentence of the Court of Appeal in a sense unfavourable to the British firm, is that of the personal liability of the managers of the "Utopia" for the results of the disaster, and that this question is admitted to be one of law and therefore susceptible of further appeal. It has been pointed out, on the other hand, that the ground upon which the Court chiefly relied in declaring the managers to be personally liable. was the insufficiency of the coal supply and of the life-saving apparatus carried by the vessel, which insufficiency was found as a fact by the Court of Appeal.

It has been one of Messrs. Henderson's most strongly-urged grounds of complaint that the finding of the Court of First Instance, upheld by the sentence of the Court of Appeal on these issues of fact, constitutes a flagrant miscarrage of justice, since the Court, as they contend, avowedly disregarded, and refused to consider, the evidence tendered by them, and regarded as absolutely conclusive, both as to there having been a sufficiency of coal on board the vessel at the time of the collision, and as regards the completeness and efficiency of the life-saving apparatus carried by her. Messrs. Henderson further lay stress on the manner in which the whole proceedings have been conducted by a syndicate of lawyers pleading in *formâ pauperis*, but alleged to be connected by ties of interest with influential Members of the Italian Government. They point to the vexatious methods of procedure adopted by the plaintiffs, the continued and prolonged delays, owing to which the case has dragged on for over six years, and the apparent violation of some of the first principles of law and justice, as proof of the corrupt influences reigning within the Tribunals, and the malevolent spirit animating the plaintiffs in the action. In the face of this state of things they declare the uselessness of having any further recourse to the Neapolitan Courts in the matter, and renew their appeal to Her Majesty's Government to intervene on their behalf with the Italian Government, pointing out the grave consequences which they must apprehend from the execution, whether provisional or definitive, of the sentence of the Court of Appeal (letter from Messrs. Henderson of 4th October, 1897, Paper U).

The views held by Messrs. Henderson on the several points involved are also reflected in the notes on the sentence of the Court of First Instance (Inclosure 2 in their letter of the 4th February, 1897, Paper B), in a letter addressed to them by Messrs. Bannatyne, Kirkwood, France and Co. with reference to the sentence of the Court of Appeal (Inclosure 2 in Messrs. Henderson's letter of the 3rd August, 1897, Paper Q), and in an article which appeared in a Genoese Shipping Magazine, for which however they disclaim responsibility (Inclosure in their letter of the 4th October, Paper U).

To sum up:

The grounds, so far as they can be gathered, on which Messrs. Henderson chiefly rely in support of these contentions, appear to be as follows:—

1. The refusal of the Italian Court to allow Messrs. Henderson to produce evidence rebutting the finding of the Marine Court at Gibraltar, which finding, as they are advised, could not be accepted by, and could not even be utilized, before, an English Court in a civil action.

2. The absolute conclusiveness of the Board of Trade Certificate, even in an Italian Court, as to the sufficiency of the life-saving apparatus on board the "Utopia."

3. The purely technical ground, viz., the sale of tickets in Italy, on which the Italian Court claimed to exercise jurisdiction in the matter.

4. The attempt to saddle the owners with an unlimited liability in lieu of the limited liability on the tonnage scale, according to English law, as the law of the ship.

It has not been thought necessary for the moment to request Messrs. Henderson to furnish a comprehensive written statement of their case, but should you think this course desirable they can readily be asked to supply such a statement for your further consideration.

As the questions raised by the proceedings appear undoubtedly to be of the greatest moment to the general interests of British shipping, and as there seems some ground to apprehend—so far as can be judged from the materials laid before the Secretary of State—that there is a possibility of grave injustice being inflicted upon British subjects under the shadow of the decision of an Italian Court of Law, Lord Salisbury would be glad if you would take the whole matter into your consideration, and furnish him with your opinion as to whether in the circumstances either the assumption of jurisdiction by an Italian Tribunal over a British vessel in respect of an occurrence which took place within British territorial waters, or the sentences given by the Neapolitan Courts of First Instance and of Appeal, taken together with the facts disclosed and the statements made by and on behalf of Messrs. Henderson in regard thereto, can be held to constitute such a grievance or a denial or miscarriage of justice as would justify Her Majesty's Government in officially addressing a

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diplomatic representation to the Italian Government, and, if so, on what special grounds such a representation might most properly and advantageously be based.

Lord Salisbury would also be glad to receive any observations of a more general nature which you may desire to offer in regard to the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Sir C. Ford	(No. 17)	January	25, 1897.
(B.)	Messrs. Henderson	..	February	4, „
(C.)	To Consul Rolfe	(No. 3)	February	24, „
(D.)	To Messrs. Henderson	..	February	24, „
(E.)	Sir C. Ford	(No. 78)	May	29, „
(F.)	Ditto	(No. 87)	June	10, „
(G.)	Messrs. Henderson	..	June	28, „
(H.)	Ditto	..	July	3, „
(I.)	Ditto	..	July	5, „
(K.)	Consul Rolfe	(No. 18)	July	8, „
(L.)	To Messrs. Henderson	..	July	10, „
(M.)	Sir C. Ford	(No. 9. Consular)	July	13, „
(N.)	Ditto	(No. 15)	July	15, „
(O.)	Messrs. Henderson	..	July	23, „
(P.)	To Consul Rolfe	(No. 12)	July	28, „
(Q.)	Messrs. Henderson	..	August	3, „
(R.)	To ditto	..	August	6, „
(S.)	Consul Rolfe	(No. 20)	August	16, „
(T.)	To ditto	(No. 13)	August	31, „
(U.)	Messrs. Henderson	..	October	4, „
(V.)	Ditto	..	October	26, „

(W.) Report of proceedings before, and decisions of, the Marine Court held at Gibraltar on March 23 and 25, 1891.

(X.) Case submitted by Henderson Bros. to, and opinion thereon given by, Sir R. Webster and Sir E. Clarke (1891).

Report.

In our opinion substantial injustice has been done to Messrs. Henderson by the proceedings in the Neapolitan Courts.

It would appear that according to Italian law the ship-owners would have been relieved from liability if they could have shown that the disaster was the result of mere accident, and was not occasioned by negligence, and that in any event, in the absence of personal negligence or obligation, on the surrender or abandonment of the ship, the owners are under no further liability.

On grounds which we are quite unable to understand the Court refused to allow them to adduce evidence on this head. We think that it is only in accordance with natural justice that Messrs. Henderson should have been allowed to adduce evidence of their case, and cannot regard as satisfactory the opinion of the Court that such evidence must have been useless.

We think that diplomatic representation may properly be made to the Italian Government as to the impropriety of allowing Messrs. Henderson to suffer by reason of a Judgment so obtained, provided that all means of redress open to them in the Italian Courts have been exhausted by Messrs. Henderson.

Before, however, such representations are made Messrs. Henderson ought to be required either to prosecute their appeal to the Court of Cassation, or to obtain the distinct opinion of Italian lawyers of eminence that an appeal to that Court would be useless. At present it does not appear with sufficient clearness that the Court of Cassation might not set the proceedings aside on the ground that the Courts below have erred in matter of law by refusing to admit the evidence tendered by Messrs. Henderson, or even reverse the Judgment on the ground that Messrs. Henderson are not liable upon the facts established before the Court.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 30, 1897.

JAPAN.

No. 21.

[January 22, 1897.]

Foreign Office to the Law Officers of the Crown.

(A.)

Gentlemen,

Foreign Office, January 21, 1897.

Trial of Mrs. Carew for murder at Yokohama. As to free pardon for Miss Jacobs.

I AM directed by the Marquess of Salisbury to transmit to you the papers, which are noted in the margin, with reference to certain points of difficulty and urgency which have arisen in connection with the conduct of the prosecution of Mrs. Walter Hallowell Carew before Her Majesty's Consular Court for Japan on a charge of wilful murder, and on which his Lordship is anxious to be favoured with your opinion and advice at your earliest possible convenience.

On the 24th October last an inquest was opened at Yokohama before Mr. Hall, Acting British Consul, sitting as Coroner, into the causes of the death of Mr. W. H. R. Carew, a British subject resident at that port. The jury returned the following open verdict:—

"We find that Walter Raymond Hallowell Carew died on the 22nd October, 1896, at the Royal Naval Hospital, from the effects of arsenic, but by whom the poison was administered there is no direct evidence to show."

The evidence was, however, of such a nature that Sir E. Satow, Her Majesty's Minister and Consul-General at Tôkiô, instructed Mr. Litchfield, the Crown Prosecutor in Japan, to take steps to bring about "a Magisterial inquiry before the Assistant Judge of Her Majesty's Court for Japan." This inquiry resulted in the committal of Edith May Hallowell Carew, wife of the deceased man, on a charge of wilful murder.

Reports extracted from a local newspaper of the proceedings before the Coroner and before the Assistant Judge are transmitted herewith.

In view of the grave nature of the charge, Sir E. Satow considered it necessary that the Crown should be represented at the trial by the Crown Advocate at Shanghae, in addition to Mr. Litchfield, and Mr. Wilkinson has accordingly been requested to proceed to Yokohama to act as leading Counsel for the prosecution.

The above facts were reported by Sir E. Satow in a despatch which reached this Department on the 5th instant. On the 14th of this month a telegram was received from him, a copy of which is annexed hereto, showing that the trial of Mrs. Carew is now proceeding in the Court for Japan, but that a point of difficulty has arisen in regard to the evidence to be given by one of the witnesses for the prosecution.

It will be seen, by a reference to the Reports of the proceedings before the Coroner and the Assistant Judge (Papers A and B), that one of the principal witnesses, if not the principal witness on whose evidence the prosecution relies, is Miss Mary Esther Jacobs, an English nursery governess, who was in the service of Mrs. Carew at the time of her husband's death.

It appears that while the trial of Mrs. Carew was actually pending before the Court for Japan, the prisoner's counsel preferred before the Assistant Judge a charge against Miss Jacobs, accusing her of the murder of Mr. W. R. Carew, and that she has been remanded until after the termination of the trial of Mrs. Carew. The result of this step has apparently been to render it impossible for the prosecution to obtain Miss Jacobs' evidence in that trial, it being understood that if Miss Jacobs were called on behalf of the Crown as a witness, she would decline to give evidence, on the ground presumably that, being herself under a criminal charge in respect of the same subject-matter, she was not bound to criminate herself.

In these circumstances, the Crown Advocate, apprehending the likelihood of a miscarriage of justice, and feeling apparently entirely convinced of Miss Jacobs' innocence, has recommended that a free pardon should be granted to her.

Sir E. Satow, who expresses his concurrence in this recommendation, refers to certain letters patent issued under the Great Seal in 1866, by which the Queen's prerogative of pardon was delegated to Her Majesty's Minister and Consul-General in Japan, but states that the document cannot at present be found, implying, it would seem, that if he were completely assured, by a reference to the document itself, of his power, as Her Majesty's Minister and Consul-General, to grant a free pardon in this case, he would do so on the advice of the Crown Advocate.

The annexed copy of the letters patent of 1866, which has been made from the original draft preserved in the office of the Clerk of the Crown in Chancery, makes it clear, however, that the sole power thereby conferred on Her Majesty's Minister and Consul-General is that of pardoning offenders who have been actually convicted in the Consular Court.

The Marquess of Salisbury, having no materials before him on which to form an independent judgment on the merits of the case, has been unable to express any opinion as to the necessity or desirability of granting a free pardon to Miss Jacobs. But feeling that it would be difficult not to attach considerable weight to the advice, on this point, of the Crown Advocate, supported, as it is, by Her Majesty's Minister at Tôkiô, his Lordship decided to seek the advice of the Secretary of State for the Home Department in the matter, since it was clear that the grant of a free pardon was not in the power of the Minister, and that, consequently, the only method of dealing with the case in the desired sense would be the grant of a pardon by the Queen under the Great Seal or under Her Majesty's Sign Manual.

The reply returned by Sir Matthew White Ridley's direction to the application accordingly made to him is transmitted herewith. It will be seen that the Home Secretary considers it impossible, in the circumstances stated, to advise Her Majesty to grant a free pardon to Miss Jacobs.

He suggests, instead, three alternative methods of proceeding by which Miss Jacobs might be induced to tender her evidence. The desired end might, in Sir Matthew White Ridley's opinion, be obtained either (1) by Miss Jacobs appearing as a witness at the trial under the provisions of the Act of 16 Vict., cap. 30, sec. 9 (a copy of which is sent herewith), or (2) by entering a *nolle prosequi* in the proceedings against Miss Jacobs, or (3) by postponing the trial of Mrs. Carew until the charge against Miss Jacobs had been disposed of.

It is, however, not impossible that the suggested alternatives may present, in the eyes of the judicial officers conducting the prosecution, practical difficulties or objections.

I have accordingly been directed to lay the case before you for consideration, inclosing at the same time, for your fuller information, the accompanying copies of the Orders in Council of 1865 and 1878, regulating Her Majesty's jurisdiction in Japan, and to request that you will advise Lord Salisbury at your earliest convenience—for the matter seems to admit of no delay—as to the best course to be taken by the prosecution in the circumstances explained.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Newspaper Reports..	Inclosures in Sir E. Satow's No. 223 of November 24, 1896.	
(B.)	Ditto		
(C.)	Sir E. Satow	(No. 3. Telegraphic)	January 14, 1897.
(D.)	Letters Patent, 1866, conferring on Her Majesty's Minister in Japan power of pardoning convicted offenders.		
(E.)	Home Office		January 19, 1897.
(F.)	Act of Parliament, 16 Vict., cap. 30.		
(G.)	Order in Council for China and Japan of 1865.	(Confidential 1354.)	
(H.)	Order in Council for China and Japan of 1878.	(Confidential 3697.)	

Report.

In our opinion a free pardon should not be granted to Miss Jacobs, even assuming that the Crown Advocate is right in believing that she is innocent; but it is not in our view expedient that when two persons are charged with the same murder the Crown should grant a pardon to one of them for a crime which that person is believed not to have committed. The Crown should not summarily decide in this way as to which is the guilty person, and it seems an extraordinary proposal that a pardon should be granted to a person not convicted in respect of a charge which is believed to be without foundation—*ex hypothesi*, there is nothing to pardon.

In our opinion the trial of Mrs. Carew should proceed, and Miss Jacobs should be summoned to appear as a witness, as suggested in the first alternative proposal of the Home Secretary. If she refuses to give evidence, it must be on the ground that she does not wish to criminate herself—this course she will certainly not adopt if the Crown Advocate is right in his belief that she is innocent; if she refuses to give evidence, Mrs. Carew is presumably innocent, unless both were concerned in the murder, if murder there was. If Miss Jacobs is innocent, she will be naturally most anxious that she should have an opportunity of giving her evidence.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 22, 1897.

No. 22.

[February 3, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January 19, 1897.*

Mr. Patel's claim on Japan for losses through disturbances in Formosa.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, a despatch from Her Majesty's Minister at Tokiô (Paper E) relating to the claim of Mr. Patel against the Japanese Government for losses sustained by him during recent disturbances in Formosa.

Annexed to the despatch is a Memorandum by the Librarian of this Department, in which reference is made to a Report, dated the 18th March, 1887, of the then Law Officers of the Crown in regard to British claims arising out of the burning of Colon in 1885; and I am also to inclose previous correspondence respecting the state of affairs in Formosa.

Mr. Patel claims 700 dollars in respect of his personal effects which were looted by the rebels during the outbreak of last June. It is explained in the despatch from Her Majesty's Consul at Tainan (Inclosure 1 in Paper E) that another British subject was killed in the first attack made by the rebels, and that Mr. Patel was so hurried to make good his escape that he was obliged to leave all his belongings behind. Mr. Patel, himself, states (Inclosure 2 in Paper E) that the Japanese authorities knew of the threatened attack and had given warning to their civil officials, but that they failed to give him similar notice, as well as to protect him.

In view of these circumstances, and having regard to the probability that a large number of claims of a similar nature may be preferred, Lord Salisbury would be glad to be favoured with your opinion as to whether such gross and culpable negligence can be attributed to the Japanese military authorities in regard to Mr. Patel's losses, or whether such other, and if so what, grounds exist as to justify Her Majesty's Government in presenting this claim to the Japanese Government.

Lord Salisbury would also be glad to be favoured at the same time with any observations of a more general nature which you may have to offer on the matter.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	To Sir E. Satow	(No. 110)	December	31, 1895.
(B.)	Sir E. Satow	(No. 137)	July	6, 1896.
(C.)	Ditto	(No. 143)	July	22, „
(D.)	Ditto	(No. 149)	July	29 „
(E.)	Ditto	(No. 202)	November	5 „

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Report.

In our opinion, no sufficient case is shown to justify the putting forward of a claim on behalf of Mr. Patel. The only ground upon which it could be founded would be that the Japanese Government had been guilty of gross misconduct tending in a material way to bring about the insurrection.

Whatever grounds there may be for believing such to be the case, it is not, in our judgment, possible to rely upon this fact with any hope of success, as the charge would unquestionably be denied by the Japanese Government.

A resident in a foreign country takes the same risks as those to which subjects or citizens of that country are liable.

No outside State has, under ordinary circumstances, a right to interfere in the regulation of the internal affairs of another State, and, unless the damage can be shown to have been occasioned by the direct act or neglect of the foreign Government or its Agents, or by the neglect of the military or police to afford protection which was afforded to the subjects of the country, no claim can be successfully maintained.

Under all the circumstances, upon the materials before us, we cannot recommend that Mr. Patel's claim should be pressed.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 3, 1897.

No. 23.

[February 10, 1897.]

Foreign Office to the Law Officers of the Crown.

(B.)

Gentlemen,
Foreign Office, January 21, 1897.

Trial of Mrs. Carew for murder at Yokohama. Action of Mr. Troup as Assistant Judge.

IN connection with the proceedings now pending in Her Majesty's Court for Japan against Mrs. Edith May Hallowell Carew, respecting which certain correspondence has been referred to you in my previous letter of this day's date, the attention of the Marquess of Salisbury has been called to a further point, on which he would be glad to be favoured with your advice, if possible, at the same time as he receives your Report in reply to the previous reference.

It will have been seen from the newspaper report of the proceedings at the Magisterial inquiry held in November last before Mr. James Troup, Her Majesty's Consul (now Consul-General) at Yokohama (or Kanagawa), which formed Inclosure (B) in my preceding letter, that Mr. Troup was described as holding that inquiry in the capacity of Assistant Judge of Her Majesty's Court for Japan. Mr. Troup was referred to by the same style and title in the official despatch from Her Majesty's Minister at Tôkiô, in which the above report was forwarded to this Department.

As, however, Article 9 (1) of "The China and Japan Order in Council, 1878" (Paper H, inclosed in my previous letter), prescribes that the Assistant Judge, as well as the Judge of Her Majesty's Court for Japan, shall be appointed by warrant under the Royal Sign Manual, and as no record could be found in the archives of this Office of Mr. Troup having been so appointed, a telegram was addressed to Sir E. Satow on the 18th instant (copy annexed, Paper marked J), calling his attention to the provisions of the Order in Council, and asking for a definite statement as to the capacity in which Mr. Troup had purported to act in the case.

From Sir E. Satow's reply (also annexed, Paper marked K) it seems clear that, owing presumably to a misconception as to the proper construction of Article 6 (2) of the Order in Council, Mr. Troup has not been appointed Assistant Judge in proper form. It has, moreover, been ascertained by further inquiry that no formal appointment to that post has ever been made since the date of its creation under the Order in Council of 1878, there being no warrant under the Royal Sign Manual in existence conferring the office on any person.

There can, therefore, be no doubt that, when conducting the Magisterial inquiry which resulted in Mrs. Carew's committal for trial on a charge of wilful murder, Mr. Troup did not possess the judicial capacity in which he purported to sit. Lord Salisbury understands that a technical flaw of this character in a criminal case might possibly lead to very serious embarrassment if attention should be called to it.

The suggestion put forward in Sir E. Satow's telegram of the 20th January (Paper K) that the defect might be remedied by conferring on Mr. Troup, retrospectively, the appointment of Acting Assistant Judge as from a date anterior to the commencement of the proceedings against Mrs. Carew does not appear to offer a practical solution of the difficulty. For, apart from the obvious objection that, the post of Assistant Judge having never been filled, no Acting Assistant Judge can be appointed, Lord Salisbury is reluctant to sanction a step which could in any way be called in question as a technical irregularity, in connection with a serious criminal case, in which the life of a British subject is at stake, and in which every formality may be held to be of special importance.

In these circumstances, I am directed to request that you will advise his Lordship as to the course which you would recommend him to follow, both as regards the position of Mr. Troup in this particular case, and as regards the more general question of the validity of any proceedings in which Her Majesty's Consul, or the Acting British Consul, at Yokohama may have purported to act in the judicial capacity of Assistant Judge of the Court for Japan since the establishment of that Tribunal in 1878.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) to (H.) Same as those which accompanied letter to Law Officers of January 21, 1897, marked (A).
(J.) To Sir E. Satow .. .. (Telegraphic) January 18, 1897.
(K.) Sir E. Satow .. .. (Telegraphic) January —, „

Report.

Having regard to the terms of the Order in Council, and the view taken by Mr. Davidson, the question cannot be regarded as altogether free from doubt, but upon the whole we are of opinion that sub-Article (2) of Article 6 of the Order in Council of the 14th August, 1878, applies, and that, in the absence of any direction by the Secretary of State, Mr. Troup is duly authorized as being Her Majesty's Consul for the District Consulate of Kanagawa to act as Assistant Judge.

We do not think it necessary, or, in fact possible, to take any steps to make any retrospective appointment or to validate any proceedings to which Mr. Troup has been a party, or to remove any objection which may be taken to his jurisdiction in the past, but, as it is important that there should be no doubt as to his jurisdiction in the future, we think it would be as well that Her Majesty should by warrant under her Royal Sign Manual appoint him to be Assistant Judge.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 10, 1897.

No. 24.

[April 13, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, March 30, 1897

Protocol as to trade-marks, &c., in Japan.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the inclosed papers relating to the proposed signature of a Protocol, by which Her Majesty's Government agree to renounce their extra-territorial jurisdiction over British subjects in Japan, in so far as it applies to patents, trade-marks, and designs, as soon as all other Treaty Powers shall have similarly renounced such jurisdiction over their own subjects or citizens respectively. The Treaty of the 16th July, 1894, between Great Britain and Japan (Paper A), provides for the entire abandonment of British jurisdiction in Japan in return for certain advantages to be conceded to British subjects. That Treaty has not yet come into operation; but in the Treaty between Germany and Japan of the 4th April, 1896 (Paper B), it was stipulated that Article XVII, which relates to the protection of patents, &c., should take effect at once, and the Japanese Government have consequently agreed that the corresponding Article of the British Treaty should likewise come into force forthwith.

In deference to the wishes of the Japanese Government, Lord Salisbury informed the Japanese Minister (Paper C) that Her Majesty's Government would, on their part, be prepared under certain circumstances to relinquish at once their jurisdiction in matters relating to the protection of industrial property; and in accordance with a subsequent request from Mr. Kato, a Protocol has been drafted which embodies the agreement arrived at between the two Governments.

I am to call attention to the correspondence which has passed with the Board of Trade on this subject (Papers G to K), and I am to request that Lord Salisbury may be favoured with your opinion as to whether the terms of the draft Protocol, as now amended (Paper L), are such as may properly be proposed to the Japanese Government with a view to carrying out the arrangement which has already been agreed upon in principle.

His Lordship will be glad, at the same time, to be favoured with any observations of a general nature which you may desire to offer on the papers now submitted to you.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Treaty. Great Britain and Japan. (Treaty No. 957) ..	July	16, 1894.
(B.)	Treaty. Germany and Japan	April	4, 1896.
(C.)	To Mr. Kato	January	28, 1897.
(D.)	Notice in "Gazette." (Confidential 6841*)	January	1, ,,
(E.)	Mr. Kato	February	8, ,,
(F.)	Ditto	February	26, ,,
(G.)	Board of Trade	January	14, ,,
(H.)	Ditto	January	23, ,,
(I.)	To Board of Trade	February	18, ,,
(J.)	Ditto	March	12, ,,
(K.)	Board of Trade	March	24, ,,
(L.)	Draft Protocol as amended.		

Report.

We have altered the draft Protocol so as to strike out all reference to criminal proceedings, and have introduced a few additional words to make the meaning clearer.

We think it very inexpedient so to modify the administration of the criminal law with reference to one class of cases only, and questions of very great difficulty might arise on the question what are crimes relating to patents, trade-marks, and designs.

We should point out that the wording of the clause in the German Treaty is not the same as in the English Treaty, and appears to be wider in its scope. We presume that the Board of Trade have satisfied themselves that the difference is immaterial.

The simplest way of dealing with the whole subject would be to bring into force unconditionally a Convention in the terms of Article XVII of the German Treaty. There is, we presume, some reason for deeming this course inexpedient.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 13, 1897.

Annex.

Draft Protocol between Great Britain and Japan.

Whereas by Treaty, grant, usage, sufferance, and other lawful means, Her Britannic Majesty has power and jurisdiction in relation to her subjects within the dominions of His Majesty the Emperor of Japan;

Whereas by Article XVII of a Treaty signed between Great Britain and Japan on the 16th July, 1894, it is stipulated as follows:—

"The subjects of each of the High Contracting Parties shall enjoy in the dominions and the possessions of the other the same protection as native subjects in regard to patents, trade-marks, and designs, upon fulfilment of the formalities prescribed by law.

Whereas by Article XX of the same Treaty it is agreed that, from the date on which such Treaty comes into force, the jurisdiction then exercised by British Courts in Japan shall cease, and that such jurisdiction shall be assumed and exercised by Japanese Courts;

And whereas it has been agreed between the Governments of Great Britain and Japan that the provisions of the above-mentioned Article XVII shall come into force at once:—

The Undersigned, duly authorized for that purpose by their respective Governments, have agreed upon the following Articles:—

Article 1. Her Britannic Majesty consents to renounce all extra-territorial jurisdiction at present exercisable by British Courts in Japan for the judicial hearing and determination of matters in difference between British subjects and subjects of the Emperor of Japan, ~~or for the repression of crimes or offences committed by British subjects,~~ in so far as it applies to *the protection of* patents, trade-marks, and designs.

Art. 2. The foregoing Article shall not take effect until all other Powers which enjoy similar benefits to those conferred by Article XVII of the Treaty between Great Britain and Japan of the 16th July, 1894, and which possess extra-territorial jurisdiction in Japan, shall similarly have renounced their right to exercise such jurisdiction between their own subjects or citizens respectively, and subjects of the Emperor of Japan ~~as well as for the repression of crimes or offences committed by their own subjects or citizens respectively,~~ in so far as it applies to *the protection of* patents, trade-marks, and designs.

In witness whereof the Undersigned have signed the above Protocol, and have affixed thereto the seal of their arms.

R. E. W.
R. B. F.

Done at

No. 25.

[December 7, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November* 15, 1897.

Jurisdiction in Japan over Chinese serving on H.M's. ships.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers marked in the accompanying list relative to the case of six Chinese subjects, borne on the books of certain of Her Majesty's ships, who were arrested by the Japanese authorities in August last, at Hakodate, on a charge of gambling while on shore in that port.

Mr. Lowther, Her Majesty's Chargé d'Affaires at Tôkiô, reported the circumstances by telegraph, stating that the Consul had lodged a protest against the Japanese claim to jurisdiction over these men, and that Mr. Wilkinson, the Acting Judge at Yokohama, had advised that Chinese borne on the books of Her Majesty's ships should be considered as British subjects.

Mr. Lowther was thereupon instructed to make representations to the Japanese Government, and to ask that the men might be given up. He was informed that Her Majesty's Government had refused to surrender a Chinese servant employed on board, and borne on the books of, Her Majesty's ship "Esk," who accidentally killed another Chinese subject while on shore at Ichang last year. Your Report on this case is inclosed (Paper I). Reference was also made to some correspondence sent home by Her Majesty's Minister at Tôkiô in 1894 (Paper J), in which will be found a Memorandum by Mr. Wilkinson respecting the status of Chinese and Japanese seamen serving in the merchant-vessels of Treaty Powers. Mr. Wilkinson then advised that the jurisdiction over Chinese seamen in British merchant-vessels properly

L.O.R. 1896 (Conf. 6918), p. 29.

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belonged to Her Majesty's Courts, and that the claim of the Japanese authorities to exercise such jurisdiction in respect of offences committed by them in Japan should be strenuously resisted.

Some doubt appears, however, to have been entertained as to the soundness of the views advanced by Mr. Wilkinson in this Memorandum; at any rate, no instructions were ever sent to Her Majesty's Minister, and the matter was not pressed to a definite conclusion.

In the case now under consideration, Mr. Lowther presented a note to the Japanese Government in the sense of his instructions, requesting the surrender of the men; but the Minister for Foreign Affairs was very decided, and would not accept the precedent in China, maintaining that the Chinese in Her Majesty's ships are not British subjects or protected persons under Treaty or according to the definition contained in the Orders in Council, and that they must be treated as if they were Japanese subjects.

Lord Salisbury thereupon instructed Mr. Lowther to make a strong protest against the trial of the Chinese in question by a Japanese Court. He had in the meantime received a note from the Japanese Government, stating that British jurisdiction in Japan is expressly limited by Treaty and by the Orders in Council of 1865 and 1881 to British subjects by birth or naturalization, and requesting a reconsideration of the case.

In spite of Mr. Lowther's protest, the prisoners were sentenced to fifteen days' hard labour and to fines; they served their time, and afterwards rejoined their respective ships.

The negotiations on this subject are set forth in the inclosed despatches from Mr. Lowther.

I am to call your special attention to his despatch No. 170 (Paper A), and to the Minutes thereon, and to his note to the Japanese Government inclosed in his despatch No. 174 (Paper B), which was written after consultation with Mr. Wilkinson. The contentions of the Japanese Government are fully explained in the article from the "Japanese Mail" inclosed in Mr. Lowther's despatch No. 181 (Paper D). A copy of the Treaty of the 26th August, 1858, conferring on Her Majesty extra-territorial jurisdiction over British subjects in Japan (Paper K), is also inclosed.

In the Orders in Council of 1865 and 1881 (Papers L and M), a British subject is defined as a subject of Her Majesty, whether by birth or naturalization, and in the Order in Council of 1884 (Paper N) it is provided that the expression "British subject" shall include a British-protected person in so far as by Treaty, Capitulation, grant, usage, sufferance, or other lawful means Her Majesty has jurisdiction in relation to such persons *in China, Japan, and Corea* respectively.

The letters from the Admiralty of the 27th September and 19th October (Papers G and H) show the importance attached by the Commander-in-chief on the China Station to the question at issue.

So far as Japan is concerned, it must be remembered that Her Majesty's jurisdiction over British subjects in that country will cease when the new Treaties come into force—probably in 1899, but as similar cases may arise in other countries, such as China, where Her Majesty possesses exclusive criminal jurisdiction over British subjects and protected persons, it is desirable that the principle on which British authorities should proceed should be laid down for future guidance, and I am accordingly to request you to favour Lord Salisbury with your opinion as to whether any further, and if so what, representations should be made to the Japanese Government in regard to this case, or whether any definite instructions should be addressed to Her Majesty's Representatives in China and Japan as to the status of Japanese and Chinese subjects serving on board Her Majesty's ships in regard to offences committed on shore in those countries respectively.

His Lordship would also be glad to receive any observations of a general character which you may wish to offer in connection with the papers now submitted.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Mr. Lowther	(No. 170)	August	29, 1897
(B.)	Ditto	(No. 174)	August	31, „
(C.)	Ditto	(No. 176)	September	1, „
(D.)	Ditto	(No 181)	September	4, „
(E.)	Ditto	(No. 182)	September	5, „
(F.)	Ditto	(No. 187)	September	17, „
(G.)	Admiralty		September	27, „
(H.)	Ditto		October	19, „
(I.)	Law Officers' Report. (Confidential 6918, p. 29)		February	12, 1896
(J.)	Mr. Trench	(No. 34. Consular)	November	16, 1894.
(K.)	Treaty with Japan	(Treaty No. 433)	August	26, 1858.
(L.)	Order in Council, 1865. (Confidential 1354.)			
(M.)	Ditto, 1881. (Confidential 4520*.)			
(N.)	Ditto, 1884. (Confidential 4985*.)			

Report.

The only rights which we have against Japan in this matter must be derived from the Treaty. The Orders in Council cannot extend our rights as against Japan. All that they can do is to provide machinery in our Courts there for trying cases over which, under the Treaty, we have jurisdiction.

By the Treaty, our Consular Courts have jurisdiction over crimes committed by British subjects. While serving on board one of Her Majesty's ships, foreigners forming part of the crew are British subjects, as between this country and Japan, within the meaning of the Treaty. A man-of-war is a portion of British territory, and, while on board it, they are under the allegiance of the Queen We cannot doubt that, if such a person committed a crime on board a man-of-war while in a Japanese port, he might be tried in the Consular Court.

We think that, as between the two countries, the character of a British subject adheres to such a person during his temporary absence from the vessel to which he belongs.

If the Japanese contention be correct, the Japanese Government would be entitled to insist on the trial in the Japanese Courts of an officer or blue-jacket in Her Majesty's navy in respect of an assault committed by him on shore, if they could show that there was something in his pedigree which, under the Statutes conferring British nationality on persons born abroad, might prevent his being, by English municipal law, a British subject. It seems to us impossible to suppose that such a line of inquiry should be open to the Japanese Government An officer or one of the crew of a British man-of-war must, we think, be regarded as a British subject within the meaning of the Treaty, whether on board ship or on shore.

If a member of the crew were himself a Japanese subject other considerations would arise, and we do not think it expedient to insist on ousting the Japanese jurisdiction in respect of offences committed by such Japanese subjects on shore or on board merchant-vessels in Japanese ports. But, in the present case, in our opinion, the Japanese Government should be informed that Her Majesty's Government insists on the view which has already been presented with regard to the case of these six men, and Her Majesty's Representatives in China and Japan should have instructions in conformity with the views expressed in this Report.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 7, 1897.

No. 26.

[December 13, 1887.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, November 30, 1897.

I HAVE the honour, by the direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, which relate to an application made by the Japanese Minister at this Court that due facilities should be accorded by Her

Japan Order in Council.
Seamen deserters.
Approve as initialled.

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Majesty's Government for recovering and apprehending seamen deserters from Japanese merchant ships, whether in this country or elsewhere in Her Majesty's dominions.

I am to direct your attention to a Memorandum by the Solicitor to the Board of Trade, forming the Inclosure in the letter from that Department of the 7th August last, with regard to the requirements of section 238 of "The Merchant Shipping Act, 1894," which reproduce the main provisions of "The Foreign Deserters Act, 1882." It appears to Lord Salisbury that the requirement of the statute has been sufficiently satisfied by the fact that, for practical purposes, whether by law, Treaty, or usage, Her Majesty's Government actually enjoy in Japan such facilities as the Japanese Government now seek to obtain in Her Majesty's dominions.

I am accordingly to inclose the draft of an Order in Council applying section 238 of "The Merchant Shipping Act, 1894," in the case of Japan, and I am to request that you will favour Lord Salisbury with your opinion as to whether the draft, in its present shape, may properly be laid before the Queen in Council for Her Majesty's approval.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	M. Kato	July	21, 1897.
(B.)	To Board of Trade	July	28, "
(C.)	Board of Trade	August	7, "
(D.)	To Board of Trade	August	13, "
(E.)	Board of Trade	August	28, "
(F.)	To India Office and Colonial Office	September	3, "
(G.)	Colonial Office..	September	9, "
(H.)	India Office	September	23, "
(I.)	Ditto	October	30, "
(J.)	Memorandum Mr. Streatfeild	November	4, "
(K.)	Order in Council (Siam). (Confidential 1469) ..	November	10, 1866.
(L.)	Ditto (Tunis). (Confidential 2840)	May	17, 1876.
(M.)	Draft Order in Council, in print.		

Report.

In our opinion, the draft Order in Council, as initialled by us, may properly be submitted for the approval of the Queen in Council.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 13, 1897.

Annex.

At the Court at , the day of

Present:

The Queen's Most Excellent Majesty in Council.

WHEREAS by sub-section (1) of section 238 of "The Merchant Shipping Act, 1894," it is provided that, where it appears to Her Majesty that due facilities are or will be given by the Government of any foreign country for recovering and apprehending seamen who desert from British merchant-ships in that country, Her Majesty may, by Order in Council, stating that such facilities are or will be given, declare that that section shall apply in the case of such foreign country, subject to any limitations, conditions, and qualifications contained in the Order:

And whereas it appears to Her Majesty that due facilities are given by the Government of Japan for recovering and apprehending seamen who desert from British merchant-ships in that country:

And whereas the provisions of section 1 of "The Rules Publication Act, 1893," have been complied with:

Now, therefore, Her Majesty, by virtue of the power vested in her by the hereinbefore recited sub-section (1) of section 238 of "The Merchant Shipping Act, 1894," and by and with the advice of her Privy Council, is pleased to order and declare, and it is hereby ordered and declared, that from and after the date hereof the said section 238 of "The Merchant Shipping Act, 1894," shall apply in the case of Japan.

And the Secretary of State for the Home Department, the Secretary of State for the Colonies, and the Secretary of State for India in Council, are to give the necessary directions herein accordingly.

R. E. W.
R. B. F.

MOROCCO.

No. 27.

[June 30, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 15, 1897.

Nationality of children of I. A. Abensur, born in Morocco before his naturalization in Great Britain.

I AM directed by the Marquess of Salisbury to transmit to you the Papers, which are noted in the accompanying list, relative to an application which has been made to Her Majesty's Consul at Tangier for the enrolment, in the Consular Register of British subjects, of certain infant children of a naturalized British subject, named Mr. Isaac A. Abensur, aged respectively nine years, five years, and six months.

Mr. Abensur, who was theretofore a subject of the Sultan of Morocco, having divested himself of his Moorish nationality in contemplation of Moorish law, was naturalized as a British subject by a special Act of Parliament, the short title of which is "Abensur's Naturalization Act, 1896," on the 7th August last.

This Act (Paper B) confers upon him (§ 1) "All the rights, privileges, and capacities whatsoever of a natural-born subject of Her Majesty the Queen," and the question which now arises for decision is, whether the infant children who are the offspring of a marriage contracted between Mr. Abensur and a Hebrew lady at Tangier on the 10th June, 1885, according to the Hebrew religious law prevailing in Morocco, are (1) according to English law legitimate; and (2) if according to English law legitimate, whether they are entitled to be registered as British subjects, notwithstanding that they were born before the date of their father's naturalization, under the special Act already quoted.

L.O.R. 1888 (Conf. 5785), p. 47.

I am to draw your attention to the instructions upon this subject which was addressed to Her Majesty's Consul at Tangier on the 17th March last (Paper E), to the Report by the Law Officers of the Crown respecting the case of Mr. Grant's children (the 14th June, 1888) to which reference is therein made (Paper F), and to Mr. Consul White's despatch of the 9th ultimo (Paper H), in which he gives particulars as to the local law and usage of Morocco in regard to Jewish marriages in that country.

You will observe that in this last-named Paper Mr. White reports that Mr. Abensur obtained his private Act of Parliament largely in the interests of his children, and was assured by his legal adviser (for whose opinion, however, neither Her Majesty's Government nor this Department are in any way responsible) that under that Act those children would obtain British nationality equally with himself.

Mr. White also draws attention to a despatch which was addressed to Sir J. D. Hay by Lord Rosebery on the 6th March, 1886, and in which it was stated that marriages performed by Jewish Rabbis between British subjects in Mahommedan countries would be admitted as valid in England.

The despatch in question is inclosed (Paper J).

I am to request that you will take the inclosed Papers into your consideration, and favour his Lordship with your opinion as to the question set forth in the third paragraph of this letter, and generally as to the instructions which should be sent to Her Majesty's Representatives in Morocco for their guidance in dealing with appli-

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cations for the registration of children of marriages between British subjects performed by Jewish Rabbis in that country.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Consul White .. .. (Inclosure and Minutes.)	(No. 5)	January 11, 1897.
(B.)	"Abensur's Naturalization Act, 1896."		
(C.)	To Consul White		January 25, 1897
(D.)	Consul White .. .. (With Minutes.)		February 8, "
(E.)	To Consul White	(No. 1. Treaty)	March 17, ..
(F.)	Law Officers' Report. (Confidential 5785, p. 47)		June 14, 1888.
(G.)	Consul White		April 8, 1897.
(H.)	Ditto .. .. (With Minutes.)	(No. 1. Treaty)	April 9, "
(I.)	Sir J. D. Hay .. .. (Two inclosures—Memorandum and Law Officers' Reports.)	(No. 4. Consular)	January 11, 1886.
(J.)	To Sir J. D. Hay	(No. 3. Consular)	March 6. "

Report.

We agree in thinking that the doctrine of English law that for the validity of a marriage in England the presence of an episcopally ordained clergyman is necessary, has no bearing upon the present case. It never applied to the marriage of Jews in England, and cannot apply to the marriage of a Jew in Morocco.

With regard to the other points raised, we are not quite agreed as to reasons, though agreeing in the result. The opinion of the Attorney-General upon these points is as follows:—

"The question whether Abensur's marriage was monogamous raises points of difficulty, but, for the purposes of the question submitted to us, it is not necessary to express any opinion thereon, or to consider whether Mr. Abensur's children are legitimate according to English law. A good deal may depend upon the place where, and, the circumstances under which, the questions arise, and I desire not to express any opinion against the legitimacy of the children.

"In my judgment, however, assuming them to be legitimate, they yet cannot be registered as British subjects. 'Abensur's Naturalization Act' is not, I think, retrospective, and cannot be held to naturalize children born before the Act was passed.

"To attain Mr. Abensur's object I think he must obtain an Act of Parliament making his children born before the passing of the Act British subjects, and it would be well to provide, at the same time, that any children born after the passing of the Act should also be British subjects."

The opinion of the Solicitor-General upon these points is as follows:—

"For the present purpose I think it is immaterial whether the marriage of Abensur was monogamous or polygamous. This question would be material if he desired the assistance of the English Divorce Court (Hyde *v.* Hyde, L. R. 1 P. and D. 130), or if his children claimed to inherit real property in England (see Birtwhistle *v.* Vardill, 7 C. and F., 1895). But it cannot, in my opinion, be broadly laid down that for all purposes the offspring of a polygamous marriage is to be treated, in the view of English law, as illegitimate. The Divorce Court and the law of inheritance to real property in this country recognize only monogamous marriages, but for the purpose of inheriting nationality I think that a polygamous marriage by a subject of Her Majesty in a country where he is domiciled, and where the law allows of such unions, must be treated as lawful, the English law adopting for this purpose the law of the domicile.

"This second objection, therefore, to the registration, in my opinion, fails like the first.

"A difficulty, however, is presented by the fact that the children were born before Abensur was naturalized. If they had been born after the Act of Naturalization they would, though born abroad, in my opinion, be British subjects by virtue of the statutes 7 Anne, cap 5, sec. 3, and 4 Geo. II, cap. 21, sec. 1.

"The children born before the Act of Naturalization stand, however, on a different footing.

"It is no doubt eminently reasonable that infant children living with their father should follow his nationality.

"The Law Officers, in their Report of the 4th November, 1861, advised that, in their opinion, minors who were born in Her Majesty's dominions, but whose fathers had become naturalized American citizens, ought, during their minority, to be considered and treated as between the two Governments, not as British subjects, but as American citizens, minors in this position being by the Statute Law of the United States regarded as American citizens.

"No difficulty would exist with regard to children born abroad of a person afterwards naturalized, who might not desire to assume the character of British subjects, as the Statute 4 Geo. II, cap. 21, merely confers upon children born abroad the privilege of being British subjects, but does not fasten upon them without their own concurrence any burdens whatever (see Sir Roundell Palmer's speech in the House of Commons on the 20th March, 1868, as quoted in 'Forsyth on Constitutional Law,' p. 339). But, in the present case, as they were born abroad, the title of these children to be, in view of English law, British subjects must depend upon 7 Anne, cap. 5, sec. 3, as explained by 4 Geo. II, cap. 21, which confers this privilege only on children whose fathers were *at the time of their birth* natural-born subjects.

"Although for some purposes naturalization by special Act has undoubtedly a retrospective effect (Blackstone's Commentaries, Book II, chapter 15, p. 250, of 11th edition citing Co Lib. 129a), it appears to me to be impossible to say that Abensur was *at the time of the birth of these children*, before the passing of his special Act, a natural-born subject as required by 4 Geo. II, cap. 21."

The Attorney-General and the Solicitor-General are, therefore, agreed in thinking that the claim to have these children recognized as British subjects fails.

We may further observe that the Morocco Order in Council does not appear to make any provision for the registration of infants, and that, before advising generally as to applications for the registration of children of marriages between British subjects performed by Jewish Rabbis in Morocco, we should desire further instructions as to the law or practice under which such registration has been carried out.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 30, 1897.

NETHERLANDS.

No. 28.

[September 14, 1897.]

Foreign Office to Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 16, 1897.

Extradition Treaty with Netherlands.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith correspondence, in print, that has taken place between this Department, the Home Office, and the Netherland Minister at this Court, with regard to the text of an Extradition Treaty between Great Britain and the Netherlands.

This correspondence sets forth the various points that have arisen and received consideration since the matter was last brought to the notice of the Law Officers of the late Administration.

Copies of the draft Treaty, in the form in which it has been approved by Her Majesty's Secretary of State for the Home Department, and accepted by the Netherland Government, are also inclosed, and I am to state that Lord Salisbury would be

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glad to be favoured with your opinion as to whether, in its present shape, his Lordship can properly sign it, in conjunction with the Netherland Minister at this Court, who is desirous of so doing at an early date.

I have, &c.
(Signed) **F. H. VILLIERS.**

List of Papers.

Confidential Print.
Draft Treaty.

Report.

We think that the Treaty may be signed, subject to the following observations:—

In Article II (6) the punctuation requires correction: the comma after "counterfeiting" should be omitted, and a comma inserted after "altering." The word "or" after "forged" should be omitted.

The first paragraph of Article IV presents some difficulty in its wording. The word "or" in line 7 should apparently be "and."

We suggest the words "is actually upon his trial" instead of the words "is still under trial."

We also suggest that the words following should run thus: "Within the territory of the other of the two High Contracting Parties."

In paragraph 2 (*a*) of Article XII the word "law" should be substituted for the word "legislation."

Article XIII.—After "for trial," in line 6, should run, "if the crime has been committed."

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 14, 1897.

Annex.

Draft Treaty between Great Britain and the Netherlands for the Mutual Surrender of Fugitive Criminals.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and Her Majesty the Queen of the Netherlands, and in Her name Her Majesty, the Queen-Regent of the Kingdom, having mutually resolved to conclude a new Treaty for the extradition of criminals, the said High Contracting Parties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; and

Her Majesty the Queen of the Netherlands, and in Her name Her Majesty the Queen-Regent of the Kingdom;

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II.

The crimes or offences for which the extradition is to be granted are the following:—

1. Murder, including infanticide, or attempt, or conspiracy to murder, including such crimes when directed against the Sovereign, his heir, or any other person whomsoever, provided that the crime is not of a political character.

2. Manslaughter, including the manslaughter of a child.
3. Assault occasioning actual bodily harm.
4. Maliciously wounding or inflicting grievous bodily harm.
5. Counterfeiting or altering money, or uttering counterfeit or altered money.
6. Forgery, counterfeiting or altering, or uttering what is forged, counterfeited or altered.
7. Embezzlement; fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any Company, made criminal by any law for the time being in force; or larceny.
8. Malicious injury to property if the offence be indictable.
9. Obtaining money, goods, or valuable securities by false pretences.
10. Crimes against bankruptcy law.
11. Perjury, or subornation of perjury.
12. Rape.
13. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.
14. Indecent assault.
15. Administering drugs, or using instruments with intent to procure the miscarriage of a woman.
16. Abduction.
17. Child stealing.
18. Kidnapping of minors and their false imprisonment.
19. Burglary or house-breaking.
20. Arson.
21. Robbery with violence.
22. Any malicious act done with intent to endanger the safety of a railway train.
23. Threats by letter or otherwise, with intent to extort.
24. Piracy by law of nations.
25. Sinking or destroying a vessel at sea, or attempting to do so.
26. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm.
27. Revolt by two or more persons on board a ship on the high seas, against the authority of the master.
28. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be an extradition crime by the laws of the State applied to.

In the foregoing cases extradition shall take place only when the crime, if committed within the jurisdiction of the country on which the claim for surrender is made, would constitute an extradition crime by the laws of that country.

Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III.

Either Government may, in its absolute discretion, refuse to surrender its own subjects to the other Government.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Netherland Government, has already been tried and discharged or punished, or is actually upon his trial, within the territory of the other of the two High Contracting Parties for the crime for which his extradition is demanded.

If the person claimed on the part of the British Government, or if the person claimed on the part of the Netherland Government, should be under examination, or is undergoing sentence under a conviction, for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal, or on expiration of his sentence, or otherwise.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

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ARTICLE VII.

A person surrendered may in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity during one month of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X.

Pending the presentation of the demand for extradition through the Diplomatic channel, a fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Magistrate. He shall, in accordance with this Article, be discharged, as well in the Netherlands as in the United Kingdom, if within the term of twenty days a requisition for extradition shall not have been made by the Diplomatic Agent of the demanding country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XI.

If the fugitive have been arrested in the British dominions he shall forthwith be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence depositions or statements on oath or the affirmation of witnesses taken in the Netherlands, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:—

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the Netherlands.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the Netherlands, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.
3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the Netherlands.
4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State of the Netherlands; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken may be substituted for the foregoing.

ARTICLE XII.

If the fugitive have been arrested in the dominions of the Netherlands the officer of justice shall prefer a requisition within three days after the arrest, or, if the arrest have not taken place, or if it have taken place prior to the application for extradition, then within three days after the receipt of authority for that purpose from the Netherland Government in order that the person claimed may be interrogated by the Court, and that it may express its opinion as to the grant or refusal of extradition.

Within fourteen days after the interrogatory the Court shall forward its opinion and its decision, with the papers in the case, to the Minister of Justice.

The extradition shall only be granted on the production, either in original or in authenticated copy—

1. Of a conviction; or,
2. (*a.*) Of a warrant of arrest (which, by the law of the British dominions, is the only document which is granted when it is adjudged upon evidence taken on oath that the accused ought to be taken into custody), issued in the form prescribed by British law, and indicating the offence in question sufficiently to enable the Netherland Government to decide whether it constitutes, in contemplation of Netherland law, a case provided for by the present Treaty; and,

   (*b.*) Of the evidence.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the Netherland dominions shall admit as valid evidence depositions or statements on oath, or the affirmations of witnesses taken in the British dominions, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, providing the same are authenticated as follows:—

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the British dominions.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the British dominions, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating the fact of, a conviction, must purport to be certified by a Judge, Magistrate, or officer of the British dominions.
4. In every case such warrant, deposition, affirmation, copy certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of one of the Principal Secretaries of State, or some other Minister of State of the British dominions, but any other mode of authentication for the time permitted by law in that part of the dominions of the Netherlands where the examination is taken may be substituted for the foregoing.

ARTICLE XIII.

The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, if the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. The fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

ARTICLE XIV.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered, at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles but to everything that may serve as a proof of the crime.

ARTICLE XVI.

The respective Governments mutually renounce all claim for the repayment of expenses incurred by them in the arrest and maintenance and transport of the person to be surrendered, and all other expenses which may be incurred within the limits of their respective territories until the person to be surrendered is placed on board ship, together with the

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expenses of giving up and returning all seized articles and of sending and returning the papers containing proof of the crime, or other documents, and they reciprocally agree to bear all such expenses themselves.

The above stipulations, however, shall not apply to extradition to and from Canada, as regards which Colony all the expenses shall be borne by the demanding State.

The person to be extradited shall be sent to the port which the Diplomatic or Consular Agent of the demanding State shall indicate.

ARTICLE XVII.

If in any criminal matter pending in any Court or Tribunal of one of the two countries it is thought desirable to take the evidence of any witness in the other, such evidence may be taken by the judicial authorities in accordance with the laws in force on this subject in the country where the witness may be; and any expenses incurred in taking such evidence shall be defrayed by the country in which it is taken.

ARTICLE XVIII.

The stipulations of the present Treaty shall apply to the Colonies and foreign possessions of the two High Contracting Parties, but being based upon the legislation of the mother country, shall only be observed on either side so far as they may be compatible with the laws in force in those Colonies or possessions.

The demand for the extradition of an offender who has taken refuge in a Colony or foreign possession of either Contracting Party may also be made directly to the Governor or principal functionary of that Colony, or possession by the Governor or principal functionary of a Colony or possession of the other Contracting Party, when the two Colonies or foreign possessions are situated in Asia, Australia (including New Zealand and Tasmania), the Pacific and Indian Oceans, or South or East Africa.

The same rule shall be followed if the two Colonies or foreign possessions are situated America (including the West India Islands).

The said Governors or principal functionaries shall have the power either of granting the extradition or of referring the question to their Government.

In all other cases, the demand for extradition shall be made through the Diplomatic channel.

The period of provisional arrest provided for in Article X shall, for the purposes of this Article, be extended to sixty days.

ARTICLE XIX.

From the day when the present Treaty shall come into force, the Treaty of Extradition between the two countries of the 19th June, 1874, shall cease to have effect; but the present Treaty shall apply to all crimes within the Treaty, whether committed before or after the day when it comes into force.

ARTICLE XX.

The present Treaty shall be ratified, and the ratifications shall be exchanged as soon as possible.

The Treaty shall come into force three months after the exchange of the ratifications. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months' notice of its intention to do so.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done in duplicate at London, this day of , 1897.

No. 29.

[November 18, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, October* 30, 1897.

Proposed Extradition Treaty with Netherlands.

I HAVE the honour, by direction of the Marquess of Salisbury, to acknowledge the receipt of your letter of the 14th instant, expressing the opinion that the proposed Treaty of Extradition between Great Britain and the Netherlands may be signed, subject to certain modifications, which shall accordingly be made and brought to the notice of the Netherland Government in due course.

Before, however, proceeding to signature, Lord Salisbury is of opinion that it may be desirable, even at this late stage of the negotiation, to propose to the Netherland Government, the addition of some provision for the mutual surrender of persons manufacturing or keeping explosives with harmful intent, and of conspiring to commit such crimes.

His Lordship understands that such an offence, *if committed within the jurisdiction of the Crown*, is an "extradition crime" (within the meaning of the Extradition Act) as it constitutes an offence against the Offences against the Person Act of 1861, which Act is specially mentioned in the Schedule annexed to the Extradition Act, 1870 (Amendment) Act of the 5th August, 1873. It would, of course, be necessary first to ascertain from the Netherland Government if a corresponding offence exists in the Dutch Penal Code, and, if so, if they would assent to its being included in the new Treaty. Should, however, no difficulty arise on either of these grounds, some such provision might be conveniently added to paragraph 4 of Article II of the Treaty in its present form.

In this connection I am to observe that, at the suggestion of the Italian Government, provision has been made for the inclusion of such an offence in a Treaty of Extradition at present in course of negotiation with Italy, but which has not, as yet. reached a sufficiently advanced stage to be submitted, in its entirety, for your approval.

The offence in question is described as "making, keeping, or carrying an explosive substance, dangerous or noxious thing or material with intent to do grievous bodily harm," and it is proposed subsequently to insert the word "sending" after "keeping" (see section 29 of 24 & 25 Vict., cap. 100), and Lord Salisbury considers that a stipulation worded in identic terms, might be proposed to the Government of the Netherlands. It has been approved by Her Majesty's Secretary of State for the Home Department after reference to the Chief Magistrate at Bow Street.

In addition to this Lord Salisbury would wish, were it possible, to make some stipulation for the mutual surrender of persons who, outside the jurisdiction of the State to which they belong, commit similar offences against that State, who, in short, are guilty of the crimes referred to in "The Explosives Act, 1883." His Lordship understands, however, that, as yet, this is not legally possible, having regard to the terms of the preamble of the Extradition Act of 1870, and to the fact that the Act of 1883, being of later date than the Extradition Acts, is not comprised in the Schedules of extradition crimes. Some considerations on this point are advanced in the Memorandum, accompanied by the four Acts referred to, which is inclosed, and to which I am to invite your attention.

It might, however, be possible, with the assent of the Netherland Government, to record in the Treaty an understanding to the effect that arrangement shall hereafter be made for mutual surrenders in such cases, so soon as the Legislatures of the two countries had provided the necessary machinery. On this latter point Lord Salisbury would be glad to be favoured with any observations you may think well to offer. I may mention that there are precedents for entering into international engagements in anticipation of future legislation, an example of which is furnished in Article IV of the Liquor Traffic Convention signed at the Hague in November, 1887, of which a copy is inclosed.

I am to request that you will be good enough to take the subject of this letter, and the documents which accompany it, into your consideration, and to favour Lord Salisbury with your opinion:—

1. As to whether a provision in similar terms to that proposed to be inserted in the Treaty with Italy may properly be submitted for the acceptance of the Netherland Government in extension of paragraph 4 of Article II as it at present stands.

2. As to whether you see any objection to a stipulation, worded as follows, being added to the Treaty, either at the end of Article II, or in the form of a Protocol, if the Netherland Government agree:—

"The High Contracting Parties hereby undertake, so soon as their respective Legislatures empower them to do so, to enter into a further agreement for the mutual surrender, to the country of his origin, of any person who, being a subject of one of the Contracting Parties, shall, within the dominions of the other Contracting Party, make or have in his possession or under his control, any explosive substance with intent, by means thereof, to endanger life or cause serious injury to property in the State of which he is a subject, or to enable any other person by means thereof to endanger life or cause serious injury to property in the same State.

"The High Contracting Parties further undertake that such Agreement shall also

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provide for the surrender to his country of origin of a person who, having committed an offence of the above nature in a third country, shall have taken refuge within the dominions of the other Contracting Party."

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) Memorandum.
(B.) Extradition Act, 1870. (33 & 34 Vict., cap. 52.)
(C.) Extradition Act, 1870 (Amendment) Act, 1873. (36 & 37 Vict., cap. 60.)
(D.) Offences against the Person Act, 1861. (24 & 25 Vict., cap. 100.)
(E.) Explosive Substances Act, 1883. (46 & 47 Vict., cap. 10.)
(F.) Draft Extradition Treaty with the Netherlands.
(G.) North Sea Liquor Traffic Convention, 1887. (Parliamentary No. 3188.)

(H.) To Home Office .. .. September 23, 1897.
(I.) Home Office .. .. October 26, ..

Report.

We suggest that the provision proposed to be added in extension of paragraph 4 of Article II should be modified in accordance with the clause (A) (*a*) in the draft initialled by us herewith. We have confined this clause to explosive substances, as it is with these that we understand it is desired especially to deal, and have added the words "placing or throwing" as well as "causing any explosion."

We suggest that there should also be added clauses including in the list of extradition crimes the offences with regard to explosives under "The Malicious Injuries to Property Act, 1861," which is one of the Statutes scheduled to the Extradition Acts. The clauses we suggest for this purpose are (A) (*b*) and (*c*) in the accompanying draft initialled by us.

2. We think that it is very desirable that a clause intended to deal with offences against "The Explosives Act, 1883," should be added to the Treaty in the form of a Protocol.

We think that this clause should embrace all the offences specified in the Explosives Act, sections 2 and 3. It ought in the first instance to deal with such offences committed within the dominions of the country demanding extradition. For this purpose all that is wanted is to add these offences to the list of extradition crimes.

In the second place, the proposed clause ought to provide for the surrender of subjects of the Contracting Parties who, out of the dominions of their own country either in the dominions of the other Contracting Party or in any third country, commit any of the offences mentioned in section 3 of the Explosives Act.

We have drafted a clause (B) in the accompanying draft intended to carry out these objects. The clause (B) as sent to us omits to deal with the case of offences against the Explosives Act committed within the dominions of the country demanding extradition.

It is possible that the proposal which it is desired to embody in the Protocol may require legislation in Holland to make the Acts in question crimes as well as to make them subjects for extradition. In this country legislation would be required for the latter purpose only.

Although the subject is not strictly relevant to that of extradition, we desire to point out that it would be most desirable to make an arrangement with Holland to endeavour to procure the passing in the two countries of Statutes making it a crime in England to conspire there to cause an explosion in Holland, and making it a crime in Holland to conspire there to cause an explosion in England.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 18, 1897.

Annex.

Draft Treaty between Great Britain and the Netherlands for the Mutual Surrender of Fugitive Criminals.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and Her Majesty the Queen of the Netherlands, and in her name Her Majesty the Queen-Regent of the Kingdom, having mutually resolved to conclude a new Treaty for the extradition of criminals, the said High Contracting Parties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India,

And Her Majesty the Queen of the Netherlands, and in her name Her Majesty the Queen-Regent of the Kingdom,

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party under the circumstances and conditions stated in the present Treaty.

ARTICLE II.

The crimes or offences for which the extradition is to be granted are the following:—

1. Murder, including infanticide, or attempt, or conspiracy to murder, including such crimes when directed against the Sovereign, his heir, or any other person whomsoever, provided that the crime is not of a political character.

2. Manslaughter, including the manslaughter of a child.

3. Assault occasioning actual bodily harm.

4. Maliciously wounding or inflicting grievous bodily harm;

(a.) *Causing any explosion, or making, keeping, placing, throwing, sending, or carrying any explosive substance, with intent to do grievous bodily harm.*

(b.) *Unlawfully and maliciously by explosion, destroying, or damaging any building to the danger of life, or placing or throwing in or near any building any explosive substance with intent to destroy any building, machinery, or chattels, or placing or throwing any explosive substance in or near any ship or vessel with intent to damage any ship, vessel, machinery, or chattels.*

(c.) *Making, or unlawfully having possession of any explosive substance with intent unlawfully and maliciously to destroy or damage any building, machinery, or any ship or vessel, or any sea bank, bank of river, or canal, or reservoir, or quay, lock, or any other work belonging to any port, harbour, dock, or reservoir, or navigable river or canal, or any bridge or viaduct.*

5. Counterfeiting or altering money, or uttering counterfeit or altered money.

6. Forgery, counterfeiting or altering or uttering, what is forged, ~~or~~ counterfeited or altered.

7. Embezzlement; fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any Company, made criminal by any law for the time being in force; or larceny.

8. Malicious injury to property if the offence be indictable.

9. Obtaining money, goods, or valuable securities by false pretences.

10. Crimes against bankruptcy law.

11. Perjury, or subornation of perjury.

12. Rape.

13. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.

14. Indecent assault.

15. Administering drugs, or using instruments with intent to procure the miscarriage of a woman.

16. Abduction.

17. Child stealing.

18. Kidnapping of minors and their false imprisonment.

19. Burglary or house-breaking.

20. Arson.

21. Robbery with violence.

22. Any malicious act done with intent to endanger the safety of a railway train.

23. Threats by letter or otherwise with intent to extort.

24. Piracy by law of nations.

25. Sinking or destroying a vessel at sea, or attempting to do so.

26. Assaults on board a ship on the high seas with intent to destroy life or do grievous bodily harm.

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27. Revolt by two or more persons on board a ship on the high seas against the authority ot the master.

28. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be an extradition crime by the laws of the State applied to.

In the foregoing cases extradition shall take place only when the crime, if committed within the jurisdiction of the country on which the claim for surrender is made, would constitute an extradition crime by the laws of that country.

Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

The High Contracting Parties hereby undertake, as soon as their respective Legislatures empower them to do so, to enter into a further agreement to add to the list of crimes or offences for which extradition is to be granted the following:—

1. *Unlawfully and malicously causing by any explosive substance, an explosion of a nature likely to endanger life, or to cause serious injury to property.*

2. *Unlawfully and maliciously doing any act with intent to cause by an explosive substance, or conspiring to cause by an explosive substance, an explosion of a nature likely to endanger life, or to cause serious injury to property.*

3. *Unlawfully and maliciously making or having possession or control of any explosive substance, with intent—by means thereof—to endanger life, or cause serious injury to property, or to enable any other person—by means thereof—to endanger life, or cause serious injury to property.*

And also to arrange for the mutual surrender to the country of which he is a subject "of any person who being a subject of one of the Contracting Parties shall within the dominions of the other Contracting Party, or in any third country, unlawfully and maliciously do any act with intent to cause by an explosive substance, or conspire to cause by an explosive substance, an explosion in the dominions of the Contracting Party demanding his surrender, of a nature likely to endanger life, or to cause serious injury to property, or who unlawfully and maliciously shall make, or have in his possession, or under his control, any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in the dominions of the Contracting Party demanding his surrender, or to enable any other person by means thereof to endanger life, or cause serious injury to property in such dominions."

ARTICLE III.

Either Government may, in its absolute discretion, refuse to surrender its own subjects to the other Government.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Netherland Government, has already been tried ~~or~~ *and* discharged or punished, or is ~~still~~ ~~under~~ *actually upon his* trial, within the territor~~ies~~*y* of the *other of the* two High Contracting Parties ~~respectively~~, for the crime for which his extradition is demanded.

If the person claimed on the part of the British Government, or if the person claimed on the part of the Netherland Government, should be under examination, or is undergoing sentence under a conviction, for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal, or on expiration of his sentence, or otherwise.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered may in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity during one month of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X.

Pending the presentation of the demand for extradition through the Diplomatic channel, a fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Magistrate. He shall, in accordance with this Article, be discharged, as well in the Netherlands as in the United Kingdom, if within the term of twenty days a requisition for extradition shall not have been made by the Diplomatic Agent of the demanding country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XI.

If the fugitive have been arrested in the British dominions he shall forthwith be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence, depositions, or statements on oath, or the affirmations of witnesses taken in the Netherlands, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:—

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the Netherlands.

2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the Netherlands to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.

3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the Netherlands.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State of the Netherlands; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken may be substituted for the foregoing.

ARTICLE XII.

If the fugitive have been arrested in the dominions of the Netherlands, the officer of justice shall prefer a requisition within three days after the arrest, or, if the arrest have not taken place,

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or if it have taken place prior to the application for extradition, then within three days after the receipt of authority for that purpose from the Netherland Government, in order that the person claimed may be interrogated by the Court, and that it may express its opinion as to the grant or refusal of extradition.

Within fourteen days after the interrogatory, the Court shall forward its opinion and its decision, with the papers in the case, to the Minister of Justice.

The extradition shall only be granted on the production, either in original or in authenticated copy—

1. Of a conviction; or

2.—(*a.*) Of a warrant of arrest (which, by the law of the British dominions, is the only document which is granted when it is adjudged upon evidence taken on oath that the accused ought to be taken into custody), issued in the form prescribed by British ~~legislation~~ *law*, and indicating the offence in question sufficiently to enable the Netherland Government to decide whether it constitutes, in contemplation of Netherland law, a case provided for by the present Treaty; and—

(*b.*) Of the evidence.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the Netherland dominions shall admit as valid evidence, depositions, or statements on oath, or the affirmations of witnesses taken in the British dominions, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:—

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the British dominions.

2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the British dominions to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the British dominions.

4. In every case such warrant, deposition, affirmation, copy certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of one of the Principal Secretaries of State or some other Minister of State of the British dominions, but any other mode of authentication for the time being permitted by law in that part of the dominions of the Netherlands where the examination is taken may be substituted for the foregoing.

ARTICLE XIII.

The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, ~~in case~~ *if* the crime ~~shall have~~ *had* been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could at the time of such conviction have been granted by the State applied to. The fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

ARTICLE XIV.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles but to everything that may serve as a proof of the crime.

ARTICLE XVI.

The respective Governments mutually renounce all claim for the repayment of expenses incurred by them in the arrest and maintenance and transport of the person to be surrendered, and all other expenses which may be incurred within the limits of their respective territories until the person to be surrendered is placed on board ship, together with the expenses of giving up and returning all seized articles, and of sending and returning the papers containing proof of the crime, or other documents, and they reciprocally agree to bear all such expenses themselves.

The above stipulations, however, shall not apply to extradition to and from Canada, as regards which Colony all the expenses shall be borne by the demanding State.

The person to be extradited shall be sent to the port which the Diplomatic or Consular Agent of the demanding State shall indicate.

ARTICLE XVII.

If in any criminal matter pending in any Court or Tribunal of one of the two countries it is thought desirable to take the evidence of any witness in the other, such evidence may be taken by the judicial authorities in accordance with the laws in force on this subject in the country where the witness may be; and any expenses incurred in taking such evidence shall be defrayed by the country in which it is taken.

ARTICLE XVIII.

The stipulations of the present Treaty shall apply to the Colonies and foreign possessions of the two High Contracting Parties, but being based upon the legislation of the mother country, shall only be observed on either side so far as they may be compatible with the laws in force in those Colonies or possessions.

The demand for the extradition of an offender who has taken refuge in a Colony or foreign possession of either Contracting Party may also be made directly to the Governor or principal functionary of that Colony or possession by the Governor or principal functionary of a Colony or possession of the other Contracting Party when the two Colonies or foreign possessions are situated in Asia, Australia (including New Zealand and Tasmania), the Pacific and Indian Oceans, or South or East Africa.

The same rule shall be followed if the two Colonies or foreign possessions are situated in America (including the West India Islands).

The said Governors or principal functionaries shall have the power either of granting the extradition or of referring the question to their Government.

In all other cases the demand for extradition shall be made through the diplomatic channel.

The period of provisional arrest provided for in Article X shall for the purposes of this Article be extended to sixty days.

ARTICLE XIX.

From the day when the present Treaty shall come into force the Treaty of Extradition between the two countries of the 19th June, 1874, shall cease to have effect; but the present Treaty shall apply to all crimes within the Treaty, whether committed before or after the day when it comes into force.

ARTICLE XX.

The present Treaty shalt be ratified, and the ratifications shall be exchanged as soon as possible.

The Treaty shall come into force three months after the exchange of the ratifications. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months' notice of its intention to do so.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done in duplicate at London, this day of , 1897.

R. E W.
R. B. F.

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PERSIA.

No. 30.

[September 29, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 2, 1897.

Gentlemen,

Messrs. Ziegler and Co.'s claim on Persian Government for plunder of their goods by robbers.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to a claim for compensation brought by Messrs. Ziegler and Co., of Manchester, against the Persian Government.

It will be seen from the letters addressed to this Department by Lloyds, Papers (A) and (C), that the agents of Messrs. Ziegler and Co. recently sent from Bushire to Shiraz a quantity of goods which had previously been insured at Lloyds to the amount of 9,200*l*.

These goods were plundered by robbers between Kazeroom and Shiraz during the disturbances consequent on the death of the late Shah, and Messrs. Ziegler and Co. sustained a loss of 3,695*l*.

This amount was paid to the Company by the underwriters.

When application was made to the Persian Government for compensation for the stolen goods, they refused it on the ground that these goods were insured. In the case of other goods which were not insured, they had consented to award compensation.

The Persian Government contend (see Mr. Hardinge's despatches of the 11th July, Papers (D) and (E)) that the value of the stolen goods having been recovered by Messrs. Ziegler from an Insurance Company, no claim lies against Persia, and they hold that it is an inevitable condition attached to the existence of Insurance Companies that they should occasionally be subject to losses.

Mr Hardinge, Her Majesty's Chargé d'Affaires at Tehran, states that he cannot discover any case in which the Persian Government have made good losses on property which they knew to have been insured.

I am to request that you will take the papers transmitted herewith into your consideration, and inform Lord Salisbury whether, in your opinion, the Persian Government are liable for compensation in this case, and whether you consider the claim to be one which may properly be pressed upon them by Her Majesty's Government.

I am also to request that you will favour his Lordship with any general observations which you may have to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Lloyds	.. ..	July 15, 1897.
(B.) Mr. Hardinge	.. .. .. (No. 40. Telegraphic)	July 22, ,,
(C.) Lloyds	.. ..	July 28, ,,
(D.) Mr. Hardinge	.. .. (No. 91)	
(E.) Ditto	.. .. (No. 92)	
(F.) Ditto	.. .. .. (No. 41. Telegraphic)	August 9, ,,

Report.

The fact that Messrs. Ziegler and Co. were insured, and that the underwriters have paid their claim is immaterial, and does not affect the question of the liability of the Persian Government to make good the loss. Her Majesty's Government should not on this account abstain from pressing the claim.

Whether the claim is one which can be properly pressed depends upon the facts, which are not before us. If the goods were lost by the default of the Persian Government, or their officers, they should make good the loss to the persons on whom it falls, whether the owners or underwriters.

The question whether the claim should be pressed must, in our opinion, be decided by the usual considerations which govern the liability of Governments to the subjects of other nations for losses occasioned by civil disturbance, having regard to the ascertained facts.

The fact that the Persian Government have paid all uninsured owners for similar losses tends to show recognition of liability by them, but it is not conclusive, as the payment may have been by way of friendly concession.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 29, 1897.

No. 31.

[November 29, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 15, 1897.

Gentlemen,

Persia (Judicial Fees) Order in Council, 1897.

I AM directed by the Marquess of Salisbury to transmit to you herewith a correspondence which has passed between the Foreign Office and the Treasury with respect to the preparation of an Order in Council, to be cited as "The Persia (Judicial Fees) Order in Council, 1897," for the purpose of amending "The Persia Order in Council, 1889," in certain respects.

A Memorandum, explaining the changes proposed to be made, and the grounds on which it has seemed desirable to make them, is annexed.

I am also to transmit to you the accompanying letter from Mr. Albert Gray, forwarding a draft Order, which has been prepared by him under instructions from this Department, and I am to request that you will favour Lord Salisbury with your opinion as to whether the draft in its present shape may properly be laid before the Queen in Council for Her Majesty's approval.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Treasury	.. ..	August 23, 1897.
(B.) To Treasury	.. ..	September 1, ,,
(C.) Memorandum by Mr. Crowe.		
(D.) Mr. Albert Gray	.. ..	,, 29, ,,
inclosing		
(E.) Draft Order in Council.		

Report.

In our opinion the draft Order in Council, as initialled by us, may properly be submitted to the Queen in Council for Her Majesty's approval.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 29, 1897.

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Annex.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction in Persia:

And whereas it is expedient to amend "The Persia Order in Council, 1889" (in this Order referred to as "the principal Order"):

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Persia (Judicial Fees) Order in Council, 1897."

2. (*a.*) The Consul-General may, with the approval of the Secretary of State and concurrence of the Treasury, make Rules imposing fees leviable in respect of any proceedings in, or processes out of, any Court established under the principal Order.

(*b.*) But the Court may in any case, if it thinks fit, on account of the poverty of a party, or for any other reason, dispense in whole or in part with the payment of any fee chargeable in respect of such matter.

(*c.*) The Court shall in every such case forthwith report the dispensation to the Consul-General, and he shall give such directions thereon as he thinks fit.

(*d.*) Nothing in this Order shall affect any Order in Council prescribing a Table of Fees to be taken by Consular officers; and, when a fee is taken under that Order, no fee shall be taken in respect of the same matter under any Rules made in pursuance of this Order.

3. As from the time when any Rules under this Order come into operation, Article 27 of the principal Order, and the second Schedule thereto, shall be repealed, and any reference in that Order to the fees imposed by that Article shall be construed to apply to the fees that may be imposed by Rules under this Order.

R. E. W
R. B. F

PORTUGAL.

No. 32.

[November 10, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, October* 16, 1897.

Nationality of son of J. G. da Silva Casquilho, born at sea of Portuguese parents on board a British vessel.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith a despatch from the Acting British Consul-General at Rio de Janeiro respecting a claim to British nationality which has been advanced by Senhor J. G. da Silva Casquilho, a Portuguese subject, on behalf of his son, who is stated to have been born at sea, on board the British steam-ship "Douro" whilst that vessel was on a voyage from Brazil to Southampton, on the 13th November, 1879; the birth of the child being recorded in the ship's log-book, and duly reported to the competent British authority.

The precise point raised in this instance does not appear to have been the subject of direct judicial pronouncement by any competent British Court. The decision, however, in the case of Regina *v.* Anderson, I.C.C.R., p. 161, and the considerations on which that decision was founded appear to have a close bearing upon the present question.

In the course of the arguments of the prisoner's Counsel in that case Mr. Justice Blackburn interposed with the statement that it has been decided "that a ship which bears a nation's flag is to be treated as part of the territory of that nation. A ship is a kind of floating island," and expressions of similar import are to be found in the Judgments of the other members of the Court for Crown Cases Reserved on that occasion.

It is presumed that, in so far as questions of nationality are concerned, this doctrine would cover the case of a child born on board a British merchant-vessel on the high seas, and that whatever might be the nationality of the father, the vessel would be considered in English law as being so far British territory as to confer British nationality "jure soli" upon the child so born. If this view should be correct, Senhor Casquilho might be informed accordingly. But before furnishing Acting Consul-General Rhind with instructions to this effect, Lord Salisbury would be glad if you would take the matter into your consideration and favour him with your opinion as to whether such instructions would be right and proper under the circumstances.

In further reference to this subject, I am to call your attention to a case which arose in 1894 in regard to the nationality of a child born of German parents on board a German vessel within British territorial waters.

The question had many features in common with the present case, but was complicated by the consideration that the child was born within the territorial waters of a State of a different nationality from that of the vessel on board which the birth took place.

It was referred to the then Law Officers for opinion, and formed the subject of their Report of the 25th August, 1894, which, as will be seen, is of a very inconclusive character.

L.O.R. 1894 (Conf. 6641), p. 52.

The points at issue appear, however, to Lord Salisbury to be of considerable practical importance on which it may become incumbent on the Secretary of State to issue instructions at any moment, and I am to request that you will take them into your consideration in connection with the present case and favour him, for his assistance and guidance, with your observations thereupon.

The correspondence which took place in 1894 and a list of the papers are annexed.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Acting Consul-General Rhind	(No. 3. Treaty)	September 11, 1897
	Case in 1894.		
(B.)	Mr. G. Jones		April , 1894
(C.)	To Mr. G. Jones		April 27, „
(D.)	Mr. G. Jones		April 28, „
(E.)	To Home Office..		May 7, „
(F.)	Home Office		May 17, „
(G.)	To Board of Trade		June 12, „
(H.)	Board of Trade		June 30, „
(I.)	Law Officers. (Confidential 6641, p. 52)		August 25, „

Report.

In our opinion, a child of Portuguese parents, born on the high seas on board a British merchant-vessel is, by the Municipal Law of this country, a British subject.

We are also of opinion that the child of foreign parents born on board a foreign merchant-vessel in a British port, being within the limits of the country, is, by British Municipal Law, a British subject; but this would not apply to the case of a child of foreign parents born on board a foreign vessel merely passing through British territorial waters.

In either of these cases the child may also be of foreign nationality according to the law of the country to which its parents belonged, and would be entitled, under the Naturalization Act of 1870, to disclaim British allegiance on coming of age.

Moreover, the fact that such children are by British Municipal Law British subjects would not be decisive of the question of their nationality in any question arising between this country and another foreign country which claimed their allegiance. Any such question would have to be decided on general grounds of common sense and international comity, having regard to all the circumstances under which, and the place where, the question arose; and we cannot doubt that it would be improper in all cases to insist, as against a foreign Power, on treating as a British subject a child whose parents were subjects of that foreign Power, merely on the ground of the birth on board a British vessel, or on board a foreign vessel within a British port. We would refer, by way of illustration, to the last paragraph of the Report of the then Law Officers (Sir R. Webster and Sir Edward Clarke) of the 27th August, 1887.*

L.O.R. 1887 (Conf. 5597), p. 55.

A child so born would, however, until disclaimer be entitled to vote at elections in this country, if otherwise qualified, and would be liable by English law to indictment for offences which are punishable if committed abroad by British subjects.

Senhor da Silva Casquilho may be informed that his child is by our law a British subject, but ought not to be allowed to suppose that this country would, in all cases, assert the nationality of the child as against Portugal or Brazil, if the question should ever arise. The rule of English law that all persons born within the Queen's allegiance are British subjects, cannot, of course, be regarded as binding on foreign Powers.

The question whether the child should be registered by the Consul as a British subject depends on the Consular Regulations, which are not before us. It is quite possible that, as the birth took place at sea, it is not the duty of the Consul to effect the registration.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 10, 1897.

SIAM.

[Colonial Office.] *No. 32A.*

[February 3, 1897.]

The Law Officers of the Crown to Mr. Chamberlain.

Extradition of coolies between Straits Settlements and Kedah.

Sir, *Royal Courts of Justice, February* 3, 1897.

WE were honoured with your commands signified in Mr. Wingfield's letter of the 25th ultimo, stating that, with reference to our Report of the 12th August, 1896, respecting the proposed extradition between the Straits Settlements and Kedah of fugitive coolie contract labourers, he was directed to transmit to us a copy of a despatch which you had addressed to the Governor of the Colony, and of a subsequent letter (with its inclosures) from the Foreign Office on the subject.

That a copy of the Siam Order in Council was also inclosed.

That it would be seen that a difficulty had arisen in applying the procedure advised in our Report, inasmuch as the Assistant Legal Adviser to the Siamese Government had given an opinion that, by the law of Siam, the breach of a labour contract was not a criminal offence, but produced only civil consequences. That Her Majesty's Chargé d'Affaires proposed to meet this difficulty by omitting from the draft Regulations prepared by the Attorney-General of the Straits the words which limit the operation of the Order to such breaches of contract as would be an offence against the laws of Siam; but that the Marquess of Salisbury was of opinion, in which you concurred, that it was objectionable in principle to make what, according to the local law

or custom, was apparently a mere breach of civil contract, an offence against the Order in Council punishable criminally; and that it appeared also to be at least doubtful whether the Fugitive Offenders Act could be applied to the case of an act which, though made an offence against the Order in Council, was not an offence punishable by the general law of Siam.

That Mr. Wingfield was, therefore, to request that we would be so good as to take the papers into our consideration, and advise you whether any, and if so what, further steps could be properly taken to obtain the object in view.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

That, according to the opinion that has now been obtained as to the law in force in Kedah, it is clearly impossible to deal with the surrender of fugitive labourers by way of Extradition Treaty. As such labourers have committed no offence against the law of Kedah, their surrender is not a matter which can be dealt with by machinery which is applicable only to criminals.

The difficulty which this opinion as to the law of Kedah raises in the way of making a new Regulation such as suggested depends, in our opinion, rather on questions of policy than of law.

We do not think that the power to make Regulations is so limited by Article 84 of the Order in Council that no act could be made a crime which is not a crime by the law of Kedah. If it is deemed necessary for the enforcement of any local law or custom in the case of British subjects that any infraction should be constituted a criminal offence, we think that such a Regulation might be made, although the act in question would not be a criminal offence by the law of Kedah. In other words, the Regulation may, we think, provide machinery differing altogether from that of the local law for the purpose of carrying it out; and we think that there is power to make a Regulation constituting a breach of a labour contract a criminal offence, if this be deemed necessary, in the case of British subjects for the proper enforcement of the obligations imposed by the local law upon the labourer under such a contract.

We further think that the operation of the Fugitive Offenders Act, Part II, is not confined to the case of acts which are crimes by the local law, as well as by the laws in force in the British Courts in the country.

Where Her Majesty has jurisdiction in foreign parts the Act may be applied, and a person, subject to the jurisdiction of the British Court there, may be dealt with under the Act if he has committed a crime according to the law of the British Court.

The method suggested in our last Report is, in our opinion, the only one by which this difficulty can be dealt with. It is, no doubt, a question for very serious consideration whether, as a matter of policy, it is desirable that a Regulation should be made making a breach of a labour contract by a British subject criminal when it would be no offence if committed by a native. It must, however, be remembered that according to the local custom, if not the local law, such breaches of contract appear to be, in practice, punished with considerable rigour. And, in cases where there is a pecuniary penalty, the law itself provides for imprisonment in default of payment, although it is stated that this imprisonment is in the nature of a civil remedy only, so far as this distinction is appreciated in Kedah.

Upon the whole, subject to the considerations of policy above indicated, we think that the procedure indicated in our previous Report should be followed, if the difficulty with Kedah is of such gravity as to make it necessary that action should be taken in the matter.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

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* Case of the sons of Mme. Triebel:—

"We think it right to add the expression of our opinion that, in cases of double nationality, Her Majesty's Government would not be entitled to assert for persons being or deemed to be natural-born British subjects exemption from their obligations as subjects of a foreign State; and that if the sons of Mme. Triebel should use the passport as a ground for contending that they are exempt from the obligations of military service in Germany, that contention ought not to be supported by Her Majesty's Government."—Law Officers' Report 1887, pp. 55, 56.

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No. 33.

[July 31, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 14, 1897.

Registration of British subjects in Siam.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the papers noted in the accompanying list, which relate to a question which has arisen in connection with the registration of British subjects at Her Majesty's Consulate-General in Siam.

It is, his Lordship conceives, unnecessary to invite your perusal of the voluminous earlier correspondence which has passed on this subject. It may suffice to state that various circumstances have of late years led to a large increase in the number of persons who apply to be registered at the Bangkok Consulate-General, and that in consequence many disputes have arisen with the Siamese authorities as to who are, and who are not, entitled to British protection. These and other considerations render it desirable that the practice of registration should not be unduly extended.

I am to invite your particular attention to the considerations set out in the Memorandum by Mr. Davidson, Q.C., the legal adviser to the Foreign Office, which forms the inclosure to the letter from this Department to the India Office of the 9th April, and to the reply received from that Office of the 27th instant.

I am to request that you will be good enough to take these papers into your consideration, and to favour Lord Salisbury with your opinion as to whether Her Majesty's Government are entitled, in law, to claim as British subjects—in the sense in which that expression is employed in the Treaties between Great Britain and Siam—the children and grandchildren of persons born on British soil, or on soil which has subsequently become British, and, if so, whether it is competent for Her Majesty's Government to exercise any discretion with reference to asserting or declining to assert as against the Siamese Government, and in admitting or declining to admit with reference to the claimants themselves claims of this nature in the circumstances mentioned.

Lord Salisbury will at the same time be glad to be favoured with any observations of a more general nature which you may desire to offer on the papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Memorandum by Mr. Davidson	April 5, 1897.
(B.)	To India Office	April 9, „
(C.)	India Office	May 27, „
(D.)	Memorandum by Sir C. Turner	July 10, „
	Treaties between Great Britain and Siam.	
	Orders in Council having reference to Siam.	

Report.

We assume from the terms of the despatch from the India Office and of Sir Charles Turner's Memorandum that there is nothing in the local law of British Burmah which specially affects this question.

Upon the conquest of Burmah, Burmese subjects became British subjects, and we think that their children and grandchildren, born subsequently to the conquest, are also, by British law, British subjects, though born out of Burmah.

The fact that these children and grandchildren are the issue of polygamous marriages is not, in our opinion, decisive of the question of nationality.

The rules relating to the jurisdiction of the English Divorce Court, and to succession to land in England, have not necessarily any application to questions of nationality, and the opinion of the Law Officers, dated the 14th June, 1888, in the case of Abdul Kerim Grant, did not lay down any general principle apart from the facts of the particular case.

There are many parts of the British Dominions in which polygamous marriages

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SIAM.

No. 33*.

[August 6, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 28, 1897.

Revision of Siam Order in Council, 1889.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers relating to the revision of "The Siam Order in Council (1889)."

The point on which his Lordship desires to have your opinion is whether the registration provisions of this Order should be repealed, as suggested by Mr. Albert Gray, in view of the conflict between Siamese law and custom and the clause in the existing Order, which is explained in Papers A, G, and H.

I am to request that you will be good enough to take these papers into your consideration, and favour Lord Salisbury with your views on Mr. Gray's suggestion in his letter of the 24th instant (Paper I).

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Memorandum		June 4, 1897.
(B.)	Treaty with Siam (1883).		
(C.)	"Siam Order in Council, 1889."		
(D.)	Mr. de Bunsen	(No. 35. Consular)	1895.
(E.)	To Mr. Gray		June 4, 1897.
(F.)	Mr. Gray		June 15, „
(G.)	Memorandum by Mr. French		July 9, „
(H.)	To Mr. Gray		July 15, „
(I.)	Mr. Gray		July 24, „

Report.

In our opinion, the course recommended by Mr. Albert Gray in his letter of the 24th July should be followed. There appears to be a Siamese law of mortgage which is well understood, and not irrational. We think that the law of the country where real property is situate ought to prevail, and recommend that the attempt to establish a register of mortgages of lands or houses by British subjects should be abandoned.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 6, 1897.

Annex.

Mr. Gray to Foreign Office.

2, *Paper Buildings, Temple, July* 24, 1897.

Sir,

IN reply to Mr. Bertie's letter of the 15th July respecting the provisions of the Siam Order in Council relating to the registration of mortgages, I have the honour to report as follows:—

The insertion of provisions for the registration of mortgages in Orders in Council under the Foreign Jurisdiction Act has not been general.

Those in the Siam Order seem to have been taken from the China, Japan, and Corea Orders of 1881. There is a provision for registration of all non-testamentary documents relating to land in the Zanzibar Order of 1884. No similar provisions were, however, inserted in the Africa, Morocco, and Persia Orders of 1889, nor in the Ottoman Orders.

It seems to me wrong in principle that such provisions should affect to bind Siamese subjects, and being aware that any system of registration, which gives priority to registered documents over non-registered documents, is readily used for fraudulent purposes in an Oriental country, I am of opinion that the registration provisions of the Siam Order should be repealed.

The fact that Siamese law, as appears from Mr. French's Memoranda, has a well-recognized system of mortgage, seems to add weight to the arguments for this course.

The repeal is, however, a matter upon which it would be well to ascertain the views of the Law Officers before the preparation of an Order in Council.

I have, &c.
(Signed) A. GRAY.

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are lawful, and for the purposes of nationality it seems to us impossible to treat the issue of such marriages, who are legitimate by the law of the domicile of their parents, as illegitimate.

These considerations do not, however, dispose of the question whether these persons are British subjects within the meaning of the Treaty between this country and Siam. If it be contended by the Siamese Government that, according to Siamese law, these persons are Siamese subjects, in such a conflict of laws it is impossible to say that the question can be disposed of merely by reference to the Municipal law of either country. Such questions must be decided rather with reference to those principles of fairness and good sense which must govern the relations of two nations.

The question is one between the Government of Siam and Her Majesty's Government, and should, in our opinion, be decided in each case in accordance with that discretion which, in their opinion of the 4th November, 1861, the Law Officers considered should be applied to the decision of a somewhat analogous question arising with the United States.

L.O.R. 1861 (Conf. 1123), p. 269.

We are not in a position to advise whether these persons ought, as between Her Majesty's Government and that of Siam, to be treated as British subjects.

A great deal must depend upon the permanence of the settlement made in Siam by the fathers or grandfathers of such persons; and we can only say that each case must be determined on its own merits, and with reference to what is fair as between the two Governments claiming the allegiance of the person.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 31, 1897.

No. 34.

[August 24, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 3, 1897.

Gentlemen,

Dispute between Mr. M. Campbell and Siamese Railway Department as to Bangkok–Korat Railway.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers, marked in the accompanying list, which relate to a dispute between the Siamese Railway Department and Mr. Murray Campbell, the contractor for the construction of a railway from Bangkok to Korat.

In accordance with the terms of the Contract, which is given in the volume annexed to Paper A, the dispute was referred to arbitration.

The two Arbitrators, Sir Guilford Molesworth and Herr Lange, differed, and selected Herr van Bosse to act as Umpire. Mr. Murray states (see No. 4 in Paper A) that he had previously protested against this selection; he subsequently ascertained certain facts which convinced him that the Tribunal had acted *ultra vires*, and that certain of its members were not acting impartially, and he proceeded to withdraw from the proceedings under protest, declining to be bound by any Award which the Court might make. Sir G. Molesworth followed his example, and communicated to Lord Salisbury the circumstances of his withdrawal (No. 5 in Paper A).

A letter was addressed to Mr. Campbell from this Department on the 12th July (see No. 4 in Paper A), stating that, if he should be advised by his Counsel that he has exhausted all ordinary legal remedies, including recourse to arbitration, Lord Salisbury would be prepared to submit his Counsel's opinion to you, with the other papers in the matter.

Messrs. Leighton and Savory have now forwarded the case submitted to Mr. Cripps, Q.C., with that gentleman's opinion on it, and they have appealed for the intervention of Her Majesty's Government (see Paper B).

I am to request you to take the inclosed papers into consideration, and to favour Lord Salisbury with your opinion as to whether the circumstances are such as to entitle Mr. Campbell to relief, and whether, in that case, Her Majesty's Minister Resident at Bangkok should be instructed to bring the present position of the case to the attention of the Siamese Government, and, if so, whether officially or unofficially.

1897

His Lordship would also be glad to receive any observations of a general character which you may have to make on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Case for the opinion of Counsel in the matter of an arbitration between G. M. Campbell and the Siamese Railway Department (five annexes).	
(B.)	Messrs. Leighton and Savory	July 27, 1897.

Report.

The statements contained in Mr. Murray Campbell's letter and in that from Sir G. Molesworth show a great probability that there has been a miscarriage of justice in this case.

We think that Her Majesty's Minister Resident at Bangkok should be instructed to bring the present position of the case before the Siamese Government unofficially.

The Siamese Government cannot desire that the matter should remain undecided. The proceedings before the Umpire, M. van Bosse, which were expected to last for a month, went on for three days only, and Mr. Murray Campbell would certainly appear to have had strong *primâ facie* ground for his withdrawal.

Under these circumstances the proper solution would appear to be that a new Umpire should be appointed in whom both parties have confidence.

We think that Her Majesty's Minister may properly be instructed to endeavour to bring about this result by unofficial representations to the Siamese Government.

Should these representations prove unavailing, we should like before advising official action to be taken to have some information whether redress could not be had from the Courts in Siam. It is very possible that Mr. Cripps may be right in his statement that no effective relief can be obtained there. But there is an absence of any evidence as to the nature of these Courts, and the relief, if any, which they could give. Her Majesty's Minister in Siam would, no doubt, be able to procure information upon this subject. If unofficial representations prove unavailing, and it appears that the Siamese Courts cannot, or will not, give relief, we think that Mr. Murray Campbell should be required to put in a somewhat more definite shape his allegations against Herr van Bosse, and to support them by statutory declarations directed to specific questions of fact. If he is able to show in this way that his withdrawal was justifiable, we think that Her Majesty's Government, in the event of unofficial representations proving unavailing, and its appearing that there is no remedy in the Siamese Courts, may properly treat the case as one calling for direct Diplomatic representations to Siam.

(Signed) RICHARD E. WEBSTER,
ROBERT B. FINLAY.

Royal Courts of Justice,
August 24, 1897.

No. 35.

[December 2, 1897.]

Foreign Office to the Law Officers of the Crown.

Mr. M. Campbell's Contract for construction of Bangkok-Korat Railway.

Foreign Office, November 2, 1897.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers named in the accompanying list on the subject of Mr. Murray Campbell's Contract with the Siamese Railway Department for the construction of a railway from Bangkok to Korat.

On the receipt of your Report of the 24th August (Paper A), Her Majesty's Minister at Bangkok was instructed to bring the case to the notice of the Siamese Government, and to press unofficially for the appointment of a fresh Umpire (Paper B).

Mr. Greville replied on the 4th October (Paper C) that the Siamese Government were not disposed to agree to the appointment of a fresh Umpire. They stated that the Umpire was proposed by the British Arbitrator, but this statement is at variance with the facts as given by Sir G. Molesworth (see Paper H), and has since been modified (see Paper G).

In answer to a further telegram as to the possibility of the contractor obtaining redress through the Siamese Courts, Mr. Greville (Paper E) reported that the Siamese Government might give guarantees for the constitution of a proper Siamese Court to try the case, but that such a Court would find it a very difficult matter to deal with. The intention of the Siamese Government was to await the Award of the Umpire.

Mr. Greville has now explained (Paper G) that redress might be obtained in the so-called International Court, which, however, he believes would not consider itself competent to try the case before an Award has been given. Some account of this Court will be found in the Memorandum annexed to Mr. Greville's telegram.

It has also been pointed out by Mr. Murray Campbell that a reference to the Courts was specifically barred by clause 42 of the original Contract (Paper I, pp. 12 and 13).

Lord Salisbury would be glad to be favoured with your opinion as to whether any, and if so, what representations can properly be made to the Siamese Government on behalf of Mr. Murray Campbell in the present state of the case, and his Lordship would wish to receive any remarks or suggestions which you may have to offer in regard to the means of obtaining redress for Mr. Campbell.

I am to observe that no independent information has reached this Department showing that the Umpire still intends to make an Award, though the Siamese Government clearly anticipate that he will eventually do so.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Law Officers' Report		August	24,	1897.
(B.)	To Mr. Greville	(No. 48)	August	31,	„
(C.)	Mr. Greville	(No. 41. Telegraphic)	October	4,	„
(D.)	To ditto	(No. 28. Telegraphic)	October	5,	„
(E.)	Mr. Greville	(No. 42. Telegraphic)	October	11,	„
(F.)	To ditto	(No. 29. Telegraphic)	October	15,	„
(G.)	Mr. Greville	(No. 45. Telegraphic)	October	24,	„
(H.)	Sir G. Molesworth		October	7,	„
(I.)	Contract.				

Report.

In our opinion it may properly be represented by Her Majesty's Government to the Siamese Government that Mr. Murray Campbell's case ought not to be allowed to remain in its present very unsatisfactory position.

Mr. Murray Campbell alleges that the conduct of the Umpire was such that he ought to have been removed from his office, and that his Award is not binding. If the Siamese Government will concur in having this question brought before any local Court of authority, Her Majesty's Government will hold their hands until that Court has given its decision.

The clause in the Contract ousting recourse to the Court does not apply to the present application for relief on the ground of misconduct of the Arbitrator or Umpire.

The Siamese Government should, we think, be informed that if they refuse to concur in having the question decided in this way Her Majesty's Government will have to consider Mr. Murray Campbell's representations with a view of seeing whether he is entitled to redress at the hands of the Siamese Government.

If the Siamese Government refuse to concur in the course suggested, Mr. Murray Campbell should, we think, be required to support (by statutory declarations directed to definite matters of fact) his allegations against the Umpire, and if these allegations

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appear to be established, we think that Her Majesty's Government may properly endeavour to obtain redress for him by diplomatic representations.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 2, 1897.

TURKEY.

No. 36.

[March 25, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 11, 1897.

Claims of British subjects for losses through disturbances at Constantinople.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you a despatch from Her Majesty's Ambassador at Constantinople with its inclosures, as noted in the accompanying list, relating to the claims of British subjects against the Turkish Government for compensation for losses arising out of the disturbances at Constantinople in August last.

The investigation of the various claims presented by British subjects was intrusted by Her Majesty's Ambassador to Mr. Wratislaw, the Acting British Consul at Constantinople, and Mr. Max Müller, Third Secretary to Her Majesty's Embassy, who, with the valuable assistance of Mr. Gilchrist, an English merchant at Constantinople, nominated for that purpose by the British Chamber of Commerce, have drawn up the Report now forwarded by Sir P. Currie.

I am to request that you will take the accompanying papers into your consideration and favour Lord Salisbury with your opinion whether all or any of these claims—and, if so, which—may properly be made the subject of representations to the Porte.

The only claim which appears to call for any remark, in addition to the observations made by Messrs. Wratislaw, Max Müller, and Gilchrist in the accompanying explanatory statement (Inclosure 3) is that of Messrs. Temple and Co. (No. 24 in the schedule). This claim is of so suspicious a nature, and the statements of the firm appear to be so unworthy of credit, that, in the absence of absolute legal proof, Lord Salisbury doubts whether it can properly be put forward.

His Lordship will be obliged if you will favour him with your views on these points, together with any general observations which you may desire to offer on the whole set of claims.

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I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

Sir P. Currie	(No. 80)	February 8. 1897.
Inclosures—		
1. Report by Messrs. Wratislaw and Max Müller ..		January 21, 1897.
2. Tabular statement.		
3. Explanatory statement.		
4. Statutory declarations.		
5. Original claims.		

Report.

We recommend that the claims should be sent in as settled by Mr. Wratislaw and Mr. Max Müller, subject to the following remarks :—

The claim of Messrs Temple and Co. (No. 24) should be reduced to the small sums allowed for damage to safe, furniture, and iron door; the £ T 158 for cash from safe should not be claimed at all.

The amounts claimed for loss by the death or disappearance of Armenian debtors (see Nos. 1 and 15) would not, by English law, be *legally* recoverable, but, assuming that the loss has actually been sustained in this way, constitute, we think, a fair head of claim.

The 2,000*l.* for penalty under contract (No. 25) should, we think, be claimed on the advice of Mr. Tarring; but the Turkish Government should be informed that, if they should think fit to prosecute the action in the name of M. Sofiano, anything recovered will be received on their account. This claim is, however, subject to the consideration that the Turkish Government may be able to show that the action would have failed on some ground other than the loss of the contract.

As regards the 300*l.* for the "Serghis" (No. 19), the Turkish Government can hardly set up that they would not have paid their debt, and, as the only evidence of it has been destroyed, we think it may be fairly claimed.

As regards promissory notes and valuable securities, it will, of course, be open to the Turkish Government to show that the amounts represented will not be really lost. In any case, all rights in respect of them should be made over, or offered, to the Turkish Government if they pay.

The item of £ T 100 for the clothes, &c., of the men who were killed (No. 28) can be put forward only on behalf of their representatives, and we fear that it cannot properly form part of the British claim. On the other hand, we think that any injury to the business of Mr. Seager, directly resulting from the murder or imprisonment of his servants, is a legitimate head of claim, and may properly be added to their claim.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 25, 1897.

No. 37.

[May 24, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 18, 1897.

Greek blockade of Gulf of Salonica.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the Papers noted in the accompanying list, which relate to the announcement by the Greek Government of a blockade of the Gulf of Salonica, from the mouth of the River Peneus to that of the Haliacmon, of the Gulf of Volo, and of the coast of Epirus and Albania from Prevesa to Valona.

You will observe that, in the first of the three notes addressed to Lord Salisbury by the Greek Chargé d'Affaires (Paper A), M. Métaxas, in announcing the blockade of the Gulf of Salonica, uses the words "le littoral bloqué serait d'une distance de 5 milles marins de la côte," and in announcing the blockade of the coast of Epirus, states that "le blocus s'étendra jusqu'à la portée d'un canon."

It is worthy of remark that the Greek Government apparently use the term "littoral," which, in its literal meaning, is synonymous with "côte" or coast, in a much more extensive sense, *i.e.*, as comprising not only the shore itself but the waters, to a distance of 5 marine miles from the shore, and that by describing these waters as "le littoral bloqué," they seem to imply an intention to blockade a strip of the high seas for a distance of 2 miles outside the ordinarily recognized limit of the territorial waters.

It may, however, be that the note is loosely expressed, and that its meaning is merely that the Greek Government reserve to themselves the right of stationing a blockading squadron for the purpose of interdicting access to the coast line, at any distance from the shore up to a maximum of 5 miles.

The phrase "portée d'un canon" again is extremely vague, especially as in the note no starting point is indicated from which the range of the cannon is to be calculated.

A notice of the blockade has already been inserted in the "London Gazette"

1897

(Paper D), but before acknowledging the communications made by M. Métaxas, Lord Salisbury wishes to be favoured generally with your opinion upon its terms, and especially to be informed whether you consider that any observations or reservations should be made by Her Majesty's Government with regard to them.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) M. Métaxas	.. ..	May 8, 1897
(B.) „	.. ..	May 11, „
(C.) „	.. ..	May 13, „
(D.) "London Gazette" Notice. (Confidential 6885*)	..	May 15, „

Report.

We agree in the observation that the notice that a portion of the sea will be blockaded is unusual, and if the words used were intended to imply an intention to restrict the innocent passage of ships through the whole of the sea area named, it might be desirable to make some reservation or protest, but we rather regard the language used as indicating the distance within which it is proposed that the character and object of vessels approaching the blockaded coast shall be ascertained in the ordinary way, and if so, they do not appear to call for any special notice or observation.

(Signed) RICHARD E. WEBSTER.
ROBERT. B. FINLAY.

Royal Courts of Justice,
May 24, 1897.

No. 38.

[October 7, 1897.]

Foreign Office to the Law Officers of the Crown.

Claims of British subjects for losses through disturbances at Constantinople.

Gentlemen, *Foreign Office, September* 22, 1897.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, a despatch from Her Majesty's Ambassador at Constantinople, with its inclosures, relative to claims of British subjects against the Turkish Government for compensation for losses arising out of the disturbances at Constantinople in August 1896.

These claims have been presented since the date of the despatch from Sir P. Currie referred to you in my letter of the 11th March, and reported on in your letter of the 25th of the same month.

I am to request that you will take the accompanying papers into your consideration, and favour Lord Salisbury with your opinion whether all or any of these claims, and, if so, which, may properly be made the subject of representations to the Porte.

His Lordship will also be obliged if you will favour him with any general observations which you may wish to make on these claims.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

Sir P. Currie .. .. (No. 632) September 16, 1897.
Inclosures—
1. Report by Messrs. Max Muller and Eyres.
2. Tabular Statement.
3. Explanatory Statement.
4. Statutory Declarations.
5. Original Claims.

Report.

In our opinion all these claims may be properly made the subject of representations to the Porte.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 7, 1897.

UNITED STATES.

No. 39.

[November 19, 1897.]

Foreign Office to the Law Officers of the Crown.

Refusal of Canada to admit citizens of United States to privilege of Registration of Copyright.

Gentlemen, *Foreign Office, October* 27, 1897.

I HAVE the honour to transmit to you herewith, by direction of the Marquess of Salisbury, papers, as marked in the accompanying list, which refer to a complaint on the part of the United States' Government in respect to the action of the Government of Canada in refusing to admit citizens of the United States to the privilege of registration of copyright in Canada, notwithstanding the declaration of Her Majesty's Government that the Law of Copyright in force in all British possessions permits to the citizens of the United States of America the benefit of copyright on substantially the same basis as to British subjects.

L.O.R. 1891 (Conf. 6207), p. 110.

The declaration in question was based upon a Report, of which a copy is also inclosed (Paper A), from your predecessors in office in 1891. It is contained in a note to Mr. Lincoln (then United States' Representative at the Court of St. James) of the 16th June, 1891 (Paper B), and is to the following effect:—

"Her Majesty's Government are advised that, under existing English law, an alien by first publication in any part of Her Majesty's dominions can obtain the benefit of English copyright, and that contemporaneous publication in a foreign country does not prevent the author from obtaining English copyright; that residence in some part of Her Majesty's dominions is not a necessary condition to an alien obtaining copyright under the English Copyright Law, and that the Law of Copyright in force in all British possessions permits to citizens of the United States of America the benefit of copyright on substantially the same basis as to British subjects."

Acting upon this assurance, the President of the United States issued a Proclamation on the 1st July, 1891 (Paper C), extending the benefits of the American Copyright Act of the 3rd March, 1891 (Paper D), to all British subjects.

By virtue of this Proclamation British authors can obtain copyright in the United States on the condition of republishing and reprinting from type set up in the United States. On the other hand, under the existing English law, as you are aware, any person, whether a native or an alien, can obtain a copyright throughout Her Majesty's dominions by the mere act of first publication in any part of those dominions.

The balance of advantage in these mutual arrangements is, no doubt, largely in favour of the United States, but inasmuch as the English law grants its benefits even in the absence of any reciprocity, and as the protection obtained by British authors in the United States under existing conditions is of very material and recognized value, it is clearly to the interest of this country to retain the present United States' treatment and to smooth over, as far as possible, any difficulties which might possibly lead to the withdrawal of the President's Proclamation.

The English Copyright Law, according to the opinion of your predecessors in

L.O.R. 1892 (Conf. 6347). p. 82. office in 1889 and 1892—copies of whose reports are inclosed (Papers K and L)—and the decision of the Supreme Court of Upper Canada in Smiles *v.* Belford (1 Upper Canada Reports 436), runs in Canada, but there is, it appears, also a local Canadian Copyright Act providing for the registration and protection of copyright in Canada.

The 4th section of the Canadian Act (Paper E) provides that copyright may be obtained by "any person domiciled in Canada or in any part of the British possessions, or any citizen of any country which has an International Copyright Treaty with the United Kingdom."

This it is which gives rise to the remonstrance of the United States' Government, whose view of the matter is very fully set forth in notes from Mr. Blaine and Mr. Olney (inclosed in despatches from Her Majesty's Ambassador at Washington) of the 22nd December, 1891, and of the 6th February last respectively (Papers F (1) and F (2)), and still further elaborated in a note from the United States' Ambassador at this Court of the 9th June (Paper G).

It is alleged that the Canadian authorities have steadily declined to permit the registration of copyright in Canada on the ground that the United States' enactment of the 3rd March, 1891, and the Proclamation of the President of the 1st July, 1891, do not constitute an "international Treaty" within the meaning of the Canadian Act above quoted, and that, therefore, United States' citizens cannot register under that Act.

The views of the Dominion Government in regard to this allegation are set forth in the report of the Committee of the Canadian Privy Council of the 10th August, 1897, inclosed in a letter from the Colonial Office of the 9th September (Paper H).

The Committee submit that, while the ground of objection stated in Mr. Olney's note to Sir J. Pauncefote (Paper F) is one of the conditions as respects foreigners contained in the Copyright Act of Canada, yet, as that condition is only technical, it is one that Canada is not disposed to urge in view of the understanding that has been arrived at between Great Britain and the United States, and if it were not for other and substantial objections to the present International Copyright Law between Great Britain and the United States, Canada would be glad to meet the convenience of American authors desirous of obtaining copyright in the Dominion.

The Dominion Government object to the unequal treatment of Canadian and United States' authors and the want of reciprocity in the present arrangement, but they express their willingness to amend the Canadian Copyright Act and accord to American authors the privilege of copyright in Canada, on publishing only, if a similar favour be conceded to Canadian authors who desire to obtain copyright in the United States.

In these circumstances Lord Salisbury is disposed to think that the United States have no reasonable cause of complaint, so long as the English Copyright Law is enforceable in Canada, and the United States' Government have not, at present, adduced any instance in which there has been a failure to enforce it.

The remedies open to American authors against infringement of copyright in Canada were very clearly indicated in Lord Rosebery's note to the United States' Chargé d'Affaires at this Court of the 12th November, 1892 (Paper I), wherein it was pointed out that if registration cannot be effected in Canada under section 8 (1) (*a*) of "The International Copyright Act, 1886," any person, whether a British subject or an alien, whose work has been first published in Canada or in any part of Her Majesty's dominions can entitle himself to a complete remedy against infringement by registering at Stationers' Hall, in London, under the English Copyright Acts. And, in face of the objections of Canada, it seems doubtful whether Her Majesty's Government could well press the matter further.

His Lordship is therefore disposed, in replying to the representations of the United States, to reiterate the assurances already given in the notes (above referred to) which were addressed to United States' Representatives on the 16th June, 1891, and the 12th November, 1892, adding that if, in addition, it is desired to secure registration for American works under the Canadian as distinct from the English Act, the Dominion Government are willing to amend their Act and to accord to United States' authors, under the Canadian as well as the English Law, the privilege of copyright in Canada, on publishing only, if a similar favour is conceded to Canadian authors who desire to obtain copyright in the United States.

It must, however, be borne in mind that if these assurances be not accepted as sufficient there is a considerable risk of the President's Proclamation being withdrawn, and of English authors losing their valuable rights in the United States, for the sake of asserting on behalf of Canada a grievance which can scarcely be considered as more than sentimental, inasmuch as the number of Canadian authors who could claim exact reciprocity of treatment in the United States is extremely limited. It is, therefore, desirable that the answer given to the United States' Government should give them all the satisfaction which the state of the Law and the attitude of the Canadian Government will admit of.

I am accordingly to request that you will take these Papers into your consideration and favour his Lordship with your opinion whether a reply in the sense suggested may properly be returned to the United States' Government as satisfying the conditions on which the benefits of the United States' Copyright Act have been extended to British subjects, or whether it should be amended or modified in any, and if so, what particulars.

Lord Salisbury would also be glad to be favoured with any observations of a more general nature which you may be disposed to offer on the questions at issue.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Report of Law Officers. (Confidential 6207, p. 110)	June	11, 1891.
(B.)	Foreign Office to Mr. Lincoln	June	16, 1891.
(C.)	Mr. Lincoln to Foreign Office	July	2, „
(D.)	Ditto	May	27, 1891.
(E.)	Canadian Copyright Acts.		
(F¹.)	Sir J. Pauncefote to Foreign Office	December	22, „
(F².)	Ditto	February	6, 1897.
(G.)	Mr. John Hay to Foreign Office	June	9, „
(H.)	Foreign Office to Colonial Office	June	16, „
	Colonial Office to Foreign Office	September	9, „
(I.)	Foreign Office to Mr. White	November	12, 1892.
(K.)	Report of Law Officers. (Confidential 6416, p. 21)	December	31, 1889.
(L.)	Ditto. (Confidential 6347, p. 82)	September	9, 1892.

Report.

We suggested that, in answer to the United States' Government, it should be pointed out, as proposed, that subjects of the United States can obtain in Canada every privilege in a matter of copyright open to British subjects by registering at Stationers' Hall, and that under these circumstances the Law of Copyright in force in Canada does permit to citizens of the United States the benefit of copyright on substantially the same basis as to British subjects. The question whether registration should be under the Canadian or the Imperial Act is merely one of machinery, and the Imperial Act is in force in Canada.

At the same time we think that the United States' Government may be informed that, as a matter of good feeling, Her Majesty's Government would be glad to do anything in their power to facilitate registration by subjects of the United States under the Canadian Act. This must be a question for the Canadian Legislature, and it should, we think, be added that the passing of the desired amendment of the Law in Canada would probably be very much facilitated if the United States would concede to Canadian authors the privilege of copyright upon publishing only in the United States.

It must, of course, be doubtful whether the United States will yield on this last point, and we feel strongly in view of the great importance of the present arrangement for British authors that an endeavour should be made to induce the Canadian Government to give way on what they admit to be a mere technicality, without making it a condition that the international arrangement now in force should be modified in substance.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 19, 1897.

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No. 40.

[December 16, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November* 11, 1897.

Fine on master of "Cuban" for alleged violation of United States' Immigration Act.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, with regard to the imposition of a fine by the Collector of Customs at New Orleans on the Master of the West India and Pacific steam-ship "Cuban," for an alleged violation of the United States of America Immigration Act Amendment Act of the 3rd March, 1891, by neglecting on arrival in United States' waters, to detain on board his ship two stowaways, who, in consequence, came unlawfully into the United States, within the meaning of Section 10 of the above-mentioned enactment.

The facts of the case are as follows (Papers A, B, C, D):—

The "Cuban" left Liverpool on the 15th April, 1896. On the second day out two stowaways, named Patrick Downey and Michael Cavanagh respectively, were found on board, both of whom had applied before the departure of the vessel to be taken on as members of the crew, but had been refused by the Chief Officer.

Sometime during the voyage the master, Mr. J. L. Bertie, placed the names of these men on the crew list, and permitted them to sign the ship's articles for the voyage to New Orleans and return voyage to Liverpool, and therefore employed them on board as members of the crew.

On arrival at New Orleans on the 4th May, these facts came to the knowledge of the Immigrant Inspector, and at a meeting of the Board of Immigration, it was decided, after hearing the statements of the Inspector of Immigration, the Customs Inspector, Mr. Bertie, and the two defendants, that the said defendants were stowaway paupers, and persons likely to become public charges on the revenues of the United States of America. As such, it was ordered that they should be remanded to the custody of the master of the steam-ship "Cuban," to be deported on that vessel upon his next sailing to the country whence they had come.

It was contended by Mr. Bertie and by the British Consul, that the men were not immigrants, but duly enrolled members of the crew of the "Cuban," and therefore not liable to the provisions of the Immigration Law of the United States; but the Board felt justified in issuing the order above cited, on the grounds that both the men were under age; that both had, on their own confessions been arrested in Liverpool before leaving, and that both admitted that they intended to remain in the United States if possible. Mr. Bertie, it was further stated, had opportunities of becoming acquainted with the character and purposes of the men before enrolling them as members of his crew.

Her Majesty's Cousul requested to be informed on what ground these men, though possibly stowaways, were treated as alien immigrants, and was told that under the decision of the Superintendent of Immigration, dated the 13th June, 1893, and approved by the Secretary of the Treasury, "All stowaways who are aliens and arriving in vessels from foreign ports, must be treated as alien immigrants, and vessels bringing them will be liable to all pains and penalties contained in the Immigration Law."

Mr. Bertie states, in an affidavit dated the 15th July, 1896 (Inclosure in Paper B), that he appealed to the Board to assist him by incarcerating the men, as he had applied to Her Majesty's Consul for permission to use force to detain them but had been refused on the ground that they were members of the crew. The Board at first granted Mr. Bertie's request, but it was afterwards refused by the Immigration Inspector.

With a view to carrying out to the best of his ability the directions of the Board Mr. Bertie gave strict orders that the men should not be allowed on shore at any time for any purpose whatever, and he appointed one of Boylan's policemen, in addition to three of the ship's officers, to enforce this order. In spite of these precautions, the two men escaped from the vessel on the 11th May.

The captain immediately claimed the assistance of the city police, offering a reward of 10 dollars for each man recovered. He also persuaded a shipping master to go round and visit all the city haunts with a view to their recapture. These efforts were, however, unsuccessful. Thereupon, without any trial or conviction by a Court of Law, Mr. Bertie was held guilty of a misdemeanour, and two fines of 300 dollars each were imposed upon him by an Executive officer of the United States, claiming authority for such action under Section 10 of the Immigration Act Amendment Act of the 3rd March, 1891.

The terms of this Section will be more fully stated hereafter, and a copy of it is left herewith.

The Collector of Customs, however, had, in the first instance, recommended that the fines should be reduced to a merely nominal amount, as it was believed that the escape of the two men was not due to any personal negligence on the part of the master; but his official superiors, the Treasury Department, replied that, although two fines of 300 dollars each had been incurred, they would limit themselves to directing the Collector to enforce only one.

On the 18th July a letter was received from the West India and Pacific Steam-ship Company (Limited) (Paper A), who owned the "Cuban," briefly narrating the facts of the case, and pointing out the dilemma in which the master was placed. On the one hand, Mr. Bertie was informed by the United States' authorities that he must detain the two men on board the "Cuban" and ship them back to England when he sailed, and, on the other, he was expressly forbidden by Her Majesty's Consul to use force in order to carry out this order, on the ground that the men were properly enrolled members of his crew, while the authorities declined to assist the master by incarcerating them on shore.

The Company ask that the good offices of Her Majesty's Ambassador at Washington may be used with a view to putting an end to conflicts of authority of this nature, and, whilst they are perfectly prepared to comply with the law of the United States for the exclusion of alien immigrants, they nevertheless consider that in cases where force has to be used, it should be undertaken by the port authorities themselves.

They strongly protest against the fines.

On the 7th August, a note was received from the United States' Chargé d'Affaires (Paper B) calling attention to the case, pointing out that the master of the "Cuban," by placing the two stowaways on his crew list and allowing them to sign his ship's articles while at sea, violated in the first instance the provisions of the British Merchant Shipping Act of 1894, section 113 (1), (2), and section 115 (1), (4), (7), which requires (section 113) the master of a ship to enter into an agreement with every seaman whom he carries to sea as one of his crew from any port of the United Kingdom, and (section 115) that the agreement shall be signed by each seaman in the presence of a Superintendent.

The note goes on to say that this was apparently done with the deliberate intention of evading the Immigration Laws of the United States, which were in fact violated by the subsequent action of Mr. Bertie in permitting the escape of the men on arrival at New Orleans. The United States' Government request that the necessary steps may be taken to prevent the recurrence of such incidents by informing masters of British vessels of the illegality of such proceedings.

The two letters in question, that of the West India and Pacific Company and that of the United States' Chargé d'Affaires, were referred to the Board of Trade on the 25th July, and on the 11th August, 1896, respectively.

The Board replied on the 8th September (Paper F), but, in the absence of fuller information, principally limited themselves to the question of the alleged infringement of the British Merchant Shipping Act.

Whilst admitting that the provisions of the Act relating to the signing on of seamen were not strictly complied with, they observed that there was no evidence to prove that the master carried, or had any intention of "carrying, the men to sea as seamen," or that he had any knowledge of their presenee on board until after the ship had left port, and they added that in these circumstances they were advised that a conviction of the master for an offence under sections 113 and 115 of the Act could not be obtained. They also adverted to the terms of section 237 (2) of the same Act, which provides that a stowaway, so long as he is on board, shall be deemed to belong to the ship, and shall be subject to the same rules of discipline as if he were a member of, and had signed the agreement with, the crew. This section, they thought, might have suggested to the minds of masters and owners of British ships the desirability of placing stowaways upon the articles of their ship, in order that they might realize that they were subject to the same discipline as the regular crew. This theory was, in their opinion, at least as probable as the suggestion of the United States' Government that the custom had arisen with a view to evading the United States' Laws in regard to pauper immigration.

They further added that, as Her Majesty's Consul contended that the men actually formed part of the ship's crew, it was difficult to understand why he should have interfered to restrain the master from taking the precautions the latter deemed necessary in order to prevent their desertion.

On the 12th October (Paper C) a Report on the case was received from Mr. Donnelly, Acting Consul at New Orleans, in the absence of Her Majesty's Consul, Mr. St. John, who was in charge when the incident occurred.

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Mr. Donnelly narrates the facts of the case at somewhat greater length than the reports received up to that date.

He quotes from Mr. St. John's despatch of the 25th May to Her Majesty's Ambassador at Washington, in which he discusses the right of the United States' authorities to interfere with the discipline of crews legally enrolled on board British ships. His words are as follows:—

"The two stowaways in question were enrolled as members of the crew, and it was for the master to decide whether such a step was expedient or not. The enrolment took place on the high seas, in a manner recognized by the country to which the ship belonged. The men thereupon ceased to be stowaways, became British mariners, and for the authorities of the United States to make them out something different appears to me an unwarrantable proceeding, and a very objectionable precedent to establish."

On the 17th October a despatch was received from Her Majesty's Chargé d'Affaires at Washington (Paper D), reporting the whole case at length, inclosing the correspondence which had passed between the United States' Government and Her Majesty's Ambassador, and also two opinions by Mr. Calderon Carlisle, the Legal Adviser of Her Majesty's Embassy, to whom the correspondence had been referred.

In addressing the United States' Government with a view to obtaining a reconsideration of the question by the Treasury Department, Sir J. Pauncefote apparently based his arguments on the fact that the decision of the Superintendent of Immigration approved by the Treasury (Paper D, Inclosure 3), was at variance with the ruling of the United States' Court in the case of the United States *v.* Sandrey, where it was laid down that a stowaway on a British vessel once enrolled, in good faith, as a member of the crew, acquired the status of a British seaman; and that in the event of his desertion he was to be considered as a deserting seaman, and not as an alien immigrant.

A fuller statement of the case of United States *v.* Sandrey will be found stated in a subsequent part of this reference.

With regard to the difficulty put in the way of Mr. Bertie in his endeavour to detain the two men by the refusal of the United States' authorities to keep them in custody, Sir Julian inclosed a statement, drawn up by Her Majesty's Consul-General at New York, as to the practice followed by the New York Customs authorities in such cases, namely, to land the stowaways on arrival, and to keep them in custody at the ship's expense until her departure.

The Department of State replied, on the 24th August, that the Treasury did not acquiesce in the decision in the Sandrey case, the ruling in that case being in conflict with the decision (*in re* Vito Rullo) of a Court of equal jurisdiction, the practice of the Treasury Department being established by "Synopsis of Decisions, 14,099," of which, however, no copy was forthcoming, but which is understood to contain the Decision of the 13th June, 1893, before referred to.

The Treasury invited the attention of Her Majesty's Government to the fact that masters of British vessels bound to New Orleans seemed to consider that placing of stowaways on their crew lists, in order to avoid future trouble in connection with the Immigration Laws of the United States, was one of their prerogatives; that in the cases in question, both the men had applied for shipment before the "Cuban" left Liverpool, but were refused; that it was not alleged that the addition of their names to the crew list of the vessel after their presence on board had been discovered was for any of the purposes for which shipment of substitutes was authorized by English law; that for this, and other reasons, the Treasury were constrained to believe that the names were placed on the ship's articles for the purpose of evading the laws of the United States, and that this circumstance outweighed the subsequent acts of vigilance exercised by Mr. Bertie.

They added that the local authorities of various ports, upon application, provide sufficient facilities for the detention, at the expense of the vessel, of persons to be deported, but that in this case the master had, on the advice of the British Consul that they were properly enrolled British seamen, declined to restrain the stowaways.

Mr. Calderon Carlisle, to whom all the papers were thereupon referred, holds the view (Annex 1) that the fine was legally imposed on the master of the "Cuban."

Mr. Carlisle states that, in his opinion, it would not be necessary for a master who discovered the presence of criminal, insane, or deceased stowaways on board when he was two or three days out at sea, to put back and disembark them, or, in the alternative, render himself liable to suffer the penalty imposed, but the master would undoubtedly be obliged to prevent their landing and to take them back in his ship.

Mr. Carlisle also observes that "if a stowaway regularly became a member of the crew, he could not be considered an alien immigrant any more than any other member of the crew, according to the late decision of the United States' Court, but if he did not become a member of the crew, he was none the less an alien immigrant because he stole his passage instead of paying for it."

In the decision alluded to, viz., United States *v.* Sandrey, the Court found that all the circumstances of the case showed that the master had acted openly and above board, within the line of his duty as master of the vessel, and no way in violation of the United States' law.

"In the present case," Mr. Carlisle continues, "the Board of Immigration and the Treasury Department seemed to have reached the conclusion that the stowaways in question really intended to violate the laws of the United States when they left England, and had successfully done so when they eluded the vigilance of the master and landed in the United States; that they did belong to the excluded classes; and that the captain had sufficient knowledge or notice of their character, condition, and purpose not to be himself free of responsibility."

Mr. Carlisle considers that, in regard to the effect of enrolling such stowaways in a crew, there would seem to be no distinction in law between the case of the two men in question, and the cases of two persons admittedly lunatics or well known as dangerous criminals. The policy of the United States being to exclude certain classes from their territory, it could not be admitted that the mere enrolment of such persons in the crew list of a British ship on the high seas, or the signing of articles, &c., could give such persons the right to land, or would free the master of the vessel from the duties and responsibilities which the law imposed on him.

The papers were then referred back to the Board of Trade, and their Solicitor wrote a Memorandum (Annex II) which furnishes the basis of the arguments advanced by the Board, and subsequently stated in this reference.

Mr. Calderon Carlisle, to whom the Memorandum (Annex II) of the Board's Solicitor was submitted, has not found reason to alter his own opinion that the fine was legally imposed (Annex III).

He evidently does not agree with the Board's Solicitor that, in order to make Section 10 applicable, the immigrant must have left the ship and have been brought back.

He holds that the procedure was correct, and that the fine was lawfully levied under Section 10, which imposes a penalty on vessels violating its provisions, and provides for its enforcement by withholding a clearance.

"The whole gist of the case," he writes, "is whether stowaways, enrolled in a crew, under circumstances like those disclosed in the case of Cavanagh and Downey, are alien immigrants within the meaning of the laws of the United States."

"The laws of the United States provide expressly (Section 6, Act of the 3rd March, 1891,) that 'all decisions made by the inspection officers, or their assistants, touching the right of an alien to land, when adverse to such right, shall be final, unless appeal be taken to the Superintendent of Immigration, whose action shall be subject to review by the Secretary of the Treasury.'"

The case of Vito Rullo is, he says, one of many authorities holding that the Courts will not undertake to review such sentences.

The case of Sandrey was a prosecution under Sections 6 and 8, which have no provision for enforcing fines by refusing clearance. Mr. Carlisle does not admit that the circumstances of this case were the same as those of the "Cuban."

Finally, Mr. Carlisle is of opinion that the United States' authorities have the right, under the Act of the 3rd March, 1891, to make the Regulations they have made with regard to stowaways, and he adds that by observing these Regulations, British masters can avoid all trouble by special care and vigilance with regard to stowaways who have been entered on the crew list.

That in the case of personal restraint they would not be liable to action for false imprisonment in the United States, nor, does he imagine, would they be so liable in Great Britain either.

The Board of Trade have on the other hand been advised by their Solicitor that in view of the decisions of the United States' Circuit Court of Louisiana in the abovementioned case of United States *v.* Sandrey, and also in the Stanley *habeas corpus* case, and even apart from those decisions the master of the "Cuban" did not commit either of the offences referred to in Section 10 of the United States' Immigration Act of the 3rd March, 1891; that even if it could be held, by disregarding and practically overruling express decisions of the Court to the contrary, or by taking an erroneous or unfair view of the facts of the case, that an offence had been committed, the United States' Executive authorities were not justified in holding the master guilty of a misdemeanour and imposing penalties upon him for that offence of their own mere motion without any

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previous trial or conviction by a Court of Law; and that it is a proceeding opposed to received ideas of justice, liberty, and right treatment, that executive officers should, in a case of alleged misdemeanour, be at once prosecutors and Judges, and also the instruments for enforcing their own decisions by detention of the ships of the alleged offenders.

The Solicitor to the Board of Trade is further of opinion that, even if the United States' authorities had been technically justified in their action by the terms of the Statute, they took an erroneous and unreasonably harsh view of the master's conduct in signing the two stowaways on the articles of the "Cuban," and, further, when they rejected the abundant evidence of his earnest desire and efforts to prevent their landing.

The Alien Immigration Act of the 3rd March, 1891, upon which the questions at issue arise, is sent herewith (Paper E).

A fuller statement of the contentions and arguments of the Solicitor to the Board of Trade has been prepared by him, and will be found in the annexed Memorandum (Annex IV).

I have the honour to request that you will take these papers into your consideration, and that you will favour Lord Salisbury with your opinion as to—

1. Whether the action taken by the United States' authorities in this case was legal and proper?

2. And if not, whether there are good grounds for representations to the United States' Government, and if so, what form they should assume?

His Lordship would also be glad to be favoured at the same time with any general observations you may have to offer on the case.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	West India and Pacific Steam-ship Company to Foreign Office		July	18, 1896.
(B.)	United States' Chargé d'Affaires to Foreign Office ..	..	August	6, ,,
(C.)	Acting Consul Donnelly to Foreign Office	(No. 10. Commercial)	September	30, ,,
(D.)	Viscount Gough to Foreign Office	(No. 62 .Commercial)	October	4,
(E.)	United States' Alien Immigration Act ..	.. ..	March	, 1891
(F.)	Board of Trade to Foreign Office..	.. .. ..	September	8, 1896.
(G.)	Ditto, ditto	.. .. ..	December	5, ,
(H.)	Sir J. Pauncefote to Foreign Office	(No. 28. Commercial)	March	29, 1897.

Report.

In our opinion no fine can be lawfully imposed under the American Act except by a Court of Justice. The Act does not confer any such power upon any Executive officer, and he has no more right to impose a fine than to award a term of imprisonment.

We do not think it by any means clear that the master might not have been convicted under Section 10 if a prosecution had been instituted. Sandrey's case appears to us to have no bearing upon the present, as all that was there decided was that the master was not liable if stowaways, whom he had *bonâ fide* enrolled for the voyage to America and back, escaped while in port. The other cases referred to are also inapplicable. In the present case it would appear that the stowaways proposed to land, and that it was decided by the proper authority that they were not entitled to land in the United States under the provisions of the Act in question. The master was then asked to detain them on board. He failed to do so, and it appears to us that the circumstances do not exclude the possibility of a proper conviction under Section 10, although there is, no doubt, great force in some of the observations made by the Solicitor to the Board of Trade on this point.

But the question ought to have been tried by a Court of Justice, and as the action of the Executive officer at New Orleans in refusing clearance unless the fine which he himself imposed was paid has been adopted by the American Treasury Department, we think that diplomatic representations might properly be made to the United States' Government. They should be based upon the fact that as no proceedings had been taken, the fine was not imposed by any legal authority, and that the question whether the master had committed an offence under Section 10 was one which ought to have been determined judicially.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 16, 1897.

No. 40A. **[Colonial Office.]**

[December 17, 1897.]

The Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, December* 17, 1897.

Breach of Bermudas Quarantine Laws by United States' war-ship "Enterprise."

WE were honoured with your commands, signified in Mr. Lucas' letter of the 11th instant, stating that he was directed by you to submit to us the accompanying despatch and inclosures from the Governor of the Bermudas, with reference to a breach of the Quarantine laws of those Islands, recently committed by Commander J. G. Eaton, of the United States' Navy, when in command of the national ship "Enterprise," which resulted in his being convicted before two Justices of the Peace for the Colony, under the 6th section of "The Bermuda Quarantine Act, 1893," and being sentenced to pay a penalty of 10*l.*, and the costs of the prosecution, amounting to 3*l.* 17*s.*

That by section 5 (1) of the above Act, if a vessel arrives at Bermuda in June, July, August, September, or October, the officer, or other person in charge, must immediately, on being shown by the pilot a copy of the "Quarantine Clauses" of the Act, hoist a yellow flag, and keep the same flying without intermission, until permitted in writing by a Health Officer to haul it down, during all which time such vessel is to be and remain in quarantine.

That by section 6 of the Act, whenever the officer or other person in charge of any vessel is required to hoist the yellow flag, it is the duty of the pilot and the person in charge of the vessel to pilot and take her, if entering from the east, to the first chequered buoy or to Murray's anchorage, at the option of the master, or, if the weather will not admit of her remaining at either of those anchorages, to a specified position in the Great Sound—unless such vessel be one of Her Majesty's ships, or a troop-ship, or a store-ship, or freight-ship bound to Her Majesty's dockyard to load or unload, in which case she is to be piloted to Grassy Bay; and the pilot is to remain with such vessel at the prescribed quarantine ground until she has been visited by a Health Officer, and either released by him from quarantine, or directed to proceed to some other place or anchorage. If any vessel—not coming under the exceptions above mentioned—proceeds further west than Murray's anchorage without the permission of the Health Officer, the master or person in charge of her may be summoned by any Justice of the Peace, to appear before any two Justices of the Peace to show cause why such vessel was permitted to proceed as aforesaid, without such permission; and if such master or other person in charge, fails to show to the satisfaction of the Justices that such vessel was compelled by stress of weather, or other unavoidable cause, to proceed as aforesaid, he is liable to a penalty not exceeding 30*l.*, besides costs, and if the Justices see fit, to imprisonment not exceeding six calendar months.

That the "Enterprise" arrived at the Bermudas on the evening of the 18th September, entering from the east, and took up a pilot on nearing the Islands. That on the morning of the 19th, which was a Sunday, she proceeded to Murray's anchorage with the yellow flag flying in compliance with section 5 of the Quarantine Act. That Commander Eaton there awaited the Health Officer's visit, repeatedly blowing his whistle to attract that officer's attention, but that after a delay of fifteen minutes, on a suggestion from the pilot he proceeded to the anchorage at Grassy Bay, where he shortly afterwards obtained pratique from the West End Health Officer. That the reason he gave for acting as he did, was that the pilot showed him a "Notice to Pilots," dated the 13th February, 1897, from which he understood that the proper anchorage for him to proceed to was Grassy Bay. That Commander Eaton's *bona fides*

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in adopting that course appeared to be unquestioned. That as a matter of fact the East End Health Officer was approaching the "Enterprise" when she left Murray's anchorage, but that apparently no one on board was aware of this.

That the "Notice" in question stated that "subject to the convenience and safety of Her Majesty's ships, and to the requirements of the Quarantine Acts and Regulations, foreign ships of war and transports, and all other foreign Government vessels arriving at these Islands are, until further orders, to be piloted to Grassy Bay, and there brought to anchor not nearer than 1½ cables to any naval moorings."

That on the 21st September, Commander Eaton was summoned to appear before two Justices of the Peace at the Police Office of St. George, and that on the 22nd, after several witnesses, including himself, had been heard, he was convicted of a breach of section 6 of "The Quarantine Act, 1893," and fined 10*l.* and costs. That at the conclusion of the proceedings Commander Eaton, who had not raised the point previously, desired to have noted his protest that the Court had no jurisdiction over acts committed by him whilst on board a public vessel of the United States' Navy.

That subsequently, on the advice of the Attorney-General for the Colony, who had advised the proceedings, but who afterwards felt a doubt whether process of a local Court could be enforced on board the "Enterprise," the Magistrates were instructed by the Officer administering the Government not to enforce their sentence, and that the matter was then (after some correspondence between Commander Eaton and the Government) allowed to drop.

That although the fact seemed to be regarded by the Attorney-General of Bermuda as to some extent open to doubt, you had no ground for discrediting the statement of Commander Eaton to the effect that the "Enterprise" was a Government ship (as she undoubtedly appeared to be to the pilot). That, on the contrary, she appeared undoubtedly to have been an armed vessel employed as a training-ship, named in the official Navy List of the United States, and commanded by officers of the United States' Navy. That it was therefore assumed that no question of fact could arise as to her right to be treated as a public vessel belonging to a foreign Power.

That Mr. Lucas was, therefore, to ask us to take the papers into our consideration and to favour you with our opinion whether, upon the assumption that she was in fact a public ship, the "Enterprise" and her officers could rightfully claim to be exempted from the Colonial Laws relating to quarantine, and from the jurisdiction of the local Courts; and, if so, whether any and what means could be employed to insure the observance by public vessels belonging to foreign States of the ordinary and reasonable sanitary regulations necessary for the preservation of health in the ports of Her Majesty's Colonial possessions.

That you would also be glad to receive any general observations which we might think fit to offer upon the question which was regarded as one of considerable importance.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

That even upon the assumption that she was a public ship, the "Enterprise" and her officers could not rightfully claim to be exempted from the Colonial Laws relating to quarantine. Every man-of-war entering a foreign port does so upon the terms of observing such regulations.

It does not, however, follow that the vessel and her officers are subject to the jurisdiction of the local Courts. There has been considerable difference of opinion as to the extent of the immunity enjoyed by men-of-war in a foreign port; but in our opinion the officer commanding such man-of-war is not liable to proceedings in the local Courts, in respect of any act done by him in the management of the vessel.

The duty of observing the regulations of the port is one of international obligation. The vessel is admitted on the implied terms of observing such regulations. If they are broken she may be expelled—if such an extreme step be necessary for the safety of the port. Diplomatic representations may be made to the Government of the country to which the vessel belongs, and if anything like a right to disregard such regulations were asserted, the foreign Government might be informed that its vessels could not be admitted.

In the present case the error seems to have been purely accidental, and partly due to a mistake on the part of the pilot, and we do not think that any further notice should be taken of the incident.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

URUGUAY.

No. 41.

[March 15, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, March 8, 1897.

Uruguay Revolution. Seizure of neutral vessels

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers which have reference to the revolution which has broken out in the Republic of Uruguay.

Mr. Baring, Her Majesty's Minister at Monte Video, in his telegram No. 1 of the 5th March (Paper A), apprehends that the Uruguayan Government may seize small steamers, many of which belong to British Companies, and he asks whether he is authorized to act in concert with the Commander of Her Majesty's ship "Beagle" for the purpose of according such vessels the protection of the British flag.

A Memorandum has been prepared in this Department (Paper B), giving precedents respecting the seizure of neutral property by belligerent Powers, but it seems doubtful whether this right can properly be claimed by a Government engaged in putting down rebellion when no recognized state of belligerency exists.

Mr. Baring has been provisionally instructed that if any British vessel is seized he should immediately inform the Uruguayan Government that Her Majesty's Government reserve all rights, and I am to request that you will favour Lord Salisbury with your opinion as to whether Her Majesty's Government would be justified in giving instructions to the British naval officers to resist by force the seizure of British vessels under the circumstances indicated, and if not, what orders should be given in reply to the suggestion contained in Mr. Baring's telegram.

His Lordship will also be glad to receive any observations of a general character which you may have to offer on this question.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Mr. Baring	(No. 1. Telegraphic)	March 5, 1897.
(B.) Memorandum by Mr. A. H. Oakes		„ 6, „

Report.

The right of angary has never been recognized except where there are belligerents. So far as appears this cannot be predicated of Uruguay at present, although an attempt at revolution may ultimately result in civil war and a state of belligerency. The proposed seizure of steamers belonging to British subjects would therefore appear not to be justifiable. It could be justified only as a measure of urgent military necessity. It must, however, be borne in mind that strangers resident in a country are liable to the same consequences resulting from the acts of the Government of the country in the maintenance of peace and order as the native inhabitants of the country.

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The statement of facts is so meagre, that we should feel hesitation in advising that force should be employed by Her Majesty's ship "Beagle" to prevent the seizure. It does not appear in what capacity these "small steamers" are employed, nor whether their owners are resident in Uruguay. And we have no sufficient information as to the circumstances which may be relied upon as justifying the proposed seizure on the ground of necessity.

We advise that every step should be taken to prevent the seizure, short of the actual employment of force, and that if it is effected a remonstrance and claim for compensation should be lodged with the Government of Uruguay.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 15, 1897.

VENEZUELA.

No. 42.

[February 4, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 18, 1897.

Gentlemen,

Guiana Boundary Arbitration. Preparation of British Case.

I HAVE the honour to inform you, by direction of the Marquess of Salisbury, that the negotiations now proceeding at Washington for the signature of a Treaty with Venezuela, by which the question of disputed boundary between that country and British Guiana is to be referred to arbitration, appear to be approaching a favourable conclusion.

His Lordship considers it very important that preparations should at once be made for the presentation in proper form to the Tribunal of Arbitration of the arguments on behalf of Her Majesty's Government.

I am to request that Lord Salisbury may be favoured with your opinion as to the general scheme of evidence which is necessary for preparing an outline of the British Case, and he would also be glad to learn what professional assistance you will require in proceeding with this work.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

We are prepared to consider the general scheme of evidence, and to advise as to the preliminary steps necessary to be taken for preparing the outline of the British Case, but before doing so we shall be glad to have a copy of the Memorandum on the points likely to be raised on the part of Venezuela, which was prepared by Mr. Reddan, and submitted to the Attorney-General at the Foreign Office, upon the occasion of his visit there a few days ago, and which was left with Mr. Reddan in order that he might note therein his comments.

We suggest that instructions should be given to Mr. Bertram Cox and Mr. Sidney Rowlatt to act as junior counsel in preparing the outline of the British Case. It may be that later on further legal assistance may be required, but we think it better that the consideration of the question whether any other gentleman should be engaged should stand over for the present. We presume that we shall have the assistance of Mr. Harris, of the Colonial Office, and of Mr. Reddan. We think it quite probable that when the work is further advanced we may require additional expert assistance in connection with the examination, collation, and possibly the translation of documents, and we think that possibly the services of Mr. de Villiers, of the British Museum, would be useful in connection therewith. The services of a shorthand writer will from time to time no doubt be required, but we understand that one of the shorthand writers attached to the Colonial Office will be available when necessary.

We do not remember whether in the draft Treaty as approved it is proposed that some Agent should represent Her Majesty's Government. If this be so, consideration will be required at a later stage of the person to be appointed to fill this position.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 4, 1897.

No 43.

[April 13, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, March* 26, 1897.

Maintenance of *status quo* on Guiana boundary pending Award of Arbitrators.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers, which relate to a proposal made by the Venezuelan Minister at Washington, that notes should be exchanged between the British and Venezuelan Governments providing that pending the Award of the Arbitrators on the boundary question no further occupation of territory would be permitted on either side, but that the *status quo* should be maintained by the authorities of Venezuela and British Guiana respectively.

After consultation with the Secretary of State for the Colonies, his Lordship instructed Her Majesty's Ambassador at Washington to endeavour to obtain some further definition of the exact meaning and scope of the proposal.

A despatch has since been received from Sir Julian Pauncefote (Paper E), inclosing a short statement from Señor Andrade, who proposes that, pending the Award of the Arbitrators, the British and Venezuelan Governments should undertake to warn their local officials against committing, or permitting any persons under their control to commit, any act likely to give rise to a disturbance in relation to the rights claimed by either Government within the territory in dispute; and also that both Governments should undertake to refrain from granting within that territory any new concessions or rights.

Mr. Chamberlain's views on this proposal are stated in the letter from the Colonial Office of the 20th March (Paper G). He suggests that a definite line of demarcation should be provisionally adopted, and that each Government should issue instructions to their officials in the terms indicated; and that the area within which no grant or concession shall be made should likewise be defined.

I am to request that Lord Salisbury may be favoured with your opinion as to whether Sir J. Pauncefote may properly receive instructions in accordance with the arrangement set forth in the letter from the Colonial Office, or whether those proposed instructions can in your opinion advantageously be altered or modified, and, if so, in what respects and to what extent.

His Lordship will at the same time be glad to be favoured with any observations of a more general nature which you may desire to offer on the papers now submitted to you.

I have, &c.
(Signed) T. H. SANDERSON.

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List of Papers.

(A.)	Sir J. Pauncefote	(No. 18. Telegraphic)	January 25, 1897.
(B.)	To Colonial Office		January 26, „
(C.)	Colonial Office		January 28, „
(D.)	To Sir J. Pauncefote	(No. 22)	January 29, „
(E.)	Sir J. Pauncefote	(No. 47)	February 19, „
(F.)	To Colonial Office		March 6,
(G.)	Colonial Office		March 20, „

Sir. T. Sanderson presents his compliments to Her Majesty's Attorney and Solicitor-General, and has the honour to transmit to them, by direction of the Marquess of Salisbury, the inclosed letter from the Colonial Office* respecting alleged Venezuelan encroachments on the right bank of the Amacuru River, as showing the kind of incident against which it is desirable to guard during the progress of the arbitration.

Sir T. Sanderson requests that the Colonial Office letter may be returned with the papers which accompanied the reference from this Department of the 26th ultimo with regard to the proposed arrangement for maintaining the *status quo*.

Foreign Office, April 1, 1897.

Report.

There are, in our opinion, some objections and probable disadvantages in proposing, or agreeing, any provisional line of demarcation; and, having regard to the nature of the questions which will arise in the Arbitration, we do not recommend that the proposal made in the letter from the Colonial Office of the 20th March should be adopted.

We think that before any attempt is made to agree on a provisional line of demarcation the Venezuelan Minister, from whom the proposal emanated, should be asked to show upon a map the line of demarcation which he would suggest. His present proposal is altogether inadmissible.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 13, 1897.

ZANZIBAR.

No. 44.

[July 6, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, June* 29, 1897.

Search of vessels under French flag in Zanzibar waters.

I HAVE the honour, by direction of the Marquess of Salisbury, to request that you will favour him with your opinion on the following point:—

Of late years it has been the practice of the French Government to grant French papers and the use of the French flag afloat to any Arab going through certain formalities at Obok, Madagascar, or the Comoro Islands. The effect of such grants has been to give the holder an almost complete immunity at sea from any control which would otherwise be exercisable by British men-of-war, and to enable him to carry slaves with impunity to Arabia or elsewhere, as the existing arrangements with France only entitle British men-of-war to verify the flag of merchant-vessels, and give no right of interference with vessels on the mere ground of Slave Trade.

Her Majesty's Government have, however, recently entered into an Agreement with the French Government (see Sir E. Monson's No. 100, Africa, of the 6th April, 1897) under which Great Britain has given up her rights to jurisdiction over British subjects in Madagascar, and the French Government have stated that they are prepared to abandon their rights of jurisdiction over French citizens and French-protected persons in Zanzibar, as soon as the administration of justice shall be guaranteed in the island by properly constituted British Tribunals. These Tribunals will have been properly constituted as soon as the Zanzibar Order in Council, which has recently been approved by you, has come into operation, and the question arises whether, in these circumstances, vessels flying the French flag will, when within the territorial waters of Zanzibar, be subject generally to the local jurisdiction and liable not only to the verification of their papers, but particularly to be searched for slaves under process issued by the Tribunals of the Protecting Power and carried out by the police authorities of the Sultan's Administration.

Lord Salisbury thinks that it can hardly be contended that the police of the Sultan can act in such matters except under a warrant or other authority issued by the judicial Tribunals established by Great Britain under the new Order.

I am to request your particular attention to the arguments contained in his Lordship's note to M. Waddington, of the 13th June, 1891,* maintaining the right of British men-of-war, as the national ships of the Protecting Power, to search vessels under the French flag within the territorial waters of a British Protectorate. Lord Salisbury assumes that this contention still holds good, and that this particular right of search exists entirely independent of those other general rights (if any) which may now be superadded, as flowing from the establishment of the Tribunals of the Protecting Power within the Protectorate and the submission of the French Government to their jurisdiction.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

We agree with the views stated in Lord Salisbury's note of the 13th June, 1891,* and are of opinion that these contentions still hold good.

In addition to the right of search then asserted, we are of opinion that, when the French Government have submitted to the jurisdiction of the Tribunals established by the Protecting Power, search may be made of French vessels, within the territorial waters of Zanzibar, by the Zanzibar police under warrant granted by these Tribunals.

It has been suggested that jurisdiction over foreign vessels within territorial waters does not extend to cases affecting only persons on board these vessels. There is a want of authority for this suggestion, and in any case we do not think that any such doctrine could be properly invoked on behalf of the vessels engaged in the Slave Trade.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 6, 1897.

No. 45.

[August 21, 1897.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, July* 31, 1897.

Extension of French Protection to Zanzibar subjects.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, relating to the manner in which French protection is extended to Zanzibar subjects since the date of the assumption by Her Majesty of the Protectorate over Zanzibar.

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* Colonial Office, March 23, 1897.

* See Confidential Paper No. 6127, p. 163.

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Paper (A) shows the general view which has been taken by Her Majesty's Government of the question, as expressed in instructions to Her Majesty's Representative in Zanzibar. Papers (B), (C), (D), and (E) deal with the special case of Salim-bin-Abdurahman which has arisen since those instructions were issued.

Paper (B) shows that Salim-bin-Abdurahman is an Arab of Lamu, a town situated within the dominions of Zanzibar on the African mainland, and that he was a favourite of the late Sultan of Zanzibar, who used to pay him at the rate of 80 dollars a-month as a member of his household. Whilst drawing this pay, he was, at the request of the Sultan, taken under French protection, and to that end appointed by the Acting French Consul, without communication with the Representative of the Protecting Power, to a post as copying clerk in the French Consulate, although notoriously ignorant of French.

It is claimed by the Acting French Consul that, in virtue of Article IV of the Treaty between France and Muscat of 1844 (Paper F), Salim became, by the fact of this appointment, a French-protected person, and as such justiciable only by the French Consular Courts. On this ground he claimed immunity for Salim from the jurisdiction of the Zanzibar Courts.

Sir A. Hardinge contested this view, and his arguments have been supported by Her Majesty's Government and presented to the French Government by Her Majesty's Ambassador in Paris in the note of the 10th June, contained in Paper (D).

The reply of the French Government is given in Paper (E). It maintains the view originally put forward by the Acting French Consul, that under Article IV of the Treaty between France and Muscat of 1844, which still governs the relations of France with Zanzibar, Salim, as being in French service, is entitled to the same protection as if he were a Frenchman.

I am to request that you will take the papers now submitted to you into your consideration, and favour Lord Salisbury with your opinion on the point at issue between the two Governments, namely, whether all Zanzibar subjects not under the protection of some Power other than Great Britain at the time of the assumption by Her Majesty of the Protectorate over Zanzibar are, since that date, under British protection, and therefore incapable of being under the protection of any other foreign State; or whether Article IV of the Treaty of 1844 between France and Muscat still holds good, whereby any Zanzibar subject enjoys French protection by being in the service of a Frenchman.

A copy of the Arrangement of 1890, whereby France agreed to recognize the British Protectorate over Zanzibar is annexed (Paper G), to the 3rd clause of which your attention is specially invited.

It runs as follows:—

"It is understood that the establishment of this Protectorate will not effect any rights and immunities enjoyed by French *citizens* in the territories in question."

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	To Mr. Cave	..(No. 286)	December 1, 1896.
(B.)	Mr. Hardinge	.. (No. 60)	March 25, 1897.
(C.)	To Sir E. Monson	..(Africa. No. 150)	June 3, „
(D.)	Sir E. Monson	.. (No. 179)	June 11, „
(E.)	M. de Courcel		July 5, „
(F.)	French Treaty with Muscat, 1844.		
(G.)	French recognition of British Protectorate.		

Report.

In our opinion, when France consented to the British Protectorate in Zanzibar she agreed that all Zanzibari subjects not under the protection of some other Power, should be under British protection.

In the present case it is not necessary to decide the larger question as to what is the exact effect upon Article IV of the Treaty of 1844 of the establishment of a British Protectorate, and the assent thereto by the French under the Declaration of 1890. It is quite clear that the IVth Article of the Treaty between France and Muscat can apply only to persons *bonâ fide* in the service of French subjects, and in the present case it is plain that there is a mere pretence of service for the purpose of conferring French protection.

We are unable to agree with the contention of the French Ambassador in his despatch of the 5th July, 1897, that this is a matter which concerns the French Government exclusively. The IVth Article cannot inure in favour of persons asserted by the French Government to be in French service unless they are in fact so, and the service must be real, and not merely colourable. This is a question not for the French Government exclusively, but of the application of the clause in the Treaty, and it cannot be determined by the mere assertion of the French Government.

We are further of opinion that the Article relied on (Article IV of the Treaty of 1844), would not afford any exemption against proceedings of the kind which were taken against Salim in this case.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 21, 1897.

No. 46.

[September 23, 1897.]

Foreign Office to Law Officers of the Crown.

Foreign Office, August 23, 1897.

Gentlemen,

Indian immigration into Zanzibar and Pemba.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the following list of papers relating to the introduction of an Ordinance regulating Indian immigration into the Islands of Zanzibar and Pemba.

In the form in which the Ordinance now stands it is a document issued by the Sultan of Zanzibar, and purporting to be binding upon British subjects and protected persons. But the Sultan has no powers over British subjects or British-protected persons who enjoy the privilege of exterritoriality. It is, therefore, suggested by Her Majesty's Assistant Judge at Zanzibar that the Sultan's Ordinance should be put in force, so far as British subjects and British-protected persons are concerned, by a Queen's Regulation issued by Her Majesty's Agent and Consul-General under the Zanzibar Order in Council.

Lord Salisbury is, however, advised that such a mode of procedure would be incorrect, and that the proper method would be for the Sultan to issue an Ordinance which would be binding upon his own subjects and persons subject to his jurisdiction only, and for Her Majesty's Agent and Consul-General to make it binding upon British subjects and British-protected persons by a Queen's Regulation enforcing the terms of the Ordinance in their case, or otherwise, as may be found most convenient.

The views of Mr. Albert Gray and of Mr. Cracknall, Her Majesty's Judge in Zanzibar, are set forth in their letters marked (E) and (F) respectively.

It will be for the Government of India to say what safeguards will satisfy them in regard to the proposed immigration, and the actual terms of the Ordinance and Regulation must depend upon their views. I am, however, to request that you will take the papers now transmitted to you into your consideration, and favour Lord Salisbury with your opinion as to the form in which the proposed measure should be introduced into the Islands of Zanzibar and Pemba.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	India Office	(No. 257)	September 15, 1896.
(B.)	To Mr. Cave	(No. 109)	„
(C.)	Sir A. Hardinge		June 24, 1896.
(D.)	To Mr. Gray		July 26, „
(E.)	Mr. Gray		August 5, „
(F.)	Mr. Cracknall		

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Report.

In our opinion it would not be proper that the proposed Ordinance should be issued by the Sultan and applied to British subjects by Regulation under the Zanzibar Order in Council.

We agree with the reasons given by Mr. A. Gray for thinking that this course would be irregular.

We think that there ought to be a Regulation which will be binding on British subjects and protected persons, and an Ordinance by the Sultan which will be binding on persons subject to his jurisdiction. These should be issued simultaneously.

We do not think it practicable to confine the British Regulation to the obligations of the employed: it must deal with the whole subject. In many cases both employers and employed may be British subjects.

We would suggest that the difficulty as to jurisdiction in the case of employers who are neither Zanzibaris nor British subjects might be met by providing that allotments of labourers should be made only to such employers as formally agree to submit to the jurisdiction of the Courts and officers established by the Regulation and Ordinance. Without some such provision it is difficult to see how adequate security could be taken for the protection of Her Majesty's Indian subjects.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 23, 1897.

No. 47.

[November 29, 1897.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 20, 1897.

Gentlemen,

Restoration of fugitive slaves. Obligations of British officials of East African Protectorate.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list which relate to the obligations of British subjects serving in the Administration of the East Africa Protectorate in connection with the restoration of slaves to their owners. The question arises only as regards that portion of the Protectorate which is within the sovereignty of the Sultan of Zanzibar, and is hereinafter termed the Seyyidiyeh.

The circumstances are briefly as follows:—

On the 24th May, 1887, the Sultan of Zanzibar granted a concession (Document A) to the British East Africa Association, Articles 1 and 2 of which gave the Association power to administer portions of the Seyyidiyeh.

On the 3rd September, 1888, a Royal Charter (Document B) was granted to the Association, thenceforth called the Imperial British East Africa Company.

On the 9th October, 1888, the Sultan granted a further concession to the Company (Document C).

On the 31st August, 1889, the Sultan entered into an Agreement with Her Majesty's Agent and Consul-General on behalf of Her Majesty's Government, regulating the concessions to the Company (Document D). Article 2 of this Agreement provides that the Seyyidiyeh should be held by the Company as His Highness' "Wakil," or Plenipotentiary and Agent, and that it should be administered according to the "Sheri'at," that is, the (Mahommedan) laws or customs.

On the 14th June, 1890, the Sultan placed his dominions under British protection (Document E).

The Imperial British East Africa Company eventually decided to go into liquidation, and on the 1st July, 1895, the Administration of the Seyyidiyeh, theretofore exercised by the Company, was, with the assent of the Company and of the Sultan, assumed by Her Majesty's Government.

On the day of the transfer, Sir Lloyd Mathews, "Wazir," or First Minister of the Sultan, announced the transfer to the Chiefs and Elders of the Seyyidiyeh assembled at Mombasa, in a speech which contained the following passage:—

"All ancient customs will be allowed to continue."

And Her Majesty's Agent and Consul-General at Zanzibar, who had received from Her Majesty's Government instructions to make the necessary arrangements for carrying on the Administration, also made a speech, and said:—

". . . . The Mahommedan religion will remain, ... and all cases and lawsuits between natives will continue to be decided according to the 'Sheri'at'" (Document F).

The administration of the Seyyidiyeh is still exercised by Her Majesty's Government, from whom Her Majesty's Commissioner and Consul-General for the East Africa Protectorate receives instructions for the purpose.

The Seyyidiyeh is therefore a Protectorate in which the territorial Sovereign, the Sultan of Zanzibar, has ceased to exercise any administrative functions. All such functions are exercised solely under instructions from Her Majesty's Government, both as regards persons over whom Her Majesty's Government has extra-territorial jurisdiction under Treaty with Zanzibar, and also over persons the subjects of the territorial Sovereign, namely, the Sultan of Zanzibar.

Although the Slave Trade has for some years been prohibited throughout the dominions of the Sultan of Zanzibar, the status of slavery, which has existed there *ab antiquo*, has not been abolished in the Seyyidiyeh. In that province, therefore, slavery is legal under the local law.

In the existing absence of administrative or other officers receiving instructions from the Sultan, the officers, whether British or Zanzibar subjects, or others, who administer the Government under instructions from Her Majesty's Government, have therefore administered to persons subject to the jurisdiction of the Sultan the local laws, and, amongst others, the local laws relating to slavery.

The same state of things obtained when the Administration was exercised by the Imperial British East Africa Company. The position is illustrated by a Proclamation (Document G) issued by the Company on the 1st May, 1890.

Thus subjects of the Sultan, and perhaps certain foreigners, have, in the Seyyidiyeh, legal property in their slaves, and are entitled to appeal to the officers of the Administration to assist them to recover slaves their property in the manner, whatever it may be, provided by the local law, to which both the slave-owners and the slaves are subject.

On the 24th June last, the question of slavery in the Seyyidiyeh was raised in the House of Commons (Document H), and during the course of the debate, Her Majesty's Attorney-General expressed concurrence in the position that it was unlawful for any British subject to accept, receive, or detain against his will any person as a slave within the territories of the Sultan of Zanzibar, of which, as stated above, the Seyyidiyeh is a part.

On the 26th June, Her Majesty's Commissioner and Consul-General in that province was instructed to defer to the opinion expressed by the Attorney-General in the House of Commons to the effect that a British subject anywhere, no matter in what service or employment he may be engaged, is breaking the British law, and is exposing himself to penalties if he takes part in restoring to his master, or otherwise depriving of his liberty, any person on the sole ground that he is a fugitive slave (Document I).

Her Majesty's Commissioner and Consul-General has now addressed to Lord Salisbury the inclosed despatch (Document K). He raises two questions:—

1. The obligations of a British subject, a public officer of the Administration of the Seyyidiyeh, instructed by Her Majesty's Government to administer the local law of that province, which recognizes the legal status of slavery and the right of the slave-owner to recover slaves his property; and

2. The question of the course of action which should in practice be followed by such an officer when applied to officially by a slave-owner to carry out the local law on the recovery of slaves.

Lord Salisbury is not aware of the provisions of English law, to which reference was made during the proceedings in the House of Commons; nor does he know to what law a British subject, a public officer of the Administration in the Seyyidiyeh, should appeal to dispense him from complying with a request made to him by a slave-owner to put in force the local law on the recovery of slaves.

Papers illustrating the course hitherto followed by officers in such cases, and the nature of the orders they have given, on receipt of such requests, in order to enforce the local law, are inclosed (Document L).

The recommendations of the Royal Commission appointed in 1876 on Fugitive Slaves (Document M), and the existing Instructions to Naval Officers employed in the

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suppression of the Slave Trade (Document N), should be borne in mind in the consideration of this subject.

I have the honour to request you to take the accompanying papers into your consideration, and to favour Lord Salisbury with your opinion as to the reply that should be made to the despatch in question, and also with any observations which will be of use to his Lordship in dealing with questions arising in connection with slavery in the Seyyidiyeh until such time as it may be found possible to abolish the status of slavery in that part of the dominions of the Sultan of Zanzibar.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Concession to the East Africa Association (Hertslet's Map of Africa by Treaty, p. 110)	May	24, 1887.
(B.)	Royal Charter to Imperial British East Africa Company	September	3, 1888.
(C.)	Concession to Imperial British East Africa Company (Hertslet, p. 124)	October	9, „
(D.)	Agreement, Great Britain and Zanzibar. (Ibid., p. 760)	August	31, „
(E.)	Agreement. Great Britain and Zanzibar. (Ibid., p. 763)	June	14, 1890.
(F.)	Speeches delivered at Mombasa. (Ibid., p. 1069)	July	1, 1895.
(G.)	Proclamation by Imperial British East Africa Company*	May	1, 1890.
(H.)	Proceedings in the House of Commons. (Extract from the "Times")	June	24, 1897.
(I.)	Sir A. Hardinge (No. 54. Telegraphic)	June	26, „
(K.)	Sir A. Hardinge (No. 134)	July	5, „
(L.)	Papers communicated by Sir J. Pease	June	24, „
(M.)	Report of the Royal Commission on Fugitive Slaves, 1876.		
(N.)	Instructions to naval officers employed in suppressing the Slave Trade.		

Report.

We are of opinion that the manner of enforcement of the local law as to slavery in the Seyyidiyeh should be modified so far as this can be done consistently with good faith.

We think that the issue of search warrants should be discontinued. It is not shown that there is any obligation on the British Administration to give active assistance of this kind for the recovery of fugitive slaves, and we think that it may be discontinued without any breach of the promise to maintain the law of Islam.

If the question whether any person is a slave is brought into Court, the Judge must, of course, decide in accordance with the local law if the facts establish slavery. So long as slavery exists, judgment might, for instance, properly be given against any man who forcibly detained slaves belonging to another person, and probably damages would be recoverable against any person who enticed them away, or harboured them. But where slaves have escaped, we would suggest that the owner be left to recapture them himself, every precaution being taken against abuse in the way of cruelty to the person seized, or seizing the wrong person.

The subject is undoubtedly a most difficult one, but it is probably true, as remarked by Her Majesty's Commissioner, Sir A. Hardinge, that any difficulty which may arise in a particular case may bring with it its own solution.

The Courts must, of course, recognize as lawful the detention of a slave by his master, and restrain any other person from forcibly interfering with his property, and give damages in suitable cases. But the law of Islam may be recognized in this respect without creating the odium in this country which the employment of the police to assist actively in the work of capturing slaves is certain to occasion.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 29, 1897.

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* See Confidential Paper No. 6762, p. 4.

1898

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CONFIDENTIAL.

(7199.)

REPORTS

BY THE

LAW OFFICERS OF THE CROWN, &c.

1898.

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Printed for the use of the Foreign Office. October 1899.

CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.: 1898.

AFRICA.

No. 1.

[January 26, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 15, 1898.

Vestment of lands acquired for Uganda Railway.

ON the 22nd September last you favoured the Secretary of State for Foreign Affairs with your opinion with regard to the vestment of the lands acquired for the purposes of the Uganda Railway in the East Africa and the Uganda Protectorates.

The Treasury Solicitor, acting on your Report, instructed Mr. Albert Gray to prepare a draft deed for the purpose of vesting the lands in certain trustees to be appointed by Her Majesty's Government.

I have now the honour, by direction of the Marquess of Salisbury, to transmit to you a copy of a letter which has been received from Mr. Gray,* pointing out that, as regards the practice under the provisions of "The (Indian) Land Acquisition Act, 1894," after certain initial steps, the Collector enters upon the land required for public purposes, and that thereupon (section 16) this land vests in the Government without any conveyance.

Mr. Gray, after expressing doubts as to the person or persons in whom land acquired by the Local Government in East Africa would vest, proceeds to state that two courses appear to be open to the Secretary of State—

1. To direct that when any land has vested in the Commissioner, he shall forthwith convey it to such trustees as are proposed in your Report; or

2. To direct that the trustees shall, for the purposes of section 16 of the Land Acquisition Act, stand in the place of the "Government."

Mr. Gray recommends the adoption of the second course if you regard such a direction as being a proper exercise of the powers of Her Majesty under Article 11 of "The East Africa Order in Council, 1897."

I have the honour to request that Lord Salisbury may be favoured with your views on the point to which attention has been specially called by Mr. Gray, and also on the other questions raised in his letter, together with any further observations of a more general character which you may desire to offer on the subject.

The papers which accompanied the letter to you from this Department, on which you reported on the 22nd September last, are inclosed herewith for convenience of reference.

I have, &c.
(Signed) FRANCIS BERTIE.

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* Mr. A. Gray, November 18, 1897.

1898

Report.

We do *not* think that section 11 (*e* (ii)) empowers the Secretary of State to direct that trustees shall, for the purposes of section 16, stand in the place of the Government. Section 11 (*e* (ii)) gives the Secretary of State power, by order, to direct by what authority any jurisdiction, powers, or duties incident to such enactment shall be exercised. These words are not, in our opinion, apt to denote the case of the vesting of lands.

We think that the case should be dealt with by an Order in Council, providing that in all cases under the Land Acquisition Act the land shall vest in the Commissioner for the time being, or in trustees to be named by the Secretary of State in each case, with power to the Secretary of State to appoint new trustees from time to time.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 26, 1898.

No. 2.

[**May 16, 1898.**]

Foreign Office to the Law Officers of the Crown.

Orders in Council for vesting of lands acquired for Uganda Railway, &c.

Gentlemen, *Foreign Office, May* 9, 1898.

WITH reference to your letter of the 26th January last respecting the vesting of lands acquired for the Uganda Railway and other public purposes in the East Africa and Uganda Protectorates, I have the honour, by direction of the Marquess of Salisbury, to transmit to you the drafts of two Orders in Council on the subject, which have been prepared by Mr. A Gray.

I am to request that you will favour Lord Salisbury with your opinion as to whether these draft Orders in Council may, in their present shape, properly be laid before the Queen in Council for Her Majesty's approval, and generally with any further observations you may desire to offer on the matters with which they deal.

The papers which have already been before you on this subject are herewith returned, in case you may wish to refer to them.

I have, &c.
(Signed) FRANCIS BERTIE.

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Report.

The drafts of the two Orders in Council, as altered and initialled by us, may properly be submitted to the Queen in Council, for the approval of Her Majesty.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 16, 1898.

Annex.

East Africa Protectorate.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty has power and jurisdiction within the territories comprised in the East Africa Protectorate:

And whereas by Article II of "The East Africa Order in Council, 1897," "The Land Acquisition Act, 1894," an Act of the Governor-General of India in Council is applied to the East Africa Protectorate:

And whereas it is expedient that provision should be made for the vesting of lands taken for public purposes, under the provisions of the said Act:

Now, therefore, Her Majesty, by virtue, and in exercise of the powers on this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise, in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. Any lands, whereof possession has been or shall, after the passing of this Order, be taken for public purposes, under the provisions of "The Land Acquisition Act, 1894," shall vest absolutely in the Commissioner and Consul-General, *and his successors in office*, for the time being in trust for Her Majesty, or if the Secretary of State at any time or in any case by order under his hand so directs, in such other trustee or trustees as the Secretary of State may appoint.

2. The Secretary of State may, when he thinks fit, by a like order remove any trustee so appointed, and may appoint any new or additional trustee or trustees.

3. This Order shall be read and construed with "The East Africa Order in Council, 1897," and may be cited as "The East Africa (Acquisition of Lands) Order in Council, 1898."

4. And the Most Honourable the Marquess of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

R. E. W.
R. B. F.

Uganda Protectorate.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty has power and jurisdiction within the limits comprised in the Uganda Protectorate:

And whereas under "The Africa Orders in Council, 1889 and 1892," "The Land Acquisition Act, 1894," an Act of the Governor-General of India in Council has been applied to the Uganda Protectorate:

And whereas it is expedient that provision should be made for the vesting of lands taken for public purposes, under the provisions of the said Act:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise, in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. Any lands whereof possession has been or shall, after the passing of this Order, be taken for public purposes within the Uganda Protectorate, under the provisions of the said "Land Acquisition Act, 1894," shall vest absolutely in the Commissioner and Consul-General, *and his successors in office*, for the time being in trust for Her Majesty, or if the Secretary of State at any time or in any case by order under his hand so directs, in such other trustee or trustees for Her Majesty as the Secretary of State may appoint.

2. The Secretary of State may, when he thinks fit, by a like order remove any trustee so appointed, and may appoint any new or additional trustee or trustees.

3. This Order shall be read and construed with "The Africa Orders in Council, 1889 and 1892," and may be cited as "The Africa (Acquisition of Lands) Order in Council, 1898."

And the Most Honourable the Marquess of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

R. E. W.
R. B. F.

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[Colonial Office.] *No. 2.*

[August 3, 1898.]

The Law Officers of the Crown to Mr. Chamberlain.

Sir, *Royal Courts of Justice, August* 3, 1898.

Nationality of children (1) of Mr. Strange, British subject naturalized abroad; (2) born abroad of Mr. Pollak, naturalized British subject. Procedure as to re-admission to British nationality of British subject naturalized abroad.

WE were honoured with your commands signified in Mr. H. Bertram Cox's letter of the 15th ultimo, stating that he was directed by you to transmit to us a letter and other documents received from Her Majesty's Agent at Pretoria with reference to certain questions relating to the nationality of the children of Mr. Strange and of Mr. Pollak.

That it appeared that Mr. Strange was born in England and emigrated to the South African Republic in 1888, where, in 1889, he married a British subject. That his first child was born at Pretoria on the 2nd April, 1891, and his second child on the 27th December, 1892, also at Pretoria. That Mr. Strange took the oath of allegiance to the South African Republic on the 23rd September, 1891.

That Mr. Pollak, who was by origin a subject of the Austro-Hungarian Empire, was naturalized in this country as a British subject under the provisions of "The Naturalization Act, 1870," on the 16th August, 1889, and that his children were born at Johannesburg subsequently to the date of his naturalization in the United Kingdom. That Mr. Pollak had applied to have the births of those children registered by Her Majesty's Consul at Johannesburg.

That the circumstances in which Mr. Strange became naturalized under the provisions of the laws of the Republic in September 1891 would be found on p. 2 of his letter to the British Vice-Consul at Johannesburg. That it appeared, however, to be open to some possible question whether Mr. Strange on that occasion voluntarily became naturalized in a foreign State within the meaning of "The Naturalization Act, 1870" (33 Vict., cap. 14, sec. 6), so as thereby to have ceased, in contemplation of English law, to be a British subject.

That Mr. Strange was now anxious to take the oath of allegiance to Her Majesty in order that he might be able to allege that, under Article 16 (*a*) of the Law No. 3 of 1894 of the South African Republic, he had lost his burgher rights and therefore ceased to be a citizen of the Republic.

That it appeared to you to be doubtful whether Mr. Strange was legally entitled to take the oath of allegiance in this manner and for this purpose, having regard to the provisions of Sections 9 and 14 (7) of "The Promissory Oaths Act, 1868."

That if Mr. Strange desired to obtain readmission to British nationality he must, it would seem, fulfil the conditions and conform to the procedure prescribed by Sections 7 and 8 of "The Naturalization Act, 1870," and that the former section seemed to imply that the taking of the oath of allegiance to Her Majesty was one of the later steps if not the last step, which must be taken by a person seeking to acquire British nationality.

That Mr. Bertram Cox was to request us to take the papers into consideration and advise you:—

1. What is the position of the children of Mr. Strange? Are they or either of them, British subjects, or are they citizens of the South African Republic?

2. What is the position of Mr. Pollak's children? Are they, or any of them, British subjects, or are they citizens of the South African Republic, and should their births be registered by Her Majesty's Vice-Consul at Johannesburg?

3. Whether by taking the oath of allegiance to the South African Republic in 1891 Mr. Strange "voluntarily became naturalized in a foreign State" within the meaning of "The Naturalization Act, 1870," so as to be deemed, in contemplation of English law, to have ceased to be a British subject, and to have become an alien?

4. Whether it is legally permissible for Mr. Strange to take the oath of allegiance in the manner and for the purposes desired.

5. Whether a person seeking admission, or readmission, to British nationality can take the oath of allegiance before receiving a certificate of naturalization, or (as the case may be) of readmission to British nationality, from the Secretary of State?

6. If so, at what stage of the proceedings such a person is entitled to take the oath of allegiance?

7. Generally.

We have taken these papers into our consideration, and, in obedience to your commands, have the honour to

Report—

1. That the children of Mr. Strange are, by Section 10 (3) of "The Naturalization Act, 1870," subjects of the South African Republic if, according to the laws of that Republic, they have become naturalized therein as would appear to be the case.

2. This is a question of great difficulty which has never been decided. But the better opinion would appear to be that a certificate of naturalization does not make even subsequent children of the person so naturalized, if they are born abroad, British subjects unless they reside here, during infancy, with the parent. We do not desire to express any final opinion on this point, which may become one of great importance, but do not advise the registration of Mr. Pollak's children as British subjects.

3. Yes. We assume that by the law of the Transvaal he became a subject.

4. No. The oath of allegiance can be taken only after complying with the other conditions necessary to become a British subject.

5. No.

6. After receiving the certificate, or complying with the conditions of readmission to British nationality.

7. We have nothing further to add.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

No. 3.

[August 11, 1898.]

Foreign Office to Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 3, 1898.

"Africa Protectorates (Capital Sentences) Order in Council, 1898."

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying draft Order in Council amending the provisions of Article 74 of "The Africa Order in Council, 1889," and stipulating that no sentence of death given under its authority shall be carried into effect until confirmed by the Secretary of State.

The inclosed despatch from Mr. G. Wilson, who, when it was written, was administering the Protectorate of Uganda, shows the difficulties which arise under the present Law, and the views of Lord Salisbury on the subject are embodied in the inclosed draft instructions to Mr. Albert Gray of the 30th ultimo.

I am to ask whether, in your opinion, the draft Order in Council, as it now stands, may properly be submitted to the Queen in Council for Her Majesty's approval.

A copy of the Africa Order in Council is transmitted, with the other three papers mentioned, for convenience of reference.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Mr. Wilson	(No. 18)	February 21, 1898.
To Mr. Gray		June 30, „

Africa Order in Council, 1889. (Confidential 5846**.)
Draft of Amending Order in Council for approval.

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Report.

As altered and initialled by us the draft Order in Council may, in our opinion, properly be submitted to Her Majesty for approval.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 11, 1898.

Annex.

AFRICA ORDER IN COUNCIL.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction in the parts of Africa mentioned in "The Africa Order in Council, 1889":

Now, therefore, Her Majesty, by virtue and in exercise of the powers by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered as follows:—

1. So much of Article 74 of "The Africa Order in Council, 1889" as requires that in every case of sentence of death the Minutes of the trial shall be transmitted to a Secretary of State, and that the sentence shall not be carried into effect until confirmed by him, is hereby repealed as to every Protectorate of Her Majesty in Africa, and the following provisions shall be substituted, that is to say:

(*a.*) In every case of sentence of death the Judicial Officer by whom it was pronounced shall send the Minutes of the trial to the Commissioner for the Protectorate, appending thereto a ~~note~~ *Certificate* under his hand ~~stating~~ (~~together with such other observations as he may think fit~~) ~~whether in his~~ *to the effect that, in his* opinion, ~~sufficient grounds do or do not exist rendering it~~ *it is or is not* desirable that the sentence should be reconsidered ~~with a view to a remission or a commutation thereof~~ *by a Secretary of State, and adding such other observations as he may think fit.*

(*b.*) The Commissioner, after considering the Minutes and ~~the note~~ *Certificate and observations* (*if any*) of the Judicial Officer, shall ~~add a note of his opinion, with his observations~~ (~~if any~~) *append thereto a Certificate under his hand to the effect that, in his opinion, it is or is not desirable that the sentence should be reconsidered by a Secretary of State, and may add such further observations as he may think fit.*

(*c.*) If either the Judicial Officer or the Commissioner ~~is of opinion that such sufficient grounds as aforesaid do exist,~~ *so certifies that it is so desirable*, the Commissioner shall transmit the Minutes, *Certificates*, and ~~notes~~ *observations* to the Secretary of State, ~~and the sentence shall not be carried into effect unless confirmed by him~~ *for consideration by him.*

(*d.*) If the Judicial Officer and the Commissioner ~~are~~ both ~~of opinion~~ *certify* that ~~such sufficient grounds as aforesaid do not exist, the sentence shall be~~ *it is not desirable that the sentence should be reconsidered by a Secretary of State, the Commissioner shall certify his confirmation of the sentence by writing under his hand.*

(*e.*) *Such sentence of death shall not be carried into effect until so confirmed by the Commissioner or a Secretary of State, but, upon such confirmation, shall be* carried into effect according to the provisions of "The Africa Order in Council, 1889."

2. In this Order "Commissioner" means the Commissioner and Consul-General or other principal officer for the time being administering the government of a Protectorate.

3. This Order may be cited as "The Africa Protectorates (Capital Sentences) Order in Council, 1898."

R. E. W.
R. B. F.

No. 4.

[September 21, 1898.]

Foreign Office to Law Officers of the Crown.

Gentlemen, *Foreign Office, September* 3, 1898.

Death sentence on Amari Mahomed in Uganda.

I HAVE the honour, by direction of Mr. Balfour, to transmit to you the papers noted in the accompanying list, which relate to the case of Amari Mahomed, a native officer in the Uganda Rifles, who has been convicted of murder, and sentenced to death in Uganda.

Amari Mahomed was tried in the Vice-Consular Court for that Protectorate under "The Africa Order in Council, 1889," a copy of which is inclosed (document A). The Protectorate of Uganda is a part of the local jurisdiction of the British sphere on the east coast of Africa, constituted by the instructions of the Secretary of State, dated the 31st July, 1891 (document B), issued under Article 5 of the said Africa Order in Council.

An account of the trial is contained in the despatch No. 53 of the 30th May last from Her Majesty's Commissioner and Consul-General in the Protectorate (document C), and the despatch No. 19 of the 28th May last from Mr. Collinson (document D), Her Majesty's Vice-Consul for the Uganda Protectorate.

I have the honour to request you to take the papers sent herewith into your consideration, and to favour Mr. Balfour with your opinion as to whether the death sentence should be executed on Amari Mahomed; or, if not, into what punishment it should be commuted; and, finally, I have the honour to request you to favour Mr. Balfour with any observations which may occur to you on consideration of the papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) "Africa Order in Council, 1889." (Confidential 5846**.)
(B.) Secretary of State's Instructions thereunder. (Confidential No. 6228.)
(C.) Mr. Berkeley .. .. (No. 53) May 30, 1898.
(D.) Mr. Collinson .. .. (No. 19) „ 28, „

Report.

In our opinion, the sentence of death should not be carried out.

In substance the offence was that of levying war unjustifiably, and we think that great allowance should be made for the critical circumstances, and the influence of the clerk over the prisoner.

We think that the case is one for punishment by a term of imprisonment and deportation under Article 48, say for two years.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 21, 1898.

No. 4A. [Colonial Office.]

[October 29, 1898.]

The Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, October* 29, 1898.

Naturalization of Aliens in Southern Rhodesia.

WE were honoured with your commands signified in Mr. Wingfield's letter of the 10th instant, stating that he was directed by you to transmit to us copy of a letter from the Acting Secretary to the British South Africa Company, dated the 7th September, together with a telegram, dated the 12th September, from the High Commissioner for South Africa, respecting the question of the naturalization of aliens in the territories administered by the British South Africa Company.

That, in view of the contemplated issue of an Order in Council providing for the government of Southern Rhodesia and the election of members of the Legislative Council proposed by that Order, it had been thought desirable to consider in advance the question of the qualification of the electors who were to be entitled to vote at the elections of members of that Council.

That it had been considered that, if possible, the right to vote should be confined to British subjects, and consequently, in order to avoid the exclusion from the exercise of electoral rights of persons otherwise qualified for the franchise, a desire had been

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expressed that such persons should be permitted to become naturalized in Southern Rhodesia. That a difficulty, however, had been felt in providing for such naturalization, owing to the fact that the territories administered by the British South Africa Company were protected territories, and had never been formally declared to be part of Her Majesty's dominions, and that the laws which were in force had been made either by the High Commissioner or the British South Africa Company under the powers conferred by the Foreign Jurisdiction Acts, or by the British South Africa Company under the provisions of their Charter.

That Mr. Wingfield was to observe, in that connection, that a Naturalization Act was passed in India in 1852, while that country was governed by the East India Company in trust for Her Majesty, and that a copy of a note upon the point drawn up in the Legal Department of the India Office was inclosed for reference.

That Mr. Wingfield was further to observe that it would seem to follow from the statements made by the Lord Chief Justice in his summing-up in the case of Reg. *v.* Jameson and others (as reported at p. 590 of the "Times" Law Reports, vol. xii) that a territory might be part of Her Majesty's dominions although no formal annexation had taken place, the fact being a necessary inference from acts of sovereignty exercised by Her Majesty therein.

That should it, however, be your opinion that it was not possible, without express authority from Parliament, to provide for the naturalization of aliens in Rhodesia, the further question would arise whether, by Order in Council under the Foreign Jurisdiction Act, aliens could be permitted to take the oath of allegiance to Her Majesty, with a view to qualifying for the franchise, and that, in that connection, Mr. Wingfield was to transmit to us a copy of our Report of the 3rd August last.

That Mr. Wingfield was to request that we would take the above matters into our consideration, and advise you:—

1. Whether there was power, by an Order in Council made under the provisions of "The Foreign Jurisdiction Act, 1890," to provide for the naturalization of aliens within the limits of a "Protectorate?"

2. Whether the British South Africa Company had power, under their Charter, to enact a Law providing for the naturalization of aliens in Southern Rhodesia?

3. Whether there was any other means by which power to naturalize aliens in a Protectorate could be conferred?

4. Whether Southern Rhodesia could be regarded as so far part of Her Majesty's dominions as to be deemed a British possession within the meaning of sections 16 and 17 of "The Naturalization Act, 1870?"

5. Whether there was power, by Order in Council, under the Foreign Jurisdiction Act, to enable aliens to take the oath of allegiance to Her Majesty as a condition of the right to vote for the election of members of the Legislative Council.

6. Generally.

In obedience to your commands, we have taken the matters referred to us in Mr. Wingfield's letter into our consideration, and have the honour to

Report—

That we are of opinion that Her Majesty may, by Order in Council, provide for the naturalization of aliens within the limits of Southern Rhodesia.

It is not material for this purpose whether Southern Rhodesia is a British possession or not. We think it is; but even if it is not to be so regarded, Her Majesty may, by Order in Council, legislate as to naturalization within Southern Rhodesia considered as a Protectorate. The 16th and 17th sections of the Naturalization Act do not negative Her Majesty's right to provide for naturalization in places out of her dominions where she has jurisdiction; they merely deal with the effect of land laws made by the Legislatures of British possessions.

The Company could not provide for naturalization by Ordinance.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Annex.

Note drawn up in Legal Department, India Office.

India, before the Crown took over the direct Government, was part of "Her Majesty's Dominions." Many Acts which apply to "Her Majesty's Dominions" or "Her Majesty's Possessions abroad" are in force in India. The early Copyright Acts are illustrations. Naturalization of aliens in India was permitted by Indian Act 30 of 1852 still in force. The form of oath given in the schedule required the applicant to swear that he would be "faithful and bear true allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland and of *these territories.*"

Before the transfer in 1858 India "was governed by the Company" but "in trust for Her Majesty."

September 29, 1898.

No. 4B. **[Colonial Office.]**

[December 8, 1898.]

The Law Officers of the Crown to Mr. Chamberlain.

Naturalization of Aliens in S. Rhodesia O. in C.

Sir, *Royal Courts of Justice, December* 8, 1898.

WE were honoured with your commands signified in Mr. Graham's letter of the 26th ultimo, stating that, with reference to our Report of the 29th October last, he was directed to transmit to us for our consideration two copies of the draft of an Order in Council to provide for the naturalization of aliens in Southern Rhodesia, which had been drawn up in the Colonial Office.

That the terms of the draft were based upon the Naturalization Act, No. 2, of 1883, which was at present in force at the Cape of Good Hope, but that provision had been made in clause 4 of the draft for a qualifying period of residence. That inasmuch, however, as it might be found desirable to permit aliens who had been already naturalized in a British Colony to become naturalized in Southern Rhodesia, although they might not possess the qualification of previous residence therein, clause 5 of the draft had been inserted to enable this to be done.

That the original draft Order in Council had been submitted to the Foreign Office for their observations, and that certain amendments were suggested by that Department. That a copy of the original draft in which these amendments (all of which were inserted in the draft submitted to us) are indicated in red ink, was transmitted with Mr. Graham's letter.

That the matter was regarded in Southern Rhodesia as one of some urgency in view of the approaching election of members of the Legislative Council under the provisions of the Southern Rhodesia Order in Council, which came into operation on the 25th November last.

That Mr. Graham was to request us to take the draft Order in Council into our consideration, and to advise you—

1. Whether its terms are proper and sufficient for the purpose for which it is intended.

2. If not, in what respect it should be amended.

In obedience to your commands we have taken the matter into our consideration, and have the honour to

Report—

We approve the draft Order as altered in red ink, and initialled by us.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

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Annex.

Draft Order in Council for Naturalization of Aliens, Southern Rhodesia.

WHEREAS Her Majesty the Queen has power and jurisdiction in the territories of South Africa known as Southern Rhodesia:

Now, therefore, Her Majesty is pleased by and with the advice of her Privy Council to order, and it is hereby ordered, as follows:—

Short title.

1. This Order may be cited as "The Southern Rhodesia Naturalization Order in Council, 1898."

Definitions.

2. In this Order, unless the context otherwise requires—

"Southern Rhodesia" means the territory for the time being within the limits of "The Southern Rhodesia Order in Council, 1898."

"The Administrator" means, if there be two or more Administrators, the senior of such Administrators, and includes an Acting Administrator.

"The Gazette" means any official Gazette published in Southern Rhodesia.

Aliens may own property.

3. An alien may in Southern Rhodesia purchase, acquire, own, or dispose of movable or immovable property of any description in like manner as natural-born subjects of Her Majesty: Provided that this section shall not qualify an alien for any office or franchise which such alien does not now by law possess, nor entitle an alien to any right or privilege except such rights and privileges as are hereby expressly given to him.

Alien may apply for letters of naturalization.

4. (1.) An alien who within such limited time before making the application hereinafter mentioned as may be allowed by the Administrator, either by general order or on any special occasion, has resided in Southern Rhodesia for a term of not less than twelve months, and intends, if such application be granted, to continue to reside in Southern Rhodesia, may apply to the Administrator for letters of naturalization in the form provided in the first Schedule hereto.

(2.) The applicant shall adduce in support of his application such evidence of his residence and intention to continue to reside, and of the matters set forth in the said Schedule as the Administrator may require, and shall furnish proof to the satisfaction of the Administrator that notice of his intention to apply for letters of naturalization has been published in two issues of the Gazette.

(3.) The Administrator, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may with or without assigning any reason give or withhold letters of naturalization as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such letters of naturalization shall not take effect until the applicant has made a declaration of allegiance to Her Majesty as hereinafter provided.

Naturalization in Southern Rhodesia of aliens naturalized elsewhere.

5. Any person resident in Southern Rhodesia who has previously obtained a certificate of naturalization as a British subject elsewhere than in Southern Rhodesia may, notwithstanding that he has not resided within Southern Rhodesia for a period not less than twelve months prior to the date of his application, submit such certificate, and make an application to the Administrator stating that—

(*a.*) He is the person named in such certificate;

(*b.*) That the certificate has been obtained without any fraud or intentionally false statement;

(*c.*) That the signature and seal (if any) thereto are, to the best of his knowledge and belief, genuine;

(*d.*) That he intends, if naturalized, to reside in Southern Rhodesia;

and shall adduce in support of his application such evidence concerning the matters aforesaid, and concerning the matters set forth in the first Schedule hereto, as the Administrator may require. The Administrator, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold letters of naturalization as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such letters of naturalization shall not take effect until the applicant has made a declaration of allegiance to Her Majesty as hereinafter provided.

Declaration of allegiance to be taken.

6. Every alien to whom the Administrator may grant letters of naturalization shall, before the delivery of such letters to him, make and subscribe before a Magistrate a declaration of allegiance in the form contained in the second Schedule hereto, which declaration shall be of the same force and effect as an oath of allegiance.

Rights of naturalized aliens.

7. An alien to whom letters of naturalization have been granted shall, in Southern Rhodesia, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in Southern Rhodesia.

National status of married women and infant children.

8.—(1.) A married woman shall, in Southern Rhodesia, be deemed to be a subject of the State of which her husband is for the time being a subject.

(2.) The following persons shall be deemed and taken to be naturalized, and shall have all the rights, privileges, and obligations in Southern Rhodesia of natural-born subjects of Her Majesty:—

(*a.*) Any alien woman who is already, or who shall hereafter be, married to any person who shall be or become naturalized under this Order.

(*b.*) Where the father or the mother, being a widow, shall be or become naturalized under this Order, any child of such father or mother who during infancy shall be or become resident with such father or mother in Southern Rhodesia.

Returns to be published of letters issued

9. A Return of persons to whom letters of naturalization shall have been granted under this Act shall be published in the Gazette, half-yearly, in the months of January and July, and such Return shall show:—

(1.) The names of such person in full.
(2.) Their birth-place.
(3.) Nationality prior to grant of letters of naturalization.
(4.) Occupation.
(5.) Residence in Southern Rhodesia.
(6.) Date of the issue of letters of naturalization.

Penalty for false declaration.

10. If any person shall wilfully make any false statement in any application made under the provisions of this Act for the purpose of obtaining letters of naturalization, he shall, upon conviction, incur the same penalties as are by law provided against persons convicted of wilful and corrupt perjury. And in case letters of naturalization shall have been granted, such letters shall be void.

Fee.

11. Every person obtaining letters of naturalization under this Act shall pay for the same a fee, to be collected by means of stamps, of 1*l*.

Register to kept.

12. The Administrator shall cause a register to be made and kept of all letters of naturalization granted under this Order, and shall, upon the application of any person, and upon payment of a fee of 1*s*. in respect of every name, permit a search to be made for the name of any person upon, or supposed to be upon, the register.

Certificate of attesting.

A certificate under the hand of the Administrator attesting the fact of the issue of letters of naturalization to any person whose name appears upon the said register may, at the discretion of the Administrator, be issued upon payment by means of stamps of a fee of 5*s*. Every such certificate shall be received as evidence of the facts therein stated.

Evidence.

13. Every letter of naturalization and every such certificate as aforesaid shall be admissible in evidence without proof of the signature or seal attesting the same, and shall be *primâ facie* evidence of the person named therein being duly naturalized, and of the signature or seal attesting the same, and of the official character of the persons appearing to have signed the same.

(Initialled) R. E. W.
R. B. F.

THE FIRST SCHEDULE.

Form of Application for Letters of Naturalization.

To the Administrator of Southern Rhodesia.

I do hereby apply for letters of naturalization in Southern Rhodesia, and I declare that the answers to the questions hereunder given are true and correct.

1. Name of the applicant (in full)	
2. Present nationality and how acquired by birth or naturalization	
3. Birth-place (state fully the name of the place and the country in which the place is situated)	
4. Age next birthday	
5. Occupation	
6. Place of residence in Southern Rhodesia	
7. Length of time during which the applicant has resided in Southern Rhodesia	
8. Does the applicant intend if naturalized to reside in Southern Rhodesia?	

Dated at , the day of , 18 .

(Signature of applicant.)

(Witness.)

THE SECOND SCHEDULE.

Declaration of Allegiance.

I, *A. B.*, of , do sincerely promise that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, and to her heirs and successors, according to law.

(Signed) *A. B.*

Declared this day of , 18 .

Before me:
(Signed) , *Justice of the Peace.*

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BELGIUM.

No. 5.

[June 8, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, *June* 4, 1898.

Gentlemen,

Expulsion of Mr. Ben Tillett from Belgium.

WITH reference to your Report of the 16th December last, I have the honour to transmit herewith, by direction of the Marquess of Salisbury, and to request that you will take into your consideration a Memorandum which has been drawn up by Mr. J. F. Rawlinson, Q.C., on behalf of Her Majesty's Government, in support of their claim against the Government of His Majesty the King of the Belgians with regard to the expulsion of Mr. Ben Tillett from Belgium.

His Lordship would be glad to be favoured with your opinion as to whether the Memorandum may properly be submitted to the Arbitrator in its present form, or whether any, and, if so, what amendments or modifications should be made therein.

I am to add that as the case should be in the hands of the Arbitrator not later than the 20th instant, Lord Salisbury would be glad to be favoured with a reply at your earliest convenience.

A copy of your previous Report on the case, as well as the various papers submitted to you on that occasion, are also inclosed for convenience of reference.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

We think that the Memorandum initialled by us may properly be submitted to the Arbitrator in its present form.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 8, 1898.

Annex.

Memorandum on behalf of the Government of Her Britannic Majesty in support of their Claim against the Government of His Majesty the King of the Belgians with regard to the Expulsion from Belgium of Mr. Ben Tillett.

ON the morning of Thursday, the 20th August, 1896, Mr. Ben Tillett, a British subject arrived at Antwerp by steamer from Harwich. It was his intention, which, but for the circumstances hereinafter mentioned, he would have carried out, to return from Antwerp to Harwich by the steamer leaving Antwerp on the evening of Friday, the 21st August.

2. At 3·30 P.M. on the afternoon of Friday, the 21st August, Mr. Tillett was arrested in Antwerp by the Belgian police and taken to a police office.

He protested against the arrest, and asked on what charge he was arrested. The police officer having control of the police office answered that no specific charge was preferred against Mr. Tillett, but that he was arrested in pursuance of orders given by the Belgian Minister of Justice.

3. Mr. Tillett was detained at the said police office for a period of three or four hours until after 7 P.M. on the 21st August. He was then taken by the Belgian police to the prison at Antwerp. On his arrival at the said prison, though no accusation or criminal charge was preferred against him, Mr. Tillett was in all respects treated as a criminal or as a person arrested on a criminal charge.

He was stripped naked, searched, and placed in a prisoner's cell. The cell was damp, full of foul odour, and the walls, the floor, and the bed were covered with filth. Upon Mr. Tillett's complaint, he was removed to another cell, the condition of which, except for the bed, was equally filthy, repulsive, and injurious to health.

4. On being incarcerated, as hereinbefore stated, Mr. Tillett requested permission to communicate with his wife, his friends, and Her Britannic Majesty's Consul at Antwerp On the morning of Saturday, the 22nd August, he made a written request to the like effect. These requests were disregarded.

5. On Saturday, the 22nd August, Mr. Tillett was on several occasions taken from his cell into the presence of various officials, and on each of these occasions he was compelled to wear the dress reserved for criminals and prisoners, namely, the cowl or cloak worn by prisoners in the prison at Antwerp when outside their cells.

6. At 4 P.M. on Saturday, the 22nd August, Mr. Tillett was informed that he would be liberated in two hours, and, finally, soon after 6 P.M., he was allowed to leave the prison, and was escorted to the steamer which left Antwerp that evening.

7. Mr. Tillett was thus subject to arrest and imprisonment for a continuous period of twenty-six and a-half hours. No charge was ever made against Mr. Tillett, and no sufficient explanation even given to him of the reason of his arrest.

8. Throughout his imprisonment Mr. Tillett suffered from cold, from damp, and from the absence of sufficient and wholesome food. By reason of these circumstances he suffered serious injury to his health. Such injury included severe chill, inflammation of the respiratory organs, shock to the nervous system, and complete prostration from which Mr. Tillett has never wholly recovered. Mr. Tillett has since his incarceration been unable to pursue his vocation, and has been obliged to proceed to Australia for his health.

9. For the reasons and on the grounds hereinafter set forth, it is submitted that the Government of His Majesty the King of the Belgians are liable to make adequate compensation for the matters complained of, and having regard to the indignities suffered by Mr. Tillett, to the expenses incurred by him through his illness, and to the loss he has sustained by not having been able to attend to his business, the sum claimed on his behalf by way of compensation is 3,000*l.*, and, further, it is prayed that the Arbitrator shall adjudge that the Government of His Majesty the King of the Belgians should pay the amount of the necessary costs of both parties incident to the arbitration.

10. As to the question of the liability of the Government of His Majesty the King of the Belgians for the acts complained of, even assuming that a State has the right to expel a foreigner from its territory, and in case of his refusal to go, or in case of other necessity, a right to use force or restraint in such a manner as might be reasonably necessary to secure his leaving the country within a reasonable time, it is submitted that, in the absence of any criminal charge against the foreigner, the State has otherwise no power, according to the accepted usages and principles of international law, to imprison or use force to the person of the foreigner.

In the present case, therefore, it might have been justifiable for the Belgian Government to have requested Mr. Tillett to leave Antwerp by the steamer leaving for England at 7 P.M. on Friday, the 21st August, and, if necessary, to have used force or means of restraint to compel him to do so. But it is submitted that the Belgian Government had no right to subject Mr. Tillett to the treatment he underwent or to the indignities he sustained, and, further, no right to detain him in their territory, and so prevent him leaving Belgium by the steamer on the 21st August, as he would otherwise have done.

11. The following authorities bear out the above propositions and explain the present position of international law on the subject:—

"(i.) Bluntschli, 'Das Moderne Völkerrecht,' Book V, Chapter IV, § 384:

"'Wird ein gehörig legitimirter Fremder ohne Grund verhindert, das Land zu betreten oder grundlos oder in ungebührlicher Form weggewiesen, so ist sein Heimatstat veranlasst, wegen Verletzüng des völkerrechtlichen Verkehrs Beschwerde zu führen und je nach umständen Genugthuung zu fordern.'

"Traduit de l'Allemand par M. G. Laudy, MDCCCLXX. 'Le Droit International Codifié':—

"'§ 384. Lorsqu'un Gouvernement interdit sans motif l'entrée du territoire à un étranger dûment légitimé, ou l'expulse sans cause et avec des formes blessantes, l'État dont cet étranger est citoyen a le droit de réclamer contre cette violation du droit international et de demander au besoin satisfaction.'

"(ii.) Heffter, 'Le Droit International de l'Europe,' § 33, Proposition 6:—

"'Aucune Puissance ne peut refuser de recevoir sur son territoire les sujets d'une Puissance amie, dès qu'ils justifient d'une manière régulière de leur individualité. Elle ne peut, après les avoir reçus, les renvoyer de son territoire sans des motifs qui doivent être communiqués à leurs Gouvernements respectifs. Dans tous les cas le renvoi ne peut s'effectuer avec des formes blessantes, si la conduite de l'individu renvoyé ne les justifie pas. C'est une conséquence du droit de respect.'

"(iii.) Vattel, 'Le Droit des Gens,' Liv. ii, Chapitre VIII, § 108:—

"'L'État qui doit respecter les droits des autres nations, et généralement ceux de tout homme, quelqu'il soit, ne peut donc s'arroger aucun droit sur la personne d'un étranger qui, pour être entré dans son territoire, ne s'est point rendu son sujet. L'étranger ne peut prétendre la liberté de vivre dans le pays sans en respecter les lois: s'il les viole, il est punissable, comme

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perturbateur du repos public, et coupable envers la société ; mais il n'est point soumis, comme les sujets, à tous les commandements du Souverain : et si l'on exige de lui des choses qu'il ne veut point faire, il peut quitter le pays. Libre en tout temps de s'en aller, on n'est point en droit de le retenir, si ce n'est pour un temps et pour des raisons très particulières. comme serait, en temps de guerre, la crainte qu'étant instruit de l'état du pays et des places fortes un étranger ne portât ses lumières à l'ennemi. Les voyages des Hollandais aux Indes Orientales nous apprennent que les Rois de la Corée retiennent par force les étrangers qui font naufrage sur leurs côtes. Bodin assure qu'un usage si contraire au droit des gens se pratiquait de son temps en Éthiopie et même en Muscovie. C'est blesser tout ensemble les droits du particulier et ceux de l'État auquel il appartient.'

"(iv.) In 1888 the Institute of International Law ('l'Institut de Droit International'), a body comprising the leading international jurists of the world, discussed at length the question of the right of a State to, and the methods whereby a State ought to, expel foreigners (*cf.* 'Annuaire de l'Institut,' Tome X, 1888–89, pp. 239–246, and 'Revue de Droit International,' Tome XX, pp. 498–607, &c.), and having considered the various authorities on the point, concluded, *inter alia*, that—

"'La décision prononçant une expulsion ordinaire et indiquant les dispositions sur lesquelles elle se fonde devra être signifiée à l'intéressé avant d'être mise à exécution.'"

(Initialled) R. E. W.
R. B. F.

BOLIVIA.

No. 6.

[September 29, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 12, 1898.

Gentlemen,

Anglo-Bolivian Extradition Treaty O. in C.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the draft of an Order in Council for the purpose of carrying into effect an Extradition Treaty between the United Kingdom and Bolivia, which was signed at Lima on the 22nd February, 1892, where the ratifications were exchanged on the 7th March last.

I am to inclose the accompanying letters from the Home, Colonial, and India Offices, expressing concurrence in the terms of the draft Order in Council, and I am to request that you will favour Lord Salisbury with your opinion as to whether it may, in its present form, be laid before the Queen in Council for Her Majesty's approval.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Draft Order in Council.	
Home Office	August 26, 1898
Colonial Office	August 30, ,,
India Office	September 8, ,,

Report.

The accompanying draft Order in Council, which we have initialled, may, in our opinion, properly be submitted for the approval of Her Majesty in Council.

(Signed) RICHARD E. WEBSTER
ROBERT B. FINLAY.

Royal Courts of Justice,
September 29, 1898.

Annex.

WHEREAS by the Extradition Acts, 1870 to 1895, it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

And whereas a Treaty was concluded on the 22nd day of February, 1892, between Her Majesty and his Excellency the President of the Republic of Bolivia for the mutual extradition of fugitive criminals, which Treaty is in the terms following:—

[Here follows Treaty.]

And whereas the ratifications of the said Treaty were exchanged at Lima on the 7th day of March, 1898.

Now, therefore, Her Majesty, by and with the advice of her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the day of , 1898, the said Acts shall apply in the case of Bolivia, and of the said Treaty with the President of the Republic of Bolivia.

Provided always that the operation of the said Acts shall be and remain suspended within the Dominion of Canada so long as an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the extradition of Fugitive Criminals," shall continue in force there, and no longer.

R. E. W.
R. B. F.

BULGARIA.

No. 7.

[February 22, 1898.]

Foreign Office to Law Officers of the Crown.

Foreign Office, February 3, 1898.

Gentlemen,

Régime applicable in Bulgaria to subjects and produce of Brit. Colonies not parties to Anglo-Bulgarian Comml. Arrangement.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the papers marked in the accompanying list which refer to the question as to what régime is applicable in Bulgaria to the subjects and produce of those British Colonies which decline to accede to the recent Commercial Arrangement concluded between Great Britain and that country.

It has always been claimed that, apart from any more recent Treaty, British trade is entitled to most-favoured-nation treatment in Bulgaria in virtue of the Treaty of Berlin, a position which none of the Colonies has, so far as his Lordship is aware, done anything to forfeit.

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Article VIII of that Treaty, of which a copy is inclosed (Paper A), provides that "the subjects and citizens and commerce of all the Powers shall be treated in the Principality on a footing of strict equality;" and this principle has hitherto been observed. But it is argued in Bulgaria that the right which has been conceded to her of negotiating independent Treaties carries with it the right of applying differential treatment against those countries with which she has no direct Treaty engagements. (See Mr. Elliot's despatches No. 16, Treaty, Paper G, and No. 17, Treaty, Paper H.)

It will be seen from the Colonial Office letters of the 30th October and 5th November (Papers C and D respectively), that Canada and the Cape of Good Hope have intimated their non-accession to the Anglo-Bulgarian Arrangement of July 1897 (Paper B). The question of the treatment of those Colonies may therefore arise at any moment, but it is thought that its solution may perhaps interest in an even higher degree some others of Her Majesty's foreign possessions.

It seems, therefore, of importance to determine whether such Colonies as may decline to accede to the recent Convention are deprived of the most-favoured-nation treatment in Bulgaria, which was secured by the Treaty of Berlin by reason of Her Majesty having entered into a Commercial Arrangement with Bulgaria containing a most-favoured-nation clause, and whether, if these Colonies should refuse to give most-favoured-nation treatment to Bulgaria, they could, even if otherwise entitled to the benefit of the Treaty of Berlin, claim most-favoured-nation treatment in Bulgaria.

L.O.R. 1888 (Conf. 5785), p. 74.

In this connection I am to refer you to a Report from your predecessors in office in 1888 in regard to the question whether the Treaties which were in force between this country and Turkey (including more particularly the Commercial Treaty of the 29th April, 1861) at the time of the signature of the Treaty of Berlin on the 13th July, 1878, were still in force in Bulgaria, although such Treaties might have been denounced by Turkey subsequently to that date.

The Law Officers were then of opinion that Bulgaria would remain bound by the Treaty with Turkey of 1861, at any rate until the 9th July, 1889, and that after that date it would be competent to Her Majesty's Government to claim from that of Bulgaria most-favoured-nation treatment under the Capitulations of 1675 and the Berlin Treaty of 1878.

A copy of this Report is inclosed (Paper L).

Copies of the following further documents, marked M to Q, are also sent herewith, for convenience of reference, and as throwing some light on the successive stages by which the present Treaty position of this country in respect to Bulgaria was reached; the three latter, O to Q, have, however, now ceased to be in force, and are replaced by the Arrangement concluded last year (Paper B).

I have the honour to request that you will take these papers into your consideration, and that you will favour Lord Salisbury with your opinion on the points submitted in this reference, and also with any general observations which you may be disposed to offer on the subject.

I have, &c.
(Signed) G. N. CURZON.

List of Papers.

(A.)	Treaty of Berlin, 1878. (Treaty 623.)		
(B.)	Anglo-Bulgarian Arrangement, 1897. (Treaty 1027.)		
(C.)	Colonial Office		October 30, 1897.
(D.)	Ditto		November 5, „
(E.)	To Mr. Elliot	(No. 6)	November 10, „
(F.)	Mr. Elliot	(No. 15)	November 16, „
(G.)	Ditto	(No. 16)	November 16, „
(H.)	Ditto	(No. 17)	November 16, „
(I.)	To Colonial Office		November 29, „
(K.)	Colonial Office		December 24, „
(L.)	Law Officers. (Confidential 5785, p. 74)		May 8, 1888.
(M.)	Capitulations and Treaty between Great Britain and Turkey of 1809. (Treaty 75 A.)		
(N.)	Treaty of Commerce between Great Britain and Turkey of 1861. (Treaty 453.)		
(O.)	Commercial Agreement between Great Britain and Bulgaria of 1889. (Parliamentary 3314.)		
(P.)	Notes prolonging above-mentioned Agreement of 1889. Exchanged in 1893.		
(Q.)	Further Agreement of 1895. (Confidential 6547*.)		

Report.

By the Declaration annexed to the Commercial Arrangement of July 1897 between Great Britain and Bulgaria, it is provided that all the stipulations of the Treaties in force are maintained in so far as they shall not have been modified by the Arrangement or by special Convention.

The VIIIth Article of the Treaty of Berlin governed the relations between Great Britain and Bulgaria at the time of the Arrangement of 1897.

Any Colony which may elect, under the 5th Article of the Commercial Arrangement, to refuse acceptance thereof is remitted to the rights of British subjects under the VIIIth Article of the Treaty of Berlin. Under that Article, the people and commerce of such Colonies would be entitled to equality of treatment with the subjects and commerce of any of the Powers which were parties to the Treaty of Berlin.

We must, however, observe that it cannot be considered as beyond controversy whether the stipulation in the VIIIth Article for equality of treatment would entitle these Colonies to the treatment of the most favoured nation irrespective of their performing the conditions on which such treatment is extended to the subjects of the other Powers.

The Colonies are also entitled to the benefit of any stipulation affecting these questions which may be contained in any Treaties of Commerce and Navigation, Conventions, and Arrangements referred to in Article VIII of the Treaty of Berlin.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 22, 1898.

No. 8.

[June 3, 1898.]

Foreign Office to Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 20, 1898.

Ad valorem duty of 14 per cent. on empty jute sacks from Calcutta.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the papers noted in the accompanying list, which refer to a claim on the part of the Bulgarian Government to collect duty at the rate of 14 per cent. *ad valorem* on a consignment of empty jute sacks recently arrived at Bourgas from Calcutta.

The treatment of British goods in Bulgaria is, as you are aware, governed by the Commercial Arrangement concluded between this country and Bulgaria in July last. To that Arrangement, however, the Government of India decided not to adhere.

It will be seen from the despatch from Mr. Elliot, Her Majesty's Agent and Consul-General at Sophia (Paper E), that the Acting British Consular Agent at Bourgas was informed by the Director of Customs that the Ministry of Finance had ordered customs duty at the above rate to be levied in consequence of the official intimation received from Mr. Elliot that the Government of India had declined to accede to the Commercial Arrangement in question.

The question of what treatment was to be applied in Bulgaria to goods from British Colonies which had refused to adhere to the Anglo-Bulgarian Arrangement above mentioned was submitted to you in a letter from this Department of the 3rd February last (Paper A), and it was therein pointed out that the question might arise, in a practical shape, at any moment, and that its solution might interest in an even higher degree some others of Her Majesty's foreign possessions. This anticipation has been realized in the case which has now arisen.

In your report on this question of the 22nd February (Paper B) the opinion was expressed that "any Colony which may elect, under the 5th Article of the Commercial Arrangement, to refuse acceptance thereof is remitted to the rights of British subjects under the VIIIth Article of the Treaty of Berlin. Under that Article the people and commerce of such Colonies would be entitled to equality of treatment with the subjects and commerce of any of the Powers which were parties to the Treaty of Berlin."

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It was added, however, that "it cannot be considered as beyond controversy whether the stipulation in the VIIIth Article for equality of treatment would entitle these Colonies to the treatment of the most favoured nation, irrespective of their performing the conditions on which such treatment is extended to the subjects of the other Powers."

With reference to this last observation, it is pointed out by Mr. Elliot that the question of reciprocity of treatment can hardly arise between India and Bulgaria, there being, so far as he is aware, no export trade whatever from that country to India.

With regard to the main question, Mr. Elliot further points out that it would appear that in strictness under the VIIIth Article of the Treaty of Berlin every Power, whether a Signatory of the Treaty or not, is not only entitled by the 3rd paragraph to most-favoured-nation treatment for its subjects and commerce, but is also entitled, under the 1st paragraph, to refuse its consent to any change in existing commercial Conventions and Arrangements, and thus practically to annul the effect of any Conventions conceding to Bulgaria the right to increase her customs duties, which might be concluded by Bulgaria with other Powers. It would seem unreasonable, however, to put it in the power of any one State so to prevent the imposition of increased duties which the Signatories of the Treaty of Berlin acknowledge to be expedient, and are prepared to agree to. Consequently, Mr. Elliot adds, while the commercial negotiations between Bulgaria and several Powers were in progress last year, it was tacitly admitted, although the question was not formally raised, that as soon as the Bulgarian Government had obtained the consent of the Powers which were parties to the Treaty of Berlin to the increased duties it would be entitled to levy them upon the produce of States which were not parties to that Treaty, even without their consent, provided that the principle of equality of treatment was maintained.

It will, it is anticipated, be held by the Bulgarian Government that the right which has been conceded to Bulgaria of negotiating independent Treaties carries with it the right of applying differential treatment against those countries with which she has no direct Treaty engagements. In this category India has placed herself by her refusal to adhere to the Arrangement of last July.

In these circumstances the question arises whether Her Majesty's Government should protest against the imposition of these differential duties on Indian produce, and if so on what ground such protest should be based.

Lord Salisbury is disposed to doubt the expediency of challenging Bulgaria on the direct issue, not only in view of the somewhat forced construction which such a contention would involve, but of the very doubtful prospect of such a protest being productive of useful result. His Lordship would be rather inclined to base a protest on the fact that India, though not a party to the Agreement, does in fact grant the same treatment to Bulgaria as does the United Kingdom, viz., that of the most favoured nation.

As to the grounds of protest, however, his Lordship would desire to be guided by the views of the Law Officers of the Crown, and I have accordingly the honour to request that you will take these papers into your consideration and favour him with your opinion on this point, and with any general observations which you may desire to offer on the subject.

It will be seen from Mr. Elliot's later despatch (Paper F) and from the correspondence with the Dundee Chamber of Commerce (Papers G and H) that the jute sacks on which the increased duty has been charged are the property of British firms established in the United Kingdom, and on this the subsidiary question would arise, whether these merchants are not entitled to most-favoured-nation treatment for their goods without regard to the origin of the latter, and Lord Salisbury would be glad to be favoured with your opinion on this as well as on the main issue, with a view to the drafting of instructions to Mr. Elliot for his guidance in dealing with the case.

The papers which accompanied the letter from this Department of the 3rd February are also returned herewith in a separate packet, for the convenience of reference if desired.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	To Law Officers		February 3, 1898.
(B.)	Law Officers		" 22, "
(C.)	To Mr. Elliot		March 16, "
(D.)	Dundee Chamber of Commerce		" 16, "
(E.)	Mr. Elliot	(No. 32)	April 13, "
(F.)	Ditto	(No. 34)	" 15, "
(G.)	To Dundee Chamber of Commerce		" 25, "
(H.)	Dundee Chamber of Commerce		" 27, "

Report.

We think that the protest to the Bulgarian Government should be based upon the fact that India concedes to Bulgaria the treatment of the most favoured nation.

Under the circumstances of this case we think that the protest might also be founded upon the fact that the sacks in question were imported by, and on behalf of, and were the property of the firm of Messrs. A. Wulff and Co., carrying on business in the United Kingdom.

No doubt, under ordinary circumstances, the country of origin of the articles imported alone can be considered, and we doubt whether this ground can be insisted on.

It is possible, however, that the Bulgarian Government may be willing to admit exemption on this ground, while they do not admit the broader contention as to India.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 3, 1898.

CENTRAL AMERICA.

No. 9.

[May 24, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 11, 1898.

Negotiation and ratification of Treaties with States of Greater Republic of Central America.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list with reference to the negotiation and ratification of Treaties with the States which now form "The Greater Republic of Central America."

The Republics of Nicaragua, Honduras, and Salvador, by a Treaty which was signed at Amapala on the 20th day of June, 1895, and ratified on the 15th September, 1896, while retaining their independence for the control of internal affairs, constituted themselves a single political entity for the exercise of their external authority, through the medium of a Diet composed of members chosen from each of the three Republics.

It is understood that, according to the construction placed upon Article V of the Treaty of Amapala, the Treaty-making power is transferred to their respective Legislative Bodies, by whom each Treaty is eventually ratified, the formal instrument of ratification being countersigned by the President of the Diet, or signed by him on behalf of the State or States concerned.

Her Majesty's Government have hitherto always contended that the Queen's

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ratification can only be exchanged against that of the Head of a State, but I am to request that you will take the circumstances mentioned in the inclosed Memorandum into your consideration, and that you will favour the Marquess of Salisbury with your opinion as to whether there is any objection in principle to Her Majesty's ratification being exchanged for a document signed in the manner which I have described.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

1. Translation of Article from "Mensajero de Centro America" of July 23, 1895, with the Treaty of Amapala as signed.		
2. Mr. Gosling	(No. 4. Treaty)	March 17, 1897
(Inclosing copy of Treaty as ratified, and copy and translation of Regulations as to the functions of the Diet.)		
Papers referred to in Memorandum:—		
3. Mr. Jenner	(No. 5. Commercial)	February 15, 1898.
4. Ditto	(No. 7. Commercial)	February 24, ,,
5. Ditto	(No. 9. Commercial)	Eebruary 24, ,,
6. Memorandum by Mr. Villiers and Mr. Robertson		March 28, ,,

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Report.

In our opinion there is no objection to Her Majesty's ratification being exchanged for a document signed in the manner described. The effect of the Treaty of Amapala is that the Diet represents the States forming the Central Republic in matters of foreign policy.

Any Treaty must be sanctioned by the Legislatures of the several States, and when it has been so sanctioned, we think that ratifications should be exchanged with the Diet.

The seal of the Republic will, of course, be affixed in accordance with Article 31 of the Regulations of the Diet, and it will, we presume, be countersigned by the President.

This appears to us to be the regular and proper course to pursue in Treaties of this Greater Republic.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 24, 1898.

CHILE.

No. 10.

[July 15, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 5, 1898.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the draft of an Order in Council for the purpose of carrying into effect an Extradition Treaty between the United Kingdom and Chile which was signed at Santiago on the 26th January, 1897, and of which the ratifications were exchanged on the 14th April last.

O. in C. applying Extrad. Treaty with Chile.

I am to inclose letters from the Home, Colonial, and India Offices, stating that the terms of the draft Order in Council are concurred in by those Departments respectively; and I am to request that you will favour Lord Salisbury with your opinion as to whether it may, in its present form, be laid before the Queen in Council, for Her Majesty's approval.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Draft Order in Council.	
India Office	June 30, 1898.
Home Office	June 15, ,,
Colonial Office	June 13, ,,

Report.

The accompanying draft Order in Council, which we have initialled, may, in our opinion, properly be submitted for the approval of Her Majesty the Queen in Council.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 15, 1898.

Annex.

Draft Order in Council.

WHEREAS by the Extradition Acts, 1870 to 1895, it was, amongst other things, enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in, or suspected of being in, the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

And whereas a Treaty was concluded on the 26th day of January, 1897, between Her Majesty and the President of the Republic of Chile for the mutual extradition of fugitive criminals, which Treaty is in the terms following:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Excellency the President of the Republic of Chile, having determined, by common consent, to conclude a Treaty for the extradition of criminals, have accordingly named as their Plenipotentiaries:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John G. Kennedy, Esq., Minister Resident of Great Britain in Chile;

And his Excellency the President of the Republic of Chile, Señor Don Cárlos Morla Vicuña, Minister of Foreign Affairs;

Who, after having exhibited to each other their respective full powers, and found them in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE II.

Extradition shall be reciprocally granted for the following crimes or offences:—

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.

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2. Manslaughter.

3. Administering drugs or using instruments with intent to procure the miscarriage of women.

4. Rape.

5. Carnal knowledge or any attempt to have carnal knowledge of a girl under 14 years of age, if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties.

6. Indecent assault.

7. Kidnapping and false imprisonment, child stealing.

8. Abduction.

9. Bigamy.

10. Maliciously wounding or inflicting grievous bodily harm.

11. Assault occasioning actual bodily harm.

12. Threats, by letter or otherwise, with intent to extort money or other things of value.

13. Perjury, or subornation of perjury.

14. Arson.

15. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.

16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any Company, punishable with imprisonment for not less than one year by any law for the time being in force.

17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

18.—(*a.*) Counterfeiting or altering money or bringing into circulation counterfeited or altered money.

(*b.*) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.

(*c.*) Forgery, or uttering what is forged.

19. Crimes against bankruptcy law.

20. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.

21. Malicious injury to property, if such offence be indictable.

22. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition offences, and are punishable by more than one year's imprisonment.

23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III.

Each Party reserves the right to refuse or grant the surrender of its own subjects or citizens to the other Party.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of Chile, has already been tried and discharged or punished, or is still under trial in the territory of the Republic of Chile or in the United Kingdom respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of Her Majesty's Government, or on the part of the Government of Chile, should be under examination for any other crime in the territory of the Republic of Chile or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

It shall likewise not take place when, according to the law of either country, the maximum punishment for the offence is imprisonment for less than one year.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made for any other crime, or on account of any other matters, than those for which the extradition shall have taken place until he has been restored, or has had an opportunity of returning, to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X.

A criminal fugitive may be apprehended under a warrant issued by any Police Magistrate, Justice of Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of Peace, or other competent authority, exercises jurisdiction. Provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in the Republic of Chile as in the United Kingdom, if within the term of ninety days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed in the high seas on board any vessel of either country which may come into a port of the other

ARTICLE XI.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and

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sentences issued therein, and certificates of or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:—

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.

2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

3. A certificate of, or judicial document stating, the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by the law of the country where the examination is taken may be substituted for the foregoing.

ARTICLE XIII.

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date.

ARTICLE XIV.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, to be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI.

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the Chief Consular officer of the Republic of Chile in such Colony or possession.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Chilean criminals who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII.

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year, and not less than six months.

It shall be ratified, after receiving the approval of the Congress of the Republic of Chile, and the ratifications shall be exchanged at Santiago as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and affixed thereto their respective seals.

Done at Santiago the 26th day of January, in the year 1897.

(L.S.) J. G. KENNEDY.

And whereas the ratifications of the said Treaty were exchanged at Santiago on the 14th day of April, 1898.

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the [*] day , 1898, the said Acts shall apply in the case of Chile, and of the said Treaty with the President of the Republic of Chile.

Provided always that the operation of the said Acts shall be and remain suspended within the dominion of Canada so long as an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the extradition of Fugitive Criminals," shall continue in force there, and no longer.

R. E. W.
R. B. F.

CHINA.

No. 11.

[August 9, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, July 20, 1898.*

Mutual protection of British and French trade-marks in China.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers relating to a proposal made by the French Government for the mutual protection of British and French trade-marks in China.

It will be seen from M. Geoffray's note of the 20th April (Paper A), that the French Government wish to follow the precedent of the arrangement made as regards trade-marks in Morocco in 1895, which was notified in the "London Gazette" (Paper D).

The Board of Trade in a letter dated the 21st June (Paper C), have suggested that British subjects should register their marks in France, and so obtain protection in the French Consular Courts in China, whilst French nationals should in like manner obtain the protection of the British Consular Courts.

It appears, however, to Lord Salisbury that in cases of conflict between British and French marks there might be some difficulty in obtaining a remedy in the French Consular Courts, and his Lordship is therefore inclined to think that it would be preferable to deal with the matter in the same way as was done in Morocco.

I am to call attention to the Memorandum attached to Paper A, which shows that there is some doubt as to whether special provision must be made by Order in Council to enable British Consular Courts in China to enforce the British Acts for the protection of trade-marks, and I am to request you to favour Lord Salisbury with your opinion on this point.

His Lordship would also be glad to receive any observations or suggestions which you may have to offer in regard to the means of carrying out the arrangement proposed by the French Government.

I am, &c.
(Signed) FRANCIS BERTIE.

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[*] Date to be inserted by Council Office, and to be a date ten days after publication in "London Gazette."

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List of Papers.

(A.)	M. Geoffray	April 20, 1898.
(B.)	To Board of Trade	May 10, „
(C.)	Board of Trade	June 21, „
(D.)	"London Gazette"	June 7, 1895.

Report.

In the absence of an arrangement for a common Registry of trade-marks to be recognized by the Courts of both countries, we think that the British Consular Courts should enforce only British trade-marks, and French Courts French trade-marks. It is difficult to see how the Courts of either country can satisfactorily administer the law of the other.

We therefore think that the arrangement proposed by the Board of Trade would be likely to work best.

At the same time we must add that it is extremely difficult to make out what is the system in force in Morocco as between Great Britain and France. The extract from the "Gazette" is very obscure.

An Order in Council would certainly be wanted to carry out any such arrangement as we conceive to be indicated.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 9, 1898.

No. 12.

[August 11, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 4, 1898.

Gentlemen,

Order in Council for appointment of Registrar to Supreme Court for China and Japan.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the draft of an Order in Council which has been drawn up by Mr. Albert Gray for the purpose of relieving the Assistant Judge of the Supreme Court for China and Japan of the duties of Registrar, and in order to provide for the appointment to that office of the present Chief Clerk, and hereafter of some other properly qualified person. By section 3 of the draft Order in Council, Article 53, of "The China and Japan Order in Council, 1865," is applied to the Registrar in like manner as to the Supreme Court and every other Court; and by section 4, sub-Article (2) of Article 4 of "The China and Japan Order in Council, 1878," is revoked.

I am also to transmit to you the correspondence noted in the accompanying list, and to request that you will take the papers into your consideration, and favour Lord Salisbury with your opinion as to whether the draft Order in Council may properly be submitted to Her Majesty for approval.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Sir N. Hannen	(No. 13. Legal)	March 21, 1898.
(B.)	To Treasury		May 20, „
(C.)	Treasury		May 27, „
(D.)	To Mr. Gray		June 14, „
(E.)	Mr. Gray		July 2, „
(F.)	To Mr. Gray		July 8, „
(G.)	Mr. Gray		July 12, „
(H.)	China and Japan Order in Council, August 14, 1878.		(Confidential No. 5697.)
(I.)	Draft China and Japan Order in Council, 1898		

Report.

We are of opinion that the draft Order in Council, which we have initialled, may properly receive the approval of Her Majesty in Council.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 11, 1898.

Annex.

Draft Order in Council.

WHEREAS by Treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction in China and Japan.

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased by and with the advice of the Privy Council to order, and it is hereby ordered, as follows:—

1. The Registrar of Her Majesty's Supreme Court for China and Japan shall be appointed by Her Majesty.

He shall be either a member of the Bar of England, Scotland, or Ireland, or a solicitor of the Supreme Court in England or Ireland, or a writer to Her Majesty's Signet, or a solicitor in the Supreme Courts of Scotland.

He may also, with the approval of the Secretary of State, hold the office of Chief Clerk of the Supreme Court.

In case of the absence or illness of the Registrar, or during a vacancy in the office of Registrar, or during the employment of the Registrar, in another capacity, or on emergency, the Chief Justice may, by writing under his hand and the Seal of the Supreme Court, appoint any fit person to act as Registrar for the time therein mentioned, or until the appointment is revoked by the Chief Justice or disapproved by the Secretary of State.

2. The Registrar shall, subject to any directions of the Supreme Court, hear and determine in a summary way such criminal cases as may, under the Orders in Council relating to China and Japan, be so heard and determined, and for that purpose shall have the jurisdiction, power, and authority of the Supreme Court.

3. The Registrar shall, subject to any directions of the Supreme Court, have and discharge within the district of the Consulate-General of Shanghae all the powers, rights, and duties appertaining to the office of Coroner in England; and Article 53 of "The China and Japan Order in Council, 1865," shall apply to the Registrar in like manner, as to the Supreme Court and every other Court.

4. On the commencement of this Order, the Assistant Judge of the Supreme Court shall cease to be the Registrar of that Court; and the existing Chief Clerk shall be the first Registrar under the provisions of this Order.

Sub-Article (2) of Article 4 of "The China and Japan Order in Council, 1878," is hereby revoked.

5. This Order shall come into force on the day on which it is first exhibited in the public office of Her Majesty's Consulate-General of Shanghae, and that day is in this Order referred to as the commencement of this Order.

6. This Order may be cited as "The China and Japan Order in Council, 1898."

R. E. W.
R. B. F.

No. 13.

[August 19, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 11, 1898.

Gentlemen,

Shan-hai-kwan–Newchwang Railway Loan. Exclusion of British Syndicate.

THE Director-General of Northern Railways in China, acting under the authority of the Emperor, and with the knowledge of the Chinese Government, concluded, on the 7th June last, a Preliminary Agreement with a British Syndicate, represented by the Hong Kong and Shanghae Bank, for an advance of money for the construction of a railway. The projected railway was to be the continuation of an existing line (Tientsin–Shan-hai-kwan) and was to terminate at the Treaty port of Newchwang, in the

Gulf of Liaotung. The advance was to be secured by a mortgage on the line, and the railway was to be constructed by a European and native staff under the direction of an English engineer in the service of the Chinese Government.

On the 6th instant Her Majesty's Minister at Peking reported that the Chinese Government had addressed to him a despatch saying that by an Agreement with the Russian Chargé d'Affaires "they can only give permission for Shan-hai-kwan–Newchwang Railway on condition that there is no mortgage on the line and no European control."

The Agreement referred to is probably that of the 7th May, of which a copy, secretly obtained, is inclosed in Sir Claude MacDonald's despatch No. 131, Confidential, of the 24th June (herewith transmitted), Section III of which provides as follows:—

"Article III.—The Russian Government consents that the terminus of the branch line connecting the Siberian Railway with the Liaotung Peninsula shall be at Port Arthur and Talienwan, and no other port in the said peninsula.

"It is further agreed in common that railway privileges in districts traversed by this branch line shall not be given to the subjects of other Powers. As regards the railway which China shall herself build hereafter from Shan-hai-kwan in extension to a point as near as possible to this branch line, Russia agrees that she has nothing to do with it."

I transmit herewith a despatch from Sir C. MacDonald (No. 129, of the 23rd June), which incloses the Preliminary Agreement between the Hong Kong and Shanghae Bank and the Chinese Director-General, and some correspondence showing the objections raised by the Russian Chargé d'Affaires, and I am directed by the Secretary of State for Foreign Affairs to call your attention to Article LIV of the Treaty of Tien-tsin (p. 31 of the accompanying volume), and I am to request that you will advise him at your earliest convenience whether the plea put forward by the Chinese Government of their inability to carry out the Preliminary Agreement is not contrary to the engagement undertaken by China under the Article of the Tien-tsin Treaty to which I have called your attention, and whether a protest can be made against it, both at St. Petersburgh and Peking, on that ground, bearing in mind that Her Majesty's Government have no official cognizance of the Agreement of 7th May, on which the objections of Russia to the loan are supposed to be based.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Sir C. MacDonald	(No. 129)	June 23, 1898.
Ditto	(No. 131)	„ 24, „
Treaties with China (Hertslet), vol. 1.		

Report.

It appears that the railway from Shan-hai-kwan to Newchwang can in no sense be considered as competing with the Manchurian Railway from Kirin to Port Arthur. It is therefore in no way inconsistent with the concession granted for the latter railway, and apparently it is not pretended that Russia has any interest in the proposed railway from Shan-hai-kwan to Newchwang.

It would therefore appear that the Russian contention is, that they have a contract with China, in virtue of which China is bound to refuse any offer from an English Syndicate in respect of this proposed railway.

It is not asserted that Russia is herself entitled to the concession, but the contention would appear to be that any English financiers are to be excluded by reason of their nationality. It is true that M. Pavloff states that his objection is to such a contract with any foreign Syndicate. But this would not, we presume, include a Russian Syndicate, and in substance we think that the objection is directed against English influence.

If this be the Russian contention, it appears to us that the Chinese Government would be violating Article LIV of the Treaty of Tien-tsin if they gave effect to it. They are, it is true, under no obligation to enter into this or any other specific contract

with Englishmen. It is open to them to make or not to make such contracts as they please, but it is not open to them to accept as a principle of their action that Englishmen, as such, shall be under any disability with reference to obtaining this or any other contract.

We cannot help thinking that in substance this is what the position taken up by Russia comes to, and, if so, Article LIV of the Treaty of Tien-tsin may fairly be invoked by Her Majesty's Government by representations both at Peking and St. Petersburgh.

Her Majesty's Government are also entitled to object to the course which China is being urged by Russia to take in this matter, on the broader ground that as Russian interests are not involved Russia has no right to interfere between China and English contractors, and that China ought not to give way to pressure of this kind. But further, we have to observe that the Russian Government may very fairly be asked to produce the Agreement with China on which they base their pretensions to interfere with regard to this contract. If the document shown to us as a translation of this Agreement is at all accurate, it would appear that there is no colour for the Russian contention. Russia admits by Article III that she has nothing to do with this railway which China proposes to construct. We cannot understand how it can be seriously asserted that China was bound to construct this railway out of her own resources without borrowing money, and that she is not at liberty to give the capitalists who find the money a charge upon the railway, and the necessary powers of administration.

If this Agreement be produced it will therefore appear that Russia, without any colour of right, is claiming to compel the Chinese Government to refuse ratification of the contract in question because the contractors are Englishmen.

Upon the whole we think that Her Majesty's Government are justified in making remonstrances upon this subject, both at Peking and St. Petersburgh.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 19, 1898.

No. 14.

[November 7, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 22, 1898.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list relative to the sinking of the British steam-ship "Kow-shing" by the Japanese man-of-war "Naniwa," on the 25th July, 1894.

Sinking of "Kow-shing"; claim on Chinese Government for compensation.

The Memorandum which was approved by the Law Officers of the Crown in their Report dated the 17th June, 1896 (Paper A), was duly communicated to the Chinese Minister on the 25th of that month, and by him referred to the Chinese Government. A reply has now been received from Loh-Fêng-luh (Paper B), and contains the refusal of his Government to entertain the claim for compensation, chiefly on the ground that a state of war, imposing neutral duties on the subjects of third Powers cannot be held to exist until formal notification of the fact of war has been made by one or both of the belligerents to the Governments of such Powers.

L.O.R. 1896 (Conf. 6918), p. 30.

In the present instance this notification was only made on the 1st August, whereas the sinking of the "Kow-shing" took place on the 25th July.

Before replying to the Chinese Minister's note, Lord Salisbury would be glad to be favoured with your observations as to the terms in which the answer should be drawn up both on this and the other points raised in the Minister's note.

It appears to his Lordship that the only prospect of settling the case is that it should be referred to arbitration, and he proposes in replying to Loh Fêng-luh to recommend this course again to the consideration of the Chinese Government.

I have, &c.
(Signed) FRANCIS BERTIE.

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List of Papers.

(A.) Law Officers' Report.	(Confidential 6918, p. 30.) ..	June 17, 1896.
(B.) Loh Fèng-luh ..	.. .. ..	Aug. 22, 1898.

Report.

It should, we think, be pointed out that the passages cited in the Chinese Minister's note have no bearing on the case of the "Kow-shing." Their irrelevance is very clearly shown by the note appended by Hall in his International Law, p. 597, to one of the passages cited by the Chinese Minister in support of his contention that until neutrals are affected with knowledge of the existence of war, their liabilities and duties as neutrals do not arise. That note is as follows:—

"What is said above as to the moment from which States, and therefore their subjects, become affected by the consequences of non-neutral actions does not apply to cases in which neutral persons are engaged knowingly, or even ignorantly, in carrying out a naval or military operation for an intending belligerent."

The "Kow-shing" was engaged in such an operation. She was carrying Chinese troops to Corea, and had been chartered to the Chinese Government with the knowledge that war with Japan was probable. The Japanese were entitled to treat her as a Chinese transport, and when she resisted to use force. Her resistance was entirely the act of the Chinese officers and soldiers on board.

There is no analogy between the case of a vessel engaged in such an expedition, and the case of the "Tatsuta," to which the doctrine of the extracts cited by the Chinese Minister would be applicable. Moreover, in the case of the "Tatsuta," the vessel was actually stopped at Aden as soon as the British Government had information of the facts.

It would serve no useful purpose to discuss the various abstract propositions on International Law, which are put forward in the note of the Chinese Minister; they have no bearing on the present case.

We think the claim against the Chinese Government is well-founded, and that it may properly be pressed.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,

No. 15.

[November 11, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, October 29, 1898.

Gentlemen,

Order in Council for Mutual Protection of British and French trade-marks in China.

WITH reference to your Report of the 9th August last, I have the honour to transmit to you, by direction of the Marquess of Salisbury, the draft of an Order in Council, prepared by Mr. Albert Gray, for carrying into effect the proposed mutual arrangement between Great Britain and France for the protection of British and French trade-marks in China.

The papers which accompanied the reference made to you on the 20th July, together with your Report thereon, are returned for convenience of reference.

As regards the system in force in Morocco as between Great Britain and France, to which allusion is made in your Report of the 9th August, the arrangement is recorded as follows in a note, dated the 4th June, 1894, from Count d'Aubigny, the French Minister in Morocco, to Her Majesty's Minister there:—

"Vous avez bien voulu faire savoir au Chargé d'Affaires de France que l'autorité Consulaire Française avait droit de poursuivre au Maroc devant l'autorité Consulaire Britannique, toute personne contrefaisant les marques de fabriques Françaises ou les recevant à la condition—

"1. Que le dépôt de la marque Française aurait été effectué en Angleterre conformément au 'Merchandize Marks Act, 1887.'

"2. Que la protection dans les mêmes conditions serait assurée, au Maroc, par l'autorité Française aux fabricants Anglais."

It will be seen that this arrangement is practically identical with that suggested in the last paragraph of the letter of the 21st June from the Board of Trade, effect to which would be given as regards China by the proposed new Order.

Mr. Gray states that the present Order has been limited to China and Corea, as he apprehends that it is unnecessary to extend it to Japan, having regard to the impending withdrawal (viz., in July next) of Her Majesty's jurisdiction in that country.

From a practical standpoint this no doubt is so; but it seems nevertheless necessary to consider whether, from a technical point of view, it would not be more strictly accurate, pending the actual cesser of Her Majesty's extra-territorial jurisdiction in Japan and the consequent continued application to Japan of the various Orders in Council for China, Japan, and Corea which are now in force, to expressly include Japan within the scope of the operation of the draft Order.

I am to request that you will take the draft Order into your consideration, and that you will favour Lord Salisbury with your opinion as to whether it may properly be submitted in its present form to the Queen in Council for Her Majesty's approval, or, if not, in what manner its terms may be advantageously modified or altered.

His Lordship would be glad at the same time to be favoured with any observations of a general nature which you may desire to offer on the subject.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Mr. A. Gray	.. ..	September 3, 1898.
M. Geoffray	.. . .	April 20, „
To Board of Trade	.. ..	May 10, „
Board of Trade	.. ..	June 21, „
"London Gazette"	.. ..	June 7, 1895.
To Law Officers	.. ..	July 20, 1898.
Law Officers	.. ..	August 9, „
"Siam Order in Council, 1889."	(Confidential 5860*.)	
To Mr. A. Gray	.. ..	August 27, 1898.

Report.

As altered and initialled by us, we approve of the draft Order in Council.

We think that the Order should also apply to Japan, although the Consular Courts there will soon cease.

On reference to section 103 of "The Patents, Designs, and Trade-Marks Act, 1883," it will appear that the scheme recommended by us in our Report of the 9th August, 1898, is the same as that proposed by the Board of Trade.

A foreign patent or trade-mark, when granted or registered pursuant to an arrangement made under that section, becomes, for the purposes of a British Court, a British patent or trade-mark, as the case may be.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 11, 1898.

Annex.

China, Japan, and Corea.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction in China. *Japan, and* Corea:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The

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Foreign Jurisdiction Act, 1890," and otherwise, in her vested, is pleased, by and with the advice of the Privy Council, to order, and it is hereby ordered, as follows:—

1. Any act which, if done in the United Kingdom or in a British possession, would be an offence against any of the following Statutes of the Imperial Parliament or Orders in Council, that is to say:—

"The Merchandize Marks Act, 1887."

"The Patents, Designs, and Trade-Marks Acts, 1883 to 1888."

Any Act, Statute, or Order in Council, for the time being in force, relating to copyright or to inventions, designs, or trade-marks; or

Any Statute amending or substituted for any of the above-mentioned Statutes shall, if done by a British subject in China, *Japan, or* Corea, be an offence against this Order, whether such act is done in relation to any property or right of a British subject, or of a foreigner or otherwise:

Provided—

(1.) That a copy of any such Statute or Order in Council shall be published in the public offices of the Consulates-General of Shanghae, *Tôkiô, and Seoul respectively*, and shall be there open for inspection by any person at all reasonable times; and a person shall not be punished under this Order for anything done before the expiration of one month after such publication, unless the person offending is proved to have had express notice of the Statute or Order.

(2.) That a prosecution by or on behalf of a prosecutor who is not a British subject shall not be entertained without the consent in writing of Her Majesty's Minister or Chargé d'Affaires, who may withhold such consent, unless he is satisfied that effectual provision exists for the punishment in Consular or other Courts in China, *Japan*, or Corea (as the case may be), of similar acts committed by the subjects of the State or Power of which such prosecutor is a subject, in relation to or affecting the interests of British subjects.

2. An offence against this Order shall be punishable with imprisonment for any period not exceeding three months, or fine not exceeding 100*l*., or both.

3. This Order may be cited as "The China, *Japan, and* Corea (Patents, &c.) Order in Council, 1898."

And the Most Honourable the Marquess of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

R. E. W.
R. B. F.

FRANCE.

No. 16.

[February 2, 1898.]

Foreign Office to Law Officers of the Crown.

Gentlemen,
Foreign Office, January 26, 1898.

Proposed expropriation of British Mission Property in Madagascar by French.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the following correspondence relating to the proposed expropriation by the French Government of Mission property in Madagascar.

On the 25th May last a despatch (Paper A) was received from Mr. Sauzier, the Acting British Consul at Tamatave, inclosing a copy of a Circular letter addressed by General Gallieni, the French Resident-General, to the representatives of the various Missions in Madagascar respecting the terms on which religious buildings in that island were held.

In this communication the General stated that all religious buildings—whoever might be the persons or the Societies which had contributed to their erection—were, according to French law, the property of the State.

Search was made in the archives of this Department for the Law to which General Gallieni referred, but from the inclosed Memorandum (Paper B), which was drawn up by the Librarian of the Foreign Office, it will be seen that it cannot be identified.

The papers were therefore referred to Her Majesty's Ambassador at Paris, and his Excellency thereupon took the opinion of Mr. Sewell, who acts as solicitor to the British Embassy in that capital. It appears from Mr. Gosselin's despatch No. 191, Africa, of the 24th June last (Paper C), that Mr. Sewell has been unable to discover

the text of any Law which supports General Gallieni's view, and considers the statement made in the General's Circular to be unfounded.

In these circumstances, Mr. Gosselin suggested that M^e^ Clunet, the eminent French advocate, should be consulted, and his suggestion was adopted.

On the 16th ultimo Her Majesty's Ambassador at Paris sent home the opinion with which M^e^ Clunet had, on consultation, furnished the Embassy. (Paper D.)

From this opinion it appears, with regard to the question of ownership, that by the law of Madagascar as it stood prior to the annexation of that island by France (*vide* Article 85 of the Malagasy Code of 1881, quoted at p. 5 of M^e^ Clunet's consultation), it was absolutely forbidden to sell or mortgage land to foreigners under pain of imprisonment for life; and in the event of such a sale being made, the purchase-money was not recoverable, and the land reverted to the Government.

In support of this contention M^e^ Clunet quotes from the text of several concessions made by the Malagasy Government. In each of these the Queen's sole right of ownership in the ground and buildings is expressly asserted.

Among the documents cited are the Malagasy Code of 1881 already referred to, and the Royal Decree of the 27th June, 1865, granting a Mission-house to the London Missionary Society.

In the Decree the following clause is to be found:—

"Néanmoins la Société reconnaît que toutes les églises précitées appartiennent à la Reine de Madagascar, et qu'elle n'aura aucun droit de réclamation sur les dits immeubles qui appartiennent éternellement* à la Reine."

A similar reservation is made in the concession with two English Missions for the building of the English hospital at Antananarivo.

In 1896 the rights of the Malagasy Government were transferred in virtue of the Law of the 6th June of that year to France, which country thus became the sovereign owner of the lands and buildings in question.

With regard to the matter of expropriation of religious buildings under French law, M^e^ Clunet explains at some length that inasmuch as buildings in France cannot be devoted to religious purposes without the sanction of Government, it follows that it is in reality the State that appropriates buildings to such uses, and that, as a natural consequence, the State has the right to undo what it has done, and to "expropriate."

These Regulations form part of the Municipal Law, and are in force *ipso facto* as well in the French Colonies as in the mother country, and, therefore, M^e^ Clunet is of opinion that General Gallieni is entitled, in his capacity of Resident General, to proceed to the expropriation of any religious buildings within the limits of his jurisdiction. Such measure can, however, only be taken by the General himself, who under the terms of Article 1 of the Decree of the 11th December, 1895, which defines his authority, is the depositary of the powers of the French Republic in the Island of Madagascar and its dependencies.

I am to observe, with reference to this opinion, that whatever may be the technical rights of the French Government according to French law, it seems to Lord Salisbury that the fact that the original Agreement was made at a time when Malagasy, and not French law, governed the matter, was of importance, and that the French Government might, under the circumstances, fairly be expected to consider themselves at any rate under a moral obligation not to derogate from the terms of the Queen of Madagascar's grant so long as the grantees of the concession strictly observed the conditions laid down in the grant, unless, of course, on the terms of giving the grantees suitable compensation.

I am also to transmit (Paper E), as bearing on this matter, a communication relating to the Mission hospital at Antananarivo, which has been recently left at this Office by Mr. Clark, of the Friends Foreign Mission.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion as to the rights of British subjects in the special circumstances of this case, and with any general observations which you may have to offer thereon.

I have, &c.
(Signed) T. H. SANDERSON.

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* Qy. in perpetuity.

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List of Papers.

(A.) Mr. Sauzier	(No. 22)	April	29, 1897.
(B.) Memorandum by Librarian		June	3, „
(C.) Mr. Gosselin	(No. 191)	June	24, „
(D.) Sir E. Monson	(No. 440 Africa)	December	16, „
(E.) Left by Mr. Clark, of Friends Foreign Mission		December	14, „

Report.

We have perused the opinion of M^{e} Clunet. With reference to the first part of it we have to observe, without differing from him on the subject of the Malagasy law as to the title to real property, that the terms of the grants made by the Malagasy Queen for hospital purposes—while reserving to the Queen the title to the land—amount in substance to a contract that so long as it was used for the purposes mentioned in the grant, the holders would not be disturbed. On this point we refer to our Report of the 22nd March, 1897.

It appears to us that the French Government inherit this obligation, and that it would be a breach of contract if the holders of land under such grants were evicted, unless the land were wanted for public purposes and adequate compensation was paid.

The terms of the grants for Mission purposes are, we gather, similar to those employed when the land was granted for hospital purposes.

With regard to the second part of M^{e} Clunet's opinion, we have some difficulty in following his reasoning. We assume that, as a matter of French law, the sanction of the State is necessary for the appropriation of any building to religious purposes, but we cannot see that it follows, as M^{e} Clunet says, that this sanction, once given, may be withdrawn at the pleasure of the Government. A large amount of capital may have been invested in the erection of a building for religious purposes on the faith of the sanction granted by the Government, and this building might become almost valueless if the sanction were withdrawn. We are, however, of course not prepared to express dissent from M^{e} Clunet on a point which is purely one of French law, but we must observe that the application of this principle of French law to the case of Mission buildings erected in Madagascar would work intolerable hardship. These buildings had been erected before the French had conquered the island, and not in view of the French law on this subject.

Under these circumstances, to refuse to permit such edifices to be used for religious purposes would, in our opinion, be an act of a very oppressive character, even if it be justified by the technicalities of French law, affording legitimate ground for diplomatic remonstrance. But we must observe that the Circular of General Gallieni does not appear to us to announce that it is the intention of the French Government either to confiscate these buildings, or to prevent their further use for religious purposes. It is true that he says that, by the law of France, all religious edifices are the property of the State—a proposition which finds no support in M^{e} Clunet's opinion, and which would appear to be erroneous; but all that he intimates his intention of doing is to prevent, for the present, any change in the destination for which these edifices are appropriated. It is quite consistent with General Gallieni's Circular that these buildings may continue to be appropriated to the religious purposes for which they have been erected. We do not see that this Circular can conveniently be made the subject of diplomatic representation. Of course, if General Gallieni proceeded to confiscate the Mission buildings, or to forbid their use for religious purposes, very different considerations would arise.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 2, 1898.

No. 17.

[February 3, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, January 28, 1898.

Arrest of French courier in Lagos Hinterland.

WITH reference to your Report of the 2nd November, 1897, as regards the answer to be made by the Governor of Lagos to the Governor of Dahomey respecting a French messenger who, while carrying official and other letters, had been stopped by British Colonial authorities, I have the honour, by direction of the Marquess of Salisbury, to transmit to you a printed copy of that Report (Document A), together with other papers relating to the case, and noted on the accompanying list.

Full reports on the subject have now been received from the Governor of Lagos (Documents B, C, and D), from which it appears that the more important points connected with it are briefly as follows:—

Two French valises are in the possession of Her Majesty's Government. One was given up voluntarily on the 21st September, 1897, by the courier at Meko (see Document B, and Inclosure 7 therein). Meko is south of the 9th parallel of north latitude, and therefore in territory reserved, so far as concerns France, to Great Britain by the Agreement of the 10th August, 1889 (Document X).

This valise contained a letter from Lieutenant Brot to the Governor of Dahomey, dated Saki, the 14th September, giving an account of movements in contemplation against Kiama (Inclosure 2 in Document B). Kiama lies north of the 9th parallel, but in the Hinterland of Lagos, and is claimed as part of the Niger Company's territories. This valise also contained two other letters, without date, written by Lieutenant Brot (Inclosures 5 and 6 in Document B) at Kishi, as to the position of which place a statement will be made later on in this letter.

The other valise was taken on the 28th September, 1897, by Captain Neal, an officer in the service of the Government of Lagos, from an armed French soldier at Sepeti, a place between Saki and Bohu, and therefore south of the 9th parallel, and, like Meko, in territory reserved, as far as France is concerned, to Great Britain (see Document C). It contained letters from the following places and persons, bearing the dates shown against each:—

Lieutenant Bretonnet from Kiama (north of 9°), 24th September.
Lieutenant Bretonnet from Beria (north of 9°), 21st September.
Lieutenant Bretonnet from Beria (north of 9°), 21st September.
Lieutenant Bretonnet from Mossé (situation not known), 20th September.
Lieutenant Brot from Kishi (south of 9°, according to the British authorities), 24th September.
Lieutenant Carron from Kiama (north of 9°), 29th September. (This date should probably be the 25th September.)

all of which places are claimed by Great Britain to be part of the Niger Company's territories.

The soldier-messenger, who was a British-protected person, had himself formed part of a French expedition which had passed through and thus violated territory reserved to Great Britain by the Agreement of 1889; but the letters or despatches which he carried were all from places beyond that territory, except those from Kishi, which place lies, according to French official maps, north of 9°, but which is placed by the British authorities south of that parallel.

But the violation of British territory reserved to Great Britain by the Agreement of 1889, except as regards Kishi (held by Her Majesty's Government to be in that territory), was not continuing at the time the messenger was stopped.

The terrritory south of 9°, where the valises came into the possession of the British authorities, is under British protection, and Her Majesty's Government claim that the several places north of that parallel, from which the letters were written, and which were then, and probably still are, occupied by France, are also under British protection, though this is disputed by France.

Copies of some of the letters seized are given as inclosures in Document (C), and

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it will be seen that they inform the Governor of Dahomey of hostile military operations undertaken, or about to be undertaken, against places and persons held by Her Majesty's Government to be under British protection, and that they were calculated to facilitate such operations by so informing the superior French authorities of such operations.

The bearer of the despatches seized by Captain Neal was sent to Lagos, and was given his freedom to proceed to Dahomey if he chose; but he did not choose so to do (see Inclosure 2 in Document D).

The official correspondence seized is still retained by Her Majesty's Government, but the private letters in the valises were sent to the French Government to be forwarded to their destination.

In reply to an inquiry from the French Minister at this Court, a note was on the 18th November, 1897, addressed to the French Ambassador (Document E) in the sense of the telegram sent to the Governor of Lagos, in accordance with the advice given in your above-mentioned Report of the 2nd of that month (Document A). The French Minister (who in the absence of Baron de Courcel is now in charge of the Embassy) has now addressed to Lord Salisbury a note (Document F), stating that the French Government, for the reasons therein stated, do not accept as satisfactory the explanations given in his Lordship's note of the 18th November, 1897. The French note urges that the messenger should not have been stopped, that the despatches seized should be handed to the French Government, and that Her Majesty's Government should have followed the principle that, in territory in dispute between two countries, the Government of neither should perform any act of sovereignty. The note contrasts the treatment of the French messenger stopped by the authorities of the Colony of Lagos with that accorded to a British soldier-messenger who was found in the French territory of Dahomey. The incident referred to is probably that mentioned in a letter from the Governor of Lagos to the Governor of Dahomey, which forms Inclosure 3 in the letter of the 13th ultimo from the Colonial Office (Document G).

A draft of a note has been prepared in this Department in reply to M. Geoffray's note of the 4th instant, and is herewith transmitted to you, marked (H).

The terms of the draft note have been submitted to and have the concurrence of the Secretary of State for the Colonies.

I have the honour to request you to take the papers sent herewith into your consideration, and to favour Lord Salisbury, at your earliest convenience, with your opinion as to whether the terms of the note are satisfactory as they stand, or, if not, in what manner and to what extent they may advantageously be modified or amended.

I also have the honour to request you to favour his Lordship with such further observations of a more general nature as you may desire to offer on the case.

A map is inclosed (Document I) showing the several territories and places mentioned in this letter.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Law Officers	November 2, 1897.
(B.)	Governor of Lagos	September 29, ,,
(C.)	Ditto	October 14, ,,
(D.)	Ditto	November 10, ,,
(E.)	To M. de Courcel	November 18, ,,
(F.)	M. Geoffray	January 4, 1898.
(G.)	Colonial Office	December 13, 1897
(H.)	Draft.	
(I.)	Map.	
(X.)	"Africa No. 3 (1890)." (Parliamentary 3310.)	

Report.

In our opinion the terms of the note are satisfactory.

The only suggestions we have to make are embodied in red ink on the draft.

Those on pp. 3 and 4 are purely verbal; that on p. 11 involves the omission of a sentence, and we suggest this omission lest the statement that France is actually exercising all the functions of sovereignty in the disputed districts, should be afterwards utilized by France as an admission that French sovereignty in these districts is of a settled character.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 3, 1898.

Annex.

Draft of Letter to Baron de Courcel.

Your Excellency,
Foreign Office, February , 1898.

I HAVE the honour to reply to the note of the 4th ultimo, in which M. Geoffray informed me that M. Hanotaux has carefully examined the considerations put forward in my note of the 18th November last respecting the interception of a French courier by British authorities in West Africa.

M. Geoffray stated that his Excellency cannot concur in the view taken of the matter by Her Majesty's Government, and went on to observe that, if Her Majesty's Government considered their rights to have been insufficiently respected by an official French Mission, and British-protected persons to have been ill-treated, the regular procedure would have been to address a complaint through the diplomatic channel to the French Government.

M. Geoffray further remarked that the ownership of the region to which the incident relates is in dispute between France and Great Britain, and that the two Governments are now seeking a solution of the matter, *and that, consequently*, the principle of law applicable in this connection is that neither of the parties interested should perform any act of sovereignty in territory thus in dispute between two countries.

M. Geoffray said that in the present case no act of the sort had been done by France, the case at issue being only the passage of a single person, and such passage not amounting to a taking possession of territory.

I must, in the first place, protest against the assumption that the territory in which the courier, who was an armed French soldier, was intercepted is in any sense whatever in dispute between the two Governments, or now forms the subject of any negotiations between them.

The Agreement of the 10th August, 1889, provides that a certain boundary-line shall be fixed between the British and French territories on the Slave Coast as far northward as the 9th parallel of latitude, and that Her Majesty's Government shall have full liberty of political action to the east of the boundary thus fixed.

The soldier referred to was intercepted between Saki and Bohu (that is, in territory reserved to Great Britain by the Agreement in question). He was, as I have stated in my note of the 18th November, assisting and conveying despatches from an armed force, which, in spite of the remonstrances of British officers, had violated British-protected territory, and had subsequently attacked British allies and protected natives, and unlawfully occupied territory under British protection. He was, moreover, a British-protected person, being a native of Ijesa, within the territory reserved to Great Britain by the Agreement of 1889.

Her Majesty's Government are surprised to learn from M. Geoffray's note that, in M. Hanotaux' opinion, in territory in dispute between two countries, as is now a large extent of West Africa, neither should perform any act of sovereignty, and that no act of this nature has been performed by France. It has long been known to the French Government that the whole Hinterland of Lagos and of the Gold Coast and other adjacent territories are claimed by this country in virtue of Treaties concluded with the various native Rulers. These territories, or a large part of them, are now in dispute between Great Britain and France, and are the subject of negotiation between the two countries.

But France, far from herself following the principle the adoption of which is urged on Great Britain by M. Hanotaux, and far from abstaining, in deference to that principle, from performing any act of sovereignty in the disputed territory, has occupied largely by force every portion of it that she has been able to reach, and French forces have, in order the more easily to do so, violated, as stated above, territory reserved to Great Britain by a Convention with France, and this after due warning not to do so given by a properly constituted officer of Her Majesty's Government. ~~France is actually exercising all the functions of sovereignty in the disputed districts, which she has occupied. Such occupation is in itself an act of sovereignty.~~

Bussa is being fortified; the King of Nikki was kept a close prisoner till his death; a new Ruler has been installed in Mossi, and the whole of the territory which France has been able to occupy is treated as though it were indisputably French, and neither claimed by any other Power nor the subject of negotiation.

Her Majesty's Government would have been glad if France had abided by the principle urged by M. Hanotaux, or would even now adopt it as her rule of conduct.

Her Majesty's Government cannot in any case consent to British territory, or territory under British protection, being made use of by France for facilitating operations and acts of sovereignty in territory claimed by Great Britain.

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The private correspondence carried by the messenger referred to in M. Geoffray's note was forwarded to the French Government because it could be assumed that it had not for its object (as was the case with the official correspondence) to facilitate acts of the nature of which I have complained.

I may add that no French courier is now under detention by any British official, and that, as the Governor of Lagos informed the Governor of Dahomey on the 29th October, 1897, the French courier referred to was perfectly free to proceed to Dahomey. He was lodged and maintained at the Government expense, and given every freedom, but he fled to the bush, leaving his uniform behind him.

As regards the case of the British soldier, who, it is stated, was carrying a letter to a British Agent, and who was hospitably treated by the French authorities, I am not able, by the slight details given, positively to identify the case, but it is possibly that of a soldier mentioned in a letter of the 20th October, 1897, from the Governor of Dahomey to the Governor of Lagos. If so, the cases are not analogous, for the letter carried by the British soldier was not from or to any British officer who had violated French rights.

I have, &c.

No. 18.

[March 5, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, February* 28, 1898.

Status of British Companies in France.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the inclosed list respecting the bearing of a recent decision of the French Cour de Cassation on the status of British Companies in France as secured by the Anglo-French Convention of 1862 (Paper A).

The following is a summary of the case dealt with by the Cour de Cassation (Papers B, C, D, and E).

A Company called "La Construction (Limited)" was registered as a British Company in May 1888. It was formed by seven Englishmen, who, for the purposes of effecting the registration of the Company in this country, under the provisions of the Companies Act, became holders of one share each. The returns made by the Company show that these seven persons never had any substantial interest in it, but that, on the other hand, no less than 1,770 shares were held by eight Frenchmen, only one of whom had an English address.

The Company bought land and erected a casino at Cap Martin with money advanced by one of the French directors, who was repaid by the allotment of a certain number of fully-paid shares to his nominees.

Meanwhile, a private creditor of the French director who had advanced the money to the Company obtained a Judgment against him, and, as is permitted by French law, registered this Judgment as a general mortgage against any real property the debtor might possess. This creditor then applied to the local Court to have the Company declared null and void, as being English only in form, but, in reality, fraudulently constituted out of France by his debtor in order to evade the requirements of French law in respect of the debt owing to him—the creditor. The local Court did not take this view, but, on appeal, the Court of Aix held that the Company was a fictitious one. The result was to hand over the Company's assets to the private creditors of one of the directors, and the Company was declared null and void from its formation.

The Cour de Cassation, the highest French Tribunal, which was asked to reverse this decision, upheld it in the following Judgment (see translation as given in the "Monthly Circular," No. 36, for December 1897, of the British Chamber of Commerce in Paris, Paper D), which was as follows:—

"As to the violation of the Treaty with England of the 17th May, 1862, and the false application of the Law of the 24th July, 1867:

"Whereas, if the nationality of a Company depends upon the place of its corporate" (*i.e.*, registered) "office, and upon its principal establishment, in whatever country are carried on the operations from which its speculations are derived, it is on the condition that this corporate office be of an effective and serious character, and has not been transferred abroad in a purely fictitious manner for the purpose of escaping the rules of public order prescribed by French law for the creation and working of Companies:

"Whereas the Judgment appealed against states, as a matter of fact, that the pretended Company had purposely in England only a nominal and fictitious office where its administration had never been centralized; that it kept there only a secretary without initiative, receiving the balance-sheets and the decisions from Paris, where alone the directors met; that it had no interest whatever in England, and never exercised its activity" (*i.e.*, transacted business) "there; that the creation of the appearance of" (*i.e.*, what was ostensibly) "a principal office in London was only suggested by its principal founder in order to withdraw a perfectly French establishment from the protective formalities of our laws, of which he feared the application; that in concluding from these circumstances, decided upon in the last resort that the said Company was not a foreign one, had assumed no legal form in France, and should, therefore, be declared null and void, the Court of Appeal has violated no law.

"Rejects the appeal," &c.

It is contended by Mr. Thomas Barclay, who is a member of the English and French bars, and a jurist of some repute, resident and practising at Paris, and whose views on the points involved are indorsed and accepted by the British Chamber of Commerce, that this Judgment, when resolved into its legal elements, rests on the two following propositions (Paper E):—

1. Companies constituted according to British law are not necessarily British Companies. Their nationality depends on the place of their corporate office and upon their principal establishment. It depends also upon the corporate office being of an effective and serious character.

2. A Company constituted according to British law is not entitled to exercise its rights in France if formed to escape the rules of public order prescribed by French law for the creation and working of Companies.

Article I of the Anglo-French Convention of 1862 runs as follows (Paper A):—

"The High Contracting Parties declare that they mutually grant to all Companies and other associations, commercial, industrial, or financial, constituted, and authorized in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the Tribunals, whether for the purpose of bringing an action or for defending the same, throughout the dominions and possessions of the other Power, subject to the sole condition of conforming to the laws of such dominions and possessions."

It is, therefore, contended that the French law, as expounded by the Cour de Cassation, renders to some extent nugatory the provisions of this Article, according to which all Companies constituted and authorized in conformity with the laws in force in either of the two countries are granted the power of exercising all their rights throughout the dominions of the other Power.

The French law, moreover, seems to qualify very materially the stipulation of the Article—

1. By laying down that the nationality of a Company depends on the place of its corporate office and its principal establishment;

2. By excepting Companies whose corporate office is not of an "effective and serious character;"

3. And by making their validity depend upon the intentions of the promoters.

The facts of this case were first brought to the notice of Her Majesty's Government by the British Chamber of Commerce in Paris early in 1897 (Paper B), and again recently by Mr. Bevan (Paper E).

The Board of Trade were consulted, and have furnished a Memorandum on the subject compiled by the Registrar of Joint Stock Companies (Paper C).

After careful consideration, Lord Salisbury decided that the case was not one upon which any representation could properly be based (Papers F and G), for although, no doubt, technically every Company registered under the English Companies Act comes within the terms of the Convention of 1862, yet substantial justice seems to have been awarded by the French Courts in this particular instance.

It is, nevertheless, possible that *bonâ fide* cases might arise which, in view of the state of the French law, might involve great hardship to British subjects, and it therefore seems desirable to consider whether some protest of a general character might not advantageously be lodged with the French Government.

I am to request that you will take the inclosed papers into your consideration and favour Lord Salisbury with your opinion as to whether the circumstances would justify his Lordship in instructing Her Majesty's Ambassador at Paris to represent to the French Government that the conditions of the French law, as expounded by the Cour

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de Cassation, seems to run counter in some respects to the provisions of the Convention of 1862, and to suggest to the French Government the propriety of modifying the law so as to bring it into conformity with that instrument.

His Lordship would also be glad to be favoured with any general observations which you may have to offer on the question.

I have, &c.
(Signed) G. N. CURZON.

List of Papers.

(A.)	Anglo-French Convention (Joint Stock Companies) (Treaty 461)		April	30, 1862.
(B.)	Sir E. Monson	(No. 25. Commercial)	January	31, 1897.
(C.)	Board of Trade		March	24, „
(D.)	Sir E. Monson	(No. 53. Commercial)	February	10, 1898.
(E.)	Mr. W. A. Bevan		January	21, „
(F.)	To Sir E. Monson	(No. 66. Commercial)	March	31, 1897.
(G.)	To Mr. W. A. Bevan		February	1, 1898.

Report.

We do not advise that any representation should be made to the French Government as to this Judgment.

The Cour de Cassation does not appear to us to have laid down any principle except that when a Company is purely colourable its registration under the English law is unavailing in France. This is not, in our opinion, in any way inconsistent with the terms of the Treaty.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 5, 1898.

[Colonial Office.] *No. 18A.*

The Law Officers of the Crown to Mr. Chamberlain.

[May 11, 1898.]

Sir, *Royal Courts of Justice, May* 11, 1898.

Jurisdiction over natives in New Hebrides.

WE were honoured with your commands signified in Mr. Bertram Cox's letter of the 26th ultimo, stating that he was directed by you to transmit, for our consideration, a despatch from the High Commissioner for the Western Pacific,* respecting the case of certain natives of the New Hebrides Group who were accused of the murder of a naturalized British subject at Aoba, one of the islands of that group.

That the present political position of those islands was defined by the Convention between England and France of the 16th November, 1887, and the Declaration (with Regulations appended thereto) of the 26th January, 1888.

That the natives of those islands were savages of a low type, without Chiefs or any recognized native authority capable of exercising jurisdiction, or from whom a concession of jurisdiction could be obtained.

That by Article II of the Convention of the 16th November, 1887, it would be seen that a Joint Naval Commission was agreed to be constituted, composed of British and French naval officers on the Pacific Station, charged with the duty of maintaining order, and of protecting the lives and property of British subjects and French citizens in the New Hebrides.

That the terms of that Article appeared to imply a claim on the part of Her Majesty and the Government of the French Republic to exercise criminal jurisdiction over the natives of the group, but that in the Regulations for the guidance of the Joint Naval Commission, appended to the Declaration of the 26th January, 1888, it would be seen that the only action contemplated was repressive action in the nature of an act of war.

That it appeared, however, from paragraph 4 of Sir G. O'Brien's despatch, that the Commission had been in the habit, apart from its exercise of acts of war, of inflicting punishments judicially by way of fines and imprisonment, and that the French authorities in the neighbouring French settlement of New Caledonia recognized and gave effect to such sentences of imprisonment, in cases where the outrages or offences perpetrated had been against French subjects.

That it appeared to you that there could be no question that in such proceedings the Naval Commission was acting beyond its powers as defined in the Regulations appended to the Declaration of 1888.

That in those circumstances, as the French authorities were apparently prepared to overlook any informality in the action of the Commission in assuming judicial powers, while the Government of Fiji rightly declined to do so, the protection of the lives and property of British subjects in the New Hebrides would be much less effective than that afforded to French citizens, and the extension of French influence in the group would be facilitated, a result which, from a political point of view, it was important to avoid.

The copies of previous opinions* of the Law Officers bearing upon this question were inclosed with Mr. Bertram Cox's letter.

That in those circumstances Mr. Bertram Cox was to request us to be good enough to consider:—

1. Whether, in entering into the Convention of 1887, Her Majesty and the Government of the French Republic have not asserted a claim to jurisdiction over the natives of the New Hebrides Group.

2. Whether, in the case of Her Majesty, it can be properly held that the jurisdiction so claimed is a jurisdiction held by "usage, sufferance, and other lawful means," as specified in the Foreign Jurisdiction Act of 1890, and for the exercise of which Her Majesty may make provision under section 5 of that Act.

3. If so, whether it would be proper for Her Majesty by Order in Council, after an agreement, express or implied, with France, to empower the Joint Commission to exercise such jurisdiction in ordinary cases of offences against the lives or property of British subjects, and in more serious cases, such as murder, to remit them for trial by the High Commission Court in Fiji, and, further to empower that Court to hear and decide such cases.

We have taken the papers into our consideration, and in obedience to your commands, have the honour to

Report—

In our opinion, there is no claim to jurisdiction over the natives within the New Hebrides Group within the meaning of the Foreign Jurisdiction Act. That Act refers to cases in which Her Majesty has jurisdiction in foreign parts. In the present case what we have to deal with is an agreement between Her Majesty and the French Republic jointly to exercise such force as may be necessary for the protection of the subjects of the two countries in the New Hebrides.

We do not think that any Order in Council can be made under the Foreign Jurisdiction Act. If it is found necessary to deal with the matter, the proper course would, in our opinion, be to pass an Act of Parliament of the Imperial Legislature providing that the sentences passed by the Joint Commission might be enforced in Her Majesty's dominions.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

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* No. 97, October 14, 1897.

* Nos. 196 in vol. iii, 183 in vol. iv, and 23 in this volume.

No. 19.

[August 4, 1898.]

Foreign Office to the Law Officers of the Crown.

Search of Muscat slave-dhows flying French flag.

Gentlemen, *Foreign Office, July* 12, 1898.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you a collection of papers in print (marked A), which relate to the question of the protection afforded by France to dhow-owners who are natives of Muscat, and who apply, under certain conditions, for the right to fly the French flag at sea.

The point to which the papers in question are chiefly directed is the immunity from search conferred by the system upon vessels engaged in the transport of slaves for sale, but they also refer to the more general question of the claim of any one State to extend its protection to the subjects of another, without the assent of such other State, and the letter from the India Office of the 23rd May (marked B) shows the effect of the pretension in the case of vessels of the Muscat State in the Persian Gulf and waters of the Indian Ocean adjacent to India.

The status of Muscat towards Great Britain is somewhat peculiar, for, on the one hand, its geographical and historical position bring it completely within the sphere of British interests, and, on the other hand, its independence has been guaranteed by Great Britain and France by the Declaration of the 10th March, 1862, inclosed herein, and marked (C).

France, moreover, by her Treaty with Muscat, signed at Zanzibar on the 17th November, 1844 (Paper D), enjoys certain rights in Muscat, amongst which are those of extra-territorial jurisdiction within that Sultanate (see Article VI), and the immunity of French domiciles from entry or visit, except with the consent of the occupier, unless with the intervention of the French Consul (see Article III).

The French Government contend that this exemption applies to all vessels flying the French flag in the territorial waters of Muscat. They have also persistently refused to allow such vessels to be searched for slaves or other purposes when in the territorial waters of Muscat, not only by foreign men-of-war, but even by the authorities of the territorial Sovereign.

Correspondence on this subject is sent herewith (Paper E), as elucidating the general position claimed by France in such matters, although it does not directly bear upon the point on which Lord Salisbury is desirous of obtaining your opinion. That point is whether there is any justification under the general law of nations, or through the special Agreements of France with this country and Muscat for the claim of France to confer the right of flying her flag, with its attendant immunities, upon subjects of the Sultan of Muscat who have qualified under French law for French protection, and to protect such persons in the territorial waters of Muscat or on the high seas against interference by the Sultan of Muscat or by British men-of-war.

The Memorandum marked (F) contains references which may assist you in forming an opinion on the subject dealt with in this letter.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Fourth revise (September 1897) of Suri dhow papers.		
(B.)	India Office	May	23, 1898.
(C.)	Declaration, Great Britain and France. (S. P., vol. 57, p. 785)	March	10, 1862.
(D.)	Treaty between France and Muscat. (Hertslet's Map of Africa, p. 927)	November	17, 1844.
(E.)	Selection of Correspondence.		
(F.)	Memorandum by Mr. Streatfeild	June	2, 1898.

Report.

The right to use the flag of a country is one that has been left to be regulated by the laws of that country; but this has rested on the assumption that this right will not be abused, and that permission to use the national flag will be granted only to vessels which can fairly be considered as national.

From the papers before us it would appear that a practice has prevailed of granting the use of the French flag to vessels which cannot be considered as, in any sense, French vessels.

The Arab slave-traders, to whom these permits are granted, do not become French subjects, and the allegation that they become French-protected persons is, it would appear, merely colourable. It is possible that they acquire this character by French law, but in order to validate the claim to fly the French flag from the point of view of international law, they should be so in reality.

The subject is one on which there is an almost entire absence of authority, but the claim of the French Government seems to us to be unsustainable on principle.

We cannot suppose that the French Government will fail to put a stop to so flagrant an abuse. If it fails to do so, and if it is considered expedient to resort to so extreme a step, the vessels may be treated, even on the high seas, as not entitled to the protection of the French flag.

The XXXIInd Article of the Treaty of Brussels may be referred to in any remonstrance that may be addressed to the French Government. In territorial waters, the vessels may clearly be searched and proceeded against for slave-trading, even if they are entitled to fly the French flag. Every Government has the right to police its own territorial waters. We cannot read the French Treaty with Muscat as in any way interfering with this right.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 4, 1898.

GENERAL.

No. 20.

[April 5, 1898.]

Foreign Office to Law Officers of the Crown.

Canadian Alien Act.

Gentlemen, *Foreign Office, March* 28, 1898.

I HAVE the honour, by direction of the Secretary of State for Foreign Affairs, to transmit to you herewith the accompanying list of papers which refer to an Act passed by the Parliament of Canada in 1897, and entitled "An Act to restrict the Importation and Employment of Aliens."

This measure is, it appears, in fact though not specifically, directed against immigrants from the United States, and was, it is stated, passed in retaliation for the enforcement against Canadians of the United States' Statute forbidding the immigration of contract labour.

In this connection, I am to direct your attention to section 9 of the Act, which provides that the Act shall only apply to such foreign countries as have enacted and retained in force, or as enact and retain in force, Laws or Ordinances applying to Canada of a character similar to this Act.

Section 1 of the Act makes it unlawful for any person, Company, partnership, or Corporation, in any manner to prepay the transportation, or in any way to assist or encourage the importation or immigration of any alien or foreigner into Canada under contract or agreement, parole or special, express or implied, made previous to the

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importation or immigration of such alien or foreigner, to perform labour or service of any kind in Canada; and section 3 imposes penalties for the violation of these provisions.

By section 4 of the Act, it is further constituted an indictable offence for the Master of any vessel knowingly to bring into Canada on such vessel, and to land, or permit to be landed, from any foreign port or place any such alien, labourer, mechanic, or artisan, under contract to perform labour or service in Canada.

Section 6 further provides for the compulsory return of immigrants under certain circumstances to the countries whence they came.

In view of the stipulations contained in many of the Commercial Treaties between this country and foreign Powers, in respect of the freedom of individuals to enter and reside in the respective countries, the question arises whether the provisions of the Act conflict with such Treaty stipulations as accord most-favoured-nation treatment in this respect.

A Parliamentary Return of most-favoured-nation clauses in existing Treaties of Commerce and Navigation is inclosed, and also Memoranda showing the views of this Department on the bearing of these on the case under discussion. I am to point out that the stipulations in regard "to freedom to enter and reside" are in some instances absolute, as for instance is the case in the Treaties with Austria,* Colombia,* Germany,* &c. (see marked passages at pp. 2, 10, and 20 of the Blue Book), and are in other instances limited by the words "subject always to the Laws and Statutes of the two countries respectively," or words to this effect. Such is the case in the Treaties with Bolivia,* Costa Rica,* Mexico, and Russia,* &c. (see marked passages at pp. 4, 11, 31, and 44).

The Treaty with the United States is of the latter character, but as its stipulations do not apply to British Colonies, it is not directly pertinent to the question at issue.

Of the Treaties above mentioned, those marked with an asterisk apply to Canada.

A separate and complete list of all the Treaties containing most-favoured-nation clauses applicable to Canada is also inclosed.

Lord Salisbury is disposed to think that, as the Act does not place any restriction on the individual alien immigrator, but only on persons, &c., whether foreigners or natives, already within Canadian jurisdiction, who enter into contracts or arrangements to introduce aliens into the Dominion, it can scarcely be held to contravene or to conflict with the stipulations of existing Treaties with foreign Powers.

As, however, the matter is not entirely free from doubt, especially in the case specially dealt with in section 4 of the Act, I am to request that you will take the papers into your consideration, and favour Lord Salisbury with your opinion on the point above submitted, and also with any general observations which you may be disposed to offer on the subject.

I have, &c.
(Signed) G. N. CURZON.

List of Papers.

Colonial Office	March 2, 1898.
Canadian Act.	
Minutes.	
Return of Most-favoured-nation Clauses Blue Book. (Parliamentary 3584.)	
Return of Treaties, containing most-favoured-nation clauses, applicable to Canada.	

Report.

Apart from section 6, this Act cannot infringe any Treaty.

Canada is at liberty to restrict the engagement of foreign labour by persons residing in Canada, and it is to such residents only that the Act, except sections 4 and 6, applies, and section 4 applies to all masters of vessels of any nationality.

Section 6 might conceivably involve a breach of a most-favoured-nation clause in favour of a country which had not itself infringed the most-favoured-nation clause in question. Such a country might have passed a law containing all the provisions of this Act, except section 6, and then this Act would apply to natives of that country who might be deported under section 6.

The chance, however, of this contingency occurring is so remote that we do not on this ground advise the rejection of the measure, and its obvious futility is probably no reason for disallowing it.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 5, 1898.

No. 21.

[June 14, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 27, 1898.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the papers marked in the accompanying list, which refer to certain clauses of the Architects Registration Bill (Paper B) introduced into Parliament during the present Session. Architects Registration Bill.

The clauses in question, Nos. 38, 39, 40, and 41, to which attention has been called by the Lords Commissioners of Her Majesty's Treasury, deal with the registration of foreign practitioners. The first three of these clauses appear to be unobjectionable, from the point of view of this Department, and it is only with reference to the last-named clause (No. 41) that some doubt is felt, and I am therefore specially to request your attention to its wording.

The text of clause 41 runs as follows:—

"Her Majesty may from time to time, by Order in Council, declare that this part of this Act shall be deemed, on and after a day to be named in such Order, to apply to any British possession or foreign country which, in the opinion of Her Majesty, affords to the registered practitioners of the United Kingdom such privileges of practising in the said British possession or foreign country as to Her Majesty may seem just: and from and after the day named in such Order in Council, such British possession or foreign country shall be deemed to be a British possession or foreign country to which this Act applies within the meaning of this part thereof; but, until such Order in Council has been made in respect of any British possession or foreign country, this part of this Act shall not be deemed to apply to any such possession or country; and the expression 'on and after the passing of this Act' as used in this part of this Act, means, as respects any British possession or foreign country, the day on and after which this part of this Act is declared, by Order in Council, to apply to such British possession or foreign country.

"(1.) Her Majesty may from time to time, by Order in Council, revoke and renew any Order made in pursuance of this section, and on the revocation of such Order, as respecting any British possession or foreign country, such possession or foreign country shall cease to be a possession or foreign country to which this part of this Act applies, without prejudice, however, to the right of any persons whose names have been already entered on the register."

Upon this the question arises whether the provisions which confer upon Her Majesty power to apply, by Order in Council, or to revoke the application of the benefits of the Act in regard to any foreign country which may not be held to afford reciprocal privileges to British subjects, conflict with or contravene in any degree the stipulations contained in some of the Treaties between this country and foreign Powers, which concede either national or most-favoured-nation treatment to the subjects of such Powers in matters of commerce, industry, &c.

As an example of stipulations granting national treatment in this respect, Article XIII. paragraph 4, of the Treaty with Italy of the 15th June, 1883 (Paper C), may be cited.

It runs as follows:—

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"ARTICLE XIII.

"The subjects of each of the High Contracting Parties who shall conform to the laws of the country:—

"1. Shall have full liberty with their families to enter, travel, or reside in any part of the dominions and possessions of the other High Contracting Party.

"2. They shall be permitted to hire or possess the houses, manufactories, warehouses, shops, and premises which may be necessary for them.

"3. They may carry on their commerce either in person or by any Agents whom they may think fit to employ.

"4. They shall not be subject in respect of their person or property, or in respect of passports, nor in respect of their commerce or *industry* to any taxes, whether general or local, or to imposts *or obligations of any kind whatever* other or greater than those which are or may be imposed upon *native subjects*."

It is not clear that the obligation to show reciprocity would contravene the stipulations of paragraph 4, and it might be held that the national treatment stipulations of that Article would not be infringed by the provisions of the Bill.

Any person, whether a British subject or a foreigner, who complies with the requirements of clauses 19 and 22 of the Bill (which relate to apprenticeship, examination, &c.), is entitled to registration as an architect; but if a foreigner or a British subject wishes to obtain registration by reason of his possessing a foreign diploma, and without complying with the requirements to which persons having no such foreign diploma are subjected, he must, under clause 41 of the Bill, be the subject of a country giving reciprocity in this respect.

With regard to the question of most-favoured-nation treatment, however, as it is understood in this country, the case appears to be somewhat doubtful, and as an instance of stipulations granting most-favoured-nation treatment in matters of industry, profession, &c., Article I of the Treaty with France of the 28th February, 1882 (Paper D), may be quoted.

Article I runs as follows:—

"ARTICLE I.

"The Customs Tariff for goods the produce or manufacture of the United Kingdom on their importation into France and Algeria, and for goods the produce or manufacture of France or Algeria on their importation into the United Kingdom, being from henceforth regulated by the internal legislation of each of the two States, the High Contracting Parties guarantee to each other reciprocally in the United Kingdom and in France and Algeria in all other matters the treatment of the most favoured nation.

"It is therefore understood that, with the exception above stated, each of the High Contracting Parties engages to give the other immediately and unconditionally the benefit of every favour, immunity, or privilege in matters of commerce or *industry* which have been or may be conceded by one of the High Contracting Parties to any third nation whatsoever, whether within or beyond Europe.

"It is likewise understood that in all that relates to transit, warehousing, exportation, re-exportation, local dues, brokerage, customs formalities, samples, and likewise in all matters relating to the exercise of commerce and *industry*, and in respect to residence, whether temporary or permanent, *the exercise of any calling or profession*, the payment of taxes or other impositions, and the enjoyment of all legal rights and privileges, including the acquiring, holding, and power of disposing of property, British subjects in France or in Algeria, and French in the United Kingdom, shall enjoy the treatment of the most favoured nation."

The principle laid down in clause 41 of the Bill is by no means unusual, but Lord Salisbury would, nevertheless, be glad to be informed whether, in the opinion of the Law Officers, it can in strictness be held to contravene stipulations of the nature of those above quoted.

For instance, "The Medical Act, 1886" (Paper E), section 17, declares that Her Majesty may, by Order in Council, apply portions of it to any British possession or foreign country which, in the opinion of Her Majesty, affords to the registered medical practitioners of the United Kingdom such privileges of practising in the said British possession or foreign country as to Her Majesty may seem just.

In the same manner, under "The Merchant Shipping Act, 1894" (Paper F), Orders in Council are issued admitting foreign countries, where the British system of tonnage measurement is adopted, to privileges with respect to the tonnage certificates of their vessels.

In such cases, although conditions are imposed by Act of Parliament which are perhaps not in entire harmony with the principle of unconditional most-favoured-nation treatment, no inconvenience would appear to have hitherto arisen in carrying these conditions into effect.

I am to request that you will take the inclosed papers into your consideration and favour his Lordship with your opinion on the points raised in this letter, viz., whether the provisions of the Bill contravene Articles in Treaties guaranteeing:—

1. National treatment;
2. Most-favoured-nation treatment; and with any observations of a more general nature which you may be disposed to offer on the subject.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Treasury letter .. .. April 28, 1898.
(B.) Architects Registration Bill.
(C.) Treaty with Italy of 1883. (Treaty 717.)
(D.) Treaty with France of 1882. (Treaty 695.)
(E.) Medical Act, 1886. (49 & 50 Vict., cap. 48.)
(F.) Merchant Shipping Act, 1894. (57 & 58 Vict., cap. 60.)

Report.

In our opinion the provisions of this Bill do not contravene Treaties guaranteeing national treatment.

The same conditions are imposed on British subjects and on foreigners with regard to registration, except that with regard to foreign diplomas the conditions are slightly more stringent in the case of British subjects (clause 38 (2).

No Treaty contains any clause that foreign diplomas shall be as valid as British diplomas.

Nor do the provisions of this Bill contravene Treaties guaranteeing most-favoured-nation treatment. Such Treaties guarantee for the subjects of the Power treatment as favourable as that accorded to the subjects of the most favoured nation. This Bill treats all foreigners alike. The power given to Her Majesty in Council by clause 41 is merely to decide what are the countries whose diplomas may be recognized, and we do not think that its exercise could be held to infringe any most-favoured-nation clause.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 14, 1898.

No. 22.

[September 21, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 12, 1898.

Right of foreign vessels to trawl in the Firth of Clyde.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying letter from the Scottish Office respecting the question of trawling by foreign vessels in the Firth of Clyde.

Since the passage of the Herring Fishery for Scotland Act of 1889, the Firth of Clyde has been closed to British trawlers, and foreign trawlers have not hitherto been observed therein, but on the 20th ultimo the Danish trawler "Dania" was seen trawling in those waters off the coast of Ayrshire.

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In view of the fact that the Firth of Clyde is nearly land-locked, and is no where wider than 30 miles in breadth, the Secretary for Scotland inquires whether, if the doctrine of the "King's Chambers" has now any legal weight, it could be applied in the present instance, in order to exclude foreign trawlers from the Firth.

Lord Balfour draws a distinction between the present case and that of the Moray Firth, which is frequented by foreign trawlers, in view of the much narrower and more restricted limits of the Clyde waters, and of the fact that they are closed in virtue of an Act of Parliament, whereas the Moray Firth is only closed to British trawlers by a bye-law of the Fishery Board for Scotland, which, however, gives no power to exclude foreign trawlers.

The contention which Lord Balfour suggests raising with regard to the Firth of Clyde could hardly be advanced on behalf of the Moray Firth, which is 80 miles wide at its entrance, and which embraces an area of nearly 2,500 square miles.

A somewhat similar point was recently raised in connection with the question of trawling in Icelandic waters, and I have therefore the honour also to inclose a despatch from Sir C. Scott, Her Majesty's Minister at Copenhagen (Paper (B)), reporting a conversation which he held in October last with M. Vedel respecting the claim of the Danish Government to extend the maritime jurisdiction of Denmark to a distance of 3 miles outside a line drawn between headlands not further apart than 10 miles.

The reply returned by Lord Salisbury to this despatch is also inclosed (Paper (C)), in which it was pointed out that the doctrine of the 10-mile limit for bays could not, in the opinion of Her Majesty's Government, be regarded as one of universal acceptance or even of general application; and that although the rule had been adopted in certain specific cases for special objects and with local limitations, these arrangements were insufficient to prove that general consensus, which is the necessary foundation of a rule of international law.

Sir C. Scott was instructed to inform the Danish Minister for Foreign Affairs in this sense, and to state that Her Majesty's Government did not admit the rule as a general principle which they could accept without reserve, either in respect of their own possession or as a part of international law.

In these circumstances the question arises whether, in view of the attitude already adopted in the instance above quoted, Her Majesty's Government would, in consideration of the special features of the case and of the importance attached to the protection of the fishing interests of a large section of Her Majesty's Scotch subjects, be justified in applying the doctrine of the "King's Chambers" in the particular case of the Firth of Clyde and in excluding foreign trawlers therefrom.

I am accordingly to request that you will take the papers submitted herewith into your consideration and favour his Lordship with your opinion on the point thus raised, as well as with any general observations you may have to offer on the question.

I have, &c.
(Signed) GEORGE N. CURZON.

List of Papers.

(A.)	Scottish Office		July	30, 1898.
(B.)	Sir C. Scott	(No. 48. Commercial)	October	12, 1897.
(C)	To Sir C. Scott	(No. 35. Commercial)	December	21, „

Report.

There is no definite rule of international law on this subject, and every case must be decided on its own special circumstances.

There is no general rule as to a width of 10 miles, though this has been adopted in the North Sea Convention and other Treaties.

Where the Gulf is very deep the waters may be territorial even if the mouth be of a width which would exclude the idea of territoriality in the case of a shallower gulf.

In the present case we think that to the south of the Island of Arran the waters should not be claimed as territorial, but should be regarded as on the same footing as the Irish Sea. The distance from the Mull of Cantire to Corsewall Point in the county of Wigtown is nearly three times as great as from the Mull to the Irish coast.

But when the latitude of the south end of Arran is reached the case seems to us to be different. At this point the distance from Arran to Cantire is a little under 10 miles, and from Arran to Ayrshire a little over 10 miles, while the Firth of Clyde, with its arms, extends to the north for a distance of over 60 miles. We think that from this point northward the Firth of Clyde may fairly and properly be claimed as territorial water. There is no positive rule of international law to exclude what appears to us to be the natural inference to this effect from the very peculiar geography of this arm of the sea.

Before, however, this claim be asserted it must be ascertained that there are no Treaties with which it would be inconsistent. Would it clash with any clause in the Fishery Convention with France?

Subject to this consideration, we think that Her Majesty's Government may claim the right to exclude foreign trawlers from these waters.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 21, 1898.

No. 23.

[December 20, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 16, 1898.

Protection of Foreign Diplomats in England. I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith, for your consideration, a Circular despatch addressed by the Ministry of Foreign Affairs at Paris to the French Diplomatic Representatives at this and the various other Courts, which was lately communicated by Baron de Courcel to Lord Salisbury, and in which a request is made for information with regard to the protection afforded by English law to Diplomatic Representatives of foreign States at this Court in respect of offences committed against them, including defamatory libels published regarding them in the press or otherwise.

I am also to inclose the draft of the reply which, if you should concur in it, Lord Salisbury proposes to return to this communication; his Lordship would, however, before dispatching the note, be glad to be informed, at your early convenience, whether its terms are, in your opinion, right and proper in the circumstances.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

French Ministry for Foreign Affairs to Baron de Courcel.—(Communicated to Foreign Office November 30, 1898.)
To M. Cambon.
Act of Parliament (7 Anne, cap. 12).

Report.

The draft despatch, as altered and initialled by us, is proper to be sent.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 20, 1898.

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Annex.

Draft of Letter to M. Cambon.

Your Excellency, *Foreign Office, December* , 1898.

ON the 30th ultimo his Excellency Baron de Courcel communicated to me a despatch which he had received from the French Ministry of Foreign Affairs, requesting information with regard to the protection afforded by the provisions of English law to Diplomatic Representatives of foreign States at this Court in respect of offences committed against them, including defamatory libels published regarding them in the press or otherwise,

In this connection the French Ministry for Foreign Affairs was specially desirous of obtaining answers to three questions which were embodied in the Circular despatch above alluded to.

Although it is practically impossible to return categorical answers to the three questions put to Baron de Courcel, the following statement will, I trust, afford, so far as the position in the United Kingdom, of the Ambassadors of the French Republic at this Court is concerned, such information as is required by the French Ministry for Foreign Affairs.

The only Statutory enactment which exists in this country with regard to the protection of foreign Diplomatic ~~Ministers from outrages, &c.,~~ *Ministers and their suites*, is the Act of 7 Anne, cap. 12 (1708), a copy of which I have the honour to inclose.

By this Act not only are the persons of Ambassadors and other public Ministers ~~inviolable~~ *exempt from process of law in civil cases*, but all writs and processes whereby "their goods and chattels may be distrained, seized, or attacked," are "utterly null and void;" and all concerned in obtaining such writs or processes are subject to severe punishment.

The Statute protects also those in the service of the Ambassadors or Ministers.

This Act, ~~which has always been considered to be in precise conformity with the law of nations, was intended to be declaratory of the "jus gentium" on the subject, and to embody the doctrines of that law in the provisions of the municipal law of this country~~ *was really declaratory of the common law of this country, and declared the embodiment in our municipal law of the principles of international law.*

According to this Act, the Ambassador or Minister, and his domestics or domestic servants are the only persons entitled to privilege. With regard to persons in the service of the Ambassador or Minister, the Act makes no distinction between foreigners and British subjects, the condition being that such persons must be the domestics or domestic servants of the Ambassador or Minister.

I may add that Her Majesty's Government decline to receive any British subject in the capacity of Diplomatic Agent of a foreign Power, and that although, strictly speaking, an Ambassador or Minister can legally claim diplomatic privilege only for persons forming *bonâ fide* a part of his family, and not for persons not actually domesticated with him or resident in his house, yet it is, in practice, allowed in the case of persons who, for the convenience of the Ambassador or Minister, reside elsewhere than in his house, provided they pass the principal part of their time there, occupied as domestics or domestic servants, and are engaged in no other occupation whatever.

Any claim to diplomatic privileges on the part of persons alleged to belong to the family or establishment of a foreign Ambassador or Minister would, however, if contested, have to be decided by the competent Courts of Justice in this country.

It is the practice *for foreign Ambassadors and Ministers in this country* to furnish a list of the suites and servants ~~sent~~ *respectively* to this Department ~~by foreign Ambassadors and Ministers in this country~~ *to the* police authorities. This list is communicated through the Secretary of State for the Home Department, who, in the event of any person named in the list being arrested, would, ~~on finding his name on the list,~~ at once release him.

With regard to other offences, libels, &c., against foreign Diplomatic Agents, the latter ~~would appear to~~ have the same legal remedies as British subjects, *or other residents in this country*, but *having regard to the special position of Ambassadors*, ~~as it is the bounden duty of every State to make reparation for injuries inflicted upon the Ambassador of any foreign Power residing at its Court,~~ Her Majesty's Government would no doubt, as an act of courtesy, on the matter being brought to their attention by the Ambassador or Minister concerned, at once obtain the advice of the Law Officers of the Crown for the time being, and if, after consideration of their advice, a prosecution should be thought ~~necessary or~~ advisable, would *give* instruct*ions* ~~them to conduct it~~ *for its institution.*

According to the Criminal Law of England, it is a misdemeanour for any one to publish any libel tending to degrade, revile, or expose to hatred and contempt, any foreign Prince or Potentate, Ambassador, or other foreign dignitary, with intent to disturb peace and friendship between the United Kingdom and the country to which any such person belongs; and ~~it is probable that,~~ in any ~~suitable~~ *proper* case, Her Majesty's Attorney-General would, on the matter being brought ~~coming~~ to his notice, *at once institute proceedings against any person so offending* ~~of his own instance, file an "ex officio" information in the Queen's Bench Division of the High Court of Justice against the person so offending.~~

R. E. W.
R. B. F.

GERMANY.

No. 24.

[January 25, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 16, 1897.

Claims of British subjects for losses through burning of Ngami by Germans.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, which relate to the claims of certain British subjects to compensation from the German Government in respect of certain property which was destroyed at the burning of the town of Ngami, in Togoland, on the 16th December, 1894.

The earlier correspondence on the subject is summarized in the Memorandum (Document A) of the 11th November, 1896, and the facts of the case are briefly as follows:—

In February 1894 a Convention was concluded between this country and Germany, establishing a Customs Union between the Gold Coast east of the River Volta and Togoland, by which it was stipulated that the British possessions on the Gold and Slave Coasts lying to the east of the River Volta, and the German possessions on the Gold and Slave Coasts, should form a single Customs sphere, without any intervening Customs barrier, in such a manner that one and the same rate of customs duty should be levied within them, and that goods having paid customs duty on the frontier of the one territory might be imported into, and thus circulate freely throughout the other without additional payment.

A map (Document B) is inclosed, showing the relative situation of the territories to which this Agreement relates.

Many complaints were, however, made of the spirit in which this arrangement was carried out by the German authorities, who insisted on treating as smugglers all persons crossing from British into German territory who could not prove that their wares had paid duty—an impossible demand in the case of petty traders.

The Customs documents showing that duty had been paid at a British Custom-house on the frontier of the common Customs sphere would generally relate to rather large parcels, and it is evident that each purchaser of a portion of the parcel could not in these circumstances produce Customs papers relating to his individual portion of the original parcel.

At length, in December, 1894, the German authorities set fire to, and destroyed, as a punitive measure, Ngami, or Nkami, a town situated, indeed, within German territory, but inhabited for the most part by natives of the Gold Coast, it being alleged that the place was a centre of smuggling.

The German authorities assert that the residents fled with their property on the approach of the punitive expedition, but the result of a careful inquiry by one of Her Majesty's Judges for the Gold Coast Colony has been to show that there are substantial claims by British subjects amounting to nearly 3,000*l.* for property destroyed in the town (see Colonial Office, 30th August, 1897, Document C).

The question arises whether, in these circumstances, there is good ground for making a representation to the German Government with a view to obtaining compensation for the British subjects who suffered loss on the occasion.

Lord Salisbury is not aware of any case where British subjects have claimed compensation for loss occasioned by the destruction, as a punitive measure, of a town by the authorities of a country to which that town belonged; but somewhat similar claims were made after the bombardment of Hickory Town by the Germans in 1885, and of Minengani by the Portuguese in 1888, and copies of the Reports of the then Law Officers of the Crown on the cases submitted to them on those occasions respectively are inclosed for convenience of reference (Documents D and E).

L.O.R 1885 (Conf. 5246), p. 15.

L.O.R. 1888 (Conf. 5785), p. 5.

I am to request that you will take into your consideration the papers which are transmitted herewith, and that you will favour Lord Salisbury with your opinion on

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the question submitted in this letter, and with any general observations which you may have to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Memorandum	November 11, 1896.	
(B.) Map.		
(C.) Colonial Office	August 30, 1897.	
(D.) Law Officers. (Confidential 5246, p. 15)	September 19, 1885.	
(E.) Ditto. (Confidential 5785, p. 5)	June 2, 1888	4

Report.

The information before us does not disclose sufficient ground for the presentation of a formal claim against the German Government.

In the absence of facts, showing that the action of the authorities in sending a punitive expedition was reckless, or uncalled for, or that consistently with the sending of such an expedition notice might have been sent to British subjects to remove their goods, there do not appear to us to be any special circumstances upon which a formal demand for compensation could be based.

The ground on which the German Government refused to entertain the claim was apparently that they denied the destruction of the property in question. The investigation by Mr. Justice Smith (though we must observe that it was necessarily *ex parte*) may afford an opportunity for again bringing this matter forward by way of friendly remonstrance, asking for consideration of, and compensation for, the losses sustained; and the German Government might be informed that formal judicial investigation has shown that the property was, in fact, destroyed, and that therefore the question of compensation should be favourably considered.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 25, 1898.

JAPAN.

No. 25.

[March 30, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, March* 5, 1898.

Petition for free pardon for Mrs. Carew convicted of murder in H.M.'s. Court for Japan.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the accompanying Petition, with the papers thereto annexed, which has been handed to his Lordship for submission to the Queen. The prayer of this Petition is for the grant of Her Majesty's free pardon to Edith May Hallowell Carew, who, on the 1st February, 1897, was convicted in Her Majesty's Court for Japan on the charge of the wilful murder of her husband, and sentenced to death, but whose sentence was subsequently commuted to one of imprisonment with hard labour for life.

The material facts of the case are set out fully and in chronological order in Part I of the "Statement in support of the Petition" (Paper marked B). The principal events may be briefly summarized as follows:—

Mr. Carew died at Yokohama on the 22nd October, 1896. An inquest was opened before Mr. Hall, the Acting British Consul at that port, sitting as Coroner, and a jury of five. It terminated on the 6th November, 1896, with the following verdict returned by the jury:—

"We find that W. R. H. Carew died on the 22nd October, 1896, at the Royal Naval Hospital from the effects of arsenic, but by whom the poison was administered there is no direct evidence to show."

On the 11th November Her Majesty's Crown Prosecutor in Japan appeared before the Assistant Judge of Her Majesty's Court for Japan, to ask for the arrest of Mrs. Carew on the charge of the wilful murder of her husband. After proceedings extending over several days, Mrs. Carew was, on the 18th November, 1896, committed for trial. The trial opened on the 5th January, 1897, in the Court for Japan, before Mr. Mowat, then Judge of that Court, and a jury composed of five British subjects resident at Yokohama. It lasted twenty-one days in all. On the 1st February the jury returned a verdict of guilty, and sentence of death was thereupon passed upon the prisoner.

This sentence, which, under the provisions of Article 69 of "The China and Japan Order in Council, 1865" (copy annexed, Paper M), could not be carried into execution without the special directions of Her Majesty's Minister at Tôkiô, given in writing under his hand, was by him, and in virtue of the power vested in him under the said Article of the Order in Council, commuted to a sentence of imprisonment with hard labour for life. Full reports of the proceedings at the inquest, the Magisterial inquiry, and the trial, as published by the "Japan Gazette," will be found in the printed volume accompanying the Petition (Paper C).

Mrs. Carew was at first imprisoned in the British consular gaol at Yokohama, but was subsequently removed to Hong Kong, under the provisions of Article 79 of the above-mentioned Order in Council (Paper M), as modified by Article 7 (2) of "The China and Japan Order in Council, 1878" (Paper N). From Hong Kong the convict was finally brought to England, in accordance with the provisions of "The Colonial Prisoners Removal Act, 1884," and she is now serving her term of imprisonment in this country.

In the meantime a Petition was lodged in the Privy Council Office on behalf of Mrs. Carew, for special leave to appeal to Her Majesty in Council against the sentence of the Court for Japan. This Petition was heard on the 14th July, 1897. A record of the proceedings before the Judicial Committee will be found in the Law Reports (Appeal Cases, 1897, Part V, p. 719). It was submitted on behalf of the petitioner, "that, by the laws of England, no natural-born British subject can be tried or convicted of any capital or other felony in any of Her Majesty's Courts except by the verdict of twelve men." The contention, therefore, was, "that the verdict of five men was null and void, and that the verdict and sentence in the present case ought to be set aside and quashed." It was at the same time submitted "that there had been misdirection and misreception of evidence."

Leave to appeal was refused by the Judicial Committee. In delivering the Committee's judgment, the Lord Chancellor declared that Her Majesty had full jurisdiction to constitute the Court with a jury of five. With regard to the other questions which Counsel for the petitioner had attempted to argue, the Committee held that no case had been made out before them of a nature to show that by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice had been done.

The circumstances in which the Petition to the Queen for a free pardon was drawn up and signed are explained in a letter addressed to the Secretary of State for Foreign Affairs on the 24th January last by Messrs. Bridges, Sawtell, and Co., the solicitors acting for Mrs. Carew, which forms Annex (D) to my present letter. Attention is therein called to the limits within which the proceedings before the Judicial Committee above referred to were necessarily confined, stress being laid on the fact that the merits of Mrs. Carew's case itself "were not then argued at all, and that the decision" (of the Judicial Committee) "had no relation to them." Whilst this view, stated in such categorical terms, is not perhaps entirely borne out by the recorded Judgment of the Committee, which distinctly refers to "the other questions" raised by petitioner's counsel (*i e.*, presumably, the questions of misdirection and misreception of evidence), the contention that the main question before the Committee was that of the validity of a verdict given by a jury of five would appear to be substantially correct.

The grounds on which the signatories of the present Petition base their prayer for the grant of a free pardon can best be stated in their own words. The petitioners submit "that there has been a miscarriage of justice, that the verdict of the jury was

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against the evidence, and that Mrs. Carew did not obtain a fair trial" on the following grounds, which are thus set out in paragraphs 3–17 inclusive of the Petition:—

* * * * * *

"3. The charge, and the only charge, laid by the prosecution against Mrs. Carew was that she had poisoned her husband by administering to him arsenic in the form of Fowler's solution of arsenic. The prosecution expressly admitted that she did not administer to him any poison other than arsenic or any arsenic other than in the form of Fowler's solution.

"4. A chemical examination of portions of the deceased's viscera was made by one Edwin Devers, M.D., and by him alone, and he stated on oath at the trial that he found therein traces of lead, and that lead undoubtedly contributed to Mr. Carew's death. No examination was, however, made of those organs, which in cases of death by lead poisoning are most affected, nor did Dr. Devers ascertain what quantity of lead was contained in the organs which he did examine. Under these circumstances it was not possible to say how far death was due to lead poisoning, and it may be that Mr. Carew's death, if due to poison at all, was due to lead poisoning alone. By the admission of the prosecution Mrs. Carew did not administer any lead poison to her husband.

"5. Dr. Devers, in his examination of the deceased's viscera, discovered also traces of arsenic In a $\frac{1}{9}$th of the liver he discovered $\frac{1}{54}$th of a grain of arsenic, and in the other organs which he examined, the stomach, intestines, and abdominal fluid, he discovered a still smaller quantity, which he did not think it worth while to weigh, and did not in fact weigh. It is clear, therefore, that, although owing to unfortunate incompleteness of Dr. Devers' examination, it is impossible to ascertain exactly how much arsenic was in Mr. Carew's body at the time of his death, yet there could not possibly have been more than $\frac{18}{54}$ths or $\frac{1}{3}$rd of a grain of arsenic, and probably the quantity was much less. The smallest fatal dose of arsenic was said at the trial to be 2 grains, and books of authority give 3 or 4 grains as the smallest fatal dose. Under these circumstances it is necessary, in order to support the case for the prosecution that Mr. Carew's death was due to arsenic, to suppose that a very large quantity of arsenic was taken by Mr. Carew, and was eliminated from his system before his death. Such powerful elimination, especially in view of the fact that the kidneys, the chief organs of elimination, were probably diseased, is highly improbable, if not impossible, and further in this case, the presence of lead would be sufficient to account for death, so that there is no occasion to adopt the theory of elimination at all.

"6. Some of the arsenic found by Dr. Devers in Mr. Carew's stomach was in the form of white or solid arsenic, and must have been taken by the deceased in that form, and was therefore by the admission of the prosecution not administered by Mrs. Carew. The prosecution, while admitting that Mrs. Carew had not administered this arsenic, were unable even to suggest how Mr. Carew came to take this arsenic, viz., whether he took it himself, or whether it was administered to him by another. But in either case it would not be proper or safe for a jury to convict.

"7. It further appeared not only that some of the arsenic found in Mr. Carew's body must have been taken by him in the form of white arsenic, but it may be that every trace of arsenic which was so found was taken by him in that form, and that it was merely a matter of speculation whether Mr. Carew had in fact taken any arsenic at all in the form—and the only form—in which the prosecution alleged that Mrs. Carew had administered it to him, viz., the form of Fowler's solution of arsenic.

"8. The Judge told the jury it was impossible to discover any motive for the crime. It is quite incredible that a wife, being sane, would without motive murder her husband, and it is scarcely less incredible that the motive, if motive there were, could be concealed.

"9. It was proved at the trial by no less than nine witnesses that Mr. Carew since the year 1880 had been in the habit of taking arsenic, sometimes as a nerve tonic, and sometimes to relieve pain caused by bladder complaint, and it was also proved that at the time of his death he was suffering from the pain, from which he used to obtain relief by the use of arsenic. It also appeared that arsenic used in excess would cause pain very similar to that caused by the bladder complaint, so that Mr. Carew may have mistaken the pain caused by the arsenic for the pain from which he used to obtain relief by the use of arsenic. Under these circumstances it is more than probable that at the time of his death Mr. Carew was himself taking arsenic to relieve the pain caused by bladder complaint, from which he was unquestionably suffering at that time, and that if his death was really due to excessive doses of arsenic, such excessive doses were taken by him because he mistook the pain caused by the arsenic for the pain from which he hoped to obtain relief by use of arsenic.

"10. The case being one of circumstantial evidence the Judge ought to have told the jury that they could not find Mrs. Carew guilty unless they were satisfied that the circumstances were not only consistent with her guilt, but were also inconsistent with any other rational explanation. As a matter of fact, the circumstances proved at the trial were consistent with death being due not to arsenic but to lead poisoning: they were consistent with death being due (if to arsenic at all) to white arsenic: they were consistent with death being due (if to arsenic at all) to arsenic taken by the deceased himself, and further since the prosecution could give no explanation of how the deceased came to take white arsenic, beyond admitting that Mrs. Carew had not administered it, the circumstances were consistent with some person other than Mrs. Carew having feloniously administered arsenic to the deceased. While, therefore, the circumstances were obviously consistent with several rational, and indeed probable, conclusions other than that of Mrs. Carew's guilt, it further appears that the circumstances were to a great extent inconsistent with her guilt. No motive could be shown for the crime. Mrs. Carew was able to explain fully and satisfactorily why she had obtained any Fowler's solution of arsenic, and what she had done with such arsenic as she did obtain. She obtained such arsenic quite openly, she herself writing for it. She was most solicitous about her husband's illness, and on three separate occasions at least she unnecessarily summoned the doctor to see him, when if the case for the prosecution were true she knew he was suffering from the effects of arsenic administered by herself.

"11. For the reasons above set out, your petitioners most humbly submit that there has been a miscarriage of justice, and that the verdict was against the evidence.

"12. For the reasons hereinafter appearing, your petitioners most humbly submit that Mrs. Carew did not obtain a fair trial. The trial lasted four weeks, and its length was due to the fact that the prosecution called a mass of evidence which, though wholly irrelevant with regard to the issues in the case, was calculated to excite prejudice against the prisoner, and which the Judge directed the jury to disregard. Apart from the unfairness of placing such evidence before the jury at all, the mere length of the trial caused thereby was such as to prevent the jury from grasping the true issues and the facts bearing on those issues, and to hinder a fair trial.

"13. In the middle of the trial a charge of murdering Mr. Carew was preferred against a certain Miss Jacob, and in consequence of such charge being preferred the issue before the jury became in fact changed from 'Does the evidence prove that Mrs. Carew murdered her husband?' to 'Admitting murder was done, is it more probable that Mrs. Carew or Miss Jacob is the guilty person?'

"14. The jury consisted of five persons only drawn from among the residents at Yokohama, who before entering the jury-box must have been familiar not only with all the details of the case, but also with all the scandal and gossip and loose rumours which had for the previous two months been circulating throughout Yokohama. The prosecution ought to have caused Mrs. Carew to be tried either in Hong Kong or in this country.

"15. The evidence of Miss Jacob was admitted without cross-examination, and she went to the jury as a perfectly honest and truthful witness. As a matter of fact she is not a witness to whom credit ought to be given; but since the Judge admitted her evidence, and refused to allow her to be cross-examined, the jury were left in ignorance of her past life and character. It is very probable that knowledge of her life and character would have had great influence on the verdict of the jury.

"16. The Judge misdirected the jury. Firstly, he told them that it was not necessary for the prosecution to prove that death was actually due to the poison which Mrs. Carew was accused of administering. Secondly, he gave no direction to the jury as to the effect which the admission by the prosecution, that the white arsenic found in Mr. Carew's body was not administered by Mrs. Carew. ought to have had on their verdict. He merely mentioned incidentally that the charge of administering white arsenic had been abandoned by the prosecution, but obviously the fact that at the time of his death the deceased was himself taking the very poison which the prisoner was accused of administering, or some person other than the prisoner was administering to him, was of the very greatest importance.

"17. Thirdly, he told the jury that there was no evidence of the use of arsenic by the deceased since October 1894, a statement which is clearly contrary to the facts as proved at the trial."

The petitioners finally refer to the statement sent with their Petition, in which the above reasons and arguments are more fully set out (Paper B).

I am directed to request that you will take these papers into your consideration, and will favour Lord Salisbury with your opinion as to—

1. Whether on any, and, if so, on which, of the grounds mentioned in the Petition its prayer should be recommended to Her Majesty's merciful consideration, with a view to the grant of a free pardon to Mrs. Carew; and

2. Whether, if you should be satisfied that the case is not one in which the grant of a free pardon could properly be recommended to Her Majesty, any, and if so what, mitigation or remission of the sentence which Mrs. Carew is now undergoing might with propriety be granted.

Lord Salisbury will at the same time be glad to be favoured with any observations of a more general nature which you may be good enough to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Petition to the Queen.
(B.) Statement in support of Petition.
(C.) Report of Proceedings at Inquest, Magisterial Inquiry, and Trial.
(D.) Letter from Messrs. Bridges, Sawtell and Co. to Foreign Office, January 24, 1898.
(E.) Affidavit of J. H. Miller.
(F.) Original documents referred to in above
(G.) Fair copies of same.
(H.) Affidavit of Mrs. Marjoribanks.
(I.) Affidavit of J. M. Tucker
(K.) Affidavit of E. F. Thomas.
(L.) Certificate of W. Isaac, Esq.
(M.) "China and Japan Order in Council, 1865." (Confidential 1354.)
(N.) Ditto ditto 1878. (Confidential 3697.)

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Report.

In our opinion the summing-up of the learned Judge was not satisfactory. We think that he failed sufficiently to explain to the jury what he meant by the expression "conduced to the death," and that he did not correctly state the question as to the symptoms of the deceased being consistent only with arsenical poisoning; but before we finally report on the case, we think it desirable to have the views of some competent expert upon the medical and chemical questions which arose on the trial.

We would suggest that, for this purpose, the assistance of the Home Office might be asked. If the papers were submitted to the Home Secretary he would be able to get such assistance on these points as he would get if he had to consider a Petition for pardon in a case tried in this country.

Without limiting the points which the medical expert should consider, we should be glad to have his assistance upon the questions—

(*a.*) Whether the white arsenic found in the body could possibly be due to Fowler's solution.

(*b.*) Whether the symptoms described by the witnesses are consistent only with arsenical poisoning.

(*c.*) Whether the sequence of the symptoms, when and as they occurred, are consistent with the administration of Fowler's solution to a quantity of from 3 to 4 ozs. distributed over four days, *i.e.*, between the 17th and 22nd October.

(*d.*) Whether the death of Mr. Carew could, under the circumstances, have been the result of the administration of, say, 3½ ozs. of Fowler's solution.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 30, 1898.

MEXICO.

No. 26.

[August 23, 1898.]

Foreign Office to the Law Officers of the Crown.

Navigation in territorial waters of Mexico and British Honduras.

Gentlemen, *Foreign Office, August* 10, 1898.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the inclosed papers relating to questions of navigation in the territorial waters of Mexico and British Honduras.

The geographical position will be seen on the map which accompanies the Treaty between Great Britain and Mexico (Paper A), and the approaches to the Rio Hondo, which forms the boundary between British and Mexican soil, are more clearly shown in the map inclosed in the letter from the Colonial Office of the 16th February last (Paper H).

Questions of navigation and jurisdiction arise at two points. In the first place, it is desired to regulate the conditions under which Mexican vessels can make use of the territorial waters of British Honduras, between Ambergris Cay and the mainland of the Colony, at the entrance to the Bay of Chetumal; and, secondly, there are doubts as to the jurisdiction to be exercised by the Mexican authorities over British vessels proceeding through Mexican waters at the mouth of the Rio Hondo.

With regard to the questions in the first category, I am to call attention to the Additional Article of the Treaty referred to above, by which "Her Britannic Majesty guarantees to Mexican merchant-vessels in perpetuity the absolute liberty as at present enjoyed of navigating the Strait opening to the south of Ambergris Cay, between this cay and the mainland, as well as of navigating the territorial waters of

British Honduras." The negotiations which preceded the signing of this Article are summarized in the Memorandum by the Librarian of this Department (Paper L), from which it will be seen that the Article related solely to merchant-vessels, and that the proposal to include ships of war was distinctly and expressly refused by Her Majesty's Government. Sir H. Dering, Her Majesty's Minister at Mexico, was, moreover, instructed to explain to the Mexican Government that, although Her Majesty's Government had no wish to place obstacles in the way of *boná fide* revenue cruisers employed in the preventive service of the Mexican Government, it should, nevertheless, be remembered that passage through British territorial waters was granted to such vessels as a matter of courtesy and not of right; and he was also to intimate in friendly terms that this privilege must not be abused.

On the other hand, it must be borne in mind that in the not improbable event of the Mexican Government sending an expedition against the Santa Cruz Indians, the Colonial Government are anxious that the attack should be made from the south, *i.e.*, by sea, in order to drive the Indians away from the Colony, because, if attacked from the eastern or land side, it is feared that large numbers of Indians would take refuge in British Honduras.

As regards the entrance to the Rio Hondo, it need only be explained that British vessels going to and fro are obliged, owing to the shallows, to pass through Mexican waters, and that the Mexican Customs authorities have established a floating station near the mouth of the river.

The following are the questions to which answers are requested by the Governor of British Honduras, and on which Lord Salisbury desires to be favoured with your opinion:—

1. Whether the Mexican authorities may lawfully carry through British waters to the west and south of Ambergris Cay British subjects and British ships seized in Mexican territory or Mexican waters for an alleged breach of Mexican Customs or revenue law.

2. Whether British subjects and British ships so seized may be detained on board or in the vicinity of the floating station for an indefinite time without being taken before some Mexican Tribunal for trial or condemnation.

3. How far British vessels proceeding to places on the British side of the Hondo, and without any intention of stopping at any place in Mexican territory, but having of necessity in the course of their voyage to pass through Mexican waters in consequence of the fact that the channel leading to and through the bar of the Hondo River is situated in Mexican waters, are liable to be stopped and searched by Mexican authorities in Mexican waters?

4. How far such vessels are bound to comply with Mexican Regulations in respect of the papers which they should carry?

5. How far every such vessel so provided is liable to be searched in spite of the fact that it is provided with the papers required by the Mexican authorities?

6. In the event of the Mexican Government, with the object of subjugating the Indians, sending transports and ships of war and military stores through the territorial waters of British Honduras, what attitude is to be taken by the Government of the Colony?

7. Are such vessels to be allowed to pass at all through the territorial waters of the Colony?

8. If so, are they to be allowed to pass unquestioned, and as a matter of course, or should they be formally called upon to ask permission?

9. In the event of such vessels being allowed themselves to pass through the territorial waters of the Colony, what steps, if any, should be taken if such vessels have on board Santa Cruz Indians who have been taken prisoners by the Mexican troops?

I am to add that his Lordship will also be glad to receive any general observations which you may wish to offer on the points submitted to you.

I have, &c.
(Signed) T. H. SANDERSON.

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List of Papers.

(A.)	Treaty between Great Britain and Mexico, July 8, 1893, and April 7, 1897. (Treaty 1006.)	
(B.)	Colonial Office..	August 7, 1895.
(C.)	Ditto	February 21, 1896.
(D.)	To Colonial Office	March 20, „
(E.)	Colonial Office	March 25, „
(F.)	To Sir H. Dering .. .. (No. 16) (And to Colonial Office, April 15, 1896.)	April 15, „
(G.)	Colonial Office..	November 21, „
(H.)	Ditto	February 16, 1898.
(I.)	Ditto	February 17, „
(J.)	Ditto	March 23, „
(K.)	Ditto	June 21, „
(L.)	Memorandum by Mr. Oakes	July 6, „

Report.

1. The Mexican authorities may not lawfully carry through British waters British subjects or ships seized in Mexican territories or waters for breach of Mexican Customs or revenue law. This can be done, if at all, only by arrangement with the British Government.

The British Government would be entitled to demand, and enforce, the release of any British subjects or vessels carried through British waters without the consent of Her Majesty's Government.

A difficulty might arise in the case of British subjects carried as prisoners on board of a Mexican revenue-cutter, but this may be met by granting permission to such vessels to pass only on the terms that no attempt is made to carry British subjects on board as prisoners.

2. Such indefinite detention would be legitimate ground for diplomatic remonstrance. The Mexicans ought to have a Court capable of dealing with such cases accessible without passing through British territorial waters if they desire to exercise their right of seizure.

3. Such British vessels are liable to be stopped and searched by Mexican authorities in Mexican waters. As the left bank of the Rio Hondo belongs to Mexico, the Mexican authorities are entitled to take reasonable measures in Mexican waters to insure that British vessels proceeding to the Rio Hondo are bound for the right bank, or are not engaged in any trade on the left bank contrary to Mexican law.

4. Such vessels are bound to comply with any reasonable Mexican Regulations on this head.

5. The Mexican authorities are not bound to treat such papers as conclusive, but may reasonably exercise the right of search to satisfy themselves of the facts. This right, however, must not be used vexatiously, and if it be so used, diplomatic remonstrances may be addressed to the Mexican Government.

6. It should be distinctly stated that the passage of transports, ships of war, and military stores through British territorial waters can take place only by permission of Her Majesty's Government, and is not a matter of right.

7. Permission for this purpose may be allowed, if it be thought desirable.

8. They should in every case be formally called upon to ask permission.

9. Her Majesty's Government may, of course, if they please, impose as a condition of such passage that prisoners should not be carried on board the vessels in question.

We think that the passage of revenue-cutters should be allowed only on the terms of their not carrying on board any British subjects who may have been seized for alleged violations of Mexican Customs law.

We have only to add that we quite agree with the view stated by your Lordship that, while the passage of revenue-cutters should ordinarily be permitted, the Mexican authorities should not be allowed to suppose that this is a matter of right. These vessels are public vessels, and Her Majesty's Government has the same right to exclude them as to exclude men-of-war generally.

In view of the pretensions raised by General Monasterio's letter of the 22nd May,

it is important that a clear statement should be made that Mexican public vessels can only be allowed passage by courtesy, and not as of right.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 23, 1898.

MOROCCO.

No. 27.

[June 8, 1898.]

Foreign Office to the Law Officers of the Crown.

Expedition of Globe Venture Syndicate under Major Spilsbury in "Tourmaline" to Sûs.

Gentlemen,
Foreign Office, May 25, 1898.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the Papers enumerated in the accompanying list relating to an expedition which was dispatched under the auspices of the Globe Venture Syndicate, and under the command of Honorary Major A. Gybbon-Spilsbury, a Captain in the Thames Division of the Royal Engineers (militia), in the yacht "Tourmaline," to the Sûs districts of Morocco.

The intention of the Syndicate to take this step became known to the Moorish Government in the course of last autumn, and the Grand Vizier at once informed Sir A. Nicolson, Her Majesty's Minister at Tangier, that the inhabitants of the districts in question were under the protection and guardianship of the Government of Morocco, and that they had, therefore, no authority to make agreements such as they were said to have made with the Globe Venture Syndicate without the sanction of the Sultan of Morocco, which, in the present case, had not been given. The Grand Vizier also stated to Sir A. Nicolson that any British subject proceeding to open trade with the Chiefs on the Morocco coast above Wad Nun, without obtaining the permission of the Sultan, would do so at his own risk, that he would be liable to be arrested and handed over to the British Consular authorities at Mogador if he should attempt to land merchandize in the district of Sûs, and that such goods would be seized as contraband.

The decision of the Moorish Government in this matter was communicated to Major Spilsbury, and he was warned that if he insisted on visiting this district he would do so at his own risk, and must not expect any support or assistance from Her Majesty's Government.

The whole state of the case was also fully explained to Sir E. Thornton, one of the Directors of the Syndicate, but notwithstanding these warnings the Syndicate decided to allow the expedition to proceed.

A letter was thereupon addressed to the Syndicate (Paper A) warning them in a formal way against the course of action on which they were about to embark.

A copy of this letter was forwarded to Sir A. Nicolson with instructions to communicate it to the Moorish Government, and to take such further steps as he might consider desirable with a view to make it publicly known that Her Majesty's Government would not countenance or support the enterprise in which the agent of the Globe Venture Sydicate was engaged, unless the consent of the Moorish Government was first obtained.

In December last, Sir F. Plunkett, Her Majesty's Minister at Brussels, reported that he had learnt from Her Majesty's Consul-General at Antwerp that a British yacht, named the "Tourmaline," chartered by Major Spilsbury, was taking in arms and ammunition at Antwep.

Evidence that this was the case, and of the nature of the cargo, will be found in the despatches from Sir F. Plunkett, Nos. 36 and 78 of the 15th February and the 13th April (Papers B and C).

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The vessel having taken on board 3,650 rifles, 500,000 rounds of ball cartridge, and other merchandize of a more innocent character, proceeded with Major Spilsbury on board to the coast of Morocco, and Sir A. Nicolson telegraphed on the 17th January last that he had heard from Mogador that that officer had landed at a port in Sûs with arms and ammunition.

The Moorish Government had, however, made preparations to frustrate Major Spilsbury's movements, and Sir A. Nicolson reported, by telegraph, on the 31st of the same month that, by a combined movement of a steamer belonging to the Moorish Government and of the Sultan's troops, the Major's party had been captured, he himself escaping on board the yacht.

It afterwards transpired that six prisoners were taken, viz., a Syrian interpreter, a German, and four British subjects, one of them of Portuguese origin. These men, after repeated demands addressed to the Moorish Government, have now been handed over by the Moorish authorities to Her Majesty's Minister, who has given the German subject up to his Legation, and the other prisoners are lodged in the Consular Prison, and have been charged before the Chief Justice of Gibraltar, who has come to Tangier for the purpose, under the provisions of Article 107 of the Morocco Order in Council, 1889. A copy of this Order in Council is annexed (Paper D).

A complete and thoroughly reliable account of what happened on the Sûs coast on the arrival of the "Tourmaline" can hardly be looked for, but Mr. Siebert, Captain of the Moorish steam-ship "Hassanee," in a Declaration to Her Majesty's Consul at Tangier, and Major Spilsbury, through the Globe Venture Syndicate, have both furnished statements from their different points of view of what took place. These will be found in Papers (E) and (F), and it may be inferred that the agent of the Syndicate disposed of a small quantity of arms to the natives, although the bulk of the weapons were, as will be seen from Paper (C), after the failure of the expedition landed at Antwerp, and the cartridges have been brought on to Gravesend consigned to Major Spilsbury. Those disposed of in Sûs are believed to be now in the hands of the Moorish authorities.

The incident has placed Her Majesty's Government in a very difficult position towards that of Morocco. The Globe Venture Syndicate have constantly denied that they were in any way privy to an attempt to introduce arms and ammunition into Morocco, and declared that their object was the opening of ordinary trade with the Sûs tribes. It seems inexcusable, however, that they should have permitted their agent, Major Spilsbury, to place on board the "Tourmaline" a cargo composed in such large proportions of munitions of war. As matters have turned out no very serious harm has resulted. If, however, Major Spilsbury had succeeded in disposing of the very considerable number of arms on board the "Tourmaline" to the natives of the Sûs district, there is little doubt that these tribes would have given very serious trouble to the Moorish Government.

The view which the Sultan and the Moorish Government take of the proceedings of the Syndicate, and the difficulty which Her Majesty's Minister has consequently encountered in inducing them to consent to the delivery of the prisoners, will be gathered from the various despatches from Sir A. Nicolson, which are bound together in a paper cover, and marked (G).

It will be noted that the Moorish Government have made a large claim for compensation for the expenses to which they have been put by Major Spilsbury's proceedings.

Her Majesty's Government, whilst insisting on an adherence to Treaty stipulations with regard to the surrender of the prisoners, have authorized Sir A. Nicolson to give an assurance to the Sultan that all the parties concerned in the case will undergo prosecution for any infringement of the law which can be supported by proper evidence.

A warrant has been issued by Her Majesty's Consular Court for Morocco against Major Spilsbury, charging him, under Article 107 of the Morocco Order in Council of 1889, with the offence of smuggling into the Moroquine territories. This document has been forwarded by Sir A. Nicolson to this Office in case it should be considered executable, under the provisions of "The Fugitive Offenders Act, 1881," on Major Spilsbury in this country.

Having regard, however, to the terms of section 9 of that enactment, it seems open to doubt whether the maximum punishment prescribed by the Morocco Order in Council for the offence which is charged in the warrant is sufficient to bring the matter within the scope of the application of Part 1 of the Act; but the Attorney-General for Gibraltar is of opinion, for the reasons given in Sir A. Nicolson's telegram No. 36 of the 15th May (Paper I), that any sentence of imprisonment pronounced by the Court in this case would carry with it some kind of labour, unless such labour were expressly excluded. A separate warrant is ready for execution under Article 108 of the same Order in case of Major Spilsbury's arrival in Morocco.

But the Moorish Government assert that, previous to his escape on board the yacht, Major Spilsbury fired over their steamer and her boats, and hoisted minatory signals, such acts constituting an intention, and amounting to an attempt, to resist by force the measures which the Moorish authorities were taking in their own waters for the prevention of illegal acts. They also lay great stress on their contention that the chief object of the expedition was to arm the tribes, and thus enable them to rebel against the sovereignty of the Sultan.

The charge which is brought by the Moorish Government against Major Spilsbury and his companions amounts to something very different from smuggling. It is practically a charge of levying war against the Sultan of Morocco. In an ordinary case, such offenders would be tried according to the law of the country against which their warlike or rebellious proceedings were directed. But as they are British subjects, and as Her Majesty has extra-territorial jurisdiction in all cases of crime committed by British subjects in Morocco, but has no power to deal with such offences otherwise than as offences against English law, the situation thus created is one of extreme difficulty.

Although at present no satisfactory means of dealing with this dilemma seems to exist, it appears to be very desirable that some efficient check for the future should be provided. At the time the Morocco Order in Council of 1889 was drafted, the possibility of a British subject levying war upon the Sovereign of the country was apparently not foreseen. While, on the one hand, it is not possible to hand over such a British subject to be dealt with by the Sultan according to Moorish law, Her Majesty's Government, on the other, apparently possess no sufficient power under the Order in Council adequately to deal with such an offence, and it is to be feared that through this technical difficulty the offenders may partially or wholly escape justice.

It is, therefore, a matter for consideration as to whether proceedings can be taken in this country against Major Spilsbury, who appears to be more responsible than those of his subordinates who have been captured in Morocco, and whose trial before the Sûs Consular Court is fixed to take place on the 14th proximo.

I am accordingly to request that you will take the Papers transmitted herewith into your consideration, and that you will favour Lord Salisbury at your earliest convenience with your opinion.

1. Whether any, and if so what, proceedings can be taken against Major Spilsbury in this country.

2. If the answer to the previous question should be in the affirmative, whether, having regard to all the circumstances of the case and the nature and character of the evidence obtainable, such proceedings would have a sufficiently reasonable chance of success to render their institution desirable or expedient.

3. Whether the warrant issued by Her Britannic Majesty's Consular Court for Morocco, held at Tangier on the 15th March, 1898, and charging Major Spilsbury with an offence against the provisions of Article 107 of the Morocco Order in Council, is executable under the Fugitive Offenders Act, 1881, in this country having regard to the fact that the maximum punishment prescribed by that Article consists of imprisonment with or without fine, for a term not exceeding one year, and that section 9 of the Fugitive Offenders Act, 1881, applies the provisions of Part 1 of that Act to treason and piracy and to such other offences only as are punishable by imprisonment with hard labour for a term of twelve months or more rigorous imprisonment and any confinement in a prison combined with labour by whatever name it is called being deemed to be, for the purposes of that section, imprisonment with hard labour.

4. If, in your opinion, the warrant is executable in this country, do you consider the point sufficiently free from doubt to make it desirable to proceed at once with its execution.

5. Whether the powers at present possessed by the Queen are sufficient to enable Her Majesty adequately to deal with, and to punish under the provisions of the Morocco Order in Council, crimes and offences of a serious political complexion committed by British subjects against the Sultan and Government of Morocco.

6. And if not, whether you advise the addition of any, and if so what, provisions

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to the existing Order in Council for the purpose of more effectually dealing with the matter.

Lord Salisbury will at the same time be glad to receive any observations of a more general nature which you may desire to offer on the case.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Letter to Globe Venture Syndicate..		October 20, 1897
(B.)	Sir F. Plunkett	(No. 36)	February 15, 1898.
(C.)	Ditto	(No. 78)	April 13, „
(D.)	Order in Council, 1889. (Confidential 5832*.)		
(E.)	Declaration of Captain Siebert.		
(F.)	Major Spilsbury's letter.		
(G.)	Correspondence in cover, marked with cross.		
(H.)	Despatch inclosing warrant,		
(I.)	Sir A. Nicolson..	(No. 36. Telegraphic)	May 15, „
(K.)	Ditto	(No. 69)	May 19, ..
(L.)	Morocco: Queen's Regulations, 1892. (Confidential 6246.)		
(M.)	Ordinance to amend the Law relating to the Gibraltar Civil Prison.		
(N.)	Rules and Regulations for the Civil Prison, Gibraltar.		
(O.)	Customs		June 1. ..

Report.

In our opinion, no proceedings can be taken against Major Spilsbury in this country with any reasonable prospect of success.

It does not appear that any acts were done in this country which would bring him within the scope of the Foreign Enlistment Act.

What he really intended to do was to supply arms and ammunition to the Susis to enable them to resist the authority of the Sultan in order that the Syndicate might reap the benefit of the concessions it had from these tribesmen. We do not think that the facts sufficiently show the organizing of any expedition within the meaning of the Foreign Enlistment Act.

It is not a common law offence in this country to take part abroad in resisting the authority of the Government of a foreign country.

2. We, therefore, think that no such proceedings are desirable or expedient.

3. In our opinion, the warrant issued by Her Britannic Majesty's Consular Court for Morocco, charging an offence under Article 107 of the Morocco Order in Council cannot properly be executed in this country.

An offence against Article 107 is not made punishable with hard labour, and we do not think that the Prison Regulations can, for this purpose, modify the effect of the Order in Council so as to bring the case within the "Fugitive Offenders Act, 1881," which applies to offences punishable by imprisonment with hard labour for twelve months or more.

There is nothing to show that the imprisonment is "rigorous," so as to bring it within the definition given by section 9 of the Act in question.

4. We, therefore, do not advise the execution by itself of this warrant in this country.

5. We think that the powers, at present possessed by the Queen, are not sufficient to enable Her Majesty to adequately deal with crimes and offences of a serious political complexion committed by British subjects against the Sultan of Morocco. Article 24 (2) incidentally refers to riot as a crime punishable under the Order in Council, but the Order in Council contains no reference to the very serious crime of stirring up rebellion or supplying weapons and ammunition to insurgents.

6. We think that an Article, the terms of which would require very careful consideration, should be added to the Order in Council for the purpose of dealing with offences of this description.

We think that the circumstances detailed in the despatch from the Commander of the "Hassanee," and in Major Spilsbury's own letter to the Syndicate, show that Major Spilsbury was guilty of the offence of riot and assault within the territorial waters of Morocco. He was co-operating with the insurgents on shore, who were firing on the boat's crew dispatched by the "Hassanee." According to his own admission he threatened to fire, and, according to the statement of the Captain of the "Hassanee," he did fire over the "Hassanee." This clearly amounts to participation in a riot, and the use which he made of his guns amounted to an assault by English law.

The penalty for this offence by English law might be twelve months' imprisonment with hard labour, and we could suggest that a warrant might be issued for the arrest of Major Spilsbury, by the Consular Court, for riot and assault. Major Spilsbury might be arrested on this warrant in this country. The offence committed by Major Spilsbury was of great gravity, but the fact that it had a political complexion will not relieve him from responsibility for the riot and assault, of which, on the materials before us, it would appear that he was guilty.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 8, 1898.

PERSIA.

No. 28.

[July 19, 1898.]

The Law Officers of the Crown to the Marquess of Salisbury.

My Lord, *Royal Courts of Justice, July* 19, 1898.

Seizure of arms on "Beluchistan."

WE were honoured with your Lordship's commands, signified in Sir Thomas Sanderson's letter of the 13th instant, in relation to the recent seizure of arms at Bushire, ex the steam-ship "Beluchistan."

In obedience to your Lordship's commands we have the honour to

Report—

That we approve of the telegrams in the form proposed.

It appears to us that if it be the fact that the import of arms has practically been allowed on payments to Persian officials, it would not be reasonable that the Persian Government should seize and retain such a consignment of arms.

They are, of course, at liberty to prohibit the importation for the future, but it would not be right that they should appropriate a parcel of arms, which never would have been sent but for the belief, induced by the action of their own officials, that the importation would be permitted.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

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* Private letter, of which no copy was kept, sending draft telegrams to Sir M. Durand and to Her Majesty's Consul at Muscat.

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Annex No. 1.

The Marquess of Salisbury to Sir M. Durand.

(No. 49.)
(Telegraphic.)

Foreign Office, July 20, 1898, 7·10 P.M.

IMPORTATION of arms.

In a suit brought by Fracis, Times and Company against Insurance Company to recover value of arms seized on board "Beluchistan," the Judge has given decision against Insurance Company on ground that prohibition of importation into Persia was previously merely nominal, and that merchants engaged in the trade had no reason to suppose that it was likely to be enforced. He further held that seizure of arms from "Zulu" in 1895 was merely a question of high duties on transit, not of seizure for illegal importation.

Insurance Companies now ask whether Livingstone, Muir, or Malcolm knew prior to the 7th December, 1897, that the question of enforcing the prohibition was or had been under discussion, whether there was any rumour to that effect amongst those interested in the trade and, if so, at what period the rumour first arose.

They refer to letter addressed by Her Majesty's Consul-General at Bushire to Mr. Zeytoon on the 30th November, which shows that some question of enforcing the prohibition had arisen.

The inclosure in your despatch No. 77 shows that the seizure of arms shipped on board "Zulu" was apprehended.

Request Consul-General at Bushire to telegraph information on these points, and send any evidence in his possession, including full copy of Livingstone, Muir and Company's letter of the 30th October, 1896, and any further correspondence bearing on it.

R. E. W.
R. B. F.

Annex No. 2.

The Marquess of Salisbury to Her Majesty's Consul at Muscat.

(Telegraphic.)

Foreign Office, July 21, 1898.

WHAT is present situation as regards arms seized from "Beluchistan"? Have any applications been made by consignees for their release; if so, on what grounds and with what result?

R. E. W.
R. B. F

PORTUGAL.

No. 29.

[July 15, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 30, 1898.

Gentlemen,

Extradition Agreement between British and Portuguese India.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers relating to certain negotiations which have been resumed, and are now in progress, for the conclusion of an Extradition Agreement between British India and Portuguese India, in pursuance of the Protocol attached to the Anglo-Portuguese Treaty of the 17th October, 1892.

The negotiations for this purpose—which were begun in November 1892—were broken off in October 1893 in consequence of the refusal of the Portuguese Government to admit a provision for surrendering persons charged with capital offences, and the draft Agreement now submitted to you has been carefully amended to meet the objections entertained by Portugal on this head.

The list of crimes has been modified to suit the exigencies of Indian law, and special stipulations have been inserted for dealing with the difficulties connected with

the question of the non-surrender of nationals, including natives, and the question as to the responsibility for delay in the trial of offenders, to both which points it is understood that the Portuguese Government attach special importance.

I am to draw your special attention to the terms of the amended preamble; to the final paragraph of Article I relating to crimes punishable with death; to Articles II and VIII relating to the above-mentioned points; and I am to explain that the Agreement, in its present form, has been approved by the Government of British India, after consultation with their legal advisers.

I am to request that you will take the inclosed papers into your consideration, and that you will favour Lord Salisbury with your opinion whether the draft Agreement may be properly submitted to the Portuguese Government, and with any general observations, from a legal point of view, which you may have to offer.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Correspondence of 1892–93 (in a volume).
Printed correspondence, Nos. 1 to 16, July 31, 1895, to October 18, 1897.
Subsequent correspondence in MS.
Draft (revised) of Agreement.

Report.

In our opinion, the draft Agreement may be properly submitted to the Portuguese Government.

No other observations occur to us.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 15, 1898.

Annex.

Agreement between the Governors-General of British India and Portuguese India for the Extradition of Criminals.

WHEREAS by a Protocol signed on the 30th November, 1892, attached to a Treaty, dated the 17th October, 1892, the ratifications of which were exchanged on the 13th day of November, 1893, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and of the Algarves; it is provided that the stipulations of the said Treaty do not apply to extradition between British and Portuguese India, which is left for ulterior negotiation.

In pursuance of the said Protocol, the undersigned Governors-General of British India and Portuguese India, acting respectively on behalf of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and of the Algarves (hereinafter called the Parties or High Contracting Parties), have agreed that—

Any person accused or convicted of a crime or offence committed in the Indian dominions or jurisdiction of the one Party, who shall be found in the Indian dominions or jurisdiction of the other Party, and any person so found who is accused or convicted of a crime or offence committed beyond the Indian dominions of the Party applying for extradition, if such person is a subject of the Party which makes the application, and if the laws of the Party applied to would authorize a prosecution for such offence if committed beyond the Indian dominions of such last-mentioned Party, shall be delivered up under the circumstances and subject to the exceptions and conditions hereinafter stated:—

ARTICLE I.

The crimes or offences (hereinafter called extradition crimes) for which the extradition shall be granted are the following:—

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Crime.	British Indian Penal Code.	Crime.	Portuguese Penal Code.
	Section.		Article.
Murder, culpable homicide not amounting to murder, and causing death by rash or negligent act	299 to 304A	Voluntary homicide, including .. Parricide .. .. .. Poisoning .. .. .. Infanticide .. .. .. And involuntary homicide caused by negligence	349 355 353 356 368
Attempt to commit murder or culpable homicide	307, 308, and 511	Attempt at homicide	350; 6 to 11
Voluntarily causing hurt or grevious hurt	319, 320, 322, 324 to 333, 335, and 338	Wounding, causing contusions or hurts Ordinary hurts under Articles 359 and 360 being excepted in the circumstances described in Articles 370, 377, and 378.	359 to 367, 369
Rape	375 and 376	Rape	394; 395 to 397
Kidnapping, abduction, concealing kidnapped person, slave dealing, or selling minors for immoral purposes	360 to 373	Kidnapping and hiding of minors ..	342 to 344
Immodest assault on a woman.. ..	354	Immodest assault on a woman ..	391
Causing miscarriage and abortion ..	312 to 316	Abortion	358
Exposure or abandonment of a child ..	317	Exposure or abandonment of a child ..	345 to 348
Thefts	378 to 382	Thefts	421; 424 to 431
Extortions, robberies, dakaitis, attempts to commit robbery, and belonging to a gang of thieves	383 to 402	Robbery	432 to 444
Criminal misappropriations and criminal breaches of trust	403 to 409	Theft	313; 422 to 425; 453
Receiving stolen property	410 to 414	Receiving stolen property	463
Cheating	415 to 420	Cheating, false pretences	450 to 452; 456
Lurking, house-trespass, house-breaking	443 to 446	House-breaking	380, clause I
Fraudulent bankruptcy and fraudulent disposition of property	206, 208, 421 to 424	Fraudulent bankruptcy and fraudulent disposition of property	447 to 449; 455
Dishonest opening of closed receptacle containing property	461 and 462	Dishonest opening or breaking of seals by public servants and others	310 to 312
Being a thug	310, 311	Association of malefactors	263
Belonging to a band of dakaits or robbers	400, 401		
Aggravated cases of wrongful confinement	344 to 348	Aggravated cases of wrongful confinement	331 to 333
Mischief by fire or explosive substance ..	435, 436, and 438	Arson	466 to 474
Mischief to a vessel or after preparation to cause death, hurt, or wrongful restraint	437, 439, 440	Aggravated cases of mischief.. ..	475 and 481
Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instruments for above purposes	230 to 254	Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instruments for above purposes	206 to 214
Counterfeiting or fraudulently using of Government stamps issued for purposes of revenue	255 to 263	Counterfeit or fraudulent using of Government stamps or stamped paper	228 and 229
Forgery and using of forged documents, and making of seals for fraudulent purposes	463 to 468; 470 to 477	Forgery and using of forged documents, and making of seals for fraudulent purposes	215 to 217; 219 to 223; 230 and 231
Use of false trade-mark, or property-mark, and frauds connected with such marks	478 to 489	Use of false trade-mark or property mark, and frauds connected with such marks	230 and 231
Marrying again during life-time of husband or wife	494 and 495	.. .. ..	..
Giving or fabricating false evidence to cause a person to be convicted of an offence and subornation of the same	194 and 195	Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same	238 to 240
Illegal gratification taken by a public servant, or to influence a public servant	161 to 165	Illegal gratification taken by a public servant, or to influence a public servant	314 to 323; 452

Crime.	British Indian Penal Code.	Crime.	Portuguese Penal Code.
	Section.		Article.
Causing the evidence of the commission of any offence to disappear	201	Causing the evidence of commission of an offence mentioned in this Convention to disappear	464
False certificate or declaration made by public servant, or used by any person as evidence	197 to 200	False certificate or declaration made by public servants, or used by any person as evidence	216 to 218; 221 and 222
Escape from lawful custody or accusation or conviction of any crime specified in this Convention	224	Escape from lawful custody on accusation or conviction of any crime specified in this Convention	190 to 196
Piracy by law of nations	..	Piracy	162
Assaults on board a ship on the high seas, with intent to destroy life or to do grevious bodily harm	..	Voluntary homicide as above.. ..	349, 353, 355, 356
			Portuguese Maritime Code. Article.
Sinking or destroying a vessel at sea, or attempting or conspiring to do so	..	Loss or destruction of vessel, caused by a person on board	42
Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master	..	Act of revolt committed by more than third of crew	46
	Indian Railways Act (IX of 1890). Sections		
Endangering the safety of a person or train on a railway	100, 101, 107, 126, and 129		

Any act or omission which under the law of the party claiming extradition is punishable with imprisonment for a term which may extend to three years or more.

Extradition is also to be granted for abetment of any of the aforesaid crimes, provided such abetment be punishable by the laws of both the Contracting Parties.

Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

The Government of Portuguese India may, in its absolute discretion, refuse to deliver up any person charged with a crime punishable with death, unless, on its part, the Government of British India shall undertake that a sentence of death shall (if passed) be commuted to a sentence o transportation or imprisonment.

ARTICLE II.

The extradition of any British subject shall not be granted by either the Government of British India or the authorities mentioned in Article X, and the extradition of any Portuguese subject shall not be granted by either the Government of Portuguese India or the authorities mentioned in the same Article.

For the purposes of this Article, Indians born in British India of Portuguese Indian fathers domiciled in British India shall be regarded as British and not as Portuguese subjects; and Indians born in Portuguese India of British Indian fathers domiciled in Portuguese India shall be regarded as Portuguese and not as British subjects.

In the case of a naturalized subject, this Article shall be applicable only if the naturalization was obtained previously to the commission of the crime which gave rise to the application for extradition.

ARTICLE III.

If the person claimed is under trial for any other crime, his extradition shall be deferred until the trial is concluded, but the execution of any sentence other than sentence of death therein passed on him shall, if it would interefere with the extradition, be postponed.

If, after extradition of a person on whom sentence, other than sentence of death, has already been passed in the dominions of the Party granting extradition, such person be sentenced to punishment for the crime on account of which his extradition has been granted, the sentences shall be executed according to priority of date.

If, when extradition is applied for, the person claimed should be undergoing sentence under conviction for another crime, his extradition may be deferred till the expiration of his sentence.

ARTICLE IV.

Extradition shall not take place if the person claimed has already been tried and acquitted or punished for the crime for which extradition is sought.

ARTICLE V.

Extradition shall not take place, if subsequently to the commission of the crime or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has, according to the laws of the Party applied to, been acquired by lapse of time.

ARTICLE VI.

Extradition shall not take place if the offence in respect of which the requisition is made is, in the opinion of the Government or authorities applied to, one of a political character, or if such Government or authorities are satisfied that the requisition has in fact been made with a view to try or punish the person whose surrender is claimed, for an offence of a political character.

ARTICLE VII.

The Party to whom a person has been surrendered shall not keep him in prison or bring him to trial for any crime, or on account of any matters which has or have been committed or taken place before the surrender, other than the crime or matters for which the surrender has been made, until that person has been restored to, or had an opportunity of returning to, the dominions from which the surrender was made.

ARTICLE VIII.

On the requisition of either Party, the other Party shall furnish a statement setting forth the date on which, and the result with which, the trial of any accused person surrendered has terminated. Every such statement shall describe the offence for which any sentence has been passed. Every person surrendered shall be brought to trial, and the trial shall be completed, without unreasonable delay; but this stipulation shall not entail any responsibility on either Party on account of any unavoidable delay which may occur in the course of such trial, nor shall it in any way limit the discretion of the judicial authority concerned. The Party to whom such person is surrendered shall furnish to the Party surrendering him any information regarding the trial of the accused and his sentence that may be required.

ARTICLE IX.

If the person whose extradition is claimed by one of the High Contracting Parties is also claimed by one or more other Governments on account of crimes committed in their respective dominions, he shall, if he is a subject of the High Contracting Party claiming him, be surrendered to that Party. If he is not a subject of that Party, his extradition shall be granted to the Government whose requisition shall have been earliest in date.

ARTICLE X.

The requisition for extradition may be made on behalf of Her Britannic Majesty by the Governor-General of British India or by the Governor of the Presidency of Bombay, and on behalf of His Most Faithful Majesty by the Governor-General of Portuguese India, provided:—

1. That requisition in respect of any extradition crime committed in the Portuguese Settlements of Daman and Diu may be made by the Governors of those Settlements direct to any District Magistrate or Political Agent within whose local jurisdiction the person claimed may be found. Such District Magistrate or Political Agent shall, subject to the exceptions and conditions of this Agreement, comply with such requisition by delivering up the accused, unless the crime charged is one which, by the law of British India, is triable only by a High Court or a Court of Session, or unless he deems reference to higher authority absolutely necessary.

2. That any District Magistrate may make requisition direct to the Government of Portuguese India, and any District Magistrate or Political Agent to the Governors of Daman and Diu respectively, for the extradition of any person in their jurisdictions in respect of any crime committed within the jurisdiction of such District Magistrate or Political Agent for which the maximum punishment under the Portuguese law does not exceed imprisonment for seven years or an equivalent thereto, and such requisition shall, subject to the exceptions and conditions of this Agreement, be complied with by delivering up the person claimed, unless reference to higher authority be deemed absolutely necessary.

3. That the authority receiving a requisition may hold or cause to be held such inquiry as he may deem sufficient for the purpose of ascertaining whether facts sufficient to constitute an extradition crime have been *primâ facie* proved against the person claimed, and in the absence of such proof may decline to deliver up that person.

ARTICLE XI.

Every requisition shall ordinarily be accompanied by the summons or warrant of arrest, or an authenticated copy thereof, issued by the competent authority of the Party applying, and also by a statement setting forth—

1. Each crime for which requisition is made.
2. The facts constituting the crime.
3. Particulars sufficient for identification of the person claimed.

In cases of urgency, satisfactory proof of the issue by competent authority of a warrant of arrest may be provisionally accepted in support of a requisition.

If the requisition relates to a person already convicted, it must also be accompanied by an authenticated copy of the conviction or of the sentence passed on him by the competent Court of the Party applying.

A sentence passed *in contumaciam* is not to be deemed a conviction or sentence within the meaning of this Agreement.

ARTICLE XII.

If the person claimed have not already been arrested by the authorities of the Party applied to, they shall at once proceed to arrest him or secure his appearance.

ARTICLE XIII.

Any person accused of an extradition crime, whether a subject of the Party in whose dominions he is found or not, may be arrested by the authorities thereof—

1. On production of a warrant of arrest issued by the competent authority of the other Party; or

2. On advice from such competent authority transmitted by post, telegraph, or other means, stating the existence of such warrant of arrest; or

3. On demand by the Magistrate or Political Agent or Police Officer of such other Party who has pursued the accused across the frontier; or

4. On receipt of advice of the fact of the crime, whether communicated by a private complainant or otherwise, and whether or not the person may have been directly accused by name.

ARTICLE XIV.

All weapons and articles stolen or otherwise obtained by the commission of an extradition crime, or the proceeds of the sale thereof, and all weapons and articles required as evidence of an extradition crime shall be seized, in order to their production before the proper officer, and shall be delivered up with the accused person if surrendered, or on his death or escape. Nothing in this Article shall affect the rights of third persons to any such weapons or articles.

ARTICLE XV.

The Party granting extradition will defray all expenses incurred within the dominions (and as far as the frontier) of such Party, in the arrest, imprisonment, maintenance, and transport of persons surrendered, and the conveyance and custody of articles delivered up. The Party to whom surrender and delivery are made will make due provision for the reception and maintenance of all persons surrendered, and will defray all expenses incurred in the transport and maintenance, whether by sea or within its own dominions, of the persons surrendered, and in the conveyance and custody of articles delivered up.

ARTICLE XVI.

If in any inquiry or trial within the dominions or jurisdiction of one Party the evidence of witnesses resident within the dominions or jurisdiction of the other Party is required, and their personal attendance at such inquiry or trial cannot be procured without unreasonable delay, expense, or inconvenience, the judicial authority requiring the evidence may issue an interrogatory

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commission direct to any judicial authority having jurisdiction where the witnesses reside or are known to be.

The authority receiving the commission shall forthwith arrange for the examination of the witnesses, and for the record of their evidence in accordance with the local law of procedure, either by himself or by some judicial subordinate appointed by him; and the record or copies thereof, purported to be certified by the authority or by the appointed subordinate, shall be, without unreasonable delay, transmitted direct to the authority who issued the commission, and shall be received in the inquiry or trial as valid evidence.

The actual expenses incurred in complying with any commission so issued shall be defrayed by the Party from whose dominions or jurisdiction it was issued.

The authorities of the one Party shall aid those of the other as far as may be in securing the personal attendance of witnesses; and reasonable time shall be allowed for the production of evidence before the final discharge or conviction of an accused.

ARTICLE XVII.

Before extradition, the law of the dominions or jurisdiction where the accused is found shall govern the procedure as to releasing him on bail or recognizances; after extradition, such procedure shall be governed by the law of the Party to which surrender is made.

ARTICLE XVIII.

An accused person, notice of whose arrest has been given by one Party to the other, may be set at liberty in the following circumstances:—

1. If no requisition, complaint, or application for trial shall have been made within two months after receipt of such notice.
2. If within one month of the day on which he was brought to the frontier or sea-port and there placed at the disposal of the Party which makes the application for extradition, he shall not have been received by the authorities, and dispatched to the dominions of that Party.

ARTICLE XIX.

The Government of British India undertakes to procure the surrender of fugitive criminals taking refuge in the territories of the States in India under the suzerainty of Her Majesty, who if they had taken refuge in British India would have been extraditable under this Agreement; and the authorities of Portuguese India on their part undertake to surrender fugitive criminals from such native States taking refuge in Portuguese India, on receipt of requisitions from the Government of India or from the Government of Bombay, if in the case of British subjects such requisitions could be made and complied with under the terms of this Agreement.

ARTICLE XX.

The present Agreement shall come into operation ten days after its publication in accordance with the forms prescribed by the Laws of the High Contracting Parties, and it shall remain in force until the expiration of six months from the day on which either of the High Contracting Parties may give notice of its intention to terminate it.

SIAM.

No. 30.

[February 11, 1898.]

Foreign Office to Law Officers of the Crown.

Foreign Office, January 31, 1898.

Gentlemen,

Revision of Siam O. in C. 1889.

REFERRING to your letter of the 6th August, I have the honour to transmit to you, by direction of the Marquess of Salisbury, the inclosed Papers relating to the proposed revision of "The Siam Order in Council, 1889."

The alterations on which your opinion was asked were duly inserted in the draft prepared by Mr. Gray, but, as will be seen from the further reference made to him (Paper F), it was subsequently suggested by Her Majesty's Minister at Bangkok that provisions should be added to enable the Consul to take, subject to certain conditions and limitations which are expressed in the Order, the whole of the judicial work. Mr. Gray has, accordingly, revised the draft Order at Lord Salisbury's request, and I am to ask whether, in your opinion, the draft as it now stands (Paper H) may properly be submitted to the Queen in Council for Her Majesty's approval.

I have, &c.

(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Treaty with Siam, 1883. (Treaty 731.)		
(B.)	"Siam Order in Council, 1889." (Confidential 5860*.)		
(C.)	Law Officers. (Confidential 7058, p. 104*) ..		August 6, 1897.
(D.)	Mr. Greville	(No. 83)	September 18, ,,
(E.)	Ditto	(Telegraphic)	November 23, ,,
(F.)	To Mr. Gray		December 24, ,,
(G.)	Mr. Gray		January 19, 1898.
(H.)	Draft Order in Council.		

Report.

As altered and initialled by us, the draft Order in Council may properly be submitted for the approval of the Queen in Council.

The object of the alteration is to make it clear that the Consul-General's power is to say what cases shall be so tried; not to control the Consul in the exercise of his judicial duties.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 11, 1898.

Annex.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction within the dominions and territories of the King of Siam:

And whereas by a Treaty made the 3rd day of September, 1883, between Her Majesty the Queen and His Majesty the King of Siam, it was amongst other things agreed as follows:—

"Article VIII. His Majesty the King of Siam will appoint a proper person or proper persons to be a Commissioner and Judge, or Commissioners and Judges, in Chiengmai for the purposes hereinafter mentioned. Such Judge or Judges shall, subject to the limitations and provisions contained in the present Treaty, exercise civil and criminal jurisdiction in all cases arising in Chiengmai, Lakon, and Lampoonchi, between British subjects, or in which British subjects may be parties as complainants, accused, plaintiffs or defendants according to Siamese law: provided always that in all such cases the Consul or Vice-Consul shall be entitled to be present at the trial, and to be furnished with copies of the proceedings, which, when the defendant or accused is a British subject, shall be supplied free of charge, and to make any suggestions to the Judge or Judges which he may think proper in the interests of justice: provided also that the Consul or Vice-Consul shall have power at any time before judgment, if he shall think proper in the interests of justice, by a written requisition under his hand, directed to the Judge or Judges, to signify his desire that any case in which both parties are British subjects, or in which the accused or defendant is a British subject, be transferred for adjudication to the British Consular Court at Chiengmai, and the case shall thereupon be transferred to such last-mentioned Court accordingly, and be disposed of by the Consul or Vice-Consul, as provided by Article II of the Supplementary Agreement of the 13th May, 1856:"

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And whereas in pursuance of the said Treaty His Majesty the King of Siam has from time to time appointed Commissioners or Judges for the purposes mentioned in the said Article, and civil and criminal jurisdiction has been and is exercised in Chiengmai subject to the limitations and provisions contained in the said Treaty:

And whereas, in pursuance of powers reserved in the said Treaty, it has been from time to time agreed between Her Majesty and His Majesty the King of Siam that the limits within which the jurisdiction of the said Commissioners and Judges under, and for the purposes of, the said Treaty shall be extended to the Provinces of Muang Nan, Phre, Muang Thon, Raheng, Sawankaloke, Sukotai, Utaradit, and Pichai:

And whereas such limits of jurisdiction may hereafter be further extended:

And whereas in order to the fulfilment of the said Treaty, and for other purposes, it is expedient to amend "The Siam Order in Council, 1889," hereinafter referred to as "the Principal Order:"

Now, therefore, Her Majesty, by virtue, and in exercise of, the powers in this behalf, by "The Foreign Jurisdiction Act, 1890," and otherwise in her vested, is pleased, by and with the advice of the Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Siam Order in Council, 1898."

2. In this Order the expression "the International Court" means the Court of any Commissioners or Judges exercising jurisdiction at Chiengmai in pursuance and under the provisions of the said recited Treaty as modified by any subsequent Agreement, whether made before or after the passing of this Order.

The expression "limits of the International Court" means the provinces and parts of provinces to which the jurisdiction of that Court for the time being extends.

3. With respect to any civil or criminal case arising within the limits of the International Court between British subjects, or in which British subjects may be parties as complainants, accused, plaintiffs or defendants, the principal Order shall not operate or have any effect so long as the said Treaty continues in force, unless and until such case shall have been transferred to the District Court at Chiengmai in manner provided by the said Treaty.

4. Where a case is so transferred, the District Court shall give such directions as seem proper for its determination, having regard to the proceedings (if any) in the International Court.

In a criminal case, if the accused is handed over by the International Court in custody, he may be detained in custody as if on the day on which he is handed over he had been arrested under a warrant of the District Court.

5. The Consul at Bangkok shall, if and so long as he shall be so authorized by the Secretary of State, have and exercise concurrently with the Consul-General all the judicial powers and jurisdiction of the Consul-General under the principal Order throughout Siam; and the provisions of that Order relating to such judicial powers and jurisdiction shall be construed accordingly; provided that

(1) The said powers and jurisdiction shall be exercised by the said Consul subject to any directions which may from time to time be given by the Consul-General *specifying the cases which are to be heard and decided by the Consul, and to the power of the Consul-General to direct that any particular case shall be heard and decided by himself.*

(2) Nothing in this Article shall operate to confer upon the said Consul any powers or duties of the Consul-General under the principal Order which are in their nature administrative, executive, ministerial, or otherwise not judicial, and all matters required or authorized to be done, by or to the Consul-General other than matters in their nature judicial, shall be done by or to the Consul-General as if this Order had not passed; and

(3) Nothing in this Article shall affect the powers or jurisdiction of the said Consul as a Consular Officer when holding a District Court under the principal Order.

Any Order of the Secretary of State conferring authority upon the said Consul under this Article shall be publicly exhibited in the office of the Consul-General, and be kept exhibited there for one month after the first exhibition thereof.

6. Articles 95 and 96 of the principal Order are hereby repealed as from the commencement of this Order, but this repeal should not prejudice any rights acquired, or affect anything done or suffered before such commencement.

7. This order shall come into force on the day on which a copy thereof is first exhibited in the public office of the Consul-General at Bangkok, and notice of the time of such first exhibition, together with a copy of this Order, shall, as soon thereafter as practicable, be published in every Consular district in Siam, in such manner as the Consul-General directs.

The day on which this Order is first exhibited in the public office of the Consul-General is hereinbefore referred to as the commencement of this Order.

And the Most Honourable the Marquess of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

R. E. W.
R. B. F.

SPAIN.

No. 31.

[April 20, 1898.]

Questions submitted to the Law Officers of the Crown on the 18th April, 1898.

Spanish-American War. Observation of Declaration of Paris by belligerents.

1. WHETHER Spain or the United States were directly or indirectly bound to observe the principles laid down in the Declaration of Paris?

2. Whether the previous practice of either of these two countries has been such as to afford the presumption that it would on this occasion observe any or all of those principles?

3. Whether, in case of either country acting in contravention of any of those principles, Her Majesty's Government would have the right of protesting, or of restricting the facilities to be accorded to that belligerent, and if so, in what cases, and to what extent?

Report.

1. In our opinion neither Spain nor the United States are directly or indirectly *bound* to this country to observe the principles laid down in the Declaration of Paris.

2. As regards Spain, we are not aware that there can be said to be any previous practice upon which any presumption can be based, and, as far as we know, the only Treaties affecting their rights are those with the United States in 1795 and 1819, but there may be others (Treaties, Conventions, United States, 776–785).

As regards the United States, it appears that they have made Treaties with Prussia, Spain, Peru, Russia, Columbia, Central America, Brazil, Mexico, Chile, Bolivia, Venezuela, France, Netherlands, Sweden, and Italy, by which they have agreed to secure the freedom of enemies goods (other than contraband of war) in the neutral ships of the several Contracting Nations (Wheaton Dana's 8th edition, section 476; "State Papers," vol. lxi, p. 88, 26th February, 1876, Article XIII).

The Declaration made on behalf of the United States in the year 1861, adopted the same principle with reference to the then existing civil war.

Inasmuch as the Treaties are matters of contract, we do not think that it can be said that they establish a practice, but they will impose a practical difficulty in the way of any action by the United States contrary to their provisions, and, coupled with the Declaration of 1861, they will undoubtedly be of use in the event of it being considered necessary or desirable to make any representation to the United States.

3. We think that Great Britain might alone, or in conjunction with other Maritime Powers, make representations to the United States and Spain against any interference with neutral commerce (other than contraband of war) and against privateering so far as it affects such commerce.

Whether such representation should be made by Great Britain alone, or in conjunction with other nations, and whether in anticipation of, or consequent upon, any action Spain or the United States may take is a question of policy.

We do not think the facilities given to national ships of the belligerents can properly be restricted beyond the extent to which they have been on previous occasions; but should privateering be permitted by either nation, and our commerce attacked, we see no reason why all access by privateers to our ports should not be prohibited except possibly in cases of distress.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 20, 1898.

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No. 32.

[May 7, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 30, 1898.

Gentlemen,

Use in time of war of neutral telegraph cables by belligerents.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith a copy of a telegram from the Governor of Barbados to Her Majesty's Secretary of State for the Colonies, inquiring, in connection with the present hostilities between Spain and the United States of America, whether any control should be exercised over telegrams sent, either from a man-of-war of one of the belligerents in a British port, or from the Consular Representative of such belligerent.

L.O.R. 1870 (Conf. 3660), pp. 25, 43.
L.O.R. 1880 (Conf. 4539), p. 13.
L.O.R. 1882 (Conf. 4783), p. 44 A.

I am also to inclose a Memorandum, which has been prepared in this Office, together with copies of previous Reports from the Law Officers of the Crown, and the "Case" submitted to them and Mr. C. T. Simpson by the Postmaster-General in 1882, which bear upon this question, and I am to request that you will be so good as to take these papers into your early consideration, and to favour Lord Salisbury with your opinion generally as to the rights of use, in time of war, of neutral telegraph cables by belligerents or their agents, and as to the extent of the control and interference, if any, which a neutral Government should exercise over the dispatch of messages.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Sir J. Hay	(Telegraphic)	April	25, 1898.
To Sir J. Hay	(Telegraphic)	April	27, „
Mr. Oakes' Memorandum		April	26, „
Law Officers' Reports. (Confidential 3660, p. 25)		August	23, 1870.
Ditto (Confidential 3660, p. 43)		September	19, „
Ditto (Confidential 4539, p. 13)		December	16, 1880
Ditto (to Post Office). (Confidential 4783, p. 44 A) ..		April	3, 1882.
And the "Case" submitted to the Law Officers and Mr. C. T. Simpson in 1882 by the Post Office.			

Report.

There is little or no authority on the subject of the obligations of a neutral Power with regard to the use of telegraphic lines or cables by belligerents.

It appears to us that such use should be treated on the analogy of the principles applied to the carriage of the despatches of a belligerent. Such despatches are contraband of war, and may be seized by the other belligerent with the further consequence of, in some cases, the forfeiture of the vessel if the despatches were knowingly carried. But there is no obligation on the neutral State to prevent the carriage by its subjects of such despatches; like other contraband of war, they may be carried subject to the risk of capture.

1. We think that there is, therefore, no general obligation by international law on the part of a neutral Government to prevent the transmission by its subjects, or from its territories, of the messages of belligerents by telegraphic lines or cables. Such messages may be carried subject to the risk that the other belligerent may protect himself by cutting the cable on the high seas, or in the enemy's territorial waters.

Upon the whole we think, though the question is one of more difficulty, that for this purpose no distinction should be drawn between cables purely private and cables under the control of a Government Department.

The general rule is, of course, that a neutral Government should not carry contraband of war for one of the belligerents. But where cables or telegraph lines are under the control of a Government Department, which, as a matter of regular business, transmits messages for every one, we cannot think that it is its duty, by international law, to establish a censorship so as to prevent the transmission of belligerents' messages. In practice this would be difficult, or impossible, and we think that the principle on which a neutral Government stepping out of its way to convey contraband of war is held to be guilty of a breach of neutrality has no application to a case in which it merely continues to transmit for all comers, in the ordinary way of business, either letters or telegraphic messages.

Of late years, it has not been the practice for a belligerent to seize or examine mail bags transmitted in the ordinary course of post.

2. We think, however, that, in the case of a belligerent cruiser putting into one of the ports of a neutral Power, there is an exception to the general rule above suggested. It is a term of her admission that she shall not use the neutral port in furtherance of hostile operations. We, therefore, think that the neutral Government should prevent, so far as practicable and authorized by municipal law, the use even of a telegraph worked by a Commercial Company for the transmission from a neutral port, by or on behalf of such a cruiser, of messages in cypher, or of other messages, the object of which is to direct or influence warlike operations.

But we do not think that a neutral Government is bound, even in this case, to object to the transmission of messages which have no relation to the proceedings of the belligerents, or of messages not in cypher, the object of which is to give a narrative of past operations, *bonâ fide* intended for general publication as news.

The Commander of the cruiser should be informed that it is a condition of being permitted to use the port that he should abstain from transmitting or procuring the transmission of any telegrams relating to the conduct of warlike operations. The Company should also be informed of the views of the Government, and would probably itself establish a censorship in accordance with those views of the telegrams tendered for transmission.

There is, however, no general power on the part of Her Majesty's Government to control private Telegraph Companies; the power is to require belligerent vessels not to use them.

The case of a Consul requires special consideration. *Primâ facie* he is entitled to the privilege of free communication with his Government, and this could be interfered with only if it were clear that he was abusing this privilege for the purpose of sending messages from a cruiser of his Government which had put into the neutral port. He could not properly be required to send his messages *en clair*, and if he abused the privilege of sending messages in cypher, to send warlike messages from one of his Government's cruisers in the neutral port, the responsibility for this would rest with him and his Government.

3. The telegram from the United States' Consul at Barbados ought not to have been stopped; Mr. Chamberlain's telegram to Governor Sir J. S. Hay of the 27th April was in answer to Sir J. S. Hay's telegram of the 25th April, and related only to the case put in Sir J. S. Hay's telegram where the Consul was Consul of the Power whose cruiser had put in to the neutral port.

4. In the case put in Lord Tweeddale's letter of the 5th May, we think that the Eastern Company may transmit messages forwarded by the United States' forces from Manila subject to the risk of having their cable cut by the Spaniards, and to the question (which is one on which Her Majesty's Government cannot advise them), whether they are under any contractual obligation to the Spanish Government which forbids such transmission.

We think that if either belligerent sends a despatch-boat to Hong Kong with despatches for telegraphic transmission, Her Majesty's Government should not interfere with their transmission by the Telegraph Company, but of course cannot guarantee the Company against acts of the other belligerent in consequence of such transmission. We do not advise that, except under special circumstances, Her Majesty's Government should impose on a despatch-boat, sent under such circumstances as are mentioned in Lord Tweeddale's letter, the same conditions as to not using the cable which would be properly imposed on a cruiser putting into one of Her Majesty's ports.

5. The whole subject is novel, and cases of great difficulty may arise as to the application of principles to particular cases. No inflexible rule can be laid down, and a good deal of latitude must in practice be left to the Governor or other local authority in dealing with each particular case as it arises.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.
C. T. SIMPSON.

Royal Courts of Justice,
May 7, 1898.

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[Colonial Office.]

No. 32A.

[June 10, 1898.]

The Law Officers of the Crown to Mr. Chamberlain.

Royal Courts of Justice, June 10, 1898.

Sir,

Temporary censorship of telegrams by Governor of Barbados.

WE were honoured with your commands signified in Mr. H. Bertram Cox's letter of the 31st ultimo, stating that, with reference to recent conferences between ourselves and Mr. Cox upon the subject of the censorship of telegrams temporarily put in force by the Governor of Barbados, he was directed by you to transmit to us copies of three despatches (with inclosures) which had been received from Sir James Hay, containing full details of what occurred on the occasion in question.*

That it appeared that the action of the Governor was based on a telegram from the Colonial Office, sent on the 27th April last, in reply to a telegram from him on the 25th April, asking whether a belligerent man-of-war in the port of Bridgetown, or a Consul, could send a telegram without any control. That the reply to that inquiry—which was drafted on our verbal instructions—was to the following effect:—

"Telegraph should be controlled so as to prevent despatches from belligerent man-of-war. Consul is entitled to use telegraph, and can be interfered with only if there be case of abuse for purposes of war."

That a belligerent man-of-war named the "Alphonso XIII" soon afterwards arrived at Bridgetown—a Spanish vessel carrying 10 guns and 547 soldiers. That she entered the port at 5·45 A.M. on the 2nd May, and left again at 3 P.M., taking neither coals nor provisions of any description.

That the Governor, to whom the Secretary of State's instructions had been communicated, as soon as he was apprised of her arrival, decided, upon the advice of the Attorney-General, to put in force a portion of section 15 of the West India and Panamá Telegraph Company's Act (No. 27 of 1890), in order to effectually supervise the dispatch and delivery of any telegrams which might tend to a breach of neutrality. That an order was accordingly issued to the clerk in charge of the telegraph office providing for such supervision. That the censorship was imposed at 9.30 A.M. on the 2nd May, and withdrawn at 3 P.M. on the 3rd, twenty-four hours after the "Alphonso XIII" had left the port.

That during that period the only telegram actually handed in and stopped was a message in cypher from the United States' Consul to the State Department at Washington. That that telegram was stopped by the officer placed in charge of the telegraph office, and was handed to the Governor, who thereupon caused a communication to be addressed to the Consul, expressing his regret that he was unable to forward the telegram. That the Governor, who had observed that the word "Alphonso" occurred in it "in clear," was at a subsequent interview (the events of which were very fully detailed in his despatch No. 79 of the 5th May) apprised by the Consul of the purport of the message, which was stated by the United States' Consul to be to the following effect: "Spanish troopship 'Alphonso XIII' here with troops." That the result of the interview was that the telegram in question was not sent, but that later in the day the Governor gave permission to the Consul to send an open telegram to the State Department at Washington as follows: "Governor, under instructions from Home Government, controls cable office: will not permit messages sent Department relative to movements, American or Spanish."

That in the course of the same day the Colonial Secretary was informed by the Spanish Consul that he was desirous of dispatching two telegrams, one to the Minister at Madrid, and one to the friends of the Commander of the "Alphonso XIII." That the Consul volunteered to show those telegrams in rough, and in the Spanish language, to the Colonial Secretary, who informed him that if handed in they would be submitted to the Governor, and that it would depend on his decision whether they would be allowed to be forwarded or not. That subsequently, however, the Consul informed the Colonial Secretary by telephone that he did not desire to send any telegram.

That the telegram which was prohibited at Barbados was sent by post to Saint Vincent, and was thence forwarded by telegraph to the State Department, the Governor of the Windward Islands having not asked for, or received, any instructions similar to those given to the Governor at Barbados. That the Administrator at Saint Vincent asked the Governor of the Windward Islands whether he should exercise control of telegraphic correspondence with reference to movements of belligerent ships, as they were prohibited at Barbados, but that the Governor replied that he should not do so without special instructions. That he had since more fully explained his action in a despatch.*

That as it seemed highly desirable that some general directions should be given to Colonial Governors to avoid such inconsistencies in procedure as this incident revealed, our further and fuller opinion was requested in a letter from the Under-Secretary of the Foreign Office, and that upon our report then made a Circular despatch was drafted, and after having been settled by us in conference with Mr. Bertram Cox was sent out to all Colonies on the 17th ultimo.†

That Mr. Bertram Cox was directed to request us to take the papers into our consideration, and to favour you with our opinion upon the following points:—

1. Whether the Governor was right in issuing an order under the provisions of the Barbados Act, No. 27, of 1890?

2. Assuming that the Act did not authorize him to issue the order, had he any other power to prevent the sending of telegrams, and, if so, under what law or authority?

3. Whether the Governor acted rightly in declining to allow the telegram of the United States' Consul to be sent?

4. Whether the telegrams of the Spanish Consul, if tendered, should have been refused transmission?

5. What were the means by which the observance of the instructions relating to neutrality in respect of telegrams was to be enforced, if violated by—

   (*a*.) A belligerent war-ship;
   (*b*.) A Consular officer;
   (*c*.) A private individual;
   (*d*.) Generally.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

1. That we think that the Governor ought not to have issued an order under the Barbados Act, No. 27, of 1890. The power conferred by that section should be used only when, in the opinion of the Governor, an emergency has arisen in which it is expedient for the public service that the Government should have control. Such an emergency would arise if circumstances had occurred demanding the paramount use of the cable for Government despatches under direct Government supervision, or if there was reason to believe that the cable might be used for the dispatch of messages prejudicial to Her Majesty's Government or Dominions.

We are far from saying that an emergency such as is contemplated by the section might not arise by reason of the apprehended use of the cable by a belligerent for warlike purposes. Cases may be supposed in which such use might be prejudicial to this country as tending to embroil it with a friendly Power, so that it would be expedient for the public service that control should be assumed. But we think it clear that in the present case no such emergency had arisen. The power is one to be used only in special and exceptional cases, and not to be brought into play merely because a belligerent cruiser has stopped at the port.

2. The Governor had no other power to control the cable.

He had power to make it a term of the admission of the Spanish vessel that the cable should not be used for warlike purposes, and could enforce the performance of this condition by preventing, if necessary, access to the telegraph office by the Captain or his subordinates.

3. We think that the telegram of the United States' Consul ought to have been transmitted. It is only in a clear case of abuse of his privilege by the Consul of the *nation—one of whose cruisers* is enjoying the hospitality of a British port—that inter-

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* Sir J. Hay to Colonial Office, Nos. 77, 78, and 79, May 5, 1898.

* Sir A. Moloney to Colonial Office, May 12, 1898.

† Law Officers to Foreign Office, May 7, 1898.

ference might be justifiable on the ground that he was making himself the agent of the Captain for the transmission of warlike messages.

4. Whether the telegrams of the Spanish Consuls should have been transmitted we cannot say definitely without knowing their contents. Under ordinary circumstances, a message to the Captain's family would be unobjectionable.

In answering the third and fourth of the above questions we have, of course, treated the Governor as in control of the cable. Apart from such control there would be no power to prevent the Consul from sending messages.

5. (*a.*) We have already answered this question. (*See* answer 2 above.)

(*b.*) His *exequatur* may be revoked, and complaint made be made to his Government.

(*c.*) There is great difficulty in dealing with the case of private individuals unless it appears that, being British subjects, they contravene the Foreign Enlistment Act by taking service for this purpose with a foreign belligerent Power. If the individual in question is a subject of the belligerent Power, his withdrawal from British territory may be demanded.

(*d.*) We have nothing to add except that it is difficult or impossible, even if control were assumed of the telegraphs, to insure that messages relating to warlike operations shall not be transmitted; and that in our opinion the duties of neutrality do not involve any obligations beyond those indicated in our Report of the 7th May, 1898.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

No. 33.

[July 2, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 28, 1898.

Spanish-American war. Alleged breaches of International Law by United States.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list relating to complaints made by the Spanish Government of alleged breaches of international law on the part of the naval forces of the United States in the conduct of hostile operations against Spain.

The acts, or alleged acts, of the United States' forces which form the basis of the charges preferred against the United States' Government by that of Spain are set forth in a Circular issued by them to the neutral Powers, and communicated to Lord Salisbury on the 9th instant, and are comprised under three heads:—

1. Bombardment of towns without previous notice.
2. Improper use of the Spanish colours.
3. Interruption of the working of submarine telegraph cables.

As regards the first charge, it seems doubtful whether the United States' naval forces have, as a matter of fact, bombarded any towns, though it would appear that in the course of firing upon the fortifications of San Juan de Porto Rico, and possibly in other instances, shot or shell may have fallen into some undefended quarter.

As regards the second complaint, there does not seem to be any evidence that the United States' Naval Commanders or men have exceeded the well known and clearly defined limits within which the use of false colours at sea is, by general consent and long-established custom, permissible.

The third charge, that of interrupting or cutting submarine telegraph cables, relates to a question which, in view of the comparatively recent introduction of this form of communication, has not yet been very precisely determined.

I am accordingly to request that you will take these papers into your consideration, and that you will favour Lord Salisbury with your opinion as to whether any reply should be made to the Spanish Circular, and, if so, in what terms the answer should be framed.

Lord Salisbury will at the same time be glad to receive any general observations which you may desire to offer on the questions raised in the Circular.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

1.	Telegram from Spanish Government	May 23, 1898.
2.	Memorandum by Mr. Oakes	May 25, „
3.	Circular from Spanish Government, communicated	June 9, „
4.	Memorandum by Mr. Oakes	June 16, „
5.	Minutes: April 26 to May 5, 1898. (See No. 179, pp. 97, 98, of printed correspondence respecting war between Spain and the United States of America.)	
6.	Law Officers' Report	May 7, „
7.	Consul Crawford .. .. (No. 11)	
8.	To Sir J. Pauncefote .. .. .. (No. 152)	

Report.

We do not think it necessary or desirable to send any answer to this Circular beyond an acknowledgment that it has been received.

We have no general observations to add to those which are made in the Memoranda upon the law, and in Mr. Davidson's notes.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 2, 1898.

Annex 1.

Minutes.

I think it is quite clear that a belligerent is entitled to cut cables if this operation be required in order to prevent such cables being used as channels of communication with his enemy's forces.

He is not, of course, entitled to go into neutral waters and there to cut a cable, because that is a violation of neutral territorial waters; but he may do so in his own waters, in his enemy's waters, or on the high seas.

Although he is clearly entitled to take this course as a matter of right, the expedient is one which he may reasonably be expected sparingly to use, and not to resort to except in cases of some real necessity.

If he does so wantonly, and without sufficient necessity, a protest might be made, and I think that innocent neutral owners of the injured cable would have an equitable ground for compensation, and that a Government which was satisfied that such neutral owners had taken reasonable precautions to prevent the misuse of their cable, and were in point of fact quite innocent in regard to such misuse by the other belligerent or his agents, would pay compensation to the neutral owners, as an act of grace, though without admitting that such compensation was paid *ex debito justitiæ*.

Whether the cutting of the cable was a necessary act can only be determined in each case by the special circumstances; but *primâ facie* the belligerent may be assumed to be the best judge as to the necessity, and it may also, I think, be assumed that a civilized belligerent will only avail himself of his right with reluctance, and because he is convinced that the circumstances require it as the sole means of protecting himself against a serious mischief.

W. E. D.
A. J. B.

Foreign Office, April 26, 1898.

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These letters (Cuba Submarine Telegraph Company and West India and Panamá Telegraph Company) should be answered *mutatis mutandis* in the same way as the other similar letters from British Telegraph Companies who have applied to have their interests protected.

W. E. D.

Foreign Office, May 5, 1898.

Annex 2.

Memorandum by Mr. Oakes.

The question of the use of false colours during war is discussed by Halleck and by other writers on international law.

At p. 569 of vol i, Halleck says:—

"We will now inquire how far stratagems are allowable at sea, and how far a vessel may act under false colours. 'To sail and chase under false colours,' says Sir William Scott, 'may be an allowable stratagem in war, but firing under false colours is what the maritime law of England does not permit; for it may be attended with very unjust consequences: it may occasion the loss of the lives of persons who, if they were apprised of the real character of the cruiser, might, instead of resisting, implore protection.' It will be noticed that the prohibition to fire under false colours is here put upon the ground of local law, no reference being made to any general rule of international jurisprudence. The subject of employing false colours was much discussed during the 'Alabama' controversy with the United States, that Government frequently pressing the point on the British Government, especially in reference to the 'Oreto' and the 'Alabama.' 'It is a rule of the law of nations,' says Pistoye and Duverdy, 'that on the sea a vessel cannot attack another vessel before having made known its nationality, and having put the vessel which it encounters in a position of declaring its own nationality.'

"The ancient rule of maritime law, as stated by Valin, was that the *affirming gun* ('coup de semonce, ou d'assurance') could be fired only under the national flag. Such were the provisions of the ancient Ordinances of France. But Article 33 of the Arrêté du 2 Prairial merely prohibited the firing a shot ('tirer à boulet') under a false flag, and and the Law of the 10th April, 1825, Article 3, provided that captains and officers who *commit acts of hostility* under a flag other than that of the State by which they are commissioned, shall be treated as pirates. Ortolan says that the affirming gun may be fired under false colours, but all acts of hostility must be under the national flag. Massé and Hautefeuille seem to adopt the opinion that the affirming gun ('coup de semonce') should be fired only under national colours. But as such gun is in no respect an act of hostility, we can perceive no good reason why it may not be fired under false colours."

The Case and Counter-Case of the United States, to which Halleck refers in a note, have been examined in connection with this question, but they do not seem to contain anything useful for the present purpose. It is stated, for instance, in the Case, that the "Florida" (or "Oreto") when at Nassau carried confederate flags on board, and that the British Colonial Judge, in deciding the case of that vessel, attached little importance to the circumstance. The Counter-Case shows that the "Florida" resembled in outward appearance a British man-of-war, and in that assumed character, with the British flag flying, she passed the blockading squadron off Mobile, and her real character was not suspected until too late to stop her.

The general view as expressed by Hall and others seems to be that although a vessel is justified in war in hoisting flalse colours for the purpose of escaping or of drawing an enemy into action, &c,, she must hoist her own flag before firing with shot or shell, or committing an act of hostility. (See Hall, pp. 558, 559; Halleck, by Sir S. Baker, vol. i, p. 570, &c.).

If the cutting of a cable is to be regarded as an act of hostility, the United States' ships of war referred to in the telegram from the Spanish Government would, of course, have transgressed the laws of war if they had cut one when under Spanish colours. But they do not appear to have done so, but only to have entered the Bay with the assumed or apparent purpose of cutting the cable, a purpose which, if it existed, they did not carry out.

Under these circumstances they do not seem to have actually committed any breach of the laws of war.

(Signed) A. H. OAKES.

Foreign Office, May 27, 1898.

Annex 3.

Memorandum by Mr. Oakes.

Although it does not appear to be incumbent upon a belligerent to give notice before bombarding an armed port of an enemy, it is, nevertheless, more usual, whenever military exigencies permit, to give some such notice.

Calvo, in dealing with the question of bombardments (4th edition, vol. iv, section 2,076), says:—

"Il est un autre usage auquel les Allemands ont dérogé en plus d'une occasion. D'ordinaire le Commandant des assiégeants, toutes les fois qu'il le peut, informe les assiégés de son intention de bombarder la place; c'est une mesure dictée par l'humanité et qui a pour but de mettre les non-combattants, surtout les femmes et les enfants, à même de s'éloigner ou de pourvoir à leur sûreté."

Calvo then proceeds to quote the views of the United States on the subject:—

"§ 2,077. Voici ce que dit à ce sujet *l'Instruction pour les Armées en Campagne* des Etats-Unis d'Amérique: 'Le Commandant des Assiégeants, *toutes les fois qu'il le pourra*, indiquera aux assiégés son intention de bombarder la forteresse, afin que les citoyens paisibles, et en particulier les femmes et les enfants, puissent chercher un refuge avant le commencement du bombardement. *Cependant il ne faut pas croire que ce soit une violation des lois de la guerre que d'omettre cette formalité.* La surprise peut être requise par la nécessité.'"

Article 16 of the proposals of the Brussels Conference of 1874 on the laws of war is thus quoted by Calvo in section 2,078:—

"Si une ville ou place de guerre, agglomération d'habitations ou village, est défendu, le Commandant des troupes assaillants, avant d'entreprendre le bombardement et sauf l'attaque de vive force, devra faire tout ce qui dépend de lui pour en avertir les autorités."

Bluntschli says that notice should be given whenever military operations permit, adding that "c'est seulement dans les cas les plus urgents qu'une attaque subite, combinée avec un bombardement immédiat, peut paraître autorisé à titre de nécessité militaire."

Geffeken, on the other hand, deems that previous notice, though desirable for reasons of humanity, is not essential, inasmuch as the inhabitants of an invested place know what to expect.

Calvo gives the following precedents where notice has been given:—

Antwerp in 1832, Rome in 1849, and Sebastopol in 1855. In the contrary case he mentions Paris (? 1870) and the French town of La Fère (November 1870).

It is stated in Haydn's "Dictionary of Dates" that M. Favre asked Count Bismarck to give notice before bombarding Paris, but that the Count refused the request.

In 1883, when the proceedings of the French Admiral off Madagascar formed the subject of correspondence with this office, the Law Officers, on the 28th August, reported in connection therewith as follows:—

"The bombardment of Fenoarivo without affording any notice to Commander Johnstone (the Senior British Naval Officer) or the inhabitants of the town, appears to deserve grave consideration. No doubt, in one sense, the Commander of a hostile force has the right to regulate the manner in which he will conduct his hostilities, and *to call upon him at all times to give notice of his intended operations would be absurd.* But when an unarmed town is about to be bombarded, we conceive that humanity has created a practice which ought not to be deviated from to the effect that those residents

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who are non-belligerents should have an opportunity afforded to them of removing themselves and their property out of the danger created by the warlike operations in which they take no share."

(Signed) A. H. OAKES.

Foreign Office, June 16, 1898.

[Colonial Office.]

No. 33.

[August 11, 1898.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, August 11, 1898.

Sir,

Limits of British territorial waters in Gibraltar Bay.

WE were honoured with your commands signified in Mr. Wingfield's letter of the 8th instant, stating that he was directed by you to transmit, for our consideration and report, a despatch from the Governor of Gibraltar, requesting instructions as to the limits of British territorial waters in the Bay of Gibraltar, in view of the contingency during the present state of war between the United States and Spain of possible attempts at capture, or other belligerent action, within the waters of the bay, or attempts to violate Her Majesty's Proclamation of Neutrality.

That, on receipt of this despatch, you had caused it to be referred to the Foreign Office, War Office, and Admiralty, pointing out that, as belligerent action anywhere within the bay would involve serious risk to the numerous vessels and coal-hulks in the harbour, you considered that the Governor should treat as British waters, for the purpose of preventing any such action, the full 3 miles around the rock.

That the replies of these Departments were inclosed with Mr. Wingfield's letter, and that on the 24th May the Governor was instructed by telegraph in the sense of the letter from the Admiralty of the 19th May.

That the correspondence of 1879–83, to which reference was made, would be found in the Parliamentary Paper, a copy of which was inclosed, and that Mr. Wingfield was also to inclose a copy of a Foreign Office Memorandum summarizing the voluminous correspondence which had passed with the Spanish Government on the subject of the limits of the territorial jurisdiction of the bay.

That the British Government had always maintained that they were entitled to jurisdiction over an extent of waters extending 3 miles around the rock on every side, and Mr. Wingfield was to call our attention to the despatches of Mr. Canning and Viscount Palmerston, Nos. 3 and 10, in the inclosed Confidential print, in which that view was maintained, and he was also to refer us to a Memorandum by the late Attorney-General of Gibraltar (Inclosure 2 in No. 14 in the Confidential print), and to the Report of our predecessors, No. 15, in the same print.

That it would be seen from the correspondence in the Parliamentary Paper that the effort of Her Majesty's Government to obtain a conventional line of demarcation of jurisdiction in the bay had failed because the Spanish Government refused to acquiesce in any line which conceded to Great Britain jurisdiction over waters which washed Spanish territory, and Her Majesty's Government was, therefore, not bound by the line which they were then prepared to accept.

That Mr. Wingfield was to request that we would take these papers into our consideration, and advise you whether the instructions sent to the Governor of Gibraltar, based on the Admiralty letter of the 19th May, were proper and sufficient.

In obedience to your commands we have taken the papers into our consideration, and have the honour to

Report—

That we think there is some inconsistency between the first and second paragraphs of the Admiralty despatch of the 19th May, 1898.

We think that a reasonable solution of the difficulties as regards the extent of territorial jurisdiction in the bay is to be found in the *medium filum* indicated on the plan.

But we cannot see how it can, at the same time, be asserted that the territorial

waters of the fortress extend beyond this line for the purpose of preventing any danger to the fortress or shipping. The two propositions are not consistent.

It may well be that there is a right on the part of the Governor of Gibraltar to prevent any action even outside the territorial waters which necessarily constitutes a danger to the fortress or to the shipping in the port, but this must rest not on the doctrine of territorial jurisdiction, but on the right of the neutral to prevent warlike operations, which necessarily involve direct injury to himself.

The questions relating to the safety of the fortress of Gibraltar and the shipping in port are so important and delicate that we think no attempt should at present be made to define exactly the limits within which the Governor may act.

We think it quite right that the Governor should be instructed to enforce the Proclamation of Neutrality only within the line marked in the bay, and up to the 3-mile limit elsewhere, but no admission should be made which might hamper the right of the Governor to take action in any part of the bay which may be essential for preventing injury to the fortress or shipping.

We have, &c.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

No. 34.

[December 19, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, December 9, 1898.

Gentlemen,

Attack by Spanish mob on "Lady of Clennell" at Malaga.

I AM directed by the Marquess of Salisbury to transmit to you the papers noted in the inclosed list with reference to an attack made by a Spanish mob at Malaga on the British steam-yacht "Lady of Clennell" while she was lying alongside the quay in the harbour of that port.

According to the account given by the master of the yacht (Paper F), and corroborated by her owner, Mr. Wilkinson, the "Lady of Clennell" left Almeria on the 3rd May last, after hoisting her flags, and on the same day arrived off Malaga, where at 5·45 P.M. she took on board a Spanish pilot, who took charge of the yacht and conducted the mooring operations at West Transverse Mole.

In about an hour the Sanitary doctor boarded the yacht and granted pratique. The Royal Yacht Squadron's agent and a representative of a supply firm, both English, also came alongside, and arrangements were made for watering and clearing for Gibraltar on the following morning. The flags were kept flying till after sundown, with the exception of the quarantine flag, which was hauled down by the doctor's orders; mooring lights were placed in position, and as none of the crew desired to land, all on board, except the watchman, retired to rest early.

At about 10·30 P.M. a large mob assembled near the stern of the yacht, and pelted her with a shower of lumps of granite, which damaged the vessel, injured three of the crew, and was sufficiently serious to endanger the lives of those on board. The mob further cut the yacht's hawsers, and showed evident intentions of attempting to board her; and as no notice was taken by the authorities of the distress signals made from the yacht for forty minutes by bell and steam-whistle, and no assistance was rendered either from the quay or from the guard-ship which was lying close by, steam was got up as quickly as possible, and the yacht left for Gibraltar.

On arrival at that port, the Colonial authorities (Paper A) found the deck of the yacht thickly strewn with stones, which had been thrown with such force as to splinter and indent portions of the deck, bulwarks, and deck-houses.

A detailed account of the damage done to the "Lady of Clennell" has been furnished by Mr. Wilkinson's agents (Paper E), together with an estimate by an expert of the repairs which are considered necessary to restore her to the condition in which she entered Malaga.

Representations addressed to them by Her Majesty's Ambassador at Madrid elicited from the Spanish Government (Paper D) the explanation that the incident had been due to a mistake respecting the nationality of the "Lady of Clennell," which the rioters had believed to be a United States' merchant-vessel. This mistake, it was asserted, would not have occurred if the yacht had flown her national flag.

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The Spanish Government also informed Sir H. D. Wolff that the authorities had immediately intervened and broken up the groups of rioters, several of whom had been imprisoned, placed at the disposal of the Civil Governors of the province, and charged in the Law Courts. They, moreover, declared that the yacht had cut her own cables, and that there was no proof of an attempt to board, and they adduced as evidence of the proper conduct of the authorities at the time of the riot the fact that on the following day the British Consul at Malaga had thanked the Governor for the promptitude and efficiency with which the yacht had been protected.

With reference to this last point, I am to invite your special attention to Mr. Finn's explanation (Paper J) of the circumstances which led to his expression of thanks.

The other statements of the Spanish Government having been directly traversed by the master of the "Lady of Clennell" (Paper F), Sir H. D. Wolff was instructed to point out to the Spanish Government that they had been misinformed by the local authorities at Malaga (Paper H).

The Spanish Government, in their reply to this further representation, have not admitted the inaccuracy of the reports furnished by the local authorities, but they have expressed regret at the occurrence of so disagreeable an incident (Paper K).

Mr. Wilkinson, to whom this reply has been communicated, is not satisfied with the reparation thus offered, and he has intimated his intention to press his claim for a more ample apology and for pecuniary compensation (Papers L, M, and N).

I am to request you to take the inclosed papers into your consideration, and to favour Lord Salisbury with your opinion as to whether the case is one in which further reparation should be demanded, and more especially whether, in your judgment, Her Majesty's Government would be justified in putting forward on behalf of Mr. Wilkinson a claim for pecuniary compensation.

In the event of your arriving at a conclusion favourable to the presentation of such a claim, his Lordship would be glad to learn what amount of compensation might, in your opinion, properly be demanded on Mr. Wilkinson's behalf.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Mr. Finn	(No. 19)	May 7, 1898.
(B.)	Mr. Wilkinson		June 11, „
(C.)	Ditto		June 29, „
(D.)	Sir H. D. Wolff	(No. 268)	July 7, „
(E.)	Messrs. Marvin		August 24, „
(F.)	Mr. Green		August 24, „
(G.)	Messrs. Marvin		
(H.)	To Sir H. D. Wolff	(No. 222)	
(J.)	Sir H. D. Wolff	(No. 347)	
(K.)	Ditto	(No 397)	
(L.)	Mr. Wilkinson		November 30, „
(M.)	Messrs. Marvin		November 30, „
(N.)	To Mr. Wilkinson		December 7. „

Report.

We do not, on the whole, advise that this claim should be pressed.

The attack on Mr. Wilkinson's yacht was made by a mob who seem to have been under the impression that it was an American vessel. The attack was, of course, in any case quite unjustifiable; but in order to justify a demand of compensation from the Spanish Government, it would be necessary to show that the action of the mob was caused or facilitated by some misconduct or neglect on the part of the Spanish authorities. There appears to be no very clear evidence of this, and the incident, however regrettable, was due to the excited state of public feeling in time of war. The Spanish Government have offered an apology, which is, we think, sufficient, and Mr. Wilkinson ought we think, to regard the apology made to Her Majesty's Government as satisfactory, without further apology to himself personally.

The damages claimed are of a somewhat speculative character, and we cannot advise that Her Majesty's Government should try to enforce payment by diplomatic pressure.

We have only to add that it is a condition precedent to intervention by Her Majesty's Government that recourse to the local Tribunals should be exhausted. No steps appear to have been taken to recover damages in the Spanish Courts, but it may be fairly said on Mr. Wilkinson's behalf that, practically speaking, any such steps would be fruitless. It would be difficult or impossible to identify the individuals who were concerned in the riot, and, even if this could be done, probably none of them could pay any sum which might be awarded. But upon the other grounds above stated, we think this matter should, under all the circumstances, be allowed to rest.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 19, 1898.

TURKEY.

No. 35.

[July 30, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, July* 23, 1898.

Messrs. Arabian's claim for losses during disturbances in Anatolia.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which refer to the claim of Messrs. Arabian against the Turkish Government for losses sustained by them during the disturbances in Anatolia in 1895.

On the 25th September of that year, Messrs. Arabian submitted to this Department a claim for 94,420*l.* in respect of losses incurred at Trebizond and other towns of Asia Minor (Paper B).

Mr. Mardiros Arabian's claim to British nationality having previously been established in connection with another matter (see Paper A), Her Majesty's Ambassador at Constantinople was instructed to inquire into this case and endeavour to obtain some evidence in support of the claims to compensation advanced by Messrs. Arabian.

In February last, a despatch was received from Sir P. Currie (Paper C) forwarding a report on the case from Her Majesty's Consul at Trebizond, together with three documents produced by Messrs. Arabian as substantiating their claim in respect of their losses at Trebizond alone, which they estimated at 22,043*l.*

This part of their claim Messrs. Arabian wished Her Majesty's Embassy to present separately to the Turkish Government, but it was thought advisable to consider the claims in their entirety, and the firm were therefore asked to produce evidence with regard to their losses at places other than Trebizond (Paper E). It will be seen from a recent despatch received from Her Majesty's Chargé d'Affaires (Paper F), that, in view of this request, Messrs. Arabian have withdrawn the greater part of their claims owing to the impossibility of producing documentary proof of their losses, and they now advance, with certain papers in evidence, a claim for losses at Gurun only, which they estimate at £T. 10,980, in addition to that for losses at Trebizond, making a total claim of 30,010*l.*

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion as to whether Messrs. Arabian's claim, or any part of it only (and, if so, which part), is in law sustainable and proper to be put forward by Her Majesty's Government, subject to a final examination of details, items, and amounts; and I am also to request that you

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will favour his Lordship with any general observations which you may have to offer on the case.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) Mr. Herbert	(No. 523)	July	6, 1896.
(B.) Messrs. Arabian	..	September	25, ,,
(C.) Sir P. Currie	(No. 64)	February	3, 1898.
(D.) Ditto	(No. 234)	April	14, ,,
(E.) To Sir P. Currie	(No. 100)	April	30, ,,
(F.) Mr. de Bunsen	(No. 403)	July	14, ,,

Report.

We think that these claims may be put forward, but only on the terms that there is to be an opportunity of testing and verifying them.

The items as to bills and account books said to be lost, and as to bonds and bills in surrounding villages, require explanation and proof that, owing to the loss of these documents, the amounts due have been lost and could not be recovered. The other items also, the Ottoman Government can hardly be expected to accept without inquiry.

We have no observations of a general nature to add.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 30, 1898.

No. 36.

[November 22, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 31, 1898.

Gentlemen,

Validity of Quaker Marriage in Turkey.

AN application has been received by Mr. Crow, Acting Consul-General at Beirout, for information as to whether the ceremony of marriage between an Englishwoman and an Ottoman subject, both members of the Society of Friends, can be legally performed in the Friends Mission House at Broumana, in Syria, and whether the latter would be able to repudiate the lady, should he at any time afterwards wish to do so. Mr. Crow asks for instructions as to what answer he should return to this application.

In 1891, Mr. Holmwood, Her Majesty's Consul-General at Smyrna, requested permission to register at the Consulate-General a marriage between a British subject and an American citizen solemnized at Smyrna by a Minister of the Scottish Established Church, and the case led to a discussion as to the validity of such a marriage (Minutes on Mr. Holmwood's despatch No. 13 of the 7th March, 1892, marked (A)). It was held that the marriage was not valid by the law of England, inasmuch as English Common Law only recognized marriages solemnized in Turkey by a Minister in Episcopal Orders, while the Scottish Church was organized on the Presbyterian system, and its Ministers were consequently not in Episcopal Orders. It was further considered that such a marriage could not be looked upon as a *lex loci* marriage (*i.e.*, one accepted by the English Courts merely on the ground that it was valid by the law of Turkey, although the conditions prescribed by English law had not been fulfilled), because the doctrine of recognition of marriages *lege loci contractus* did not apply in Mahommedan, and, therefore, polygamous countries. For these reasons it was held to be undesirable that British subjects should be married in Turkey, otherwise than under the Foreign Marriage Act or at the Common Law by a clergyman in Episcopal Orders.

In a Report, inclosed herewith and marked (B), which was furnished to the

Marquess of Salisbury by your predecessors in 1892 on a somewhat analogous case, a similar opinion was expressed, "except in the case, which they did not imagine to exist, of the law of the foreign country expressly providing that valid marriages might be contracted in the way and according to the forms actually adopted." Inquiry as to the existence in Turkey of such a law having been addressed to Mr. Stavridès, Dragoman to Her Majesty's Embassy at Constantinople, as an expert in Ottoman jurisprudence, that gentleman reported in the paper, also herewith inclosed and marked (C), "that Christian communities, whether Greek, Armenian, or Catholic, have the right, according to the Sheriat and in virtue of the Berats and Firmans which are invariably granted to their respective Patriarchs and Bishops to solemnize marriages according to their own laws; and that such marriages, which are of course monogamous, are held good by the whole of the Ottoman authorities; in other words, the marriage is valid whenever it is performed, according to the ritual of the community to which the parties belong."

On a previous occasion, in answer to a question as to the nature and provisions of the laws (if any) regulating the marriages of Christians, whether Ottoman subjects or otherwise, in the Ottoman dominions, Mr. Stavridès reported in the Paper inclosed and marked (D) that Ottoman law had nothing to do with foreign subjects, that the moment the marriage of a foreigner was declared valid by his own authorities, it was recognized as valid by Ottoman law, that the marriages of Christians, whether Ottoman or otherwise, were governed by the laws of their respective Churches, and that no distinction was drawn between Christian Ottoman subjects and foreign Christians.

On this statement of the law of Turkey, the Law Officers were asked whether Her Majesty's Consular officers could, under any circumstances, be authorized to attend and register marriages of British subjects as being valid according to the *lex loci;* and, if so, Whether this authority should apply only to marriages celebrated according to the rites of the Church of England by a clergyman of that Church, or also, without distinction, to those celebrated by the ministers of other Christian religious persuasions according to the ritual of their several Churches. In their reply (Paper E), after expressing the opinion that in Turkey the local law applicable to Christian marriages was not Mahommedan, but the appropriate Christian law, the Law Officers stated that upon the statement of Mr. Stavridès, of the local law, Her Majesty's Consular officers might be authorized to register all marriages rightly solemnized according to local law, as above explained, and that such authority applied not only to marriages celebrated according to the rites of the Church of England, but also and without distinction to marriages solemnized by the ritual of any other Christian religious community.

In 1893, however, Colonel Trotter, Her Majesty's Consul-General at Beirout, reported (Paper F) that a British subject, a member of the Church of England, had been married within the Ottoman dominions to a Christian girl of Ottoman nationality, by a Reformed Presbyterian Minister. Doubts having arisen as to the validity of the marriage, the parties came to Beirout to be remarried at the Consulate-General under the Foreign Marriage Act, and were so remarried. Colonel Trotter asked whether a marriage between a British and an Ottoman subject would be valid without the intervention of the Consular officer, if solemnized by a Wesleyan, Baptist, Presbyterian, or Quaker minister. He stated at the same time that Ottoman law recognized marriage performed under the sanction of the Supreme Ecclesiastical Head of any recognized community, but was unable to say to what extent the Reformed Presbyterian Church was a recognized religious community in Turkey. He therefore thought the validity of the marriage by Ottoman law might be doubted.

According to the decision of the Law Officers on the Smyrna case, such marriages would be valid according to the *lex loci* and consequently recognized by the English Courts. It will be seen, however, that Colonel Trotter's statement of Ottoman law is not entirely in harmony with those of Mr. Stavridès, on which the opinion of the Law Officers was based, and which it is thought, moreover, may not have been intended to bear the construction which was put upon them. For these reasons it was considered that the marriage in question was of doubtful validity, and Colonel Trotter's action in remarrying the parties was approved (Paper G).

The present case is that of a proposed marriage between an Ottoman subject and an Englishwoman in the Quaker Mission House at Broumana. The doubts which arose in the Beyrout case equally arise now, and the Marquess of Salisbury is anxious that a definite decision should be arrived at. I have therefore the honour to request, by his Lordship's direction, that you will favour him with your opinion as to (1),

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whether the opinion of the Law Officers of the 18th September, 1892, may be held to be in any way modified by the statements as to Ottoman law contained in Colonel Trotter's despatch; and, if so (2), whether the marriages of British subjects, solemnized in Turkey by Christian ministers of religion not in Episcopal Orders, may be considered valid.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Minutes on Mr. Holmwood's despatch No. 13 of March 7, 1892.	
(B.) Law Officers' Report	June 27, 1892
(C.) In Sir C. Ford's No. 33, Consular, July 29, 1892 (Memorandum by Mr. Stavridès).	
(D.) In Sir C. Ford's No. 23, Consular, May 7, 1892 (Memorandum by Mr. Stavridès).	
(E.) Law Officers' Report, September 18, 1892 (with Minutes thereon).	
(F.) Colonel Trotter, No. 4, January 31, 1893 (with Minutas thereon).	
(G.) To Colonel Trotter .. .. (No. 7)	June 20, 1893.

Report.

We think that the statements in Colonel Trotter's despatch make it very doubtful whether the view of the Ottoman law on which the opinion of the Law Officers of the 18th September, 1892, proceeded was in fact correct.

The Report of Mr. Stavridès is couched in somewhat ambiguous terms. It seems clear that the Ottoman law recognizes as valid marriages contracted in accordance with the Ecclesiastical Law of the great Christian communities which are subject to the Porte. But it is to us by no means clear, reading the Report of Mr. Stavridès along with the despatch of Colonel Trotter, that the Ottoman law recognizes as valid any marriage which would be valid according to the Ecclesiastical Law of any sect of foreigners who may be resident in the Turkish dominions, and unless the view taken on this point in the Report of the 18th September, 1892, should be confirmed by experts in Turkish law we do not think that such marriages should be registered under section 18 as marriages valid by the *lex loci*. We suspect that as regards marriages of foreigners, the Turkish law recognizes as valid only such marriages as would be recognized as valid by the law of the country to which they belong. In an article on this subject in the "Journal du Droit International Privé," vol. xvi, pp. 34–35, M. Salem, Advocate at Salonica, says in terms that the Ottoman law recognizes such marriages of foreigners only because they are recognized by the Consular authorities of the country to which the parties belong. If this view be correct, these marriages are not according to the *lex loci*, but according to the law which the Consular authorities recognize as applicable in Turkey.

Moreover, many difficulties would arise in practice in applying the view taken in the Law Officers' Report of the 18th September, 1892. It may be that many religious bodies do not affect to have an Ecclesiastical Law defining what constitutes a valid marriage ceremony—they may regard that as a matter for the Civil authority while they add a religious ceremony to the legal contract.

If the view which on the materials before us we are disposed to take of the Ottoman law be correct, these marriages are not marriages by the *lex loci* to be registered under section 18 of "The Foreign Marriages Act, 1892," but so far as valid they are valid because they are valid according to the British law applicable to British subjects in Turkey. Upon this view section 18 has no application to these marriages, as it relates only to marriages which have been celebrated according to the local law of the foreign country.

We must, however, observe that as this is largely a question of Ottoman law, our opinion must be taken subject to any light which may be thrown on the subject by further Reports by experts in Ottoman law.

2. Upon the materials before us we do not think registration under section 18 applicable to any of these marriages, whether before ministers in Episcopal Orders or not.

The question is not of local law of marriage, but of the British law applicable to British subjects in Turkey.

We observe that in the Papers before us it is assumed that the doctrine of R. *v.* Millis applies to British subjects in Turkey. We ought to point out that there is high authority for the proposition that R. *v.* Millis does not apply to marriages out of England and Ireland, or that if it does apply at all its application is subject to qualifications. The question is one of very great importance, and we think it better to express no opinion upon it until it arises in a practical shape.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 22, 1898.

UNITED STATES.

No. 37.

[April 23, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, April* 4, 1898.

Free navigation of Stikine River. Treaty rights of Great Britain to.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers relating to the question of the extent and character of the obligations which devolved on the United States' Government in consequence of their purchase of the territory of Alaska from Russia in 1867.

Article VI of the Treaty between this country and Russia of 1825 (Paper A) states:—

"It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, ... shall for ever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which in their course towards the Pacific Ocean may cross the line of demarcation upon the line of coast described in Article III of the present Convention."

This arrangement was re-enacted by Article XIX of the Treaty of 1859 (Paper B).

When the territory was ceded to the United States by Russia by the Treaty of the 30th March, 1867 (Paper C), the cession was declared (in Article VI) "to be free and unincumbered by any reservations, privileges, franchises, grants, or possessions, by any associated Companies, whether corporate or incorporate, Russian or any other, or by any parties, except merely private individual property-holders," and it was added that "the cession hereby made conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominion and appurtenances thereto."

On the 26th December, 1867, the Queen's Advocate having been consulted on the matter, reported that the United States were bound by the Articles from the Treaty of 1825 as regards the limits of the ceded territory, these Articles having been recited in the Treaty of 1867, but that "as regards the other Articles, ... none of the obligations contracted by Russia towards Great Britain under those Articles devolve upon the United States by virtue of the Treaty of Cession."

Subsequently, by Article XXVI of the Treaty of Washington of 1871 (Paper D), between the United States of America and Great Britain, it was provided that "the navigation of the Rivers Yukon, Porcupine, and Stikine, ascending and descending from, to, and into the sea shall for ever remain free and open for the purposes of commerce to the subjects of Her Britannic Majesty and to the citizens of the United States, subject to any Laws and Regulations of either country within its own territory, not inconsistent with such privilege of free navigation."

It should be observed that the cases of the Yukon and Porcupine are not covered by the Treaty of 1825, but that the Stikine is among the rivers declared by that Treaty to be for ever free to British subjects. It must also be remembered that Article XXVI of the Treaty of Washington is in the form of a reciprocal Agreement,

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and that by the first portion of the Article similar advantages were accorded to the citizens of the United States in the River St. Lawrence.

In 1876–77 the question of the right to the free navigation of the Stikine through Alaska was again raised in connexion with the conveyance, in the custody of British colonial constables, of a convicted prisoner, named Peter Martin, from Laketown, in British Columbia, to Victoria in the same Colony. The journey was performed by boat upon the Stikine River, which for some considerable distance between the two places mentioned flows wholly through United States' (Alaska) territory. Peter Martin alleged that he was a United States' citizen, and the United States' Government claimed his surrender on the ground, amongst others, that his conveyance through Alaska was, in such circumstances, illegal.

The papers were referred to the Law Officers of the Crown and to Dr. Deane, Q.C., who, on the 2nd June, 1877, reported that the surrender of Peter Martin should be conceded on the ground that the unauthorized conveyance of a prisoner through the territories of a foreign Power is an infraction of the rights of sovereignty of such Power.

In the course of their Report the Law Officers made the following observations with reference to the rights of Great Britain in regard to the free navigation of the Stikine:—

"1. Whether Great Britain, on the sale of Alaska by Russia to the United States in 1867, lost her rights to the free and unrestricted navigation of the rivers flowing through that territory to the sea, secured to her by the Convention with Russia of 1825, depends upon the construction of the 6th clause of the Convention of 1825.

"That clause gives to British subjects the right of free navigation upon the rivers in question in perpetuity, and Russia could not, in our opinion, voluntarily and without the consent of Great Britain, withdraw this permission.

"By clause 6, however, of the Treaty of the 30th March, 1867, between Russia and the United States, Russia declared the cession of the territory and dominion to be free and unincumbered by any reservation, &c., and, therefore, did virtually revoke the permission she had granted, and by so doing gave Great Britain ground for serious complaint.

"2. Whatever may have been the nature of the right conferred upon Great Britain by the Convention of 1825, we are of opinion that by the subsequent conduct of her Government, especially by the negotiations which led to the Treaty of Washington, and by that Treaty itself, she has lost that right. It may be suggested that the 26th clause of the Treaty of Washington was merely declaratory, but we cannot take this view. We consider that, fairly construed, the stipulations in that clause give new rights, and amount, to that extent and in that sense, to an admission that any former rights were abrogated.

"3. If the rights of free navigation under the Convention of 1825 still existed, we should doubt very much whether the conveying a prisoner through American waters, and still more the landing him in custody upon American territory, would be within the terms of the Convention."

The considerations arising out of these papers are discussed in the correspondence which has recently passed between this Department and the Colonial Office (Papers G and H).

L.O.R. 1897 (Conf. 4216), p. 37.

Mr. Secretary Chamberlain suggests that, in reporting on the case of Peter Martin in 1877, the Law Officers (see Paper F) were probably not in possession of the circumstances in which the Treaty of 1825 was concluded, or of the actual text of the Treaty of 1867, which is quoted in the present letter.

With regard to the Treaty of Washington of 1871, it is urged that Article XXVI does not contain anything which can be construed as waiving the rights of British subjects under the Treaty of 1825 of freely navigating the Lower Stikine.

I am also to inclose a further correspondence between this Department, the Colonial Office, and Her Majesty's Ambassador at Washington, respecting the Regulations to be issued by the United States' Government for the navigation of the Stikine.

It will be seen that the Canadian Government have made a contract for the construction of a railway to the goldfields by the Stikine River, and that for the effective use of this route it is very necessary that the Regulations to be issued by the United States under Article XXVI of the Treaty of Washington should permit transhipment at Wrangel.

Sir J. Pauncefote's telegram No. 12 of the 7th March (Paper K) contains a summary of the conditions under which, in the Bill now before the United States' Congress, it is proposed that such transhipment and bonding privileges at Wrangel should be granted.

These conditions, in the opinion of the Secretary of State for the Colonies, are entirely inconsistent with the Treaty rights mutually guaranteed to British subjects and American citizens (Colonial Office letter, 9th March, 1898, Paper L).

It is urged that the Regulations contemplated by Article XXVI of the Treaty are obviously only such as are required for the purposes of safeguarding the revenue, and of preserving law and order, and that the proposals in the Bill can only be described as an attempt to secure from Her Majesty's Government important political concessions under penalty of being otherwise excluded from the enjoyment of rights already secured by Treaty.

On the 17th March Sir J. Pauncefote was accordingly instructed (telegram No. 22, Paper M), should his Excellency consider that the Bill was likely to pass with these conditions, to make representations against the imposition of any restrictions on the exercise of the Treaty right of free navigation, which must be held to include the right of transhipment under proper Regulations.

His Excellency has not yet reported whether he has taken any action on these instructions.

Copies of the Regulations issued by the Dominion Government, under which foreign vessels may navigate the Canadian waters of the Stikine, Porcupine, and Yukon Rivers, subject to the provisions of the Customs Act, are annexed (Colonial Office, the 21st March last, Paper O), as well as a letter which has been received from the Colonial Office, inclosing a Report from the Canadian Minister of Justice stating very fully the view taken by the Canadian Government with regard to the construction of Article XXVI of the Treaty of Washington (Paper P, Colonial Office letter of the 31st March, and inclosure).

I am to request that Lord Salisbury may be favoured with your opinion as to whether, in virtue of the Treaty of 1825 with Russia, as revived by the Treaty of 1859, Her Majesty's Government can still claim from the United States the right of navigating freely, without any hindrance whatever, all the rivers and streams which, in their course towards the Pacific, may cross the line of demarcation upon the strip of coast described in Article III of the former Treaty, and also as to the rights of this country under Article XXVI of the Treaty of Washington in regard to the free navigation of the Stikine, including the right of transhipment at Wrangel.

As the proposed United States' Regulations are already under discussion in Congress, I am to say that the Secretary of State would be glad to receive a reply to this letter at your earliest convenience.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Convention with Russia. (Treaty 212)		February	28, 1825.
(B.)	Treaty with Russia. (Treaty 427)		January	12, 1859.
(C.)	Treaty between Russia and the United States		March	30, 1867.
(D.)	Treaty with the United States. (Treaty 529)		May	8, 1871.
(E.)	Minute on P. Martin's case		March	26, 1877.
(F.)	Law Officers' Report. (Confidential 4216, p. 97)		June	2, "
(G.)	To Colonial Office		March	8, 1898.
(H.)	Colonial Office		March	10, "
(I.)	Ditto		March	2, "
(J.)	To Sir J. Pauncefote	(No. 16. Telegraphic)	March	2, "
(K.)	Sir J. Pauncefote	(No. 12. Telegraphic)	March	7, "
(L.)	Colonial Office		March	9, "
(M.)	To Sir J. Pauncefote	(No. 22. Telegraphic)	March	17, "
(N.)	Colonial Office		March	18, "
(O.)	Ditto		March	21, "
(P.)	Ditto		March	31, "

Report.

The terms of Article XXVI of the Treaty of 1871 make it difficult for Her Majesty's Government to base their claims to tranship goods at Wrangel upon rights given to Great Britain in the River Stikine by virtue of the Treaty of 1825, and for

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the purposes of that claim it does not appear to us to be material whether any right can be claimed under the latter Treaty.

The rights conferred by the Treaty of 1825 were not, in our view, affected by the cession to the United States, inasmuch as Russia could cede only what she had.

In our opinion, however, the XXVIth Article of the Treaty of 1871 confers on Her Majesty's subjects the right of navigating the Stikine for commercial purposes, and the right of transhipment at Wrangel is an incident to the right of navigation without which it would be useless. The United States can frame Regulations reasonably regulating the exercise of this right, but cannot impose any such conditions as are contained in the Bill before Congress. Free navigation, including transhipment, is a matter of right.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 23, 1898.

[Colonial Office.] *No.* 37*A.*

[June 10, 1898.]

Expulsion of Lieutenant Carranza from Canada

THE following decypher of a telegram which was received from the Governor-General of Canada at 11 P.M. on the 9th June, 1898, having been submitted to the Law Officers, they reported on the 10th instant in the terms given below:—

Lieutenant Ramon Carranza, a Spanish officer, formerly Naval Attaché at Washington, had gone to Canada on the outbreak of hostilities between the United States and Spain; while in Canada, a letter from him to the Minister of Marine in Madrid was intercepted by a Secret Agent of the United States. This letter disclosed the fact that he was engaged in the organization of a spy service, as a result of which the United States' Government represented that his action constituted a flagrant abuse of the protection afforded to him in neutral British territory.

Decypher of a telegram received from the Governor-General of Canada at 11 P.M., *June* 9, 1898.

Your telegram of the 7th. Do the Law Officers of the Crown advise that we have power to order Carranza out of country? If so, does that power result from the Common Law, or from Imperial legislation?

Canadian Law Officers refer us to debate in House of Lords, February 1842, Creole case. My responsible advisers desire to intimate that there is no Alien Act in force in this country.

Report.

In our opinion, Carranza should be informed that he must at once quit Canada. If he does not go, he should be arrested and sent off to any place he may select.

There is strong ground for contending that such a power exists as a part of the prerogative of the Crown, and we think that in this case it should be exercised.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

June 10, 1898.

No. 37*B.* **[Colonial Office.]**

[July 9, 1898.]

Law Officers of the Crown to Mr. Chamberlain.

Sir, *Royal Courts of Justice, July* 9, 1898.

Spanish-American war. Treatment of U. S. "press vessels" in British ports.

WE were honoured with your commands signified in Mr. Bertram Cox' letter of the 4th instant, stating that he was directed by you to request our opinion with reference to a question raised by the Governor of Jamaica regarding the treatment to be accorded to certain United States' steamers known as "press vessels," which conveyed newspaper correspondents direct to the seat of war, in the event of their applying for coal at a British port; and that Mr. Cox was to transmit to us copies of the correspondence which had passed upon the subject, as noted in the annexed list of papers.

That it would be seen that, on receipt of the Governor's telegram, an answer was sent to the effect that there seemed no ground, on the statement of circumstances given, for treating these vessels otherwise than as United States' merchant-vessels.

That the further information given in the Governor's despatch having been received, you would be glad if we would advise you whether the vessels in question should be allowed to receive coal as merchant-ships, or should be subject to the Rules as to coaling which applied to belligerent men-of-war.

In obedience to your commands we have taken the matter into our consideration, and have the honour to

Report—

That, on the facts stated, we think that these vessels should not be subjected to the Rules as to coaling which apply to belligerent men-of-war. They should be allowed to receive coal as merchant-ships.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

List of Papers.

Governor of Jamaica	(Telegraphic)	June 2, 1898.
Secretary of State	(Telegraphic)	June 2, ,,
Governor of Jamaica	(No. 217)	June 6, ,,

No. 38.

[August 9, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, July* 23, 1898.

Cutting and reopening of cables of Eastern Extension Telegraph Company during Spanish–American war.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the three accompanying letters from the Eastern Extension Australasia and China Telegraph Company (Limited), with reference to the cutting of their cables by the American naval authorities in the Far East, and to the reopening of their Hong Kong–Manila cable with the consent of the two belligerent States—Spain and America.

With respect to the latter question, I am to transmit to you the inclosed correspondence with the Admiralty and with Sir H. Drummond Wolff, Her Majesty's Ambassador at Madrid.

With respect to the question of compensation, the Marquess of Tweeddale, the Chairman of the Company, states in his annexed letter of the 5th instant that he called the attention of the American Ambassador to the matter, with a view to his Excellency submitting the Company's claim for compensation to the Executive at

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Washington, but was advised by Colonel Hay to request Her Majesty's Ambassador at Washington to make the necessary representations on the spot.

Lord Tweeddale then addressed a letter to Sir Julian Pauncefote to that effect, and his Excellency, in reply, asked to be favoured with instructions from the Foreign Office.

I am to request that you will take the papers into your consideration, and that you will, at your early convenience, favour Lord Salisbury with your opinion as to whether the case, (1) for compensation in respect of the injury to the Company's cables; and (2) for reopening communication, is one which Her Majesty's Government can properly represent to the United States' Government; and, if so, on what grounds in each instance such a representation might most advantageously be based.

A copy of your Report of the 7th May, and also the various papers which were then submitted to you, are inclosed, should you desire to refer to them.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Sir J. Hay	(Telegraphic)	April	25, 1898.
(B.)	To ditto	(Telegraphic)	April	27, ,,
(C.)	Memorandum by Mr. Oakes	..	April	26, ..
(D.)	Law Officers' Report. (Confidential 3660, p. 25) ..	..	August	23, 1870.
(E.)	Ditto (Confidential 3660, p. 43) ..	..	September	19, ,,
(F.)	Ditto (Confidential 4538, p. 13)	..	December	16, 1880.
(G.)	Case submitted by Post Office (Confidential 4783, p. 44 A)	..	April	3, 1882.
(H.)	Law Officers' Report	..	May	7, 1898.
(I.)	Admiralty	..	July	4, ,,
(J.)	To Sir H. Drummond Wolff ..	(No. 83. Telegraphic)	July	4, ,,
(K.)	To Admiralty	..	July	4, ,,
(L.)	Sir H. Drummond Wolff.. ..	(No. 199. Telegraphic)	July	5, ,,
(M.)	Ditto	(No. 201. Telegraphic)	July	6, ,,
(N.)	To Admiralty	..	July	8, ,,
(O.)	Sir H. Drummond Wolff..	(No. 219)	July	7, ,,
(P.)	Eastern Extension Telegraph Company	..	May	5, ,,
(Q.)	Ditto	..	July	5, ,,
(R.)	Ditto	..	July	11, ,,

Report.

We do not recommend that any claim as of right should be put forward in this case.

The United States' Admiral does not seem to us to have done more than was reasonable under the circumstances.

Certainly, no claim can be put forward as to reopening, or for loss of custom during the interruption. Neutrals who have property in the enemy's territory (these cables appear to have been interrupted within the territorial waters of Spain) cannot complain if war interrupts their use of their property.

It is not so clear that there may not be a claim for the actual expense of reuniting the cable.

There is no settled rule of law on the subject, but there is some ground for saying that neutrals whose property is taken or destroyed for warlike purposes have a claim to compensation for the damage done them.

But we advise that the matter be brought unofficially before the United States' Government in the interests of the Eastern Telegraph Company generally, and that no formal claim be advanced.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 9, 1898.

No. 38A. **[Colonial Office.]**

[August 10, 1898.]

The Law Officers of the Crown to Colonial Office.

Sir,
Royal Courts of Justice, August 10, 1898.

Expulsion of Mr. Dubosc from Canada.

WE were honoured with your commands signified in Mr. Lucas' letter of the 6th instant, stating that he was directed to forward to us the accompanying letter which you had received from Messrs. Hastie, Solicitors, of 65, Lincoln's Inn Fields, who had been consulted by Mr. Dubosc as to the legality of his recent expulsion from Canada by the Government of the Dominion.

That Mr. Lucas was also to inclose a copy of the opinion given by us, after consultation with the Lord Chancellor, as to the course to be pursued by the Canadian Government with regard to Lieutenant Carranza's expulsion, and copies of the telegraphic correspondence which had passed between the Colonial Office and the Governor-General on the subject.

That it would be seen from the telegram dated 7th July, 1898, that that gentleman and his companion, Mr. Dubosc, undertook to leave Canada on Saturday, the 9th ultimo, a formal requisition to that effect having been communicated to them by the Premier on the 30th June, but that Mr. Dubosc, before his departure, recorded a protest against the legality of the action taken by the Government.

That Mr. Lucas was to request us to take these papers into our consideration, and to advise you as to—

1. What answer should be given to Messrs. Hastie's communication; and
2. What instructions (if any) should be sent to the Governor-General in view of the prospect of Mr. Dubosc's returning to Canada.

In obedience to your commands we have taken the papers into our consideration, and have the honour to

Report—

That we advise that Messrs. Hastie should be informed that their request for an apology and compensation cannot be entertained. They should also be informed that Mr. Dubosc can, during the war, be permitted to enter Canada only on assurances satisfactory to Her Majesty's Government that his residence in that country will not be utilized for any purpose of hostile operations against a friendly Power.

The Governor-General should be informed that Mr. Dubosc should not be permitted to enter Canada till instructions to that effect are sent to the Governor-General by Her Majesty's Government. Such instructions should be sent only if the Colonial Secretary be reasonably satisfied that Mr. Dubosc proposes to return to Canada merely for the purposes of private business.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Annex.

Messrs. Hastie to Mr. Chamberlain..

Sir,
65, *Lincoln's Inn Fields, London, August* 1, 1898.

WE have been consulted by Señor Dubosc as to the legality of the recent action of the Canadian Government towards him, an action which was, we understand, admittedly prompted by yourself.

Señor Dubosc took some legal advice before leaving Canada, and he was advised, as we understand, to defy the wholly illegal order and request which had been addressed to him, and to remain there. Remembering, however, that he is a diplomatist who might be at any time accredited to this country, he preferred to adopt the course which seemed least likely to embarrass the British Government, and he has accordingly come over here and placed himself in our hands.

The case from your point of view is, as we understand, this: that Señor Dubosc, being an alien in British territory, plotted against a foreign Government.

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Even if these were the facts, and we will presently show you that they are not, they give no warrant for the action of the Government.

Even when there has been an Aliens Act in force, it would be hard to find a parallel (the solitary case of M. Georges is certainly not one) for the action of the Government in the present case, but there has been no Alien Act in force since the Statute of 1848, and that was never once acted upon. Even assuming that the Government are right in their facts, it would be necessary to go back to the reign of Her late Majesty Queen Elizabeth to find a single precedent for the course which has been adopted, and we will presently show that even the precedents of that period do not apply. The present law on the subject is perfectly clear. If Señor Dubosc were a foreign criminal, neither the Crown nor any servant of the Crown has power (except under Extradition Acts) to expel him from the country or to surrender him to his own Government for trial. If, on the other hand, he has offended against the laws of Canada, he must there be tried for his offence, and cannot be arbitrarily expelled the country. Where an Alien Act is in force the law provides for the removal of aliens for the safety of England, and not for the satisfaction of other States. It is not enough that the presence or acts of a foreigner may be displeasing to a foreign Power, and every act of such foreigner, *not prohibited by law*, however distasteful to foreign States, is entitled to protection. Having now pointed out to you that, even if the facts were as you supposed, and even if there had, in addition, been an Alien Act in force, the action of the Government is wholly unjustifiable, we will tell you what, as we are instructed, the facts really are:—

1. Señor Dubosc being compelled, on the outbreak of war, to leave Washington, betook himself to the nearest British territory, where he could conveniently wind up various matters of business, and in no way infringed the laws of neutrality.

2. Señor Dubosc may be technically described as what is known as a statutory alien, but he is a natural-born British subject, born in Edinburgh, educated first at a private school, and afterwards at Harrow, in England, and, therefore, peculiarly a person to whom the greatest consideration should be shown by the British Government.

If the Government make any attempt to justify the expulsion at all, we suppose that they will endeavour to allege that it was an exercise of the Royal prerogative. If so, the latest cases in the text-books are the three cases in 1571, 1574, and 1575, which are stated in several of the text-books to be cases where the Royal prerogative was exercised, but we believe that a careful examination of these cases will show that, even at that time, no such exercise of the Royal prerogative was admitted, for the excellent reason that, if such prerogative ever existed at all, it was expressly given up by Magna Charta, section 42, which gives to everyone but prisoners, outlaws, and alien enemies the right to leave England and return at will, and that the expulsions really took place, not as exercises of the Royal prerogative, but under the powers contained in the Statutes of Henry VIII and Acts incorporated with them. The question of whether the Royal prerogative existed or not was raised, as you will doubtless know, in 1793. It was strongly contended at that time (more than 100 years ago) that, whether it had existed or not, it had certainly fallen into desuetude, and, as the result, it was not thought safe to rely upon any supposed Royal prerogative, and Alien Acts were then passed. If a Power, the existence of which was disputed successfully more than 100 years ago, and which has not been exercised since Tudor times by any Government, good, bad, or indifferent, were to be exercised now, it would be a monstrous thing, and it would, moreover, be improperly exercised, since it is manifestly being exercised not for the safety of the Kingdom, but to please a foreign State.

We make no doubt that we have said sufficient to convince both the Law Officers of the Crown and yourself that a serious mistake has occurred, which might lead to very serious consequences if Señor Dubosc were inclined to deal with the matter in a hostile spirit. He asks, however, nothing more than an expression of apology and regret from those responsible for the mistake which has been made, and such fair compensation as may be proper in the circumstances.

It is, in our view, of great importance to him (in what is, we trust, the unlikely event of a denial of his rights) that he should at once proceed to Canada for the double purpose of raising again the question of his right to remain there, and of pursuing his remedies for what has happened. The Government acted with great expedition in requiring him to leave Canada, and it will not be unfair to expect it to use equal dispatch in repairing the mistake, and we shall therefore advise Señor Dubosc to sail for Canada in a fortnight should the action or inaction of the Government unfortunately render such a step necessary. Señor Dubosc has, however, the most sincere wish to give no needless trouble, but to secure the admission of his rights as quickly and quietly as may be.

We have advised him that the Government have plainly exceeded their powers in the matter, and that he will also certainly not lack public sympathy, for he is contending for that right of safe asylum to aliens which our nation has always proudly maintained, and which everyone would particularly desire to see insisted upon in the case of a gentleman who was born and bred in our own country.

We shall be glad to give you any further information in our power, or to see either yourself or one of the Law Officers of the Crown, if you consider that such a course will facilitate the settlement of the mistake.

We have, &c.
(Signed) HASTIES.

VENEZUELA.

No. 38*.

The Law Officers of the Crown to the Marquess of Salisbury.—(Received April 23.)

My Lord,
Royal Courts of Justice, April 22, 1898.

Arrest of W. A. Harrison.

WE were honoured with your Lordship's commands signified in Mr. Villiers' letter of the 21st instant,* inclosing, for our perusal and approval, the draft of a reply to the Venezuelan Government with reference to the arrest of Mr. W. A. Harrison.

We have considered the papers, and have the honour to

Report—

That we approve of the draft despatch initialled by us.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Annex.

Draft of Despatch from the Marquess of Salisbury to Mr. Haggard.

(No. .)
Sir,
Foreign Office, May , 1898.

Your despatch No. 28 of the 22nd February was duly received at this Office, and the note from the Venezuelan Government respecting the Acarabisci incident, of which you inclosed a translation, has been considered by Her Majesty's Government.

You should remind the Venezuelan Government in the first instance that Mr. Harrison was arrested while carrying out the orders of Her Majesty's Government in territory which, although in dispute, was *de facto* under British authority. Their statement that the arrest was not an act of aggression cannot, therefore, be admitted. You should point out that, if Mr. Harrison rendered himself liable to arrest, as stated by Señor Rojas, by continuing a work within territory where Venezuelan employés had already made explorations, it might be said with equal justice that the Venezuelan officers should have been arrested for attempting to interfere with the work of British officials which was actually in progress.

As regards Mr. Harrison's state of health at the time, it may be observed that the fact that he was already in a precarious condition does not, at any rate, mitigate the action of the Venezuelan officers in removing him to the El Dorado station, and detaining him there from the 15th to the 26th June.

Her Majesty's Government have from the outset acknowledged the prompt action taken by the Venezuelan Government in sending orders for Mr. Harrison's release, and they are aware that the orders, which did not arrive from Carácas till the 2nd July, were delayed owing to causes beyond the control of the Venezuelan authorities.

It was this circumstance which led Her Majesty's Government to hope that the Venezuelan Government would not hesitate to disavow the conduct of their officers, and to express their regret for what had occurred.

Señor Rojas refers in his note to the warning given to the Government of British Guiana by the Venezuelan Consul at Georgetown, but it appears to Her Majesty's Government that, if the Venezuelan Government had reason to fear a collision between the employés of the Republic and the Colonial officials, the duty of taking steps to prevent any aggressive action on the part of the Venezuelans rested with the Central Government, whose responsibility in the matter is rather confirmed than diminished by his Excellency's observations.

Pecuniary compensation was claimed by Her Majesty's Government on behalf of Mr. Harrison and the other persons concerned, and the grounds for this demand were clearly stated in Viscount Gough's note to Señor Andrade of the 13th September, 1896.

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* Private letter of which no copy was kept.

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Her Majesty's Government consider that the arrest of an officer who was doing his duty on territory in the occupation of another Power is a matter which only differs in degree from an armed invasion intended to put a stop to all administration upon such territory, and you should press the Venezuelan Government to deliver to you without further delay the sum of 1,000*l.* already demanded, and also to express their regret at the incident, and their disapproval of the conduct of their officers on the spot.

(Initialled) R. E. W.
R. B. F.

No. 38B. **[Colonial Office.]**

[October 15, 1898.]

The Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, October* 15, 1898.

Expulsion of M. Dubosc from Canada.

WE were honoured with your commands signified in Mr. Bertram Cox's letter of the 13th ultimo, stating that, with reference to our Report of the 10th August in which we advised as to the answer to be returned to the communication received from Messrs. Hasties on the subject of the expulsion of M. Dubosc from Canada, he was directed to transmit to us copy of a further letter which had been received from those gentlemen, in which they offered to submit M. Dubosc's case to arbitration.

That Mr. Bertram Cox was also to inclose a copy of the letter from the Colonial Office of the 19th August, to which that letter was a reply, and to explain that, in consequence of the cessation of hostilities between Spain and the United States, it was not thought to be necessary, as advised by us, to inform Messrs. Hasties that M. Dubosc would not be allowed to land in Canada during the continuance of the war.

That you were disposed to regard the question raised by M. Dubose as one involving important matters of principle, and that it was extremely desirable that the power of directing aliens to leave Her Majesty's dominions, when their continued residence might give rise to international difficulties, should as far as possible be maintained.

That you would be glad to receive our advice as to the reply which should be made to Messrs. Hasties' offer to submit the matter to arbitration.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

That, in our opinion, it is *not* expedient to agree to arbitration on such a point.

M. Dubosc should be left to take proceedings at law if he is so advised.

Messrs. Hasties' proposal should be declined.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

ZANZIBAR.

No. 39.

[February 25, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, February* 19, 1898.

Arrest at Zanzibar of native of Comoro by French Consul.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list, which relate to the arrest at Zanzibar, by order of the French Consul, of a native of the Comoro Islands, which are either under the Protectorate of France, or as being a dependency of Madagascar, have been annexed with that island by the French Republic.

The circumstances of the case, so far as they are known from the telegrams (Documents A and B) received from Her Majesty's Agent and Consul-General at Zanzibar, are briefly as follows:—

A Comoro Chief, who recently rebelled against the French, fled from those islands,

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and made good his escape to Zanzibar. The French Consul at Zanzibar appears to have either invited or inveigled him into the French Consulate and to have there arrested him.

Article VI of the Treaty of 1844 between France and Muscat (Document C), which is in force at Zanzibar, is as follows: "Les autorités de Son Altesse le Sultan de Mascate n'interviendront point dans les contestations entre Français." Other Articles of the Treaty, and the provision of the Treaty between Great Britain and Zanzibar (Document D), the benefit of which can be claimed by France under the most-favoured-nation clause of her own Treaty, appear to invest the French Government with full extra-territorial authority over a French citizen against whom any charge may be brought by another French citizen, or by the French Government.

It will probably be contended by the French Government, in the event of Her Majesty's Government feeling it incumbent on them to protest against the action of the French Consul at Zanzibar in the present case, that the territorial Government (*i.e.* that of the Sultan of Zanzibar), has no right to investigate the nature or validity of a charge thus made, nor, indeed, to ascertain whether, in the case of the arrest at Zanzibar of a French citizen, any charge at all is made against the French citizen so arrested, nor to inquire into the manner of the arrest, the prisoner being entitled to appeal only to such remedies as French law may provide, and being no more able to make an appeal, valid in international law, to the Sultan of Zanzibar than if he had been arrested in Paris itself; in short, it would no doubt be contended that the whole jurisdiction of the Sultan ceases on it being established that the man arrested is, in fact, a French citizen.

The man whose arrest forms the subject of the present reference, is, as already stated, a Comoro Chief.

The protectorate of France over the Comoro Islands is acknowledged by Her Majesty's Government on behalf of that of Zanzibar, and the precise political status of the islands seems to be immaterial so far as regards the present case, because Her Majesty's Government admit that in Zanzibar a person validly under the protection of a civilized Power, is, in jurisdictional matters, assimilated to a subject, or citizen, as the case may be, of the Power in question.

It is not known whether the French authorities contemplate removing the Comoro Chief from Zanzibar, but it is not unlikely that they will do so, and Her Majesty's Government desire to consider in anticipation a position which they should take up in such an eventuality.

I have the honour to request you to take the papers sent herewith into your consideration and to favour Lord Salisbury with your opinion as to—

1. Whether Her Majesty's Government, acting on behalf of the Government of Zanzibar, have any ground for remonstrating with the French Government against either the fact or the manner of the arrest of the Comoro Chief; and

2. Whether they would have any ground for endeavouring to prevent the French authorities from removing the Chief from Zanzibar, should these authorities endeavour to do so.

I also have the honour to request you to favour his Lordship with such other observations on the papers generally as will, in your judgment, be of assistance to him in dealing with the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Sir A. Hardinge's telegrams Nos. 18 and 19.
Treaty, France and Muscat, 1844 (Hertslet's Map of Africa, p. 927).
„ Great Britain and Zanzibar, 1886. (Treaty 782.)

Report.

If the arrest of the Comoro Chief was made *bonâ fide* with a view to, or in the course of proceedings intended to be taken against him either in the French Consular Court at Zanzibar, or in French Courts elsewhere, there is, in our opinion, no grounds for remonstrating against the arrest, or for endeavouring to prevent his removal from Zanzibar.

He is, we are to assume, a French citizen.

The French Consular authorities have exclusive jurisdiction, both in civil and criminal matters over French citizens. This is not a mere privilege conferred on the individual which he can waive if he pleases—it is the right of the French Government. French citizens in Zanzibar are as much subject to their own Tribunals there as if they were in France. The fact that the offence is political makes, in our opinion, no difference.

Unless, however, the proceedings were taken *bonâ fide* with a view to the enforcement of French law, neither the exterritoriality granted by the Treaty, nor any other of the provisions justify the action of the French Consul. The Treaties contemplate the exercise by the Consuls in such matters of judicial functions, and do not, of themselves, give any powers of arbitrary arrest and detention.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 25, 1898.

No. 40.

[March 19, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, March 5, 1898.

Case of Salim-bin-Abdurrahman. French protection of a Zanzibari.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list, which relate to the case of Salim-bin-Abdurrahman, of Zanzibar, one aspect of which formed the subject of your Report of the 21st August last (Document B).

The facts and considerations connected with the further aspects of the case on which your opinion is now sought are briefly as follows:—

The late Sultan of Zanzibar had retained Salim-bin-Abdurrahman, who was a Lamu Arab, as a member of his household, and His Highness subsequently requested the French Consul at Zanzibar to give Salim an appointment at the French Consulate. The circumstances in which this request was made and complied with are stated in Sir A. Hardinge's despatch No. 60 of the 27th March, 1897 (Document A), in which he states his grounds for believing that Salim was not *bonâ fide* in the service of the French Consul, but, at the request of the Sultan, was attached nominally to the Staff of the Consulate for the express purpose of placing him and his property beyond the control of any future Sultan or of the paramount Power at Zanzibar, namely, Great Britain.

L.O.R. 1897 (Conf. 7058), p. 125.

In your Report of the 21st August last (Document B) you stated that, in your opinion, the privilege of protection enuring under Article IV of the Treaty of 1844 between France and Muscat (Document C) to persons in the service of French citizens could not properly be claimed by a person in the circumstances of Salim, as it was plain that in his case there was a mere pretence of service set up for the purpose of obtaining French protection. You expressed the further opinion that the matter was not one which concerned the French Government only, as the question of the application of the Treaty was one to be settled by both parties to the Treaty, and could not be determined by the mere assertion of the French Government that the case provided for by the Treaty had arisen.

No action was taken by Lord Salisbury on your Report because there was reason to believe that the French Government was on the point of giving up their extra-territorial rights and jurisdiction in Zanzibar. But it now appears that considerable time must elapse before they do so. The French Ambassador at this Court has lately brought the case of Salim verbally to the notice of the Secretary of State, and it cannot be left indefinitely in abeyance.

It is, unfortunately, not in the least likely that the French Government will on any representation from Her Majesty's Government recede from the position taken up in Baron de Courcel's note of the 5th July last (Document D) that Salim is

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entitled to French protection under the Treaty between France and Muscat, and it becomes necessary to consider whether, and, if so, with what probable result, the case can be left to be settled by the Courts of Law at Zanzibar.

According to Sir A. Hardinge's despatch No. 60 of the 27th March last (Document A), the matter which has raised the question of the validity of the French Consul's claim to extend French protection to Salim is the claim of the latter to a portion of certain property given to him by the late Sultan and subsequently leased to a German Club. Salim alleges that the property includes an adjacent burial-place, once used by the extinct Mahommedan family of Mwenye Mkuu, the representatives (through the female line) of which family claim that the burial-place is "Wakf," or religious land, and therefore inalienable.

The representatives of the Mwenye Mkuu family therefore instituted proceedings in the Sultan's Court against Salim for unlawfully taking possession of the burial-place, but when the case came on for hearing Salim did not appear, but fled to the French Consulate, where, as is believed, he still remains.

The French Consul claims that the case must, as Salim is under French protection, be tried in the French Consular Court and in accordance with French law.

Two principal questions arise in this connection:—

1. Supposing the French protection granted to Salim to be valid, and to place him, for legal purposes, in the position of a French citizen, and supposing, further, the question of his right to the ownership of land at Zanzibar to be within the jurisdiction of the French Consular Court, should the question of his ownership be decided in accordance with French law or in accordance with Zanzibar law, that is, in accordance with the law of the place where the land is situated? and

2. To what extent does French protection extended to a Zanzibari in Zanzibar assimilate for legal purposes the man protected to a French citizen; and does it, in particular, withdraw from the jurisdiction of the Sultan's Courts of Law questions affecting the man's ownership of land in Zanzibar?

As regards the first of these questions, it was at first thought in this Department that the law applying to land—real property or immovables—at Zanzibar must necessarily be the *lex loci rei sitæ*, and that the ownership, &c., of such property must necessarily be regulated by one and the same system irrespective of the nationality or domicil of the owner. It was thought that a system under which the French law of real property would govern the devolution of real property in the case of French citizens in Zanzibar, while English, Scottish, British Indian, British Colonial, or other variety of British law, would apply to land held by British subjects, and Mahommedan or Zanzibar law to land held by Zanzibaris, would be illogical and practically unworkable.

The difficulty of such a system would at once appear if a Zanzibari, for instance, were to bring an action of ejectment against two joint tenants who were of British and of French nationality respectively.

But Sir John Kirk, who was for many years Her Majesty's Consul-General at Zanzibar, and who has therefore great knowledge of the practice of the British and other extra-territorial Courts there, had, in a Memorandum of the 10th October last (Document E), on another case, expressed the opinion that all questions relating to real property owned by British subjects in the Zanzibar dominions were governed by English—or other variety of British—law.

The French Government is entitled under the most-favoured-nation clause of their Treaty with Muscat, to claim the benefit of the stipulations contained in the British Treaty, and as the latter is the most explicit of the Treaties between Zanzibar and other Powers, it will be convenient to consider the question of the law applying to real property owned by foreigners in Zanzibar from the point of view of the provisions of the British Treaty.

Sir John Kirk was asked to furnish a full statement of his opinion on this question, and did so in his Memorandum of the 18th January (Document F) and in a subsequent letter of the 31st January (Document G). This Memorandum was referred to Mr. de Sausmarez, then on leave in this country, who was for several years Assistant Judge in Her Majesty's Consular Court at Zanzibar. His views will be found expressed in his letter of the 1st ultimo (Document H). Sir John Kirk has seen Mr. de Sausmarez' letter, and has commented on it in his own letter of the 11th instant (Document I).

These several papers set out the matter so fully that it does not appear to be necessary to add anything to them, except perhaps to submit to your consideration that it is possible that the British and other Courts of extra-territorial jurisdiction at Zanzibar may have applied to real property in the Sultan's dominions the laws of their respective countries in error, and that it is an accident that no case has as yet arisen of such a nature as to make the error and the unworkable nature of a system founded on it evident to the Courts in question.

As regards the practice of the British Consular Court in applying one of the varities of British law to real property owned by British subjects in Zanzibar, it may be observed that that Court has exercised jurisdiction under Orders of the Queen in Council (Documents J to N), which are issued under the provisions of the Foreign Jurisdiction Acts (Documents O to T), and it does not appear that these documents contemplate the application of English, or of any other variety of British, law to real property in places where Her Majesty has extra-territorial jurisdiction.

In this connection, I am to refer you to your Report of the 28th September last respecting the application of the recent Finance Act to real property in the British Central Africa Protectorate (Document U).

L.O.R. 1897
(Conf. 7058
p. 29.

But the consideration of the Foreign Jurisdiction Acts and of the Orders in Council issued under them is perhaps of small importance in connection with the question of the application of French, or other non-British foreign, law to real property in Zanzibar, because it is conceivable that the Sovereign of Zanzibar should, notwithstanding the inconvenience of the system so created, have authorized foreign Powers represented in his dominions to apply their own respective laws to real property owned by their respective subjects in the Zanzibar dominions, and yet that the British Government might have abstained from authorizing their Extra-territorial Courts and their subjects from making use of the authorization in question, while other Powers might have acted on the authorization, and have directed their Courts to apply their respective laws to real property owned by their subjects in the Sultanate.

As regards the second question, namely, the jurisdictional effect of the grant of French protection to a Zanzibari on account of his being in the service of a French citizen, I am to refer you to the paragraph marked (*a*) in Sir J. Kirk's Memorandum of the 18th January (Document F) and to the last paragraph in Mr. de Sausmarez' Memorandum of the 1st ultimo (Document H).

Mr. de Sausmarez points out an important distinction between the privileges in Zanzibar of a French citizen and those of a Zanzibari enjoying French protection by reason of his being in the service of a French citizen. The latter, and no doubt his property, does not, like the former and his property, enjoy the privilege of "extra-territoriality." He is entitled only to the same "protection" as a French citizen.

Both Sir J. Kirk and Mr. de Sausmarez draw the conclusion that a Zanzibari in the service of a French citizen is not withdrawn, as regards either his person or his property, from the jurisdiction of his natural Sovereign the Sultan of Zanzibar.

I am to observe that in the case of Charlesworth and others connected with the compulsory acquisition of land at Mombasa for the purposes of the Uganda Railway, which is referred to in the inclosed papers by Sir J. Kirk and Mr. de Sausmarez, the Judicial Officer of the East Africa Protectorate who heard the case in the Court of First Instance at Mombasa, held that the *lex loci* must apply to real property in the Zanzibar dominions, even though such property were in the possession of British subjects.

Notice of an appeal against the Judgment of the Court at Mombasa has been entered in the High Court of Bombay, but it is not known whether the appeal will be prosecuted, nor whether the High Court of Bombay has power to hear it, nor yet whether the question of the law applicable to real property in Zanzibar will be raised before or decided by that Court.

Should you advise that Salim and his property have not been withdrawn from the jurisdiction of the Sultan—and such advice is to be foreseen from the last paragraph of your Report of the 21st August last (Document B)—it will be unnecessary, so far as concerns Salim's case itself, to trouble you with the consideration of the wider question of the law applicable to real property held by British and other foreign subjects in Zanzibar. But Lord Salisbury is in any event desirous of obtaining, for his assistance and guidance, your advice on that wider question, which is one of great importance, and with which Her Majesty's Government must be prepared to deal when it arises, as it may do at any moment, in a practical form. This question would, indeed, have been referred to you in a letter separate form that dealing with that of Salim had it not been that the two questions have been treated together in most of the papers now submitted to you.

Lord Salisbury has not failed to remark that your Report of the 21st August last expresses the opinion that Salim-bin-Abdurrahman is not, in the circumstances of the

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case, entitled to French protection; but, although his Lordship does not doubt that this view is in the abstract correct, he fears that it is in the highest degree improbable that the French Government will admit such a contention on its being presented to them by Her Majesty's Government.

His Lordship would, therefore, be glad if you will take into your consideration the papers herewith transmitted to you, and will favour him with your opinion as to—

1. Whether assuming that Salim is entitled, as being in the service of a French citizen, to French protection, he is, or is not, withdrawn as regards his person and his property from the jurisdiction from the Courts of the Sultan of Zanzibar.

In the event of your being of opinion that Salim and his property are, even on the supposition stated above, subject to the jurisdiction of the Sultan's Courts, Lord Salisbury would be glad to receive a statement of the grounds on which your opinion is founded; and also to be favoured with your advice as to whether the suit against Salim should be allowed to proceed, notwithstanding the protest which in that event will certainly be made by the French Government.

2. As to the law applicable to real property owned in Zanzibar by British or other foreign subjects entitled to the benefits of the Treaty of 1886 between Great Britain and Zanzibar.

Finally, I am to request you to be good enough to offer any general observations on the papers now submitted to you which you think may be of assistance to the Secretary of State in dealing with the questions arising on them.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Sir A. Hardinge	(No. 60)	March 25, 1897.
(B.)	Law Officers. (Confidential 7058, p. 125)		August 21, ,,
(C.)	Treaty between France and Muscat, 1844. (Hertslet's Map of Africa, p. 927.)		
(D.)	Baron de Courcel		July 5, ,,
(E.)	Memorandum by Sir J. Kirk		October 10, ,,
(F.)	Sir J. Kirk		January 18, 1898.
(G.)	Ditto		January 31, ,,
(H.)	Mr. de Sausmarez		February 1, ,,
(I.)	Sir J. Kirk		February 11, ,,
(J–N.)	Orders in Council. (Confidential 1452*, 6357*, 6420, 6508*, 6934*.)		
(O–T.)	Foreign Jurisdiction Acts.		
(U.)	Law Officers. (Confidential 7058, p. 29)		September 28, 1897

Report.

1. Assuming that Salim is entitled as being in the service of a French citizen to French protection, we are of opinion that, as he is entitled to the benefit of the provisions contained in the Treaty of 1886 between Great Britain and Zanzibar, he is withdrawn as regards his person and property from the jurisdiction of the Sultan of Zanzibar, although, as stated in the 4th paragraph of our Report of August last, the Treaty between France and Muscat of 1844 did not confer such extensive privileges.

In the British Treaty of 1886 the Article conferring a protection on the servants of British subjects follows immediately upon Article XVI which deals with the question of jurisdiction, and makes British subjects only amenable to the Consular Court, and confers upon them the privilege of exterritoriality. We do not think that this Treaty of 1886 can be construed in such a way as to exclude from the protection afforded to the servants of British subjects the right to be sued in the British Court, and as we have pointed out, by virtue of the most-favoured-nation clause, it is on the construction of the Treaty of 1886 that the rights of the servants of French subjects must be determined.

We do not think that the Treaty of 1886 can be confined as suggested by Mr. de Sausmarez and Sir John Kirk. In our opinion, therefore, the immunity for person and property enjoyed by the servants of French citizens exempts them from proceedings in the Zanzibar Court, except as mentioned in Article XVII.

2. Real property in Zanzibar owned by British or other foreign subjects entitled to the benefits of the Treaty of 1886 is, in our opinion, governed partly by the law of Zanzibar and partly by the law of the foreign subject.

In respect of all questions which relate to the character of the land, and the easements which it enjoys, or is subject to in respect of neighbouring properties, it appears to us that the law of Zanzibar must prevail. The foreign subject has acquired the land from a subject of Zanzibar, and if in the hands of the subject of Zanzibar the land itself was incapable of being applied to secular purposes, or was subject to easements, the foreign subject can take only what the subject of Zanzibar had to give. In the present case, for instance, it seems to us clear that the law of Zanzibar must be appealed to in order to determine whether the land is Wakf, and so incapable of being applied to ordinary purposes.

As regards transmission on bankruptcy or on death, by the terms of the Treaty, the law of the foreign subject must apply.

As regards the mode of transfer *inter vivos* between foreign subjects of the same nationality the foreign law will apply if their Government has so provided.

3. Generally. We are, therefore, of opinion that the question raised in the case of Salim-bin-Abdurrahman must be determined by the law of Zanzibar. We observe that the lessees of the property express their willingness to acquiesce in the decision of the Zanzibar Court. The jurisdiction of that Court over Salim-bin-Abdurrahman depends upon the fact that his service to the French Consul is merely colourable. For the prosecution of the suit no interference with the person of Salim-bin-Abdurrahman, and no invasion of the French Consulate are necessary. We would therefore suggest that the suit should be allowed to proceed in the Zanzibar Court. If it terminates in favour of the plaintiff an injunction will be granted which the lessees are willing to respect. If Salim-bin-Abdurrahman should himself infringe the injunction it would raise the question whether he is entitled to immunity as a servant of the French Consul. The decision of this question, of course, does not rest with the French Government only, but must also depend on the view which Her Majesty's Government take of the facts, and would have to be settled by negotiation.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 19, 1898.

No. 41.

[August 9, 1898.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, August 1, 1898.

Selim-bin-Seif, sentenced at Zanzibar and claimed by French as "protected person."

WITH reference to my letter of the 12th ultimo, relating to the question of the protection afforded by France to natives of Muscat, and especially to the correspondence marked (E), which was inclosed therein, I have the honour, by direction of the Marquess of Salisbury, to transmit to you a despatch from Her Majesty's Agent in Zanzibar, inclosing a correspondence with the French Consul at that place respecting the case of Selim-bin-Seif, who has been sentenced by a Zanzibar Court to a term of imprisonment on a charge of slave-trading, and who is claimed by the French Consul as a French-protected person.

The paper marked (B) contains the history of cases in which the French Government have claimed to exercise protection over Zanzibar subjects, and shows the grounds on which Her Majesty's Government have contested the claim. Lord Salisbury requests that you will take the papers transmitted herewith into your consideration, and favour him with your opinion as to whether the case of Selim-bin-Seif is one in which the French claim can be contested, and if so, on what grounds the British arguments should be based.

I have, &c.
(Signed) FRANCIS BERTIE.

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List of Papers.

(A.) Sir A. Hardinge	(No. 188)	June 17, 1898.
(B.) Memorandum (Sir C. Hill)		July 25, „
(E.) Correspondence:—		
M. Waddington (with Minutes)		May 26, 1891.
To M. Waddington (with Minutes)		June 13. „

Report.

We are unable to see any ground for the contention of the French Consul that Selim-bin-Seif is amenable only to French jurisdiction.

The French Consul cannot, by registering a subject of Zanzibar, as a French-protected person, withdraw him from the jurisdiction of the Tribunals of Zanzibar.

Selim-bin-Seif is a subject of Zanzibar, and there appears to be absolutely no ground for the assertion of any right to treat him as a person under French protection. The fact that he has sailed in vessels which were allowed, with what justification does not appear, to fly the French flag, certainly does not justify any such contention.

We advise that Selim-bin-Seif should serve the term of imprisonment to which he has been sentenced. The French Consul or Government should be informed that he is a subject of Zanzibar, and that the facts alleged in no way cancel his allegiance to the Government of that country.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 9, 1898.

No. 42.

[October 10, 1898.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 10, 1898.

Gentlemen,

Right of Sultan of Zanzibar to expel foreigners.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, which relate to the question whether the Sultan of Zanzibar has the right to expel from his dominions a person under the extra-territorial jurisdiction of a foreign Power.

A copy of the British Treaty with Zanzibar, Document (A), which is the fullest of the Treaties made by foreign Powers with Zanzibar, is inclosed, and copies of the French and German Treaties, Documents (B) and (C), are also inclosed, in case you wish to refer to them.

The extent to which a foreigner is free from the jurisdiction of the local Sovereign in a country where the Sovereign of that foreigner has extra-territorial jurisdiction, depends, as his Lordship conceives, on the terms of the Treaties creating the extra-territorial jurisdiction in question, and on custom, so far as it is sufficiently continuous and sufficiently well recognized to form beyond doubt a part of the jurisprudence of the country where it exists.

There may, therefore, be a certain diversity of law in different countries where extra-territoriality obtains in regard to the expulsion of foreigners enjoying extra-territoriality.

Nevertheless, the body of law and custom regulating extra-territoriality in any one country "hors Chrétienté" is so similar to that prevailing in the others that cases occurring in one may be used to illustrate those occurring in others.

The particular question now referred to you is raised in the accompanying despatch from Her Majesty's Commissioner and Consul-General in Zanzibar, Document (D), and in Mr. Davidson's Minutes thereon. The matter of the expulsion of persons under extra-territorial jurisdiction in that Sultanate does not appear to have been discussed on any previous occasion, but it has often been raised in the Ottoman dominions, and I am to inclose a Memorandum by Sir E. Hertslet, Document (E), late the Librarian of this Department, giving an account of several cases, none of which appear, however, to show to what extent the right of expulsion exists. The paragraph of the Memorandum explanatory of the manner in which a person under British protection may be expelled by the action of the British authorities will not be to the point with regard to the present reference, because the provisions therein referred to may well not exist in the legislation of other Powers having extra-territorial jurisdiction in Turkey or other countries.

The Memorandum concludes by stating that no case appeared to be recorded in which a British subject had been expelled without the assent of the British Representative.

The papers on the case of Mr. Lillie, who was recently expelled from Siam by the Siamese authorities, but with the concurrence of the British Representative, are also inclosed, Documents (F), (G), (H), (I), and (K).

The Bulgarian case, alluded to by Sir A. Hardinge as that of M. Charnand, cannot be identified, but it is probable that he had in mind the case of M. Chadourne, a journalist under French protection. The inclosures in Mr. O'Conor's despatch No. 2 of the 1st January, 1892, given at p. 6 of the accompanying volume of Confidential Print, Document (L), contain a statement of the case, which Mr. O'Conor characterizes as "sober and accurate" The Memorandum shows that M. Chadourne had tried the patience of the Bulgarian Government beyond endurance; that its intention to expel him was made known to the French Consul, who might have prevented the necessity of the measure.

At p. 22 of the same volume, Document (L), will be found the draft of a note from the Bulgarian Minister for Foreign Affairs to the French Acting Consul at Sophia, expressing the Minister's regret that the Decree for the expulsion of M. Chadourne had not been communicated to the Consulate, and undertaking that similar Decrees would be so communicated in future, but adding that, if the person against whom the Decree of Expulsion was directed had not left the territory by the date specified in the Decree, the Bulgarian authorities would proceed to expel him. Mr. O'Conor's despatch No. 17 of the 1st February, 1892, at p. 34 of the volume, Document (L), shows that the French Government took no direct exception to the terms of this note; but, on the other hand, the note of the 1st February, 1892, from the French Ambassador at Constantinople to the Turkish Minister for Foreign Affairs, printed at p. 39 of the volume, Document (L), states that, without entering into any discussion on the point of law touched in the Bulgarian note, the incident of the expulsion of M. Chadourne was considered closed.

The view taken by Her Majesty's Government of the Chadourne case may be gathered from Lord Salisbury's telegram No. 3 of the 12th January, 1892, to Mr. O'Conor (p. 15 of the volume, Document L).

The opinions of the German, of the Italian, and of the Austro-Hungarian Governments will be found stated shortly in the telegrams numbered 24, 25, and 27 on pp. 16 and 17 of the printed volume (Document L).

I have the honour to request you to take into your consideration the papers sent herewith, and to favour Lord Salisbury with your advice—

1. As to whether the Government of Zanzibar has the right to expel a person whose presence is detrimental to public peace or order, but who is under the protection of a foreign Power having extra-territorial jurisdiction in Zanzibar;

2. If so, what conditions should be observed, and what procedure should be followed in expulsion; and finally

3. I have the honour to request you to favour his Lordship with general observations which may occur to you in connection with the question.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) British Treaty with Zanzibar. (Treaty 782)		April 30, 1886.
(B.) French ditto		November 17, 1844
(C.) German ditto		December 20, 1885.
(D.) Sir A Hardinge (With Minutes by Mr. Davidson, Q C.)	(No. 97)	April 4, 1898.
(E.) Memorandum by Sir E. Hertslet		June 16, 1893.
(F.) To Mr. Archer	(No. 74)	December 11, 1896.
(G.) Mr. Greville	(No. 103)	November 2 1897.
(H.) Ditto	(No. 3. Telegraphic)	March 12, 1898.
(I.) Ditto	(No. 12)	March 14, „
(K.) Ditto	(No. 16)	March 21, „
(L.) Confidential Print, "South-Eastern Europe, Part 151 (1892)."		(Confidential 6219.)

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Report.

We are of opinion that the Government of Zanzibar *has* the right to expel a person whose presence is detrimental to public peace or order, though he is under the protection of a foreign Power having extra-territorial jurisdiction in Zanzibar.

We do not think that the permission to reside and carry on business in Zanzibar excludes the exercise of such a power. This permission must be taken to be subject to the condition that the foreigner does not act in a manner detrimental to public peace or order, nor do we think that such a Power is excluded by the stipulation that the foreigner shall be subject only to the jurisdiction of his Consular Courts. Such expulsion is not by way of punishment, but is an executive act for the protection of the State.

In the absence of any words surrendering this right expressly it must, we think, be taken still to exist.

2. We think that as a matter of comity written notice should be sent to the Representative of the foreign Power, and, unless in the most extreme cases, in which immediate action might be necessary, he should be requested to withdraw protection, or himself expel the individual, or consent to his expulsion.

But any such request should not be couched in terms which might appear to imply any waiver of the right of the Zanzibar Government to expel even without consent.

3. We think that the right of expulsion should be exercised as regards such foreigners, only in very strong cases and with the utmost circumspection. There is no general agreement of nations on the point; and Her Majesty's Government would appear from Sir E. Hertslet's Memorandum at one time to have taken the view that consent was necessary.

It is obvious that grave complications might arise from the exercise of this right of expulsion, and we would suggest, that, while it should not be surrendered, it should be used sparingly, only in urgent cases, and when all diplomatic methods for obtaining expulsion have failed.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 10, 1898.

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Printed for the use of the Foreign Office. June 1900.

CONFIDENTIAL.

(7356.)

REPORTS

BY THE

LAW OFFICERS OF THE CROWN, &c.

1899.

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[This Report should have appeared before No. 1, page 1.]

AFRICA.

No. 1 A.

[January 10, 1899.]

The Marquess of Salisbury to the Lord Chancellor.

Restitution o slaves in the East Africa Protectorate.

THE Marquess of Salisbury presents his compliments to the Lord Chancellor and transmits to his Lordship the papers, noted in the inclosed list, relating to the question of the obligations of British subjects serving in the Administration of the East Africa Protectorate, in connection with the restitution of slaves to their owners.

The circumstances in which the question arises were set out as accurately and as fully as the information in the Foreign Office permitted, in the reference of the 20th September 189 ~~last~~ to the Law Officers of the Crown, a copy of which is inclosed (Paper A). Their Report in reply, dated the 29th November, is also inclosed (Paper B).

That Report was communicated to Her Majesty's Commissioner and Consul-General in the Protectorate for his information and guidance.

No legislative measures have been adopted in the Protectorate since the date of the reference to the Law Officers of 189 ~~last year~~, and the position generally remains what it then was. At the beginning of September last Mr. Brewin and Mr. Duckworth, writing to the Secretary of State for the Colonies, called attention to the case of a girl named Kombo, and of her father and mother, which appeared to bear in a very direct manner upon the opinion expressed in the House of Commons by Her Majesty's Attorney-General, as to the illegality of a British subject taking part in the restoration of a slave to his owner.

The details of the case were not made clear in the letters from Messrs. Brewin and Duckworth (Papers C and D) to Mr. Chamberlain, which are alluded to above, and Her Majesty's Commissioner and Consul-General was therefore instructed to report on it. His report has not yet been received; but meanwhile the accompanying letter (Paper E) has been received from the British and Foreign Anti-Slavery Society, the inclosure in which contains several letters on the case, which will, perhaps, enable the Lord Chancellor to form a sufficiently clear idea of what took place.

In a telegram of the 2nd instant (Paper F), Sir A. Hardinge reports that the return of the girl Kombo and of her parents to their owner was pre-arranged; but this information does not appear to bear on the legal point now under consideration as it seems from Mr. Craufurd's letter of the 21st June, printed at page 7 of the inclosure in the letter from the British and Foreign Anti-Slavery Society, that the owner chose to deal with the matter through the Courts of Law, in order that his ownership in the slaves might be judicially declared.

The case will evidently be brought forward in Parliament, and Lord Salisbury would, therefore, be much obliged if the Lord Chancellor would consider it, and express his opinion on the point of law which is involved in it, namely, whether a British subject acting as an Officer of the Administration of that part of the East Africa Protectorate wherein the status of slavery is recognized by the territorial law is bound to assist, within the scope of his official duties, in carrying out that law, although he be thus taking part in restoring a slave to his owner; and, if so, in what way he should protect himself against the law which, according to the opinion expressed in the House of Commons by Her Majesty's Attorney-General, he would be breaking in so doing.

Lord Salisbury would be much obliged if the Lord Chancellor would also be good enough to make any general observations which may occur to him in connection with the case, and which his Lordship may consider as likely to be of assistance to the Secretary of State in dealing with the conflict of law which appears to exist.

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The matter is of some urgency, as Mr. Brodrick is receiving a deputation of the Anti-Slavery Committee of the Society of Friends on the 13th instant, and the question is likely to be raised in the House of Commons as soon as it reassembles, in the debate on the Address.

The correspondence forwarded in the letter from the British and Foreign Anti-Slavery Society mentions also the case of a girl named Heri Karibu. The judgment delivered in this case by Mr. Craufurd, Her Majesty's Sub-Commissioner at Mombasa, sitting as Judge of the Native Provincial Court of the East Africa Protectorate, will be found at page 4 of the accompaning number of the "Zanzibar Gazette" for 4th May last (Paper G). This judgment is sent to the Lord Chancellor, as it contains a reference to the opinion expressed in the House by the Attorney-General, and showing the view which has been taken of it by Mr. Craufurd in his judicial capacity.

Foreign Office, January 7, 1899.

List of Papers.

(A.)	To Law Officers .. .. (With the papers inclosed therein.)		September 20, 1897.
(B.)	Law Officers		November 29, 189~~8~~7.
(C.)	Mr. Brewin .. (To Colonial Office)		August 31, 1898
(D.)	Mr. Duckworth (.. do ..)		September 1, „
(E.)	British and Foreign Anti-Slavery Society		December 17, „
(F.)	Sir A. Hardinge	(No. 3. Telegraphic)	January 2, 1899.
(G.)	The "Zanzibar Gazette"		May 4, 1898.

Report.

I think the opinion of the Law Officers of the 29th ~~September~~ November, 1897, is accurate, in so far as it states the question of law.

The speech of the Attorney-General and of Sir Robert Reid, if I am to understand what they said as applicable to the mere administration of the law existing in Zanzibar, is, I think, quite inaccurate, and, indeed, not consistent with the opinion in question; but the difficulty of dealing with either of the speeches arises from the vagueness and generality of the propositions laid down. It is quite true, as Sir Robert Reid said, that there are many Statutes binding upon British subjects wherever they are—*e.g.*, Acts prohibiting slave-trading; and I quite agree that for a British subject to buy or sell a slave would, under a Statute, be a crime in him wherever the sale was effected.

But no one, so far as I can judge from the papers, has been guilty of any such crime. Then we must inquire what has in fact been done, and what Statute has made it an offence. I am not aware of any Statute upon the subject, and to make an offence of it there must be a Statute.

To say that it is contrary to the Common Law, as is said in the third page (A) of the letter of Mr. Allen, and also by Bishop Tucker, is simply ridiculous, and exhibits a total ignorance of the history of the slave question.

I should have thought, after the Judgment of Lord Stowell in the Grose case, concurred in as it was by that great American Judge, Story, no one could be found to maintain so untenable a proposition, and if that proposition is as wholly baseless, as in my opinion it is, then it is obvious to ask what Statute has made it illegal in a British subject to administer the law of a foreign State which admits slavery as one of its institutions.

As I have said, it is quite out of the question to argue the illegality of either slavery, or even slave-trading, as contrary to the Common Law. The British Legislature has repeatedly recognized the legality of both. An Act of George II actually made negroes in the plantations seizable in execution for debt, and the great Statute of 1833 recited the right of the owners to their slaves, and gave the compensation for their manumission of them in return for the *right* which that Statute took away.

I would suggest that the Law Officers should themselves be asked what act herein referred to is a breach of British law, and, if so, of what law.

I concur in Mr. Craufurd's reasoning so far as this particular question is concerned; but I am bound to add that I am not quite satisfied that his elaborate Judgment for the liberation of the slave, Karibu, is one which would be supported upon the grounds on which he relies.

So far, I have advised simply upon the question of law; but, as matter of policy, I should think it would be wise to get educated natives to administer the Slave Law, as, indeed, I think Sir A. Hardinge suggests himself; and, as a matter of argument, I think it might be pointed out what an enormous advance has been made by acting with the good-will of the Sultan, and how dangerous it is for the ultimate success of the cause of total abolition not to respect and administer honestly the reservations, which are small and temporary, while these reservations last.

(Signed) HALSBURY.

House of Lords,
January 10, 1899.

P.S.—Since writing the above I have received the despatch of Sir A. Hardinge on the subject of the number of slaves enfranchised. What peril there would be of interfering with such figures if we exhibited any disposition not to keep our side of the bargain!

H.

1899

AFRICA.

No. 1*.

[February 6, 1899.]

Foreign Office to Sir R. Webster.

(Private.)

My dear Webster, *Foreign Office, January* 31, 1899.

Aid in restoration of fugitiv slaves.

THE position in which the question of recapturing slaves on the mainland of East Africa in the Seyyidiyeh is left by the opinion signed by the Law Officers on November 29 is very difficult.

In the second paragraph, marked in red in the print herewith, you appear to think it possible to frame some rules by which the British Administrators may be relieved of the odium of giving active assistance for the recovery of slaves, without any breach of faith on our part towards the Sultan of Zanzibar.

The question has been carefully considered by Lord Salisbury and Mr. Balfour, and I am directed to ask you privately whether you will kindly consider with the Solicitor-General, by what means the non-surrender of slaves may be made consistent with the promise to preserve the Law of Islam.

It is considered better to ask this privately, so as to give the opportunity of sending instructions to Hardinge as to practice, rather than to base ourselves on a strict interpretation of law which may not concur with policy.

Yours, &c.
(Signed) ST. JOHN BRODRICK.

P.S.—As early an answer as you can conveniently give will be much esteemed.

ST. J. B.

Communicated by Sir R. Webster, February 6, 1899, in reply to Mr. Brodrick's letter of January 31, 1899.

What we suggest is that it should be left to the owner of the slave who has escaped to seize his property himself.

We think that he ought to be required after any such seizure forthwith to give notice of the fact to the nearest Magistrate, and that he should be subject to a penalty if he fails to do so. This will be some safeguard against the seizure of persons who are not in fact slaves, and will enable the Magistrate to check in some measure cruel treatment of a recovered slave.

The issue of search warrants is a measure of very exceptional nature, which in this country is employed only in aid of the Criminal Law. It does not appear that it existed in the Protectorate before the country was taken over by Great Britain. Moreover, having regard to what has passed in the House of Commons on the subject, we think it impossible successfully to defend the executing by British officers of forcible process for the purpose of retaking and handing over an escaped slave to his master. It does not appear that there was any process of this kind in force in the territory over which we have assumed the Protectorate, or that when we assumed it we undertook to maintain in force any such process. The obligation to maintain the Law of Islam is satisfied if property in slaves is recognized in the Courts and damages awarded against those who entice them away or harbour them, and as against the slave himself, so as to be a bar to any proceedings taken by him as against his master.

We have nothing further to add to our Report of the 29th November, 1897.

R. E. W.

1899

Printed for the use of the Foreign Office. June 1900.

CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.:

1899.

AFRICA.

No. 1.

[August 8, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, July 24, 1899.*

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list, which relate to a proposed Order in Council, for the purpose of amending in certain respects "The East Africa Order in Council, 1897." East Africa O. in C.

The draft of the proposed Order will be found in Mr. Albert Gray's letter of the 27th November last (Document A); the copy of the draft with that letter has been corrected in ink so as to show the several amendments made in it up to the date of Mr. Albert Gray's letter of the 29th May last (Document B).

As will be gathered from Mr. Gray's letters, the draft Order has been prepared in consultation with Mr. Ralph Cator, the Judicial Officer of the East Africa Protectorate, and it has been shown in its present final form to Sir Arthur Hardinge, Her Majesty's Commissioner and Consul-General for the Protectorate, who has informed this Department that he has nothing further to say on the subject.

Mr. Albert Gray's letter of the 27th November last (Document A) contains, besides the draft of the Order, explanatory notes showing the object of the several clauses, and it appears, therefore, to be unnecessary that I should trouble you with a statement of the reasons which have led Lord Salisbury to think the new Order necessary.

I am, however, to observe that the words in "The East Africa Order in Council, 1897" (Document D), which it is proposed to repeal by Article 14 of the draft Order, were inserted in error in the Order of 1897. They were re-enacted by an Order of the Secretary of State, dated the 30th September, 1898, a copy of which is inclosed (in Document C); but it is thought that it will be desirable definitively to repeal the excepting words by Order in Council, so that they may be cancelled by a document of the same authority as that which enacted them.

The undermentioned documents are also transmitted to you, in case you may wish to refer to them.

The existing principal East Africa Order in Council, that, namely, of the 7th July, 1897 (Document D).

The Order of the Secretary of State of the 1st May, 1898, defining the officers by whom, in East Africa, the functions of various officers mentioned in Indian Acts, &c., shall be exercised (Document E).

A Report, dated the 14th February, 1895, from the then Law Officers of the Crown to the Colonial Office, dealing with the question whether a Treaty by which a L.O.R. 1895 (Conf. 6796), p. 1.

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native Sovereign acknowledges the Protectorate of the Queen confers on Her Majesty jurisdiction over the natives of the protected State, the 14th February, 1895 (Document F). It will, however, be seen that Her Majesty has already, by Articles 52 and following of "The East Africa Order in Council, 1897" (Document D), assumed jurisdiction over the natives of the Protectorate so far as concerns the establishment of Courts of Justice. The draft Order now submitted assumes also, by Article 9, the right to legislate in the case of natives by the issue of Queen's Regulations, which will be binding on them.

I have the honour to request you to take the inclosed papers into your consideration, and to favour Lord Salisbury with your opinion as to whether the draft Order in Council may properly be submitted to Her Majesty as it stands, or whether it requires any, and, if so, what alteration or amendment.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Mr. Gray	November 27, 1898.
(B.)	Ditto	May 29, „
(C.)	Order	September 30, „
(D.)	East Africa Order in Council (Confidential 6933*)	July 7, 1897.
(E.)	Order	May 1, 1898.
(F.)	Law Officers (Confidential 6796, p. 1)	February 14, 1895.

Report.

As altered and initialled by us, the draft Order in Council may properly be submitted for the approval of Her Majesty the Queen in Council.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 8, 1899.

Annex.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction within the territories comprised within the limits of the East Africa Protectorate:

Now, therefore, Her Majesty, by virtue and in exercise of the powers on this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise, in Her Majesty vested, is pleased by and with the advice of her Privy Council to order, and it is hereby ordered, as follows:—

1. In this Order—

"The Principal Order" means "The East Africa Order in Council, 1897," and any other Order relating to the East Africa Protectorate.

2. For the purposes of the Principal Order and this Order—

(i.) "British subject" includes a British-protected person, that is to say, a person who either (*a*) is a native of any Protectorate of Her Majesty beyond Africa and Arabia, and is for the time being in the East Africa Protectorate, or (*b*) by virtue of "The Foreign Jurisdiction Act, 1890," or otherwise enjoys Her Majesty's protection in the Protectorate.

(ii.) "Native" means any person who is not a British subject, as hereinbefore defined, or of European or American race or parentage, but as respects such portions of the Protectorate as are under the sovereignty of the Sultan of Zanzibar, does not include a person who, by virtue of any Treaty between Zanzibar and any foreign Power (other than Her Majesty), is exempt from the jurisdiction of the Sultan of Zanzibar.

(iii.) "Foreigner" means a subject or citizen of a State in amity with Her Majesty, not being a native, as hereinbefore defined.

3.—(i.) The Protectorate Court shall ordinarily sit at Mombasa, but may also, as occasion requires, sit at any other place in the Protectorate.

(ii.) The Judicial Officer shall be styled "Her Majesty's Judge for the East Africa Protectorate," and is in this order referred to as the "Protectorate Judge."

(iii.) The Protectorate Judge may visit any Court in the Protectorate, and examine any Court books, registers, or records, and give directions as to the proper keeping thereof.

(iv.) In case of the illness of the Protectorate Judge or of his temporary absence from Mombasa, the Commissioner may appoint either a person qualified to be appointed Protectorate Judge or an officer employed in the civil administration of the Protectorate to act as Protectorate Judge. When the Protectorate Judge is absent on judicial duty within the Protectorate, the Acting Judge shall not hold sittings elsewhere than at Mombasa except with the consent of the Commissioner. The sittings of the Protectorate Judge and of the Acting Judge shall severally be deemed sittings of the Protectorate Court.

4. Subject to the other provisions of the Principal Order, the Code of Criminal Procedure, and the other enactments relating to the administration of criminal justice in India for the time being applied to the Protectorate, shall have effect as if the Protectorate were a province of India. The full Court for Zanzibar shall be deemed to be the High Court, and the powers both of the Governor-General in Council and of the Local Government under those enactments shall be exercisable ~~by~~ *subject to any directions of* the Secretary of State, ~~or with his previous or subsequent assent~~ by the Commissioner.

Until other provision is made in exercise of the powers conferred by the Criminal Procedure Code, the Protectorate shall be a Sessions Division, the Protectorate Court shall be the Sessions Court, and the Protectorate Judge shall be the Sessions Judge.

5. Subject to the other provisions of the Principal Order, the Code of Civil Procedure, "The Bombay Civil Courts Act, 1869," and the other enactments relating to the administration of civil justice for the time being applicable to the Protectorate, shall have effect as if the Protectorate were the Presidency of Bombay, the Court for Zanzibar shall be deemed to be the High Court, and the powers both of the Governor-General in Council and the Local Government under those enactments shall be exercisable ~~by~~ *subject to any directions of* the Secretary of State, ~~or with his previous or subsequent assent~~ by the Commissioner.

Until other provision is made in exercise of the powers conferred by "The Bombay Civil Courts Act, 1869," or otherwise, the Protectorate shall be deemed to be one district, the Protectorate Court shall be the District Court or Principal Civil Court of original jurisdiction in the district, and the Protectorate Judge shall be the District Judge.

6. The provisions of Part V, VI, and VII of the Principal Order relating to the Protectorate Court or the Court (except Articles 23, 31, 39, 41, 42, and 44) shall apply to all Criminal and Civil Courts established under this Order in the several provinces of the Protectorate, subject, however, to the limits of jurisdiction of the respective Courts.

7. Where under any enactment of the Statute Law of England, which is applicable to the Protectorate, it is provided that the powers or jurisdiction of two Justices of the Peace may or shall be exercised by a Stipendiary Magistrate sitting alone, such powers or jurisdiction may or shall be exercised by the Commissioner and by every Sub-Commissioner and District Officer within his province or district.

8. In Article 45 of the Principal Order the words "and published as the Commissioner directs" shall be substituted for the words "and published as he directs."

9. All Queen's Regulations made or to be made under Articles 45 and 46 of the Principal Order shall, unless a contrary intention appears, extend to natives. and may, in relation to natives, comprise such special provisions, modifications, and penalties as the Commissioner may think fit, having regard to the powers of Native Courts and other considerations.

Any breach of Queen's Regulations by a native shall be cognizable only in the proper Native Court.

10. The power of making Queen's Regulations under Article 45 of the Principal Order is hereby extended to the making of Regulations with respect to the registration of documents purporting or operating to create, declare, assign, limit or extinguish any right, title, or interest in or over immovable property situate in the Protectorate, and any Regulations under this Article may prescribe the period within which any documents are to be registered, and such penalties for non-registration, whether by stamp duties or otherwise, and whether in lieu of or in addition to the penalties mentioned in the said Article 45 as may seem fit.

Provided that nothing in any Regulations made under this Article shall make any instrument inadmissible in evidence in any criminal proceedings.

As from the time when any Regulations under this Article come into force, Article 47 of the Principal Order shall be repealed, without prejudice to anything done or suffered thereunder.

11. The Commissioner may, by any Queen's Regulations made under the powers of the Principal Order, *or this Order*, fix such penalties for the breach of any Regulations as may seem proper, and where no penalty is so fixed, a person found guilty of such breach shall, on conviction, be liable to a fine which may extend to 1,000 rupees, or to imprisonment *of either kind* which may extend to two months, or both, in addition to such forfeiture as is mentioned in Article 45 of the Principal Order.

12. Every person subject to the Principal Order shall be liable to be summoned as a witness in a Native Court: provided that where the officer holding the Native Court is not a European British subject, the summons or process must be countersigned by a Judge of a Native Court who is a European subject, and any proceedings against any person for disobeying such summons or process must be taken in the proper Court having jurisdiction in the like cases under this Order.

13. Expressions defined in any Order in Council relating to the Protectorate shall have the same respective meanings in any Rules, Regulations, or Orders made under the authority of that Order, unless other provision is made or the context otherwise requires.

14. The following provisions of the Principal Order are hereby repealed:—

Article 3, paragraphs (v), (vii), and (viii).
Article 7, paragraphs (iii) and (vii).
Article 9.
Article 14.

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Article 30.
Article 45, the words "and published as he directs," and the last paragraph of that Article.
Article 53.
Schedule, the words and figures "except section 331."

15. This Order may be cited as "The East Africa Order in Council, 1899," and shall be construed with the Principal Order.

R. E. W.
R. B. F.

[Colonial Office.] *No. 1A.*

[August 17, 1899.]

The Law Officers of the Crown to Mr. Chamberlain.

Sir, *Royal Courts of Justice, August* 17, 1899.

Claims for losses through insurrection in Sierra Leone.

WE were honoured with your commands, signified in Sir E. Wingfield's letter of the 2nd instant, stating that he was directed by you to submit, for our consideration, certain claims for compensation for losses incurred by various persons in consequence of the recent insurrection in Sierra Leone.

That the claims hitherto presented for the consideration of Her Majesty's Government had been of two classes, namely: (*a*) claims for damage to person and property done by the insurgents; and (*b*) claims for damages to property done by officers in the naval and military service of Her Majesty in the course of the operations taken for the suppression of the insurrection. That, in both cases, claims for compensation had been made both by British subjects and by foreigners resident in Sierra Leone, either in pursuance of missionary enterprise or for purposes of trade. That in all these cases Her Majesty's Government had hitherto declined to entertain the question of compensation.

That with the details of the former class of cases enumerated above you did not think it necessary to trouble us, but in those cases in which property was destroyed by Her Majesty's officers engaged in the suppression of the insurrection it appeared necessary to draw our attention to the facts.

That the Palma Trading Company were possessed of a trading station at Manoh Salijah and another station at Sulymah. That the latter station was burnt by the insurgents, who then advanced to attack in force the station at Manoh Salijah. That Captain Henderson, R.N., who was in command of Her Majesty's ship "Fox," appeared to have come to the conclusion that it was impossible to defend this station with the force at his command, and that it was necessary to destroy it to prevent its falling into the hands of the rebels. That the buildings were accordingly set on fire by his orders and destroyed. That Sir E. Wingfield was to inclose a copy of the report of Captain Henderson of what took place on this occasion, and also a print of certain statutory declarations made by Mr. Lowry and Mr. Gordon, persons in the employ of the Palma Trading Company, who were present when the destruction took place.

That the Compagnie Française de l'Afrique were owners of a station at Mokate, near to Manoh Salijah, which was exposed to the same danger of attack by the rebels as that of the Palma Trading Company at Manoh Salijah. That this factory was destroyed by shell fire from the "Fox" while in occupation of the rebels, who had seized it on the embarkation of the British sailors and refugees on board the "Fox." That it would be seen from the report of Captain Henderson above referred to, and from a statutory declaration of M. Schultz, the chief agent of the French Company at Mokate, that there was a disagreement between Her Majesty's officer and M. Schultz as to whether the latter consented to the destruction of his factory, but it was to be observed that as the factory when destroyed was in the occupation of the rebels, its destruction was apparently justifiable as a military operation in the course of the suppression of the insurrection.

That the matters submitted for our consideration appeared to you to involve the determination of the question how far and under what circumstances compensation was payable for the destruction of the property of private persons under military necessity.

That Sir E. Wingfield was to transmit to us a copy of a Confidential Memorandum, prepared in 1896 by the Parliamentary Counsel, with reference to the powers of Government in cases of emergency, and he was also to transmit prints of various Reports of the Law Officers to the Foreign Office, together with a copy of a Memorandum prepared in that Department, from which latter document it would be seen that Her Majesty's Government had refused to compensate persons who, under somewhat similar circumstances, suffered losses during the bombardment of Zanzibar in 1896.

That Sir E. Wingfield was to request us to take these matters into our consideration and to advise you—

1. Whether Her Majesty's Government were under any legal liability to pay compensation to (*a*) British subjects, (*b*) foreigners, in respect of damage to person or property caused by the insurgents during the rebellion in Sierra Leone, and, if so, upon what grounds.

2. Whether any compensation was payable (*a*) to British subjects, and (*b*) to foreigners, in respect of damage done to person or property by the action of Her Majesty's naval or military officers engaged in the suppressson of the insurrection, and, if so, upon what grounds.

3. Whether the destruction of property by Her Majesty's officers under such circumstances, without the consent of the persons whose property was destroyed, afforded any, and what, ground for compensation; and,

4. Generally.

In obedience to your commands we have taken the papers submitted to us into our consideration, and have the honour to

Report—

1. That Her Majesty's Government are not under any legal liability to pay compensation either to British subjects or to foreigners in respect of damage caused during the rebellion in Sierra Leone.

No Government guarantees either its own subjects or the subjects of Foreign States against the possibility of insurrection, and all residents in a State must take the chance of damage arising from such causes. In the case of foreigners the claim might be put forward by their Government, if it could be clearly established that the damage was the result of the neglect of some obvious and necessary precaution on the part of the Government of the State in which the insurrection took place, or that the insurrection was caused by misconduct or neglect on the part of the Government itself or its officials. Nothing of this kind has been suggested here.

2 and 3. There is, in our opinion, no right to compensation on the part either of British subjects or of foreigners in respect of damage done by the acts of Her Majesty's officers in suppressing the insurrection, so long as they acted reasonably and properly for the purpose of military operations.

If property be used by the officers of the State for the purpose of military operations, a claim for compensation for such use and for any damages resulting therefrom may be sustainable, but the limits within which such a claim may arise are ill-defined, and there is no clear authority on the subject. The question is not raised by the circumstances of the present case.

Of course, if wanton or unnecessary damage had been done by the officers of the Government, a claim for compensation would arise, which might, in some cases, be enforced by action against the persons actively concerned in such wrongful act, and which might also afford just ground for a claim for compensation by the Government, so far at least as foreigners are concerned. But nothing of this kind apparently can be suggested here. The rebels were advancing upon the factories which were destroyed by Captain Henderson, and we infer that he thought it expedient to destroy them to prevent their occupation by the enemy. If the enemy had not occupied them as military posts they would probably have destroyed them themselves, as in the case of other factories; so that it is difficult to see that any damage can be said to have resulted from Captain Henderson's action.

We presume there is no ground for attacking the action of other officers of Her Majesty's Government as being unreasonable or more than was called for by the military necessities of the case. We are, therefore, unable to see that there is in either of these cases any right to compensation.

4. We think that Her Majesty's Government should not admit any such claim as a matter of right; but while all legal liability is repudiated, it may be matter for consideration whether, on grounds of policy, some allowance should be made to

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those whose property has been destroyed by British officers, as a matter of grace and favour. It is hardly for us to advise on this point, and, indeed, the circumstances are not before us in sufficient detail to enable us to express any opinion upon it. Of course, it may be very difficult to recognize any particular case without leading to the putting forward of a large number of claims against the Government in other cases.

If it should be determined to award any compensation as a matter of favour, no distinction ought to drawn between the property of British subjects and that of foreigners destroyed under similar circumstances.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

No. 2.

[September 7, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 16, 1899.

Claims of Messrs. Sinderam and Walker on Portugal and of French missionaries on Niger Company for depredations by natives of Protectorates.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the paper noted in the margin (Paper A), which relates to a claim which two traders of British Central Africa have brought against the Portuguese Government in respect of goods looted from them by natives of Portuguese territory in which the claimants were travelling.

The general responsibility of Portugal for what takes place within her territories or Protectorates is a matter which does not seem doubtful, and it is accentuated in the present instance by the permission given to Messrs. Sinderam and Walker by the Portuguese authorities to go on the expedition, and by the issue to them of "Billets de residence" and of licences to carry arms.

Speaking of Protectorates, Mr. W. E. Hall, in his "Treatise on International Law," 4th edition, 1895 (p. 131), says that the assumption of a Protectorate affects the Protecting Power with responsibility towards the rest of the civilized States of the world. "They are barred by the presence of the Protecting State from exacting redress by force for any wrongs which their subjects may suffer at the hands of the native Rulers or people. That State must consequently be bound to see that a reasonable measure of security is afforded to foreign subjects and property within the protected territory, and to prevent acts of depredation or hostility being done by its inhabitants." After observing that such territories are at present not ripe for the administration of European law as between the natives themselves, and that in such circumstances practice must be extremely elastic, he goes on to say: "A foreign Government, then, can have no right to ask that any definite amount of control shall be exercised in its interest, or that any definite organization shall be established."

In speaking of "spheres of influence," Mr. Hall says:

"The business of a European Power within its sphere of influence is to act as a restraining and directing force. It endeavours to foster commerce, to secure the safety of traders and travellers, and, without interfering with the Native Government, or with native habits or customs, to prepare the way for acceptance of more organized guidance. No jurisdiction is assumed, no internal or external Sovereign Power is taken out of the hands of the tribal Chief; no definite responsibility, consequently, is incurred. Foreigners enter the country with knowledge of these circumstances, and, therefore, to a great extent, at their peril (p. 134)."

In a Memorandum dated the 5th November, 1892, on Government responsibility in Protectorates and spheres of influence for the acts of a Chartered Company, and with special reference to French claims for the loss of Mission property in Uganda, the late Lord Chancellor Herschell said: "The fact that the Company's enterprise has received the sanction of the British Government, and that we should not, I presume, be prepared to permit France to make good such claims as she may have against the Company by force of arms, &c., as it seems to me impose some obligation upon us. If French citizens had been wronged by native Rulers to whose rights the Company succeeded, this would have been her recognized remedy. If we interpose to prevent her adopting it, I think we necessarily take on ourselves at least the obligation, if the claim be a just one, of pressing it upon the Company, and that France may properly insist that we should do so."

Arguing from the above premises it would seem that a claim would lie against the Portuguese Government in the present case, although the circumstances are not precisely similar to those which occurred in Uganda during the Catholic and Protestant hostilities in 1892.

A case occurred in 1895 in the German possessions on Lake Nyasa, where some men who had landed from Her Majesty's ship "Pioneer" were attacked by a neighbouring tribe called the Wa-Mpoto, who carried off one of the party who had been injured, but, on being pursued, abandoned him.

The incident was reported to Captain Berndt, the Acting Administrator of the German possessions, and he landed a party of soldiers and destroyed the village of the natives concerned. He also confiscated a number of goats belonging to them, and gave some of them as a recompense to the men who had been attacked.

No claim, however, appears to have been advanced in respect of the outrage. The reparation was spontaneous, but it may be regarded as an acknowledgment of responsibility on the part of the German officials.

The accompanying printed Memorandum by Sir E. Hertslet (Confidential No. 6647) gives some particulars as to the practice of States in regard to the conduct of uncivilized tribes on their frontiers. Though it scarcely bears upon the present question, it will be observed that it concludes by stating (page 6) that it is not customary to demand compensation for depredations committed by wild tribes on the frontiers of States.

I am also to transmit to you a letter from the Niger Company respecting a claim which has been made against them by the "Société des Missions Africaines," whose Station at Illah was destroyed by some freebooting African natives.

This claim appears to be of a somewhat similar nature to that which has been brought against the Portuguese Government by Messrs. Sinderam and Walker, and should apparently be decided on like considerations.

I am to request that you will take all these papers into your consideration, and that you will favour his Lordship with your opinion—first, as to whether the claim which has been preferred against the Portuguese Government by Messrs. Sinderam and Walker is such as may properly be supported by Her Majesty's Government; and, secondly, whether the French missionaries' claim should be met by the Niger Company.

Lord Salisbury would also be glad to be furnished with any general observations which you may have to offer on the two cases now submitted, more especially in regard to the effect which any decision taken in the matter by Her Majesty's Government may have with respect to the eventuality of similar claims being made against this country.

I am to add that, on the representations of Her Majesty's Government, the Portuguese Government have sent a considerable expedition to punish the natives who plundered Messrs. Sinderam and Walker, and that a British force from the British Central Africa Protectorate is co-operating with the Portuguese troops.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Mr. Sharpe	(No. 127)
(B.)	Sir E. Hertslet Memoradum (Confidential 6647).	
(C.)	Niger Company	July 20, 1899.

Report.

In our opinion the liability for claims of this kind must depend upon the question whether there has been a failure to take reasonable precautions against the occurrence of such outrages. This is a question of degree. The same security cannot be attained in an African Protectorate as that which is enjoyed in a more settled country. The Government of the Protectorate has fulfilled its duty to other

States if it has taken such steps for the protection of life and property as under the circumstances might reasonably be expected.

There is no sufficient evidence to show that the Portuguese Government have neglected this duty, and that the outrage in question has been the result of such neglect. In the absence of such evidence we cannot advise that any formal demand for compensation should be made. Informal representations may be made in the interest of the claimants, and if a fine can be imposed on the offending tribes, it might be applied in compensating Messrs. Sinderam and Walker. But we cannot, under present circumstances, advise that compensation should be insisted on as a matter of right.

In like manner we think that there is nothing to show that the loss of the French missionaries was the result of default on the part of the Niger Company. The Company cannot be regarded as guaranteeing the safety of the property of missionaries in such a territory, and we do not think that satisfaction of the claim should be pressed on the Company.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 7, 1899.

No. 3.

[September 29, 1899.]

Foreign Office to Law Officers of the Crown.

Gentlemen, *Foreign Office, September* 6, 1899.

Mr. Rule's Pearl Fisheries Concession off East Africa Protectorate.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, which relate to an application made by Mr. Rule, a British subject, for a Concession or lease of certain pearl and other shell-fish fisheries off the coast of the East Africa Protectorate.

The application was originally made for a Concession in a more exclusive sense than at present, and formed the subject of your Report of the 16th May last. That Report (Paper H) will be found in the inclosed papers, together with the documents on which it was written; they bear the same distinctive lettering as is mentioned in the reference to you of the 3rd April last (Paper G).

I have the honour to request you to take the inclosed papers into your consideration, and to favour Lord Salisbury with your opinion as to whether the draft lease which gives the proposed Concession as now asked for, and which will be found in Mr. Rule's letter of the 10th July last (Paper K), is free from the objections which arose on the original form of the Concession, and whether, in your opinion, the lease now submitted to you in the above-mentioned document (Paper K) is one that can properly be granted by the Administration of the Protectorate.

Finally, I have the honour to request you to favour his Lordship with any observations which may occur to you as likely to be of use to him in dealing with the matter.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

(A.)	In Mr. Rule	March 16, 1899.
(B.)	Mr. Rule	March 23, „
(C.)	Memoranda and Minutes.	
(D.)	Treaty, Great Britain aud Zanzibar (Treaty 782) ..	April 30, 1886.
(E.)	Berlin Act (Treaty 757)	February 26, 1885.
(F.)	Law Officers (Confidential 6113, p. 48)	September 27, 1890.
(G)	To Law Officers	April 3, 1899.
(H.)	Law Officers	May 16, „
(I.)	To Mr. Rule	May 29, „
(K.)	Mr. Rule	July 10, „

Report.

We are of opinion that the draft lease now proposed is free from the objections which arose on the former proposal. We do not think that a lease of specified banks, with an option of a lease of any other banks which Mr. Rule may be the first to discover, is obnoxious to the provision against monopolies.

We presume that the clause as to renewal is meant to give this right only once, and not in perpetuity. It would, in our opinion, be improper to grant such a right in perpetuity.

The lease ought to be settled, as proposed, by Conveyancing Counsel, and care should be taken to see that there are proper provisions for the effective working of the banks leased.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 29, 1899.

No. 4.

[October 26, 1899.]

Foreign Office to the Law Officers of the Crown.

(A.)
(Confidential.)
Gentlemen, *Foreign Office, October* 23, 1899.

Treatment of arms, food-stuffs, &c., during war in South Africa.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list which relate to the treatment of arms, ammunition, food-stuffs, &c., during the continuance of the state of war which exists between this country on the one side, and the South African Republic and the Orange Free State on the other.

It may be assumed that all other countries, whether they have issued formal declarations of neutrality or not, are at present in the position of neutrals.

In the case of Portugal, however, the status of absolute neutrality is to a certain extent qualified as follows:—

The Portuguese Province of Mozambique is the only non-British territory adjacent to the Republics, and affords them their only access to the sea except through British territory; and in view of this fact, an Agreement has recently been signed between the British and Portuguese Governments, under which the latter undertakes not to permit the "importation and passage of arms and of munitions of war destined for the Transvaal," and also undertakes "not to proclaim neutrality" during the war. The object of the latter undertaking is to prevent British ships of war coming under belligerent disqualifications and restrictions in Portuguese ports.

The principal instructions issued to the British Colonial and Naval authorities will be found in the inclosed papers. I have the honour to call especial attention to the telegram of the 7th instant (Document A) to the Naval Commander-in-chief at the Cape of Good Hope, inclosed in my Minute of the 8th instant (Document B); to the draft of the 13th instant (Document C) to the Admiralty; and to the telegram sent in consequence to the Commander-in-chief, as inclosed in the Admiralty letter of the 14th instant (Document D). It will be observed that this telegram does not reproduce the penultimate paragraph of the draft of the 13th instant to the Admiralty.

The Colonial Office letter of the 19th instant (Document E) contains a telegram from the High Commissioner in South Africa on the treatment of munitions of war, of food-stuffs, and of enemy's property on British territory; this telegram has already been before you, and the same letter contains the proposed answer, which you have approved.

The circumstances are in one respect abnormal, owing to the fact that neither of the two Republics, between which and this country a state of war unfortunately now exists, possesses any seaboard, and that consequently no goods, whether of a contraband or other nature, can reach an ulterior hostile destination except through a neutral

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or a British port, and thence by subsequent overland conveyance through neutral or British territory. It has been suggested that this fact may, having regard to the doctrines of British, as opposed to United States', Prize Courts on the subject of neutral *versus* hostile destination, and to the views publicly maintained by Her Majesty's Government from time to time, form an important factor in your consideration of the questions now submitted to you.

Finally, I am to call attention to the accompanying letter (Document F) from the Admiralty, containing an account of the seizure of a consignment of gold on the British vessel "Avondale Castle" by Her Majesty's ship "Partridge."

Before concurring in the despatch of the telegram to the High Commissioner contained in the Colonial Office letter of the 19th instant, Lord Salisbury wishes to have the benefit of your advice on certain general questions relating to the course which should be followed with regard to goods belonging to or destined for the enemy. I have therefore the honour to request you to take the inclosed papers into your consideration, and to favour the Secretary of State with your opinion on the following questions:—

Many of the points which are raised in them have been dealt with either wholly or in part in the Reports and advice which you have tendered to this Department and the Colonial Office and Admiralty respectively, but Lord Salisbury thinks that it will be convenient not only to Her Majesty's Government and to the various Departments concerned, but to yourselves, if you will be good enough to deal with them collectively in the form in which they are now submitted.

(A.) Generally:—

1. In what circumstances and to what extent can food-stuffs with a hostile destination be considered as contraband of war.

2. Whether, and if so in what circumstances and on what grounds, can goods, in their nature contraband of war, lawfully be removed by the local police, or customs or other authorities, from a neutral vessel in British territorial waters; or whether in any case where such neutral vessel is stopped and searched for contraband of war, either on the high seas or in the territorial waters of either belligerent, the goods alleged to be contraband must not be left on board, and the vessel and cargo taken in for adjudication before a duly constituted Prize Court.

3 Whether goods the property of, or consigned to enemy individuals, and whether such goods be (a) in their nature contraband, and (β) not contraband of war, can lawfully be detained when found on a neutral vessel in British territorial waters.

4. Whether goods, such as are mentioned in the previous question, can lawfully be detained when found on a British vessel in British territorial waters; and

(B.) With special reference to the peculiar circumstances of the present hostilities:

Can a neutral vessel, whose destination is either a neutral or a British port—but whose cargo contains contraband of war with an ulterior hostile destination to the Transvaal or Orange Free State, which can only be attained by transhipment and by overland conveyance through neutral or British territory—lawfully be detained by Her Majesty's ships of war, either on the high seas or in British territorial waters.

6. Whether goods, of whatever nature, consigned to enemy individuals in the Transvaal or Orange Free State are not, if once landed in British territory after the outbreak of hostilities, liable to seizure as being the property of one belligerent in the territory of the other.

7. Whether, if the answer to the previous question be in the affirmative, enemy goods on a British merchant-vessel coming into British territorial waters, after the outbreak of hostilities, may not technically be liable to seizure on the vessel while she is within the territorial waters, on the ground that in this case the ship, as well as the water on which she is floating for the time being, is British territory.

(C.) Having regard to all the circumstances of the case, and to the answers which you may return to the foregoing questions, has it now become, in your opinion, incumbent on, or desirable for, Her Majesty's Government to issue any public Notice or Proclamation on the subject of the establishment of Prize Courts or otherwise, beyond the Proclamation (G), of which a copy is inclosed, issued by Her Majesty's High Commissioner in South Africa on the 12th October last.

These questions are framed with a view of ascertaining what is the strict measure of the legal rights possessed by Her Majesty's Government, and how far action already taken, or to be taken in the future by them, can be justified by such doctrines of naval prize or other international or semi-international law, as can at present be described as established and generally accepted.

Lord Salisbury will, however, be much obliged if, in dealing with the matters specifically raised in these questions, you will also be good enough to offer such additional observations and suggestions as you think will be useful in dealing with the whole subject.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Admiralty to Commander-in-chief on Cape of Good Hope Station	(Telegraphic)	October 7, 1899.
(B.)	Memorandum by Mr. Bertie (with annexes)		October 8, „
(C.)	To Admiralty		October 13, „
(C^1.)	Admiralty (with inclosures)		October 13, „
(D.)	Ditto (with inclosure)		October 14, „
(E.)	Colonial Office (with inclosures)		October 19, „
(F.)	Admiralty (with inclosures)		October 11, „
(G.)	Sir A. Milner to Mr. Chamberlain	(Telegraphic)	October 12, „
	Mr. Chamberlain to Sir A. Milner	(Telegraphic)	October 12, „
(H.)	Telegraphic correspondence between Mr. Chamberlain and Sir A. Milner.		
(I.)	Colonial Office (with inclosures)		October 21, „

Foreign Office to the Law Officers of the Crown.

(B.)

Gentlemen, *Foreign Office, October 23, 1899.*

WITH reference to my other letter of this day's date respecting the treatment of contraband of war, I have the honour, by direction of the Marquess of Salisbury, to transmit to you the draft of a letter which has been addressed to the Colonial Office on the subject.*

In view of the large amount of munitions of war and food-stuffs which, as Her Majesty's Government are informed, is being carried to the Portuguese port of Lourenço Marques, and the ultimate destination of which is undoubtedly the Transvaal and the Orange Free State, it became necessary at once and before awaiting your Report to issue provisional instructions as to the action to be taken in the matter by the British naval authorities.

I have the honour to request you to take the inclosed draft into your consideration, in connection with my other letter of this day's date, and to favour Lord Salisbury with your opinion as to what modifications, if any, should be made in the instructions which have been provisionally issued.

I have, &c.
(Signed) FRANCIS BERTIE.

Report

(A.) Generally:— 1. In what circumstances and to what extent can food-stuffs with a hostile destination be considered as contraband of war.	(A) 1. Food-stuffs with a hostile destination can be considered contraband of war, only if they are supplies for the enemy's forces. It is not sufficient that they are capable of being so used, it must be shown that this was in fact their destination at the time of seizure. We, submit, for consideration that any extension of the doctrine of contraband as applied to food-stuffs would not be for the interests of this country.
2. Whether, and if so in what circumstances and on what grounds can	2. In every case in which goods supposed to be contraband are found on board

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* To Colonial Office, October 23, 1899.

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goods in their nature contraband of war lawfully be removed by the local police, or customs, or other authorities from a neutral vessel in British territorial waters; or whether in any case where such neutral vessel is stopped and searched for contraband of war, either on the high seas or in the territorial waters of either belligerent, the goods alleged to be contraband must not be left on board, and the vessel and cargo taken in for adjudication before a duly constituted Prize Court.	a neutral vessel, the goods should be left on board, and the vessel and cargo taken for adjudication before a Prize Court. Such goods cannot be lawfully removed from the neutral vessel even though she is in British waters.
3. Whether goods the property of, or consigned to enemy individuals, and whether such goods be (α) in their nature contraband, and (β) not contraband of war can lawfully be detained when found on a neutral vessel in British territorial waters.	3. The neutral flag covers the goods not being contraband of war even while the vessel is navigating British waters, and they cannot be detained. If the goods are contraband, the vessel with its cargo should be brought in for adjudication.
4. Whether goods, such as are mentioned in the previous question, can lawfully be detained when found on a British vessel in British territorial waters.	4. As regards private property of individuals of the enemy's State not being contraband of war, it would be liable to be detained when found on a British ship, navigating British territorial waters, only in cases in which it would be liable to seizure if the ship were on the high seas. It would be liable to seizure in both these cases if the vessel were trading with the enemy, an offence which renders the vessel also liable to condemnation. We are however not aware of any instance in which this offence has been held to have been committed where the destination of the vessel was to a neutral port, on the ground that the ultimate destination of the goods was hostile. We are disposed to think that it may be committed under these circumstances, but the point is not covered by authority so far as we know. We should point out that this question is probably of practical importance only as far as contraband of war is concerned. As regards such goods as are contraband of war, we think that they should be brought in for adjudication along with the vessel whether found on the high seas, or in British waters. To guard against misapprehension we should add that we have assumed that it is not intended to exercise the obsolete right to confiscate the private property of individual enemies under all circumstances.
(B.) With special reference to the peculiar circumstances of the present hostilities: Can a neutral vessel, whose destination is either a neutral or a British port—but whose cargo contains contraband of war with an ulterior hostile destination to the Transvaal or Orange Free State, which can only be reached by transhipment and	(B.) 5. In answer to this question we think it best to repeat the opinion already given by us on the subject of seizure on the high seas, or in British waters which is as follows:— "1. After the outbreak of war a merchant-vessel belonging, to a neutral State, may be visited on the high seas, or in the waters of the belligerent nations, and, if

by overland conveyance through neutral or British territory—lawfully be detained by Her Majesty's ships of war, either on the high seas or in British territorial waters.	found carrying contraband of war, belonging to the enemy, may be seized and carried into port for adjudication before a Prize Court. "It depends on the circumstances whether the ship as well as the cargo is liable to condemnation. The fact that the contraband is consigned to a neutral port will not affect this liability. "2. Where a neutral vessel carries contraband of war belonging to a neutral it is, *primâ facie*, not liable to seizure if it is consigned to a neutral port. It would not be liable to seizure if *bonâ fide* consigned to the neutral port for the purpose of being sold there, even if the purchaser would resell to the enemy. This was the view asserted by this country in the case of the "Springbok" during the American Civil War. "We think that it would be liable to seizure though belonging to a neutral, if it was to be delivered at a neutral port to the agents of the enemy to be forwarded for use by him, or if it was at the time of seizure intended to be sent on from the neutral port to the enemy—in other words, if its ultimate destination at the time of seizure was the enemy's country. This case, however, may raise questions of much difficulty and delicacy, and the rules of international law upon it cannot be said to have been finally settled. "3. We think, as above stated, that the contraband would still be liable to seizure though consigned to a neutral port, if this was merely a step on the way to a belligerent destination. "No visit or seizure can be made in the territorial waters of a neutral Power. "If the Portuguese can be induced to prevent Lourenço Marques being made an emporium for traffic in contraband it may obviate the occurrence of troublesome questions with neutral Powers as to such consignments."
6. Whether goods, of whatever nature, consigned to enemy individuals in the Transvaal or Orange Free State are not, if once landed in British territory after the outbreak of hostilities, liable to seizure as being the property of one belligerent in the territory of the other.	6. The answer to this question is in the affirmative, subject to the following observations:— The general right to seize enemy's private property in the other belligerent's country is in practice obsolete, and we cannot advise its exercise except in the case of goods suitable for use in war. Trade with the enemy will, of course, not be allowed. The goods cannot be forwarded to the enemy's country. If there is any reason to believe that the goods are really the property of the hostile Government the right of seizure should, of course, be exercised.
7. Whether, if the answer to the previous question be in the affirmative, enemy goods on a British merchant-vessel coming into	7. The fact that the British vessel is navigating territorial waters makes for this purpose no difference. The treatment

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British territorial waters after the outbreak of hostilities, may not technically be liable to seizure on the vessel while she is within the territorial waters, on the ground that in this case the ship, as well as the water on which she is floating for the time being is British territory.

(C.) Having regard to all the circumstances of the case, and to the answers which you may return to the foregoing questions, has it now become, in your opinion, incumbent on, or desirable for Her Majesty's Government to issue any public Notice or Proclamation on the subject of the establishment of Prize Courts or otherwise, beyond the Proclamation (G), of which a copy is inclosed, issued by Her Majesty's High Commissioner in South Africa on the 12th October last.

(D.) These questions are framed with a view of ascertaining what is the strict measure of the legal rights possessed by Her Majesty's Government, and how far action already taken, or to be taken in the future by them, can be justified by such doctrines of naval prize, or other international or semi-international law as can at present be described as established and generally accepted.

(E.) Lord Salisbury will, however, be much obliged if, in dealing with the matters specifically raised in these questions, you will also be good enough to offer such additional observations and suggestions as you think will be useful in dealing with the whole subject.

must be the same as if she were found with the goods on the high seas.

If, however, the vessel were lying in port, in a place which, if it were in England would be considered as within the body of the country, we think that different considerations might apply, and that the goods might be seized just as if they were on land. This last point, however, is new, and we are not aware of any authority upon it.

(C.) We think that a Proclamation warning Her Majesty's subjects against trade with the Transvaal or Orange Free State would be desirable.

(D.) With reference to the instructions contained in the letter from the Foreign Office to the Colonial Office of the 23rd October, 1899, we make the following suggestions:—

(*a*.) If the British Commander satisfies himself that the destination is to a British port, no further steps need be taken. The authorities at the port can see that the goods are not forwarded to the enemy.

(*b*.) The search can in no case be made in the waters of a neutral Power.

(*c*.) It is not necessary that the vessel should be taken to a port where there is a Prize Court It is enough if she is taken to a British port, proceedings may then be taken in any Prize Court having jurisdiction.

(*d*.) Food-stuffs are contraband only if destined for the supply of the enemy's forces.

(E.) By way of general observation we have only to add that, having regard to the novel and difficult questions of international law which might arise with neutral Powers, we would again urge the expediency, if it be possible of avoiding the exercise of the right of search of neutral vessels by securing the performance by Portugal of her undertaking with reference to Lourenço Marques. That undertaking, if carried out, prevents all arms and munitions of war from reaching the enemy. The term "munitions of war" we think, may include supplies of food for the enemy's forces. But even if Portugal refuses to take this view as to food-stuffs, we submit for consideration whether, having regard to our relations with other Powers, and the great interest which this country has in the free importation of food-

stuffs in time of war, it is desirable to stop and take in for condemnation neutral vessels carrying food-stuffs to Lourenço Marques.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 26, 1899.

Annex 1.

Colonial Office to Foreign Office.

Sir,
Downing Street, October 21, 1899.

WITH reference to my letter of this day's date respecting the mode of dealing with questions which arise in connection with the hostilities in South Africa, I am directed by Mr. Secretary Chamberlain to transmit to you, for the consideration of the Marquess of Salisbury, the accompanying telegram from the High Commissioner, South Africa, respecting the treatment of food-stuffs destined for the enemy's country, together with an opinion on the subject obtained from the Law Officers yesterday evening.

Pending Lord Salisbury's decision on the question, Mr. Chamberlain has addressed the accompanying telegram to Sir Alfred Milner in reply.

With regard to the latter part of Sir A. Milner's message, I am to inclose a statement from which it appears that the latest instructions issued by the Admiralty on the subject of the search of vessels are not consistent with those issued by this Department on the 13th instant to the Governors of the Cape and Natal, a copy of which is inclosed. A copy of those instructions was sent to the Admiralty the same evening; but by an oversight they were not at the same time communicated to the Foreign Office.

I am, &c.
(Signed) FRED. GRAHAM.

Inclosure 1 in Annex 1.

High Commissioner Sir A. Milner to Mr. Chamberlain.

(No. 3.)
(Telegraphic.) *October* 19, 1899.

YOUR telegram of 13th October, No. 2.

Dutch ship due East London to-morrow, carries food-stuffs, &c., for South African Republic. Attorney-General advises that these goods are contraband of war and liable to seizure, and he is instructing Customs officers accordingly. Ship said to be chartered by Castle Mail Packet Company. Do you mean that we are not to seize goods destined for Republics, even though contraband of war on board neutral vessels [? at] four [? our] ports, but are to take the chance of goods being stopped by Portuguese? Admiral's instructions seem inconsistent with your telegram, as they provide for search for contraband on high seas. I hope it may be possible to adhere to line which Ministers are prepared to take.

Inclosure 2 in Annex 1.

PROVISIONS can only be stopped if there is reasonable ground for believing that they are directly destined for the supply of the enemy's forces.

Provisions cannot possibly be taken out of a neutral ship; the vessel must be detained and taken into a Prize Court for condemnation.

To seize neutral vessels on the ground that they are carrying provisions will raise in the most acute form the questions which we understood it was considered most desirable to avoid.

R. E. W.
R. B. F.

October 20, 1899.

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Annex 2.

Foreign Office to Colonial Office.

Foreign Office, October 23, 1899.

Sir,

I HAVE laid before the Marquess of Salisbury your letters of the 21st instant respecting the treatment of contraband of war, and I am directed by his Lordship to state to you, for the information of Mr. Secretary Chamberlain, that he concurs in the proposal that the decision in such matters should be taken in this Department.

A general reference is now being prepared to the Law Officers; but, in the meantime, Lord Salisbury thinks that instructions in the following sense should be issued to the Colonial and to the Naval authorities. A copy of my present letter has been communicated to the Admiralty.

1. All merchant-ships intending to go to a South African port may be searched for contraband of war wherever found and of what nationality they may be.

2. If it is found on any ship, and there is reasonable ground for suspicion that it is intended for the enemy, the ship should be taken into Cape Town, or to the nearest port at which there is a British Prize Court, and should be adjudicated upon in proper form.

3. Contraband of war should be regarded as including food suitable for feeding troops, provided there is reasonable ground for believing that it is destined for the supply of the enemy's forces.

Immediate steps should be taken for establishing a Prize Court at Cape Town or elsewhere in South Africa, and every care should be taken that it is properly composed and constituted.

On the issue of the instructions in the sense indicated in this letter, it will no longer be necessary to abide by the intention expressed in my letter of the 13th instant, to interfere as little as possible with neutral vessels, but to seize contraband of war when landed.

No. 5.

[November 9, 1899.]

The Lord Chancellor to Foreign Office.

Food-stuffs, &c., as contraband of war.

IN commenting on the opinions of the two Law Officers,* it must be borne in mind that they were asked by the form of the questions submitted to them that they would be good enough to offer such additional observations and suggestions as they might think would be useful in dealing with the whole subject.

And it is further necessary to observe that with reference to the main question upon which doubts suggest themselves, namely, the question of how far food-stuffs may become contraband of war, so much depends upon the circumstances of the concrete case that it is difficult, if not impossible, to give an abstract definition of the circumstances, which may make food-stuffs contraband of war.

Lord Stowell at the commencement of the century laid down what I believe to be the true rule "that generally food-stuffs were not contraband of war, but might become so in circumstances arising out of the particular situation of the war, or the conditions of the parties engaged in it."

I think Mr. Hall has very accurately pointed out the tendency of modern opinion and the reason for it in the following passage:—

"Detention of provisions is almost always unjustifiable, simply because no certainty can be arrived at as to the use which will be made of them; so soon as certainty is in fact established, they, and everything else which directly and to an important degree contributes to make an armed force mobile, become rightly liable to seizure. They are not less noxious than arms; but except in a particular juncture of circumstances their noxiousness cannot be proved."†

The United States in the civil war with the Confederacy regarded and acted upon the theory that cotton was contraband of war on the ground that cotton was used as money during that contest; and M. Waddington in 1885, in a letter dated the 10th March, 1885, expresses himself thus:—

"The doctrine which admits that besides contraband of war by nature there may also be contraband of war by destination has been long professed in England. Thus the Attorney-General, having occasion to speak on this subject in the House of Commons on the 30th March, 1854, after having recognized that the definition of

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* Dated October 26, 1899.

† Hall's "International Law," 4th edition, pp. 689, 690.

AFRICA.

No. 4*.

[Colonial Office.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, October 26, 1899.

Sir,

Boer invasion o Natal: Claims for compensation in cas of damage during.

WE were honoured with your commands signified in Mr. F. Graham's letter of the 25th instant, stating that he was directed by you to transmit to us the accompanying copies of telegrams* received from the High Commissioner for South Africa and the Governor of Natal, with reference to the question of compensation to private individuals in the latter Colony for losses occasioned by hostilities between Her Majesty's Government and the Government of the South African Republic.

That in his telegram of the 25th May, 1899, the High Commissioner reported that he had received information from the Governor of Natal that the inhabitants in the northern districts of that Colony were becoming anxious at the warlike preparations of the Government of the South African Republic on the border, and that his Ministers were asking for some assurance that the support of Her Majesty's Government would be given to Natal in the event of hostilities. That Sir A. Milner added that he had telegraphed to the Governor of Natal as follows: "You can tell Minister from me that it is out of the question that Her Majesty's Government should tolerate any invasion of Natal. I think such an event highly improbable, but if it occurred, Natal would be defended with whole force of the Empire, and redress exacted for any injury to her." That he further expressed the hope that Her Majesty's Government would indorse his message, and that by telegram of the 28th May you expressed your approval of it.

That at the beginning of the present month the Governor of Natal reported in his telegrams of the 4th instant that the President of the Mooi River Farmers' Association had inquired whether the Imperial authorities would compensate Natal Colonists for losses incurred through hostilities with the Transvaal, and that the Prime Minister had consulted him as to whether an attempt should be made to defend Newcastle if it were attacked before troops could be sent up. That to the first inquiry he stated that he had replied that if Natal should be attacked it would be defended by the whole force of the Empire, and that redress would be exacted for any injury done to Natal or to Her Majesty's loyal subjects in the Colony due to such attack, or, in other words, in the sense of the High Commissioner's telegram to him of the 25th May, but with the addition of the last sentence. That with regard to Newcastle he said that he had felt constrained, after consulting the General Officer Commanding, Natal, to advise that, until the General Officer Commanding, Natal, was in a position to send up necessary troops, no attempt should be made to defend the town, and that he had stated that if the town should be taken ample reparation would be exacted for any pecuniary loss that individual citizens or the town might sustain.

That the High Commissioner, in his subsequent telegram of the 6th instant, reported that he had received a further communication from the Governor of Natal, stating that the Mayor of Newcastle had inquired whether he was to understand that, in the event of property being destroyed in the district, the Government would guarantee full compensation; that the Prime Minister had replied that it was a question for the Imperial Government; that the terms of the High Commissioner's telegram did not justify him in going beyond the assurance already telegraphed; that he thought some more definite assurance would do good, but that it was necessary to guard against bogus claims, and that the terms would have to be carefully worded.

That the High Commissioner added that he did not see that Her Majesty's Government could go further than the pledge contained in his telegram of the 25th May and the Secretary of State's reply of the 28th May, but that he would be glad of instructions on the point.

That Mr. Graham was to refer us to our opinion of the 17th August last with

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* High Commissioner to Secretary of State, May 25, 1899; Governor of Natal to Secretary of State, October 4, 1899; Governor of Natal to Secretary of State, October 4, 1899; High Commissioner to Secretary of State, October 6, 1899.

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reference to certain claims for compensation for losses incurred by various persons in consequence of the recent insurrection in Sierra Leone, and more especially to the first paragraph, in which we stated that Her Majesty's Government were not under any legal liability to pay compensation either to British subjects or to foreigners in respect of damage caused during the rebellion in that Colony.

That Mr. Graham was also to refer us to Articles VI, VII, VIII, and IX of the Pretoria Convention of 1881, which laid down the principles of compensation for losses and damage sustained by individuals during the hostilities which preceded that Convention.

That Mr. Graham was to request us to take the papers into our consideration, and to favour you with our opinion:—

1. Whether Her Majesty's Government should go further than the pledge already given by the High Commissioner's telegram of the 25th May as approved by the Secretary of State, and, if so, what instructions should be sent to the High Commissioner on the subject?

2. Whether the assurances of the Governor of Natal as to reparation and redress, reported in his telegrams of the 4th October, No. 1, and the 4th October, No. 2, were in harmony with the pledge of the High Commissioner as approved by the Secretary of State, or went beyond it?

3. To what extent Her Majesty's Government was committed to grant or secure compensation to individuals in consequence of damage occasioned by the hostilities:

(*a.*) Either generally as a belligerent, or

(*b.*) By reason of the assurances given in the telegrams above referred to.

4. Generally.

That Mr. Graham was to add that you regarded the question as one of the utmost importance, as, should the Boer forces succeed in wrecking the mines at Kimberley, or destroy the mines of the Rand, claims for compensation of enormous amount would almost certainly be presented by the Companies whose property had been thus injured.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

1. That we think that Her Majesty's Government should not go further in the way of promises of compensation.

2. The assurances of the Governor of Natal are in harmony with the pledge of the High Commissioner as approved by the Secretary of State, and do not go beyond it.

3. By these various pledges, Her Majesty's Government is committed to exact redress to individuals in Natal for damage occasioned by the hostilities. There is no such obligation on a belligerent; it depends on the assurances given in this case. A promise to exact redress to Natal means, in the connection in which these words were used, a promise to exact redress to the individual inhabitants who have been damnified.

4. No question of this kind can arise with regard to the mines at Kimberley or in the Rand, as no pledge has been given with regard to them.

The pledge that has been given is not that Her Majesty's Government will make compensation, but that Her Majesty's Government will exact it from the Boers.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

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what articles are contraband of war was one of the most difficult and complicated questions of international law, expressed himself as follows:—

"'Contraband of war may in general be classed as follows in two categories:—

"'1. Articles which, by their nature, are of direct use in war, such as arms and ammunition.

"'2. Articles which may be of indirect use in war, by permitting a continuation of hostilities, such as provisions.'"

One must further remark that inasmuch as in international law there is no absolute Tribunal which can be applied to as settling doubtful questions, each nation in turn has adopted its own view on this question, and has not always been consistent with itself.

Both this country and the United States have maintained inconsistent theories.

In 1793 and 1795 the English Government seized all provisions bound to a French port, and, as I have pointed out, so late as 1885 the French Minister insisted on the right of his country to treat all rice imported into such a country as China as contraband of war.

The truth is, as I have said, each country in turn has applied the doctrine to its own interests at the time. But it is fair to observe that in what seems at first sight only the decision of a party to a quarrel in his own favour, there is a principle to be found which may reconcile apparently inconsistent contentions, and gives a good practical reason which runs through all the opinions from Bynkershoek downwards, namely, whether the supply of provisions is, in truth, an act of aid to the hostilities being carried on, and such as will, in truth, assist the armies of the enemy.

I take two extreme cases to illustrate what I mean: the act of the English Government in 1793 and the contention of M. Waddington in 1885. The supply of rice or provisions generally in the two cases seems to me to have been so wide and general in their application that it was an undue interference with the trade of neutrals, and could not in any intelligible sense be said to be an aiding of the hostile forces.

On the other hand, when the circumstances of this particular war, in which the whole of the Orange Free State is in arms against us, and the mobility of its forces dependent, in a great measure at all events, upon the extent to which they can get supplies of provisions, it appears to me that within the narrowest view of what is or is not contraband of war, provisions, under these circumstances, and in respect of this particular war are, to use Mr. Hall's phrase, "as noxious as arms," and I should have thought their destination, with reference to the ordinary course of trade at Lourenço Marques, not difficult to establish.

I am therefore of opinion that if I am right as to the question of fact, which I have assumed for the purpose of my last observation, the carrying of provisions to Lourenço Marques, for the purpose of consumption in the Orange Free State, is an act of aiding and assisting the enemy to a degree which, in any view of international law, justifies the prohibition of such supply.

I do not desire to express any opinion adverse to that of the Law Officers, speaking generally, because I observe that in answer to the first question the Law Officers assume that if, in fact, the destination of "food-stuffs" at the time of seizure was simply for the enemy's forces, they would be contraband of war. But there is an observation made on p. 14 of the printed matter, B 5. 1, apparently quoted from some former opinion, which contains what I think is an erroneous limitation. On the fifth line of that paragraph the words occur "belonging to the enemy." I think these words must have slipped in by an oversight. If the goods are contraband of war, and are destined to reach the enemy, it matters not at the time of seizure who is the proprietor thereof.

With respect to Question 6, I am not certain that the Law Officers have quite understood the application of the question. I understand it to mean to refer to goods landed in British territory, and consigned to enemies either in the Orange or Transvaal States. It seems to me that such goods can properly be seized—they form part of a trading with the enemy through British territory, and though in their answer the Law Officers say trade with the enemy will of course not be allowed, the practical question with which the Cape authorities have to deal is the question of what is to be done with goods landed in British territory and consigned to the two Republics. To seize such goods, even although consigned to private individuals, I think is not obsolete in practice, since the landing of them in British territory for the purpose of being conveyed to the enemy, is a trade operation which, I think, properly subjects them to seizure.

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I agree generally with the answers of the Law Officers, but I have designedly confined myself to dealing with the strict law raised by the questions, and do not express any opinion as to the policy indicated by them.

With respect to the question arising as to the importation of cyanide of potassium, it will depend, I think, upon the same grounds as those upon which the United States treated cotton as contraband of war. I presume the article in question is intended for and used in the extraction of gold, and is therefore more nearly allied to the obtaining money for the Transvaal Government than cotton was for the Confederate States. The principle, therefore, which should be applied must depend upon the facts, which do or do not raise the same question as I have already treated of in respect of the supply of "food-stuffs."

(Signed) HALSBURY.

House of Lords, November 9, 1899.

No. 6.

[November 20, 1899.]

The Law Officers of the Crown to the Marquess of Salisbury.—(Received November 20.)

My Lord, *Royal Courts of Justice, November 20, 1899.*

Search of French steamer "Cordova" by H.M.S. "Magicienne."

WE were honoured with your Lordship's commands, signified in Sir Thomas Sanderson's letter to us of the 18th instant,* respecting the remonstrance by the French Government against the exercise of the right of search by Her Majesty's ship "Magicienne" on the French steamer "Cordova."

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That we would suggest that the answer to the French Government should be that Her Majesty's Government had regarded the existence of a state of war with the Transvaal and the Orange Free States as a matter of notoriety. As these States invaded Her Majesty's territory, there was no formal Proclamation of war, and no formal notice of the existence of a state of war was given.

No want of courtesy to the French Government was contemplated by the absence of formal notice under such circumstances.

We would suggest, further, that the French and other neutral Governments should forthwith have formal notice that a state of war exists between Great Britain and the South African Republic and the Republic of the Orange Free State. The notice should not go further, and no allusion should be made in it to the proposed exercise of belligerent rights—this follows from the existence of a state of war.

In forwarding the notice it may be explained that it is sent as an act of courtesy, and that it had not been sent previously owing to the notoriety of the facts.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

No. 7.

[November 28, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November 17, 1899.*

Trading with the enemy during war in South Africa.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list, which are sent to you in connexion with the question of issuing a notification or warning in this country against trading with the enemy during the continuance of the state of war at present existing between Her Majesty and the two South African Republics.

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* Private letter, of which there is no copy, inclosing Sir E. Monson's No. 10, Telegraphic, Africa, November 15, 1899; Memoranda by Mr. Oakes, November 17 and 18, 1899.

You advise in the 8th paragraph of your Report of the 26th ultimo (Document A), that it would be desirable to warn Her Majesty's subjects by Proclamation against trade with the Transvaal or Orange Free State.

On the present occasion a Proclamation against trading with the enemy has been issued by the Governor of Cape Colony (Document B); it warns all Her Majesty's subjects not to carry on any trade with, or supply any goods, wares, or merchandize to either of the enemy Republics, or to any subject thereof in the said Republics, and further warns all persons that whoever, in contravention of the law, shall commit any of the aforesaid acts, will be duly prosecuted, and will be liable, on conviction, to such punishment as the law provides.

The returns of exports furnished by the Commissioners of Her Majesty's Customs show that merchandize other than contraband of war is now freely exported from this country with ultimate destination to the territory of the South African Republic and the Orange Free State, and in view of the above-mentioned advice given in your Report of the 26th ultimo (Document A), the question arises whether such trade is lawful or unlawful, and whether it should be specially prohibited, and by what instrument and in what terms.

The Proclamation issued in Cape Colony prohibits all trade with or supply of goods to the enemy's territory by British subjects, and indeed, as would seem from the last paragraph of the Proclamation, by any persons within the Colony.

But the Proclamation does not explain or define the term "trade."

As regards the terms of any similar Proclamation issued in this country, it will be to consider also how far British subjects can or should be debarred from supporting trade with the enemy's territory by carrying that trade (1) for British consignors, and (2) for foreign neutral consignors on British ships.

It appears from the fourth paragraph of your Report (Document A), that the point is not as yet covered by authority.

I have the honour to request you to favour Lord Salisbury with your opinion:—

(*a.*) As to the terms of the notification or warning to be issued in this country with the enemy, and how far, if at all, it should deal with the carriage of the enemy's trade by British ships.

(*b.*) As to the form of the notification or warning, that is, whether it should be given by Order in Council, by Royal Proclamation, or merely by a notice issued by the Board of Trade, or by the Commissioners of Customs.

(*c.*) Finally, I am to ask you for any observations of a general nature which may occur to you in connexion with the questions and papers now referred to you.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) Law Officers	October 26, 1899.
(B.) Proclamation	October 12, „

Report.

1. We are of opinion that the carriage by British ships of goods consigned to any person in either of the Republics, or to any agent of such Republics, or of any subjects thereof, in a neutral port, is illegal, as amounting to trade with the enemy. Questions of great difficulty might arise in connexion with cases in which the goods are consigned to a neutral port to a neutral consignee unless it can be shown that the use of the neutral's name as consignee is fictitious, and that the goods are in fact consigned to the enemy, or enemy's citizens or subjects.

It is largely a question of policy whether the carriage of goods intended to reach the enemy by British ships should be prevented, and we are not in possession of information as to the nature and particulars of the trade of this sort, which it is suggested is being carried on, to enable us to express an opinion.

Upon the materials before us, we should think it desirable that British subjects should be informed of the unlawfulness of any such enterprise. All trade with the enemy after the outbreak of war is unlawful unless licensed by the Crown. But the Crown may think it expedient either expressly to license trade of a particular kind, or tacitly to permit it. If it be decided not to allow such carrying trade, we think that the Notification should be in some such terms as we have added upon the Proclamation

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of the High Commissioner, herewith initialled by us. A Notification in such terms does not prejudge the case which might arise of the carriage of goods in a British ship to neutral buyers at Lourenço Marques on the ground that they would be resold to the enemy. We are disposed to think that this might be treated as a trading with the enemy if, in substance, the Portuguese buyer, though apparently buying and selling on his own account, was notoriously merely a means of transmitting such goods to the enemy. But the point is not concluded by authority.

2. We think that the intimation should be by Royal Proclamation. We have inserted in the Proclamation of the High Commissioner herewith, initialled by us, such alterations as we think necessary to form the basis of such Proclamation.

3. We have nothing to add by way of general observations to what we have said in the answer to the preceding questions.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 28, 1899.

Annex.

Draft of Proclamation mentioned in the above Report.

PROCLAMATION:

~~By his Excellency Sir Alfred Milner,~~

~~Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Honourable Order of the Bath, Governor and Commander-in-chief of Her Majesty's Colony of the Cape of Good Hope in South Africa, and of the Territories and Dependencies thereof, and Her Majesty's High Commissioner, &c., &c.~~

WHEREAS a state of war exists between Her Majesty's Government and the Government of the South African Republic, and also between Her Majesty's Government and the Government of the Orange Free State:

And whereas it is therefore expedient and necessary to warn all Her Majesty's subjects, ~~and other persons in this Colony~~, of their duties and obligations towards Her Majesty the Queen, her Crown and Government;

Now, therefore, ~~by virtue of the authority committed to me as Governor of this Colony, I do hereby exhort all persons whomsoever to observe their duty and loyalty towards Her Majesty the Queen and Her Majesty's Government, and to abstain from all treasonable or seditious acts or words against Her Majesty, her Crown and Government, and from all acts or words which may tend to excite disaffection or disloyalty towards Her Majesty, her Crown and Government, or disturb in any manner the peace and good order of this Colony, or any part thereof~~; ~~and I do further~~ *we do hereby* warn all ~~Her Majesty's~~ *our* subjects not to enlist or engage themselves in the military service of the Government of either of the said Republics, or in any way to aid, abet, or assist either of the said Republics in the prosecution of hostilities, and not to carry on any trade with, or supply any goods, wares, or merchandize to either of the said Republics, ~~or any subject thereof in the said Republics~~, *or to any person resident therein, or to supply any goods, wares, or merchandise to any person for transmission to either of the said Republics, or to any person resident therein, and not to carry any goods, wares, or merchandise destined for either of the said Republics, or for any person resident therein.*

And ~~I~~ *we* do hereby further warn all persons that whoever, in contravention of the law, shall commit any of the aforesaid acts, ~~will be duly prosecuted and~~ will be liable, ~~on conviction,~~ to such ~~punishment~~ *penalties* as the law provides.

GOD SAVE THE QUEEN!

~~Given under my hand and the public seal of the Colony of the Cape of Good Hope, this 12th day of October, 1899.~~

(~~Signed~~) ~~A. MILNER, Governor.~~

~~By command of his Excellency the Governor in Council.~~

(~~Signed~~) ~~W. P. SCHREINER.~~

~~No. 277, 1899~~

(Initialled) R. E. W.
R. B. F.

No. 8.

[December 13, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November* 18, 1899.

Power of dealing with land in Protectorates.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list, which relate to the power of dealing with land in Protectorates.

These papers deal primarily with the East Africa and Uganda Protectorates, but the questions on which your advice is sought are not peculiar to those territories, and should be settled according to general principles.

Protectorates may, for the purposes of the present reference, be conveniently divided into two classes: in the one, of which Zanzibar and Tunis are examples, the Protected Power has developed an administrative, legislative, and judicial system, and possesses a body of law regulating, *inter alia*, the tenure and the transfer of land; above all, the ideas of State and private ownership in land are fully understood. In the other class of Protectorates the sovereignty, if it can be said to exist at all in regard to territory, is held by many small Chiefs, or Elders, who are practically savages, and who exercise a precarious rule over tribes which have not as yet developed either an administrative or a legislative system; even the idea of tribal ownership in land is unknown, except in so far as certain tribes usually live in a particular region and resist the intrusion of weaker tribes, especially if the intruders belong to another race. The occupation of ground in which a season's crops have been sown or where cattle are for the moment grazing furnishes the nearest approach to private ownership in land; but, in this case, the idea of ownership is probably connected rather with the crops and the cattle than with the land temporarily occupied by them. The whole of the East Africa Protectorate outside the coast strip constituting the mainland dominions of the Sultan of Zanzibar may be placed in the second class. In the Protectorate of Uganda the Kingdom of Uganda proper might, perhaps, in some respects, be placed in the first class; but the present request for advice deals mainly with regions in the second class.

The Treaties made by the Imperial British East Africa Company are given at pages 12–16 of the Parliamentary Paper, "Africa No. 4 (1892)," where a copy of the Charter will also be found. (Document A.)

Special attention is called to the terms of the Treaty given at the top of p. 15 of the above-mentioned Parliamentary Paper. The Charter recognizes the Treaties, and under Article 23 (8) confirms to the Company, in so far as Her Majesty is concerned, the right to grant lands for terms or in perpetuity absolutely.

It therefore seems clear that the exercise of whatever rights over land the Company possessed under Treaty grants from the Chiefs has been confirmed to them in the fullest and most ample manner by the Crown—and that by the transfer of the administration, noticed below, the Crown now holds all the rights, whatever they may have been, which were held by the Company at the date of the transfer.

The measure of the rights of the Crown in this regard, however, appears to be determined by the extent of the Treaty rights of the Company which passed on the transfer of the administration.

In January 1894, the Imperial British East Africa Company submitted for the approval of the Secretary of State certain Rules and Regulations regarding land. (See Document B.) The Secretary of State concurred in their issue, although he avoided expressing any opinion on their contents.

On the 15th June, 1895, a Notification (Document C) was published in the "London Gazette" of the British Protectorate over territories in East Africa late in possession of the British East Africa Company. The transfer of the Company's rights to Her Majesty's Government was recorded by a deed of the 20th May, 1896 (Document D), and the transfer itself was formally effected in East Africa on the 1st July.

On the 21st December, 1896, an Order (Document E), headed "East Africa Protectorate," was issued by Her Majesty's Commissioner for the East Africa and for the Zanzibar Protectorates providing for the registration of all "documents relating to leases, mortgages, sales, and other transfers of immovable property except wills;"

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the previous Order of the 1st June, 1893, therein referred to, is not in the possession of Her Majesty's Government.

It was proposed in 1896 to make certain land and mining Regulations for East Africa and Uganda. The proposal was referred to the Colonial Office, and that Department pointed out in the letter of the 4th September, 1896 (Document F), that the land in a British Protectorate is, as regards the British Government, foreign soil, and is not vested in the Crown as is the case in territory which is annexed to the British dominions. The letter added that it was, therefore, advisable to avoid making grants in which the British authorities appeared to alienate land which was not, in fact, vested in them or in the British Crown. The system recommended for adoption was that of certificates permitting a particular person to occupy a particular piece of land, and undertaking to secure him in his occupation subject to such conditions as might be thought advisable. The granting of such a certificate was an administrative act, and not a transfer of title.

This system was adopted in the Land Regulations for East Africa, the 7th January, 1897, and for Uganda (Documents G and H respectively).

The construction of the Uganda Railway throughout the East Africa Protectorate has necessitated important steps with regard to the appropriation of land required in connection with the line.

In the beginning of 1897, it was thought advisable to secure to the Crown a belt of land along the line, as such land might become valuable and serve to recoup a part, at least, of the money spent in building the railway.

The question how this could best be done was referred to Mr. Albert Gray. The constitutional and legal difficulties of the matters are discussed in the latter part of his letter of the 7th April, 1897 (Document I).

The last paragraph but two of the letter is apparently in error in stating that the Indian Land Acquisition Act of 1894 had then been applied to the East Africa Protectorate—it had then been applied to the Sultan's dominions only.

The matter of the railway belt was eventually dealt with by a Notification, dated the 9th May, 1897 (Document J), and issued by the Commissioner in the Protectorate, announcing that in pursuance of the powers vested in him he had appropriated for public purposes, subject to proved rights of ownership, all lands on the mainland beyond Mombasa situated within 1 mile on either side of the railway wherever finally constructed. There is no indication of the particular authority on which the Notification rests.

On the 12th June, 1897, the Commissioner issued a Notice (Document K), providing for the compulsory purchase of land and houses belonging to persons subject to the Native Courts, *i.e.*, land and houses belonging to natives; the Notice contains no indication of the particular authority on which it was issued. "The Africa Order in Council, 1889" (Document L), under which the Queen's extra-territorial jurisdiction in the East Africa Protectorate was then exercised, did not give the Commissioner any powers over natives of the Protectorate or over their property; both the natives and their property were assumed to be under the jurisdiction of their several sovereign Chiefs.

On the 8th July, 1897, the Commissioner issued a Notification (Document M), providing that no document purporting to transfer any interest in land from a native of the East Africa Protectorate (outside the Sultanates of Zanzibar and Witu) to a British subject or to a foreigner should be valid without the written approval of the local Collector.

On the 7th July, 1897, a new Order in Council was passed for East Africa (Document N). But it did not come into force in Africa till the 12th August, 1897.

Article 11 (*b*) of this Order applied to the Protectorate "The Indian Land Acquisition Act, 1894" (Document O).

Mr. Gray points out in the 7th paragraph of his letter of the 21st June last (Document P) that under "The East Africa (Acquisition of Lands) Order in Council, 1898" (Document Q), the Commissioner probably has power to grant a title amounting to a freehold in the case of land taken under "The Indian Land Acquisition Act, 1894."

The Commissioner's despatch No. 216 of the 5th September, 1897 (Document R), submitted Regulations for preventing the creation of fictitious titles to land in the Sultan's dominions. Mr. Albert Gray, to whom the despatch was referred, remodelled the Regulations, and proposed in his letter of the 17th November, 1898 (Document S), that they should be extended beyond the Sultan's mainlaind dominions to the whole of the East Africa Protectorate.

Mr. Gray's letter was sent to the Commissioner, who, in his despatch No. 14 of the 7th January last (Document T), suggested certain minor amendments in the draft of the Regulations, mentioned above, for preventing the creation of fictitious titles to land, and expressed concurrence in the proposal to extend them to the whole Protectorate. He deduced from Mr. Gray's suggestion that Her Majesty's Government now held that waste land in the Protectorate could be treated as in a Colony, and be considered capable of being granted in freehold by the Crown. The question involved in this correspondence was again referred to Mr. Albert Gray with the others relating to land, and his observations on it will be found in his letter of the 21st June last (Document P), to which reference will be made below.

On the 29th December, 1897, amended Land Regulations were issued in East Africa (Document U). These Regulations differed in detail, but not in principle, from those first issued (Document G).

The Land Regulations of Uganda were issued, *pari passu*, with those for East Africa.

It may be observed that Uganda is under "The Africa Order in Council, 1989" (Document L).

The inclosed despatch No. 19 of the 22nd February, 1898, from the Acting Commissioner in Uganda, contains observations to the effect that the Land Regulations do not entirely meet the requirements of the Protectorate, and proposes various amendments; it also contains information on the ideas of land tenure held by the native administration of Uganda. This despatch was referred to the Colonial Office; the reply of that Department is dated the 26th January, 1899 (Document V).

The Land Regulations promulgated for East Africa in December 1897 are also insufficient in present circumstances. The Commissioner's despatch No. 313 of the 4th October, 1898 (Document W), points out some of the difficulties which the Regulations do not meet in practice. This despatch also was referred to the Colonial Office, and the reply to the reference is dated the 7th April, 1899 (Document AA).

In the East Africa Protectorate an important change has recently been effected by an Order in Council, dated the 7th ultimo (Document X), Article 9 of which provides that Queen's Regulations made, or to be made, under Articles 45 and 46 of "The East Africa Order in Council, 1897," shall, unless a contrary intention appears, apply to natives.

Mr. Albert Gray's letter of the 21st June last (Document P) relates also to the form of transfer which should be used in respect to such land in the Sultan's mainland dominions as the Crown can dispose of. The matter was raised by Mr. Cave's despatch No. 70 of the 22nd February last (Document Y); properly it stands outside the scope of the present reference, because it relates to land in a region possessing a code of land laws. It is referred to you now, as it has been included in the questions dealt with in Mr. Albert Gray's letter of the 21st June last.

The documents hitherto noticed form the body of legislative measures taken in the Protectorate with regard to land. But it is in many cases doubtful whether the provisions above noticed are properly applicable to natives (or to their property), as defined by the Orders in Council, under which Her Majesty's officers have successively acted in the Protectorate, namely, "The Africa Order in Council, 1889," and "The East Africa Order in Council, 1897," those Orders applying only to the persons and property of British subjects and to foreigners, as defined in the Order.

The Order of 1897 provides, indeed, by Article 52, for the administration of justice in Native Courts, but in view of the provision of Article 5, namely, that the Order applies to natives (as defined in the Order) only in the cases and according to the conditions specified in the Order, and not otherwise, it is at least doubtful whether the Order can be said to give power to legislate for natives or to administer their affairs.

I also have the honour to call your attention to an important change that has of recent years come over the juridical conception of a Protectorate.

The original conception precluded the supersession of the Protected by the Protecting Power as regards the government of the subjects of the Protected Power; jurisdiction within the Protectorate over the subjects of the Protecting Power and over other persons was strictly limited to such cases as were directly provided for in the Treaty creating the Protectorate.

Thus "The Africa Order in Council, 1889," and the Orders issued in connection with it, and "The East Africa Order, 1897," except in so far as the latter Order creates Native Courts, do not give jurisdiction to the British authorities over the

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subjects of the Chiefs in the Protectorates affected; neither do they give power to make legislative Regulations binding on the subjects of those Chiefs.

In British Central Africa, where few, if any, Chiefs now exercise judicial, legislative, or administrative functions, the difficulty has hitherto been met by allowing the British officers of the Protectorate to exercise all these functions on the assumption that they act on behalf of the Chief.

L.O.R. 1895 (Conf. 6796), p. 1.

In practice the same course must often have been followed in East Africa; but from the strictly legal point of view the arrangement is not satisfactory. In many of the more advanced Protectorates administered by the Colonial Office the natives come under the same jurisdiction (but not necessarily under the same legislation) as British subjects and foreigners. The Colonial Department appears to act largely on the principle to which attention was called in the Report of the 14th February, 1895, from your predecessors in office (Document Z) in regard to jurisdiction in the Protectorates adjacent to the Gold Coast Colony, and to assume that, even in the absence of a Treaty between the Protecting Power and the local Sovereign granting jurisdiction over the subjects of that Sovereign, the existence of a Protectorate in an uncivilized country implies the right to assume whatever jurisdiction, over all persons, may be needed for the effectual exercise of the Protectorate.

This tendency is also seen in the above-mentioned Order in Council of the 7th ultimo (Document X), which provides means for making Regulations issued under "The East Africa Order in Council, 1897," applicable to natives.

It has already been observed, in connection with the enactment in East Africa of "The Indian Land Acquisition Act, 1894," and "The East Africa (Acquisition of Land) Order in Council, 1898," that power has probably been taken by the Crown to give a freehold title in the case of land actually claimed by a native, and compulsorily obtained from him, on compensation, by means of the provisions of the Act in question; it would seem, therefore, that power could all the more properly be assumed for giving a similar title to land lying waste and not claimed by any one.

Attention has already been called to the fact that the natives of the Protectorate have practically no such idea of "ownership" in land as is entertained amongst more settled and civilized communities. In support of this position, it may be noticed that no difficulty whatever has been experienced in appropriating the land on which the Uganda Railway has been built in the East Africa Protectorate; the line was already many miles beyond the Sultan's dominions when the Indian Land Acquisition Act became law in the Protectorate, and it is believed that no action under that Act has yet been needed. The Notification of the 9th May, 1897, appropriating a belt of land in connection with the railway, deals only with land on *either side of the line.*

As has been said above, the several legislative Orders and Regulations which have been issued from time to time in East Africa have almost certainly been applied to "natives" and to their property; and notwithstanding that, in strictness, the Orders in Council under which the British authorities act did not allow such application, it does not appear to have produced any evil effects; it is, indeed, in accordance with the tendency noted in the above-mentioned Report of your predecessors in office (Document Z).

It seems, therefore, proper to consider whether, in such a region as East Africa, in order that the Protectorate may produce its due effect in regard to the good government and the development of the country, the Protecting Power should not assume jurisdiction over waste and uncultivated land in places where the native Ruler is incompetent, whether from ignorance or otherwise, to exercise that jurisdiction.

All those of the above-mentioned papers which relate more directly to the Land Regulations of Uganda and of East Africa were referred to Mr. Albert Gray for his advice as to how they could be dealt with so as to overcome the various difficulties which had become apparent. Mr. Albert Gray's reply of the 21st June last (Document P) analyses the several questions on which a decision must be taken, and points out that the treatment of them must depend primarily on the nature of Her Majesty's title to land in the Protectorates, or, in other words, of the extent of the right to deal with it.

The questions on which I have the honour to ask for an expression of your opinion are the following:—

1. In regions where Her Majesty exercises rights of Protectorate under Treaties such as those made by the British East Africa Company, which do not specifically grant to Her Majesty the right of dealing with waste or unoccupied land, does that right accrue to Her Majesty by virtue of the right of Protectorate? Is any difference made by the fact of the natives of the region with whom the Treaty was concluded being practically savages without any proper conception of ownership in land?

2. If, in your opinion, Her Majesty has not the right to deal with waste or unoccupied land in such regions, can you suggest means by which the difficulties of the system of land certificates can be met, or some alternative system, under which the difficulties would not arise?

3. Do you agree with Mr. Gray that Her Majesty can, by operation of the "Indian Land Acquisition Act" and of "The East Africa (Acquisition of Lands) Order in Council, 1898," grant a title amounting to a freehold? And are you of opinion that a freehold title can by those means be given in such a region as is indicated under (1).

Lord Salisbury would be glad at the same time to be favoured with your observations on—

(*a.*) The form or the substance of the several Regulations and Notifications issued by the Commissioner and mentioned in the present reference;

(*b.*) On the proposal which is dealt with in Mr. Gray's above-mentioned letter (Document P), to extend to the rest of the East Africa Protectorate the Regulations already promulgated in the Sultan's dominions for the purpose of preventing the creation of fictitious titles to waste or unoccupied land (Document E); and

(*c.*) The form of conveyance for land in the Sultan's dominions, submitted in Mr. Cave's despatch No. 70 of the 22nd February last (Document Y).

I have, &c.

(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	"Africa No. 4 (1892)" (Parliamentary 3461).			
(B.)	Imperial British East Africa Company's Rules and Regulations (Confidential 6715*).			
(C.)	Notice in "London Gazette" (Confidential 6617*)		June	15, 1895.
(D.)	Transfer of Imperial British East Africa Company's rights, 1896.			
(E.)	Registration of documents, East Africa Protectorate.. ..		December	21, 1896.
(F.)	Colonial Office..		September	4, „
(G.)	East Africa Land Regulations, 1897. (7507*)			
(H.)	Uganda Land Regulations, 1897.			
(I.)	Mr. Gray		April	7, 1897.
(J.)	Notification (Railway Belt)		May	9, „
(K.)	Notice (Compulsory purchase of Land)		June	12. „
(L.)	"Africa Order in Council (1889)" (Confidential 5846**).			
(M.)	Notification . Transfer of Land		July	8, „
(N.)	"East Africa Order in Council (1897)" (Confidential 6933*).			
(O.)	"Indian Land Acquisition Act (1894)."			
(P.)	Mr. Gray		June	21, 1899.
(Q.)	"East Africa Order in Council (1898)" (Confidential 7037*).			
(R.)	Sir A. Hardinge	(No. 216)	September	5, 1897.
(S.)	Mr. Gray		November	17, 1898.
(T.)	Sir A. Hardinge	(No. 14)	January	7, 1899.
(U.)	Amended Land Regulations for East Africa		December	29, 1897.
(V.)	Colonial Office..		January	26, 1899.
(W.)	Sir A. Hardinge	(No. 313)	October	4, 1898.
(X.)	East Africa Order in Council (Confidential 7189*)		October	7, 1899.
(Y.)	Mr. Cave	(No. 70)	February	22, „
(Z.)	Law Officers (Confidential 6796, p. 1)		February	14, 1895.
(A.A.)	Colonial Office		April	7, 1899.

Report.

1 and 2. We are of opinion that in such regions the right of dealing with the waste and unoccupied land accrues to Her Majesty by virtue of her right to the Protectorate. These Protectorates over territories occupied by savage tribes, have ~~title~~ little in common with Protectorates over such States as Zanzibar, which enjoy some form of settled Government, and in which the land has been appropriated either to the Sovereign, or to individuals. Protectorates, such as those now under consideration, really involve the assumption of control over all lands unappropriated. Her Majesty might, if she pleased, declare them to be Crown lands, or make grants of them to individuals in fee, or for any term.

The question of the system to be pursued is really one of policy. Probably a

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continuance of the plan of granting certificates may work very well; and there may be good reasons for not giving more than a tenure for a term of years.

We would point out that the issue of such certificates involves the assumption of entire control over the land in question just as much as a conveyance.

3. It seems to us doubtful whether "The Indian Land Acquisition Act" and "The East Africa (Acquisition of Lands) Order in Council, 1898," were intended to apply to unappropriated lands. They seem, in their terms, applicable only to land which has an owner to whom compensation can be paid. We agree that Her Majesty can, under this Act, and Order in Council, in all cases to which they apply, grant a title amounting to a freehold. Of course, if they have been applied to unappropriated lands, it amounts to an assumption of title in them by Her Majesty.

4. (*a.*) As regards the Land Regulations with annexed certificate (U) we have only to point out that the form seems hardly applicable where land is granted, merely for timber cutting or mining purposes.

Clause 2 imposes in all cases the obligation of either cultivating the land, or placing stock upon it. We would suggest that there should be alternative forms for use in the various cases contemplated.

As regards Uganda, a fresh Order in Council would be required to enable the making of such Regulations, and also the other Regulations proposed regulating the use of unoccupied land.

As regards the notification as to Mombasa Railway land (J) it was apparently not within the terms of the Order in Council, but it was issued by the order of the Secretary of State for Foreign Affairs—it was therefore the act of the Crown, and cannot be questioned.

As regards (K), even if *ultra vires* at the time it was made, it has been rendered good by the application to natives of the Order in Council 1897 by the Order in Council 1899, validating past dealings.

(*b.*) As regards the proposed Unoccupied Land Regulations (T), whatever form of words is employed they must amount to an assumption of a disposing power over unoccupied land. The adoption of the expression "public" lands instead of "Crown" lands, hardly veils the effect of the Regulations. Lands which are "public," must, under the circumstances of such Protectorate, be Crown lands, or under the control of the Crown. There is, in our opinion, no objection to the expression "public lands."

(*c.*) The form of conveyance seems suitable for any land vested in Her Majesty, which the Commissioner is authorized by Her Majesty to convey. It is not applicable to land nominally vested in the Sultan, nor to unappropriated land which has not been adopted as Crown land.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 13, 1899.

No. 9.

[December 23, 1899.]

Foreign Office to the Law Officers of the Crown.

(Secret.)

Gentlemen,
Foreign Office, December 16, 1899.

Dr. Leyds' despatches on "Herzog."

I HAVE the honour, by direction of the Marquess of Salisbury, to lay the following circumstances before you in connection with the question of the right of a belligerent to search a neutral mail-steamer for the enemy's despatches, and to treat such despatches as contraband of war.

Her Majesty's Government have been informed through a credible source that despatches addressed to the Government of the South African Republic by Dr. Leyds, the Minister accredited by that State to most of the European countries, are on board the steam-ship "Herzog."

The "Herzog" is a German ship believed to be one of a line performing a regular mail service, and it is probable that the despatches are in a closed mail, addressed by the Postal Administration of the Netherlands or of Belgium to the Postal Administration of the South African Republic. It is not known whether the despatches bear on the relations between the South African Republic and the neutral Governments to which Dr. Leyds is accredited, or whether they relate to the conduct of the war.

It is, moreover, very possible that Dr. Leyds' despatches may, in order to conceal their true character, have been placed in covers addressed to private persons; and they may also be in cypher.

Observations on the seizure of the enemy's despatches will be found in sections 249 to 252 of the late Mr. W. E. Hall's "Treatise on International Law" [4th edition 1895, pp. 699–705], and in sections 96–105 [at pp. 27 and 28] of the "Manual of Naval Prize Law," by Professor T. E. Holland, which was issued by the authority of the Lords Commissioners of the Admiralty in 1888.

L.O.R. 1883 (Conf. 4974), p. 72.
L.O.R. 1883 (Conf. 4974), p. 84.
L.O.R. 1884 (Conf. 5121), p. 68.

The subject is also treated in the accompanying Memorandum prepared in this Department in May 1895 (Document A), and copies of the several Law Officers' Reports mentioned in the Memorandum are inclosed (Documents B to D).

I am to request you to take this matter into your consideration, and to favour Lord Salisbury with your opinion on the following points:—

1. Whether despatches addressed by Dr. Leyds to his Government and dealing with the conduct of or other matters connected directly or indirectly with the war should be treated as contraband of war.

2. Whether despatches, not dealing in any way with the conduct of the war, but addressed by Dr. Leyds to his home Government, should be treated as contraband of war—

(*a.*) If written in or dispatched from Her Majesty's dominions;
(*b.*) If written in and dispatched from a neutral State.

3. Whether assuming the answer to either or both of the preceding questions to be in the affirmative, the "Herzog" may in the circumstances be stopped on the high seas by Her Majesty's ships of war and searched for Dr Leyds' despatches on the ground that such despatches may be contraband of war.

4. Whether a closed mail addressed by a neutral Government or Postal Administration to the enemy Government or Postal Administration may be opened on board the "Herzog" by Her Majesty's naval officers for the purpose of ascertaining if it contains Dr. Leyds' despatches.

5. Whether letters addressed to private individuals found—

(*a.*) In a closed mail; and
(*b.*) In an inclosed mail elsewhere, on board the "Herzog" may be opened for the purpose of ascertaining whether they contain Dr. Leyds' despatches.

6. Finally, I am to request you to favour his Lordship with any general observations on the instructions which should be addressed on these matters to the Commanders of Her Majesty's ships, and especially whether, if such despatches should be found on board the "Herzog," as may properly be treated as contraband of war, the "Herzog" must in all circumstances be detained and sent in together with the despatches on board for adjudication by a Prize Court, or whether the master of that vessel might, if he desired it, be permitted to proceed on his voyage on handing over the incriminated despatches and giving an undertaking in suitable terms on behalf of the ship and her owners not to take any proceedings in respect of the detention and search of the vessel and the removal of the documents.

In this connection, however, it seems right to observe with regard to the particular case now especially under consideration that no engagement which may be entered into by the master of the "Herzog" in the natural desire of proceeding on his voyage with as little interruption as possible, can in any way bind the Imperial German Government in international obligation or eliminate the possibility of eventual diplomatic protest on their part.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Memorandum by Mr. Streatfeild	May 15, 1895.
(B.)	Law Officers (Confidential 4974, p. 72)	October 24, 1883.
(C.)	Ditto (Confidential 4974, p. 84)	December 24, ,,
(D.)	Ditto (Confidential 5121, p. 68)	May 14, 1884.

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Report.

1 and 2. It appears that Dr. Leyds has been accredited to European Governments as the Diplomatic Agent of the South African Republic.

Under these circumstances, despatches from him not dealing with the conduct of the war and addressed to his home Government could not possibly be treated as contraband of war. War does not interrupt communication between a belligerent and his Diplomatic Agent with a neutral Power. With regard to despatches of this character, it would make no difference as to seizure or inspection on a neutral ship whether they were written or dispatched in Her Majesty's dominions or in a neutral State.

With regard to despatches addressed by Dr. Leyds to his Government, and dealing with matters connected with the war, other considerations arise. We are far from saying that despatches altogether exceeding the sphere of diplomacy and relating directly to the conduct of warlike operations may not even, though written by a Diplomatic Agent to his home Government, fall under the head of contraband of war.

But the practical question in the present case is whether, in order to ascertain that such despatches exist, all Dr. Leyds' despatches, and, indeed, all the contents of the mail-bags, may be examined.

There is a good deal of authority for saying that the despatches of a Diplomatic Agent are exempt from such examination on a neutral vessel. In our own territory or on board a British vessel they might, of course, be seized like any other property of the enemy. The immunity of such despatches on board a neutral vessel is laid down in the strongest terms by Calvo, "Droit International," 5th edition, vol. iii, p. 331, section 1539.

It is no doubt true that the string of authorities which he cites for this proposition proceed to some extent on a misconception of the decision of Sir W. Scott in the "Caroline," 6, Christopher Robinson's Reports, 461, the leading case on the subject; for it must be observed that when that case was decided the despatches were properly seized as enemy's property, although on board a neutral vessel, and Sir W. Scott was dealing only with the question whether the vessel had incurred condemnation by carrying them.

Since the Declaration of Paris the neutral flag covers the enemy's property unless it be contraband, but the current of authority in text writers is undoubtedly in favour of the proposition that the despatches of a Diplomatic Agent to his own Government are privileged from examination.

In Earl Russell's despatch to Lord Lyons of the 23rd January, 1862, the immunity of diplomatic despatches on neutral vessels was strongly asserted. We submit, for the consideration of Her Majesty's Government, whether it is desirable on the present occasion to put into force a supposed right against the existence of which there is a great body of authority, and in contravention of which the attitude of Her Majesty's Government in the despatch just referred to would certainly be relied on. The German Government would almost certainly protest against such an interference with their flag, and although the canon of international law upon the subject has not been definitely fixed, we think the balance of authority is in favour of the immunity of diplomatic despatches.

3. The difficulties in the way of answering either questions 1 or 2 in the affirmative are such that we do not suppose that question 3 will in practice arise, but we ought to point out that in the despatch already referred to it was asserted by Earl Russell, on behalf of Her Majesty's Government, that packets engaged in the postal service are entitled to peculiar favour and protection: "to detain, disturb, or interfere with them," it was there said, "without the very gravest cause, would be an act of the most noxious and injurious character, not only to a vast number of individual and private interests, but to the public interests of neutral and friendly Governments."

4. The right to examine closed mails for the purpose of finding despatches therein relating to the war has never been excluded by international law; but we ought to point out that there has been a marked tendency of late years, as far as possible, to extend immunity to such mails. The examination by the French at Tamatave was apparently effected in the territorial waters of land in the military occupation of the French, and, even if it were on the high seas, we should not disagree with the opinion of the Law Officers that the act was not technically a violation of the law of nations.

In the case of the "Adela," however, Earl Russell, in his despatch of the 10th October, 1862, used the following expression:—

"Her Majesty's Government cannot doubt that the Government of the United States are prepared to concede that all mail-bags clearly certified to be such shall be exempt from seizure and visitation."

The "Adela," no doubt, was bound for a neutral port, but the same observation would probably be made by the German Government with regard to the "Herzog." It would, we think, be a very strong measure, and one that should be adopted only in case of the most urgent necessity to open closed mail-bags in search of diplomatic correspondence, the immunity of which is, to say the least of it, very arguable.

5. The considerations arising upon the last question 4 apply *à fortiori* to the case of private letters.

6. We have only to add that, according to present practice, it might be necessary to bring the "Herzog" into a British port along with the incriminated despatches. This, of course, would be a measure of very great gravity, and even if the Captain consented that the despatches should be seized while the vessel proceeded, his Government might contend that his consent was given under a species of duress, and that the whole action was illegal by reason of the procedure employed.

The case is one which presents many and great difficulties, and might lead to friction of a serious nature with a friendly Power. Whether the importance of the seizure of the despatches in question is so great as to make it proper that the risks involved in that course should be run is a matter of policy.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 23, 1899.

No. 10.

[December 29, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 16, 1899.

N.-E. Rhodesia O. in C. I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers which relate to the proposed Order in Council for a portion of the British sphere in Africa north of the Zambezi.

The draft of the proposed Order is inclosed (Document A).

The British South Africa Company have agreed to its terms.

This portion of the British sphere, the boundaries of which will be defined by the IVth Article of the proposed Order, and which will be known as North-Eastern Rhodesia, has hitherto been administered under "The Africa Order in Council, 1889," (Document B); North-Eastern Rhodesia is covered by the Charter of the British South Africa Company (Document C), and it is intended that the Company's Administration shall be controlled to a certain extent by Her Majesty's Commissioner and Consul-General in the British Central Africa Protectorate (to which North-Eastern Rhodesia is contiguous) in a manner analogous to that in which the administration of the British South African Company's territory lying to the west of North-Eastern Rhodesia, and known as Barotsiland North-Western Rhodesia, will be controlled by Her Majesty's High Commissioner in South Africa.

A copy of the Barotsiland North-Western Rhodesia Order in Council, which has recently been passed by Her Majesty in Council, is inclosed (Document D.)

I have the honour, by direction of the Marquess of Salisbury, to request you to take the inclosed papers into your consideration, and to favour Lord Salisbury with your opinion as to whether the draft Order in Council may properly be submitted to Her Majesty as it stands, or if not, whether it requires any, and if so, what alterations or amendments.

I have, &c.
(Signed) FRANCIS BERTIE.

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List of Papers.

(A.) North-Eastern Rhodesia Order in Council (Conf. 7236*).
(B.) Africa Order in Council, 1889 (Conf. 5846**).
(C.) Charter of British South Africa Company (Conf. 5863*).
(D.) North-Western Rhodesia Order in Council (Conf. 7250*).

Report.

In our opinion the draft Order in Council, as initialled by us, may properly be submitted to Her Majesty.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 29, 1899.

Annex.

Draft of " North-Eastern Rhodesia Order in Council, 1900."

WHEREAS the territories of Africa situated within the limits of this Order, as hereinafter described, are under the protection of Her Majesty the Queen;

And whereas by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty has power and jurisdiction in the said territories:

Now, therefore, Her Majesty, by virtue and in exercise of the powers by " The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered as follows:—

1. This Order may be cited as " The North-Eastern Rhodesia Order in Council, 1900."

2. This Order is divided into parts, as follows:—

Parts.		Articles.
I.	Interpretation and Application	3 to 6
II.	Administration and Legislation	7 " 19
III.	Police	20
IV.	Judicial	21 to 37
V.	Native Administration	38 " 48
VI.	Miscellaneous	49 " 51

PART I.—INTERPRETATION AND APPLICATION.

3. In this Order, unless the subject or context otherwise requires:—

" Her Majesty " includes Her Majesty's heirs and successors.

" Secretary of State " means one of Her Majesty's Principal Secretaries of State.

" Commissioner " means any person for the time being exercising the jurisdiction of Her Majesty's Consul-General and Commissioner for the British Central Africa Protectorate.

" The Company " means the British South Africa Company.

" Charter " means Her Majesty's Charter of the 29th day of October, 1889, incorporating the Company as amended by any Supplemental Charter.

" High Court " means the High Court of North-Eastern Rhodesia constituted by this Order.

" Senior Judge " means the senior or sole Judge of the High Court, and includes a person acting as senior or sole Judge.

" Administrator " means an Administrator appointed under this Order to administer affairs within the limits of this Order, and includes an Acting Administrator.

" Magistrate " means a Magistrate or Assistant Magistrate appointed under this Order, and includes an Acting Magistrate or Acting Assistant Magistrate.

" Gazette " means any official Gazette published within the limits of this Order by authority of the Administrator, and, until such Gazette is instituted, means the " British Central Africa Government Gazette."

" Native " means any native of Africa not being of European or American race or parentage.

" Person " includes Corporation.

The plural includes the singular, the singular the plural, and the masculine the feminine.

" Military police forces " includes all military, volunteer, and police forces from time to time raised and constituted under Queen's Regulations, and therein appointed to be under the control or authority of the Commissioner.

4. The limits of this Order are the parts of Africa bounded on the west by the boundaries of the Congo Free State and of Barotsiland-North-Western Rhodesia, as defined in " The Barotsiland-North-Western Rhodesia Order in Council, 1899;" on the south by the Kafukwe River and the River Zambezi down to its junction with the Luangwa River; thence by the west bank of the Luangwa River northwards to where that bank is cut by the 15th degree of latitude, and from this point by the Anglo-Portuguese boundary eastwards to the frontier of the British Central Africa Protectorate; on the east, by the aforesaid frontier; on the north, by the Anglo-German frontier, the south shore of Lake Tanganyika, and the southern frontier of the Congo Free State as far west as Lake Mweru, including all the islands in that lake.

The territory for the time being within the limits of this Order shall be known as North-Eastern Rhodesia.

5. A Secretary of State may from time to time, by notice published in the " Gazette," and in the " London Gazette," declare that any parts of Africa north of the River Zambezi, and under the protection of Her Majesty, shall be included in the limits of this Order, and from the date of the publications of the notice in the " Gazette " this Order shall apply to the parts named therein. A Secretary of State may from time to time, by the like notice, declare that any part of Africa for the time being within the limits of this Order shall, until otherwise directed, be excepted from the application of this Order; and from the date of the publication of such notice the part named therein shall be excluded from the limits of this Order.

6. The powers and authorities conferred by Her Majesty's " Africa Order in Council, 1889," shall continue in force within the limits of this Order concurrently with the powers conferred upon the Company by this Order, so far as not inconsistent with this Order, and where there is any conflict, this Order shall prevail. The powers conferred upon the Company by this Order are in augmentation of the powers conferred upon it by the Charter.

PART II.—ADMINISTRATION AND LEGISLATION.

7. The Company shall have and may exercise the general administration of affairs within the limits of this Order, in accordance with the terms of the Charter and the provisions of this Order.

8. The Company may exercise such administration by an officer styled the Administrator, and, under him, by such other officers as may from time to time be necessary. The Company shall appoint and pay the Administrator and all such officers, but shall obtain the approval of a Secretary of State before appointing any person to the office of Administrator. The salary of the Administrator shall be fixed by the Company, with the approval of a Secretary of State, and shall not be increased or diminished without his approval. The Administrator may be removed or suspended from office by a Secretary of State, or by the Company with the approval of a Secretary of State.

9. The Administrator may hold office, unless sooner removed, for three years from the date at which he enters upon the duties of his office; and, with the approval of a Secretary of State, may from time to time be reappointed for the further term of three years. At the end of any such term the Administrator may continue in office until reappointed, or until his successor is appointed.

10. If, at the end of any such term, or if, on a vacancy in the office, the Company does not within six months thereafter, with the approval of a Secretary of State, reappoint the Administrator, or appoint his successor, a Secretary of State may appoint some person to be Administrator.

11. The Company, with the approval of a Secretary of State, may appoint some person to act as Administrator in the event of the death, removal, resignation, absence, incapacity, or suspension of the Administrator. When there is no Administrator or Acting Administrator within the limits of the Order capable of discharging the duties of the office, the Senior Judge may act as Administrator.

12. As soon as the Company, by resolution of its Board of Directors, declares that it is expedient that a Council should be appointed, there shall be a Council to assist the Administrator, consisting of the Senior Judge, *ex officio*, and not less than three other members appointed by the Company, with the approval of a Secretary of State. A member of the said Council shall hold office for three years, unless sooner removed by the Company, with the like approval, but shall be eligible for reappointment.

In the event of the resignation, suspension, or absence from North-Eastern Rhodesia or other incapacity of a member of the Council other than the Senior Judge, the Company may, with the approval of a Secretary of State, appoint some other person to fill the temporary vacancy thus caused.

Provided that in default of such appointment by the Company within a period of six months after a vacancy has arisen a Secretary of State may appoint a person to fill the vacancy.

Every member appointed to fill any such temporary vacancy shall cease to be a member on the return to North-Eastern Rhodesia or the removal of the suspension or incapacity of the member in whose place he was appointed.

Every member of the Council shall, before taking his seat, take and subscribe before the Administrator or some other person authorized by him the following oath of allegiance:—

"I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God."

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But any person authorized by law to affirm or declare instead of taking an oath may make such affirmation or declaration in lieu of such oath.

13. The Council shall meet whenever summoned by the Administration, and shall be competent to discharge its functions notwithstanding the existence of one vacancy among its members, whether caused by a vacancy in the office of Senior Judge or of one of the other members. The Administrator shall preside at all meetings of the Council, and any two members with the Administrator shall form a quorum. All questions shall be decided by a majority of the votes of those present, and if the votes are equal the Administrator shall have a casting vote.

14. The Administrator shall take the advice of the Council upon all matters of importance affecting the administration of affairs within the limits of this Order, except in cases which are too urgent to admit of their advice being taken. In all such urgent cases he shall as soon as possible summon the Council and acquaint them with the action taken, and the reasons therefor.

15. The Administrator may act contrary to the advice of the Council, but in every such case he shall report the matter forthwith to the Company, with the reasons for his action. In every such case any member of the Council who dissents may require that the reasons for his dissent be recorded and transmitted to the Company. The Company may reverse any action of the Administrator, whether taken with or without or against the advice of the Council.

16. It shall be lawful for the Administrator, and, after the Council has been constituted as provided by this Order, for the Administrator, with the concurrence of the Council, to make, alter, and repeal Regulations for the administration of justice, the raising of revenue, and generally for the peace, order, and good government of all persons within the limits of this Order, provided that Regulations under this Article shall not be made affecting the constitution, government, or control of the military police forces. Such Regulations, when promulgated as hereinafter mentioned, shall take effect within the limits of this Order as if they were contained in this Order.

A Regulation made after the constitution of the Council shall not be valid unless two members of the Council beside the Administrator have concurred in it.

No Regulation shall be valid unless the Commissioner has approved it, and it has been promulgated by being published in the "Gazette" by authority of the Commissioner with a notification of his approval.

The production of a copy of the "Gazette" in which a Regulation purports to be published by authority of the Commissioner shall be evidence of promulgation, and of the approval of the Commissioner, and of its having received the requisite concurrence of the Council.

The Commissioner shall sign every Regulation assented to by him, and shall, at the first convenient opportunity, transmit an authenticated copy of every such Regulation to the Secretary of State, and every such Regulation may be disallowed within one year from the taking effect thereof by a Secretary of State, either of his own motion or at the request of the Company, and every Regulation so disallowed shall become null and void so soon as the disallowance thereof shall be published in the "Gazette," but without prejudice to anything theretofore lawfully done thereunder.

17. The Commissioner may, from time to time, by Regulations (to be called Queen's Regulations), provide for the administration of justice, the raising of revenue, and generally for the peace, order, and good government of all persons within the limits of this Order: provided that the Commissioner, before issuing any such Regulations, shall, whenever possible, have regard to any suggestions or requests made to him in respect thereof by the Company, and that no Queen's Regulations concerning the raising or appropriation of revenue shall be made unless the assent of the Company has been previously given thereto. Such assent may be signified by telegraph.

All Queen's Regulations shall be published in the "Gazette," and shall, from and after the commencement thereof respectively, and thereafter until disallowed by Her Majesty, or repealed or modified by any subsequent Regulation or Queen's Regulations, have effect as if contained in this Order.

Her Majesty may disallow any Queen's Regulations, wholly or in part, and may signify such disallowance through a Secretary of State, and upon such disallowance being publicly notified by the Commissioner in the "Gazette," the provisions so disallowed shall, from and after a date to be mentioned in such notification, cease to have effect, but without prejudice to anything theretofore lawfully done thereunder.

The Commissioner, in issuing Queen's Regulations and in approving Regulations made by the Administrator under this Order, shall respect any native laws or customs by which the civil relations of any native Chiefs, tribes, or populations under Her Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction.

18. No customs duties levied on any articles produced or manufactured in any part of Her Majesty's dominions or in any British Protectorate and imported into North-Eastern Rhodesia shall exceed in amount the duties levied on such articles, according to the Tariff in force in the South African Customs Union at the date of the coming into operation of "The Southern Rhodesia Order in Council, 1898," or the Tariff contained in the Customs Union Convention, concluded between the Colony of the Cape of Good Hope, the Orange Free State, and the Colony of Natal, in May, 1898, whichever shall be the higher.

19. Subject to the provisions of this Order a Regulation made by the Administrator may amend or repeal any Queen's Regulations.

If any Regulation is in any respect repugnant to the provisions of any Order in Council, such Regulation shall to the extent of such repugnancy be absolutely void.

PART III.—POLICE.

20. The military police forces shall be and remain under the direct control and authority of the Commissioner, and all officers and members of the said forces shall conform to and obey such orders and instructions as they may from time to time receive from the Commissioner, or from any person appointed by him to act on his behalf.

The foregoing provisions of this Article shall not apply to any civil police force which may be raised and constituted under any Regulations to be made by the Administrator under this Order.

PART IV.—JUDICIAL.

21.—(1.) There shall be a Court of Record, styled the High Court of North-Eastern Rhodesia, with full jurisdiction, civil and criminal, over all persons and over all matters within North-Eastern Rhodesia, subject to the provisions hereinafter contained with regard to native law and custom.

(2.) Such civil and criminal jurisdiction shall, so far as circumstances admit, be exercised upon the principles of and in conformity with the substance of the law for the time being in force in and for England, and with the powers vested in and according to the course of procedure and practice observed by and before the Courts of Justice and Justices of the Peace in England according to their respective jurisdictions and authorities, except so far as such law may be modified by any Order in Council, Regulation, or Queen's Regulation.

(3.) The High Court shall have a seal, bearing the style of the Court, and such device as a Secretary of State from time to time approves; but until such a seal is provided, the seal of the Company may be used.

22. There shall be as many Judges of the High Court, to be paid by the Company, as from time to time may be required. Every Judge shall be appointed by a Secretary of State on the nomination of the Company, and shall hold office during good behaviour, and shall only be removed by a Secretary of State. The salaries of the Judges shall be fixed by the Company, with the approval of a Secretary of State, and shall not be increased or diminished without his approval.

23. Whenever the appointment of a Judge is necessary, the Company shall nominate to a Secretary of State a fit and proper person for the office. If the Secretary of State does not approve of such person he shall so inform the Company, and the Company shall thereupon nominate another person, and so on, *toties quoties*, but if the Company has not within six months from the date of the occurrence of a vacancy nominated some person whom the Secretary of State approves, the Secretary of State may appoint a person who has not been so nominated.

24. The High Court shall sit at such places as may from time to time be prescribed by the Administrator. The jurisdiction of the High Court may, until other arrangements are made under this Order, be exercised by any Judge thereof sitting alone.

25. If any sentence of death is pronounced by the High Court, a copy of the evidence shall be transmitted to the Commissioner; and the sentence shall not be carried into effect until confirmed by him. The Commissioner may signify his confirmation by telegraph.

26. The Commissioner may remit or commute, in whole or in part, any sentence of the High Court, and may signify such remission or commutation by telegraph.

27. The High Court may make Rules for regulating its procedure and practice and the admission of practitioners, and generally for the purpose of making any provision proper or necessary for the proper or effectual exercise of jurisdiction under this Order by the High Court, and the Magistrates' Courts hereafter mentioned, and Rules affecting the conduct of civil suits shall be so framed as to secure as far as may be that cases shall be decided on their merits according to substantial justice without excessive regard to technicalities of pleading or procedure, and without unnecessary delay. Subject hereto, and so far as the same do not extend, the procedure, Rules, and Regulations of the High Court shall be the same as the procedure, Rules, and Regulations of the English Courts.

28. In civil matters, when the amount or value in dispute exceeds 500*l.* sterling, an appeal shall lie from the High Court to Her Majesty in Council.

Every appeal shall be brought within such time, and in such manner as regards the form and transmission of the appeal, as may be prescribed by any Rules of Procedure made by Her Majesty in Council.

29. There shall be Magistrates' Courts, with jurisdiction over all persons within the districts assigned to them. A Magistrate's Court shall be a Court of Record, and shall have such jurisdiction in civil and criminal cases respectively as may be prescribed in pursuance of this Order.

30.—(1.) The Administrator may from time to time determine the number of Magistrates' Courts required within North-Eastern Rhodesia, and, by notice in the "Gazette," from time to time assign to each such Court the local limits of the district within which it is to have jurisdiction, and specify the place or places at which the Court is to be held.

(2.) The Administrator, with the approval of the Commissioner, may appoint a Magistrate to each such Court, and, if occasion requires, any Assistant Magistrates.

(3.) Every Assistant Magistrate may exercise all the jurisdiction of the Court, and the provisions of this Order with respect to Magistrates shall apply to Assistant Magistrates: provided

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that, in the conduct of business, every Assistant Magistrate shall be subject to the directions of the Magistrate.

(4.) A Magistrate appointed to one Court may exercise the jurisdiction of any other Court if present therein.

(5.) The salaries of Magistrates shall be fixed by the Administrator with the approval of the Commissioner, and shall not be increased or diminished without his approval.

(6.) In the case of illness, absence, or other emergency the Administrator may appoint a competent person to act as Magistrate or Assistant Magistrate. He shall forthwith report every such appointment and the circumstances thereof to the Commissioner for his approval, and when the Commissioner disapproves any such appointment the person so appointed shall cease to act after notice of the disapproval has been received by the Administrator.

31. A Magistrate upon appointment may forthwith enter upon the duties of his office, but the appointment is subject to confirmation by a Secretary of State; if such confirmation is refused, the Commissioner shall give public notice thereof in the "Gazette," and thereupon the powers of the Magistrate shall cease. A Magistrate may at any time be removed from office by a Secretary of State, or by the Administrator, with the approval of a Secretary of State, but not otherwise.

32. A Magistrate on appointment shall, before exercising any of the functions of his office, in open Court take the following oath:—

I, A.B., do promise and swear that I will faithfully, impartially, and diligently execute to the best of my abilities the duties of the office of Magistrate. So help me God.

33. Subject to any Regulations and Rules of Court, appeals shall lie to the High Court from the Magistrates' Courts.

34.—(1.) The Commissioner may suspend a Judge or Magistrate from his office for misconduct, but shall first cause him to be furnished with a written statement of the acts of misconduct alleged against him, and cause him to be called on to state in writing by a given day (which shall allow a reasonable interval) any grounds upon which he relies to exculpate himself.

(2.) If the suspension takes place, the Commissioner shall forthwith transmit a full report of the matter, and the proofs of the alleged misconduct, to a Secretary of State, who may confirm or disallow the suspension.

(3.) If the suspension is confirmed, the suspended officer is thereby removed from office; if it is disallowed, the suspended officer is thereby restored to office, and is entitled to any salary that has been withheld during his suspension.

(4.) If the Secretary of State is of opinion that the officer deserves punishment, but not the extreme penalty of removal from office, he may, instead of disallowing the suspension, direct that the officer be restored to office, but be required to serve at a reduced salary, either permanently or for a stated period; or that a specific sum be deducted from any salary due or to become due to the officer; or that he be transferred to a lower office.

35. In civil cases between natives the High Court and the Magistrates' Court shall be guided by native law so far as that law is not repugnant to natural justice or morality, or to any Order made by Her Majesty in Council, or to any Regulation made under this Order. In any such case the Court may obtain the assistance of one or two native assessors, to advise the Court upon native law and customs, but the decision of the Court shall be given by the Judge or Magistrate alone. In all other respects the Court shall follow, as far as possible, the procedure observed in similar cases in England.

36. If in any civil case between natives a question arises as to the effect of a marriage contracted, according to native law or custom, by a native in the lifetime of one or more other wives married to him according to native law or custom, the Court may treat such marriage as valid for all civil purposes, in so far as polygamous marriages are recognized by the said native law or custom.

37. The Commissioner by Queen's Regulations, or the Administrator by Regulation, may make such other or further provisions as from time to time may appear desirable to secure the more efficient working of the several Courts constituted by this Order.

PART V.—NATIVE ADMINISTRATION.

38.—(1.) The Administrator may from time to time, with the approval of the Commissioner, subject to confirmation by a Secretary of State, appoint an officer to be called the Secretary for Native Affairs, and officers to be called Native Commissioners, and, if occasion requires, Assistant Native Commissioners, and may, by notice in the "Gazette," prescribe the powers, duties, salaries, and districts to be assigned to such officers.

(2.) The provisions of this Order with respect to the appointment, salaries, suspension, and removal of Magistrates shall apply to the appointment, salaries, suspension, and removal of the Secretary for Native Affairs, Native Commissioners, and Assistant Native Commissioners, and any other persons employed in the administration of native affairs, and the Commissioner and a Secretary of State shall have and exercise the like powers with respect to these officers as under this Order are exercisable by them in the case of Magistrates.

(3) The Commissioner may by Queen's Regulations confer upon any Native Commissioner or Assistant Native Commissioner such jurisdiction, not exceeding that exercisable by Magistrates, as may from time to time appear to him to be expedient.

39. No conditions, disabilities, or restrictions shall, without the previous consent of a Secretary of State, be imposed upon natives by Regulation which do not equally apply to persons other than natives, save in respect of fire-arms, ammunition, liquor, or any matter in respect of which a Secretary of State, upon the recommendation of the Administrator, thinks fit to authorize any Regulations or Queen's Regulations.

40. The Company shall from time to time assign to the natives inhabiting North-Eastern Rhodesia land sufficient for their occupation, whether as tribes or portions of tribes, and suitable for their agricultural and pastoral requirements, including in all cases a fair and equitable proportion of springs or permanent water.

41. All questions relating to the settlement of natives on the lands within North-Eastern Rhodesia shall be dealt with and decided by the Administrator, but all such decisions shall be reported to and be subject to review by the Commissioner.

42. A native may acquire, hold, encumber, and dispose of land on the same conditions as a person who is not a native, but no contract for encumbering or alienating land the property of a native shall be valid unless the contract is made in the presence of a Magistrate, is attested by him, and bears a certificate signed by him stating that the consideration for the contract is fair and reasonable, and that he has satisfied himself that the native understands the transaction.

43. The Company shall retain the mineral rights in all land assigned to natives. If the Company should require any such land for the purpose of mineral development or as sites of townships, or for railways or other public works, the Administrator, by direction of the Company, and upon good and sufficient cause shown, may, with the approval of the Commissioner, order the natives to remove from such land or any portion thereof, and shall assign to them just and liberal compensation in land elsewhere, situate in as convenient a position as possible, sufficient and suitable for their agricultural and pastoral requirements, containing a fair and equitable proportion of springs or permanent water, and, as far as possible, equally suitable for their requirements in all respects as the land from which they are ordered to remove.

44.—(1.) No native shall be removed from any kraal or from any land assigned to them for occupation, except after full inquiry by, and by order of the Administrator, approved by the Commissioner.

(2.) If any person without such order removes, or attempts to remove, any native from any kraal, or from any land, unless in execution of the process of a competent Court, he shall, in addition to any other proceeding to which he is liable, be guilty of an offence against this Order, and on conviction before the High Court shall be liable to imprisonment with or without hard labour for any period not exceeding two years, or to a fine not exceeding 100*l.*, or to both.

45. The Commissioner may, if he thinks fit, refer any question relating to natives for report to any Judge of the High Court, and the Judge shall thereupon make such inquiry as he thinks fit, and shall report to the Commissioner the result of such inquiry. The Commissioner may act with reference to any such report as he thinks fit.

46.—(1.) The Administrator shall, when so required by the Commissioner, appoint in any magisterial district a subordinate Tribunal, to consist of the Magistrate, or any Assistant Magistrate, and two Assessors, from time to time selected by a Judge of the High Court upon the request of the Commissioner.

(2.) Such Tribunal shall report or make recommendations to the Commissioner upon all questions relating to natives referred to it by, or by the direction of, the Commissioner, or by any Judge to whom any question relating to natives has been referred by the Commissioner. The Commissioner may deal with any such reports or recommendations as he thinks fit.

47. In case of a revolt against the Company, or other misconduct committed by a native Chief or tribe, the Administrator may impose a reasonable fine upon the offender. The Administrator shall forthwith report every such case to the Commissioner, who may remit the fine in whole or in part; the Administrator shall give effect to any such remission.

48.—(1.) The Commissioner shall transmit to a Secretary of State a report upon every case relating to natives dealt with by him under this part of this Order, together with copies of all reports and recommendations and all documents relating to such case, and a Secretary of State may review any case, and reverse or modify any decision given or order made therein, and may give such directions in the matter as he thinks fit, and due effect shall be given to such directions by all persons.

(2.) Provided that such directions shall only be binding where a Secretary of State has, within twelve months after receiving the report of the Commissioner given notice to the Commissioner that he intends to review any such case.

PART VI.—MISCELLANEOUS.

49.—(1.) Where the approval of a Secretary of State is required under this Order for the appointment of any officer, such officer may, upon appointment, enter upon and perform the duties of his office before such approval has been signified, but until approved or disapproved by a Secretary of State, such appointment shall be regarded as provisional only.

(2.) If any such appointment is disapproved by a Secretary of State, the person so appointed shall cease to hold the office as soon as the signification of such disapproval is received by the Administrator, but without prejudice to anything lawfully done by him during his provisional appointment.

(3.) The Administrator shall forthwith report to the Commissioner, who shall report to a Secretary of State every such provisional appointment.

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(4.) Notice of the disapproval of a Secretary of State shall be published in the "Gazette."

50. Judicial notice shall be taken of this Order, and of the commencement thereof, and of any Regulation made under this Order, and published in the "Gazette."

51. This Order shall be published in the "Gazette," and also at such public place within the limits of this Order as the Commissioner shall appoint.

This Order shall commence and have effect as follows:—

(1.) As to the making of any warrant or appointment, and as to the framing of any Regulations or Rules, and the approval thereof, immediately from and after the passing of this Order.

(2.) As to all other matters and provisions comprised and contained in this Order, immediately from and after the expiration of one month after this Order is published in the "Gazette."

(Initialled) R. E. W
R. B. F

ARGENTINE REPUBLIC.

No. 11.

[July 4, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, June 26, 1899.

Military Equipment Company's Contract with Argentine Government.

I HAVE the honour to transmit herewith, by direction of the Marquess of Salisbury, a letter which has been received from the Military Equipment, Stores, and Tortoise Tents Company, inclosing papers relative to a contract for the delivery to the Government of the Argentine Republic of certain articles manufactured by that Company.*

The contract in question was signed on the 20th September, 1898, and ratified by the Argentine Minister in London on the 28th September.

In the following month the President of the Sanitary Commission of the Argentine Army informed the Company that portions of the articles in course of manufacture were to be constructed on the same pattern as similar articles which had been separately ordered by the Argentine Government in France.

The Company were thus compelled to effect certain alterations. The progress of the work was delayed, and a portion of the articles was consequently not completed by the date fixed in the Contract as the latest on which delivery could be made, viz., the 23rd February, 1899. On the 22nd of that month the Company were apprised of the decision of the Argentine Government to rescind the Contract as regards the goods which were still unfinished, and they were consequently left with a very considerable part of the order on their hands.

By the 10th Article of the Contract the two parties agree to submit any differences which may arise between them to arbitration, and the Company have expressed their willingness to take this course.

I am to request you to take the accompanying papers into your consideration, and to favour his Lordship with your opinion whether this is a case in which the demand of the Company for arbitration may properly be supported by diplomatic representations, or, if not, whether you think that any other, and if so what, measure of assistance should be rendered by Her Majesty's Government to the Company in regard to their claim.

Lord Salisbury will at the same time be glad to be favoured with any observations of a more general nature which you may desire to offer on the papers.

I have, &c.
(Signed) MARTIN GOSSELIN.

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* Military Equipment, Stores, and Tortoise Tents Company, June 13, 1899.

Report.

In our opinion, the demand of the Company for arbitration may be properly supported by diplomatic representations. According to the statement of the Company, delivery at the time stipulated was prevented by the changes made by the Argentine Government, and we think that the right of the Argentine Government under these circumstances to refuse to accept delivery is a matter suitable for arbitration.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 4, 1899.

CHINA.

No. 12.

[February 22, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, February 17, 1899.

Administration of Justice at Wei-hai Wei.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, a letter from the Admiralty, inclosing a copy of a communication received from the Commander-in-chief on the China Station, in which he asks for instructions in the matter of the administration of justice at Wei-hai Wei.

By the Convention between this country and China, signed at Peking on the 1st July last, of which a copy is annexed, it is provided that the territory leased to Great Britain shall comprise the Island of Liukung (on which the present British head-quarters are established) and all the islands in the Bay of Wei-hai Wei, and a belt of land 10 English miles wide along the entire coast-line of that bay; and it is further provided that within the above-mentioned territory Great Britain shall have sole jurisdiction. The lease is to continue for so long a period as Port Arthur shall remain in the occupation of Russia.

The island is at present administered by a British naval officer, as Commissioner for the territory. He acts as Magistrate for the whole island, and deals summarily with all offences against law and order. This arrangement is stated to have worked satisfactorily up to now—no serious crimes having been committed.

Admiral Seymour is, however, anxious to be furnished with instructions, for his guidance, in the event of any serious cases arising in the future, and he submits the following points for special consideration in this connexion:—

1. As to offences of any kind in the leased territory committed by subjects of a civilized State other than Great Britain.
2. Offences committed by British subjects.
3. Serious offences, *e.g.*, murder committed by Chinese subjects.

With regard to the last category, it appears to Lord Salisbury that no jurisdictional difficulty can arise as between Her Majesty's Government and that of China, since China has given Her Majesty full and complete jurisdiction over Chinese subjects. It may, however, possibly be desirable to make some formal pronouncement of a public character, defining and regulating the conditions under which such jurisdiction is exerciseable, and on this point Lord Salisbury would be glad to receive any observations or suggestions which you may be good enough to offer.

With reference to 2, it is evident that if Wei-hai Wei were still to be regarded as an integral part of the Chinese Empire, Her Majesty might continue to exercise jurisdiction over British subjects under the China Orders in Council. Such a contention would, however, be clearly unadvisable, since foreign civilized nations would thereby be induced to maintain that their respective extra-territorial jurisdictions over their

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own nationals which existed at Wei-hai Wei as in other parts of China before the leasing of the territory to Great Britain were still in force.

It appears clear to Lord Salisbury that Her Majesty's Government must claim jurisdiction within the limits of the leased territory over all persons, British, Chinese, and foreigners alike, and that the question is on what ground such a claim can most suitably be based.

The nearest precedent to the case now under discussion would appear to be that of Cyprus, which is not British territory, but is now under the Administration of this country.

The only formal renunciation of the Capitulations, as regards Cyprus, was that made by Austria-Hungary, who signed a Declaration to that effect in 1880, when Her Majesty's Government signed a similar Declaration in respect of Bosnia and Herzegovina.

The French Government stated "that they adhered to the English judicial reform in Cyprus." The question was not formally raised by other Powers.

A Memorandum prepared by the Sub-Librarian of this Department on the 13th October last, respecting the surrender of extra-territorial jurisdiction in Cyprus, and containing an account of the negotiations on the subject with the French and Austro-Hungarian Governments, is annexed.

On the 14th September, 1878, an Order in Council (copy inclosed) was passed constituting a High Commissioner and a Legislative Council in Cyprus, with power to the former, with the advice of the latter, to make Laws, Ordinances, &c., and declaring the Levant Orders in Council to be abrogated in the island.

On the 17th January, 1879, the High Commissioner of Cyprus, with the advice of the Legislative Council, passed an Ordinance for the establishment of a High Court of Justice. Section 10 of this Ordinance (of which a copy is also inclosed), under the heading of "jurisdiction," runs as follows:—

All jurisdiction, criminal "and civil, over all persons and in all cases, other than such as would have been under the sole jurisdiction and authority of the Ottoman Courts if the said Convention (that of the 4th June, 1878, between Great Britain and Turkey) had not been made, shall, subject and according to the provisions of this Ordinance, be vested in and exercised by the High Court."

I am to request that you will take this matter into consideration, and that you will favour Lord Salisbury with your opinion as to the procedure which should be adopted with a view to providing for the exercise by Her Majesty of jurisdiction over British subjects and foreigners at Wei-hai Wei, and as to the instructions which should be sent to Admiral Sir E. Seymour for his guidance in the matter, pending a definite settlement of the question by Order in Council or otherwise, as may appear best adapted to meet the case.

Lord Salisbury would also be glad to receive any observations of a general character which you may wish to offer on the subject.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Admiralty	February	3, 1899.
Convention between Great Britain and China (Treaty No. 1042)	July	1, 1898.
Memorandum by Mr. Streatfeild (Confidential No. 7052)	October	13, ,,
Order in Council (Confidential 3727)	September	14, 1878.
Ordinance—(Cyprus)	January	17, 1879.

Report.

In our opinion Wei-hai Wei is at present part of Her Majesty's dominions, in virtue of cession from China.

An Order in Council should be passed as soon as possible making provision for the administration of justice there.

All persons in the territory ceded, whether Chinese, British, or subjects of other Powers, are alike amenable to British Tribunals and British law, as the Queen may direct.

So far as the Chinese are concerned, provision should be made for maintaining Chinese laws and customs, so far as they are not repugnant to humanity or morality.

British subjects and subjects of all other countries should be under a system of British law, say such as prevails in Hong Kong.

The administration and enforcement of the law should, unless it be considered proper to appoint a Judge, be confided to the Officer in Command.

Sailors and soldiers should, of course, remain subject to military and naval law.

Until such an Order in Council be passed, the Officer in Command should, we think, be instructed himself to deal with all crimes committed by British subjects, or subjects of countries other than China, according to naval law. He should not, in any case, send them to the Consul at Chefoo.

He should also deal in like manner, when necessary, with crimes committed by Chinese, having regard to their usages; but probably in most cases the Headmen of the villages will be able to deal with Chinese crime.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 22, 1899.

No. 13.

[May 16, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 3, 1899.

Execution of duties of Sheriff at Shanghae. O. in C.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, a despatch addressed to him by Her Majesty's Minister in China, on the subject of a difficulty which has arisen at Shanghae in connection with the execution of the duties of Sheriff at that port.

The principal duty of that office at Shanghae is the control of Her Majesty's prison and its inmates, though the office naturally embraces other functions of comparatively a minor kind.

Under "The China and Japan Order in Council, 1865," Part V, Article 42, the duties of Sheriff are assigned to Her Majesty's Consul at Shanghae.

At the time when the Order in Council was issued, the Consul was the principal Consular officer at Shanghae. Now, however, the principal Consular officer is the Consul-General, and the only official of the rank of Consul is Her Majesty's Consul and Assistant Judge, whose duties are almost entirely judicial.

The Chief Justice of the Supreme Court at Shanghae is of opinion that, so long as the wording of "The China and Japan Order in Council, 1865," remains unaltered, it is the Consul and Assistant Judge, and not the Consul-General, who is called upon to perform the duties of Sheriff.

A difficulty, however, arises from the circumstance that the Consul, in his capacity of Assistant Judge, occasionally acts as Chief Justice. Such a position is incompatible with the office of Sheriff.

It may also happen, in consequence of changes in Her Majesty's Consular Service in China, that no officer of the rank of Consul may be left at Shanghae, in which case the office of Sheriff will be vacant.

In these circumstances, Mr. A. Gray has been consulted with a view to the preparation of an Order in Council to meet the requirements of the case. Mr. Gray, in a letter which is transmitted herewith, observes that "The China and Japan Order in Council, 1865," appears to be the only one which provides that the Decrees, &c., of the Court are to be executed by an officer with the title of Sheriff, and that, under all the more recent Orders in Council, the corresponding duties are performed by an "officer of the Court." He suggests that the present opportunity should be taken to assimilate the China Orders in Council to the other more recent Orders in this respect.

I am to transmit to you the draft of an Order which has been prepared by Mr. Gray, and which provides that all Decrees, sentences, and Orders of Her Majesty's Supreme Court for China, Japan, and Corea shall be executed by such officer of the

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Court or Consular officer as Her Majesty's Minister in China shall from time to time appoint.

I am to request that you will take the draft and the papers noted in the accompanying list into your consideration, and favour Lord Salisbury with your opinion as to whether the draft Order can properly be submitted to the Queen in Council for Her Majesty's approval.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Sir C. MacDonald	(No. 255)	December 31, 1898.
To Mr. Gray		March 11, 1899.
Mr. Gray		March 27, ,,

Draft Order in Council.
" China and Japan Order in Council, 1865 " (Confidential 1354).

Report.

The draft Order in Council as altered and initialled by us may properly be submitted for the approval of the Queen in Council.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 16, 1899.

Annex.

WHEREAS, by Treaty and otherwise, Her Majesty has power and jurisdiction within China, Japan, and Corea:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," and otherwise in her vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The China, Japan, and Corea (Supreme Court) Order in Council, 1899."

2. All Decrees, Orders, and sentences made and passed by Her Majesty's Supreme Court for China, Japan, and Corea shall be executed by such *officer of the Court or* Consular officer as Her Majesty's Minster *in China* shall from time to time appoint for the purpose.

3. Article 42 of "The China and Japan Order in Council, 1865," is hereby repealed.

R. E. W.
R B. F.

No. 14.

[September 27, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, September 8, 1899.

China, Japan, and Corea Patents, &c., O. in C., 1899. Interpretation of § 1.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list relating to the interpretation to be placed on the last paragraph of section 1 of "The China, Japan, and Corea Patents, &c., Order in Council, 1899," a copy of which is inclosed (see Paper A).

Under the provisions of that paragraph a prosecution for the infringement of a trade-mark, by or on behalf of the prosecutor who is not a British subject, may not be entertained by the British Consular Courts in China without the consent in writing of Her Majesty's Representative in China, who may withhold such consent, unless he is satisfied that effectual provision exists for the punishment in Consular or other Courts in China of similar acts committed by the subjects of the State of which the prosecutor is a subject, in relation to or affecting the interests of British subjects.

It will be seen from the inclosed correspondence with the German Ambassador at this Court that the German Government are anxious to make arrangements with Her Majesty's Government for the mutual protection of trade-marks in China, and that, provided reciprocity of treatment is granted by Her Majesty's Government, the German Consular Courts in China will be prepared to proceed against German subjects and protected persons in their districts in cases of forgery of trade-marks protected in Germany for the benefit of British subjects.

The German Ambassador in his note of the 23rd August (Paper D) raises the question whether Her Majesty's Government could not, as regards forgeries of German trade-marks by British subjects, give once for all consent required by the last paragraph of section 1 of the Order in Council.

I am to inquire whether you are of opinion that, under the paragraph in question, Her Majesty Consular Courts in China can properly accept one general consent in writing from Her Majesty's Representative in regard to prosecutions by or on behalf of subjects of a given State as covering all further applications from subjects of the same State.

Lord Salisbury would also be glad to be favoured with any general observations which you may have to make on the question.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Order in Council of 1899 (Confidential 7077*).	May 27, 1899.
(B.)	Count Hatzfeldt	June 5, ,,
(C.)	To Count Hatzfeldt	August 23, ,,
(D.)	Count Hatzfeldt	

Report.

In our opinion there must be a consent in each particular case. We think that this is what the language of the Article points to, and that a general consent to any prosecution by any German subject would be *ultra vires*. Moreover, it is not possible to say beforehand that anything alleged as an offence would fall within the words "similar acts."

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 27, 1899.

No. 15.

[November 3, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, October 27, 1899.

Claims on China for copper looted from wrecks of "Bellona' and "Himeji Maru."

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, a despatch from Her Majesty's Chargé d'Affairs at Peking,* relative to a claim put forward by two British Insurance Companies at Hong Kong against the Chinese Government for compensation on account of the loss of a quantity of copper insured in the Companies' offices and forming part of the cargo of the steam-ship "Bellona," which was wrecked on the Paracel Islands off the southern coast of China on the 30th September, 1894.

A further claim is also put forward by the same Companies on behalf of underwriters at Lloyds, on account of certain copper lost in similar circumstances and forming part of the cargo of the Japanese steam-ship "Himeji Maru," which was wrecked in the same neighbourhood in November 1896.

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* Mr. Bax-Ironside, No. 272, September 4, 1899.

The circumstances of the case are fully set forth in the Companies' Petition of the 4th April, 1899, which forms Inclosure 1 in Mr. Bax-Ironside's despatch, and they may be briefly summed up as follows:—

As soon as possible, after the receipt of news of the wreck of the "Bellona," salvage vessels were dispatched by the Companies to the spot, but such vessels, owing to the bad weather prevailing at the time, were compelled to put back to Hong Kong without effecting their object, and on their subsequent return to the Paracels it was found that the greater part of the copper had been looted by junks and carried off. A quantity of the copper was subsequently traced to the houses of certain junk owners in a village of the island of Hainan, but in spite of the efforts of the Companies' agents, and the representations made by them to the local authorities, no effectual assistance was given for the recovery of the same, except as regards a very small proportion.

Her Majesty's Chargé d'Affairs has made the claim the subject of correspondence with the Tsung-li Yamên, but the latter have refused assent to the principle of compensation; and Mr. Bax-Ironside has addressed a reply to the petitioners (Inclosure 2 in his despatch) in which he has stated that, for the reasons explained therein, he does not see his way to further pressing the claim unless specially instructed by Lord Salisbury to do so.

I am to request that you will take the matter into your consideration, and that you will favour Lord Salisbury with your opinion as to whether the view taken by Mr. Bax-Ironside in his letter to the petitioning Companies of the 1st September, 1899, should be approved, or whether there are grounds on which the claim, either as regards the goods *ex* "Bellona" or as regards those in the "Himeji Maru," should be pressed.

His Lordship will also be glad to receive any general observations in regard to the case which you may desire to offer.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

It appears to us to be beyond question that the Chinese authorities in the Island of Hainan intentionally abstained from giving any effective assistance for the recovery of the copper. If the British Consul at Kiangchow had been at once applied to, and had this claim on the Chinese Government been more promptly advanced, we think that the claim of the Companies might properly have been supported by Her Majesty's Government.

But in view of the fact that the agent of the Companies endeavoured to make his own arrangements, and of the great lapse of time, we do not advise that Her Majesty's Government should press this claim.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 3, 1899.

No. 16.

[December 15, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 23, 1899.

Gentlemen,

Devolution of real property at Shanghae owned by British subjects.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the accompanying despatch from Sir N. Hannen,* Chief Justice of Her Majesty's Supreme Court at Shanghae, in which he forwards, and enters into certain explanations respecting, the text of a judgment recently delivered by him, which involves a novel decision on the subject of the devolution of real property at Shanghae owned by British subjects. The essence of that decision is that the law of England as applicable to real property situate in England is declared to be the law which governs the devolution of, and dealings with, land in Shanghae owned by British subjects.

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* Sir N. Hannen, June 12, 1899.

From the terms of his despatch it is clear that Sir N. Hannen is not unaware of the fact that his decision marks a departure from a principle which has hitherto been generally recognized, namely, the principle that the devolution of real property is governed by the *lex loci rei sitæ*. Notwithstanding the arguments used by the Chief Justice in favour of the views laid down by him, Lord Salisbury is advised that, in view of the opinion from time to time expressed by the Law Officers of the Crown (see annexed copies of their Reports), as well as for other reasons, it remains a matter of grave doubt whether the judgment, if considered from an abstract point of view, is sound in law, or whether it would be upheld if subjected to review by a competent superior Tribunal. It seems clear, at any rate, that the view of the law thus laid down for Her Majesty's Consular Courts in China and Corea differs altogether from the law hitherto acted upon in Her Majesty's extra-territorial Courts elsewhere all over the world, and Her Majesty's Government might conceivably find themselves placed in some difficulty if the Chinese Government were to challenge the validity of the principle enunciated in Sir N. Hannen's judgment, as being contrary to the universally accepted and well-settled doctrines of private international law.

An appeal lies from the decision of the Chief Justice to the Judicial Committee of the Privy Council, but in the present case it may be assumed that the unsuccessful opponents of the grant of administration have no sufficient interest at stake to induce them of their own motion to pursue the matter further, while, having regard to all the circumstances it may probably be considered undesirable that they should be afforded by Her Majesty's Government special inducements for doing so.

On the other hand, it has been suggested that the matter is one which might possibly be referred by Her Majesty to the Judicial Committee for their advice under the provisions of section 4 of 3 & 4 Wm. IV, cap. 41.

Lord Salisbury would be glad if you would take the papers inclosed into your consideration and favour his Lordship with your advice, whether:—

1. Sir N. Hannen's judgment is, in your opinion, sound in law or not; and
2. If not, whether means—and if so what means—should be taken to bring that judgment for review before the Judicial Committee of the Privy Council.

Lord Salisbury would further be glad to receive—

3. Any observations which you may desire to offer generally on this matter.

I have, &c.
(Signed) F. H. VILLIERS.

Report.

Although we are unable to agree with the arguments and dicta in the judgment of Sir Nicholas Hannen, we think that the conclusion at which he has arrived in this particular case is substantially correct.

The question was: What is the law of succession to be applied in the case of real property in Shanghae, which belonged to a British subject, the claimants being themselves British subjects?

No question arose as to the easements or other incidents to which the tenure of the land was subject. If any such questions had arisen they would, according to general principles, have had to be determined by the law of China. Nor did any question arise with reference to the form of conveyance required for the effectual transfer of such land *inter vivos*.

As regards succession the case is different. All questions in regard to rights, whether of property or person arising between British subjects, fall under the jurisdiction of the British authorities by Article XV of the Treaty of Tien-tsin. By Article 5 of the Order in Council of 1865 that jurisdiction is, as far as circumstances admit, to be exercised in conformity with the law of England.

No complaint could be made by the Chinese Government if Her Majesty, by Order in Council, had expressly applied the English law of succession to real property held by British subjects in China in cases affecting only British subjects; and in the Order in Council of 1881, provisions were in fact made (Articles XXII to XXVI) for registration of mortgages of land or houses in China. The question is, what law Her Majesty has in fact applied to succession as between British subjects in case of real property in China. Sir Nicholas Hannen states expressly that the law of England has been followed as regards the transmission of such land ever since the extra-territorial jurisdiction was established.

The Chinese law of succession is obviously unsuitable to be applied to British subjects, according to the statements made by Sir N. Hannen as to its nature, and the attempt to apply it would lead to consequences which could never have been contemplated as even possible.

Under these circumstances we think that, although there is no express Order in Council on the subject, it must be taken that the law which Her Majesty has applied to succession of land in China as between British subjects is that which in fact has always existed there since the Consular jurisdiction was established.

It is to be observed that Sir N. Hannen states that the law of China would recognize as governing the succession to land whatever law has in fact been adopted by the English in China. We think that the Chief Justice was right in rejecting the law of domicil. It has never been applied in the case of real property, and its adoption now would, according to the Chief Justice, be inconsistent with the practice which has hitherto prevailed with regard to such land in China.

2. We do not advise that any appeal from the Judgment should be encouraged by Her Majesty's Government. It is, of course, open to the parties to appeal if they choose, but the reversal of the judgment would, we think, be attended by unfortunate consequences.

In any case we should not think it desirable to refer a question of this sort for the advice of the Judicial Committee under 3 & 4 Wm. IV, cap. 41.

3. We are hardly in a position to say whether it is desirable that there should be an Order in Council declaring the law on this point applicable to British subjects in China. The Chief Justice seems to think that there is some uncertainty and disquiet on the subject in the minds of British residents in China, and if this exists to any considerable extent, it might be desirable to pass an Order in Council applying the English law of succession with, or without, any modifications. The Chinese Government could not raise any objection to the passing of such an Order in Council for the reasons given by Mr. Hall in his work on "Foreign Jurisdiction of the British Crown." pp. 166, 167.

We may observe that in the Treaty of 1886 with the Sultan of Zanzibar, by Article XX British law is expressly applied to succession to immovable property, and in the Order in Council of 1865 the provisions as to bankruptcy. Article LII, coupled with Article V, evidently imply that the real property of an English bankrupt would vest in the trustee.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
15th December, 1899.

DENMARK.

No. 17.

[July 24, 1899.]

Foreign Office to the Law Officers of the Crown.

Seizure of trawler "Fulmar" outside territorial limits of Iceland: doctrine of *hot pursuit.*

Gentlemen,

Foreign Office, July 13, 1899.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the accompanying papers, as noted in the annexed list, relative to the seizure of the British steam-trawler "Fulmar" outside the territorial waters of Iceland on a charge of having trawled within those limits.

The "Fulmar," accompanied by the "Euphrates," of Hull, and other trawlers was, on the morning of Sunday, the 9th April last, in the neighbourhood of Recherness, in Iceland, when she was sighted by the Danish gun-boat "Heimdal."

As will be seen from the statements of the British skippers and the declaration of the Commander of the Danish gun-boat, there is a conflict of evidence as to whether

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Annex to No. 15.

HER BRITANNIC MAJESTY'S SUPREME COURT.

Before Sir Nicholas J. Hannen, Chief Justice.

Hanson v. *Watson and others.*

JUDGMENT was delivered in this case, which arose out of an application made by Mr. J. C. Hanson (Messrs. Dowdall, Hanson, and McNeill), as the representative of Mrs. Watson, for a grant of administration of her late husband's estate.

Mr. H. P. Wilkinson opposed on behalf of Mr. Thomas Graham Watson, and Mr. Platt on behalf of Messrs. John Dunlop Watson and George Best Watson, brothers of Mr. Andrew Vans Watson, who died intestate, and Jane Ann Watson his sister. The suit involved important issues.

His Lordship said—

This is a case in which John Currie Hanson makes an application as the representative of Mrs. Watson for a grant of administration to her of her late husband's estate. It is opposed by Mr. Thomas Graham Watson, Mr. John Dunlop Watson, Mr. George Best Watson, and Miss Jane Ann Watson, brothers and sister of the deceased. The deceased was Andrew Vans Watson who was domiciled in Scotland, and died on the 8th November, 1898, intestate, and without issue or parents him surviving, but leaving Emma Watson, his widow. The said Andrew Vans Watson was at the time of his death entitled to an undivided share in a certain lot of land situated in the Foochow Road, Shanghae, within the area originally marked out as a British Settlement, and known in the books for registration of land kept at Her Britannic Majesty's Consulate as lot No. 59, register No. 46. The exact claim of the plaintiff is for a grant of letters of administration to him as the attorney of the said Emma Watson and for her use and benefit and until she shall duly apply for, and obtain, letters of administration to be granted to her of the estate and effects of the said Arthur Vans Watson situate within the jurisdiction of this Court.

The grant of administration was opposed by John Dunlop Watson, George Best Watson, and Jane Ann Watson on the ground that they, together with Thomas Graham Watson, were next-of-kin surviving the said Andrew Vans Watson, but on the argument of the case they merely claimed to have joint administration with the plaintiff, and seemed to base their claim upon the possibility of there being property belonging to the estate other than the piece of land before mentioned. Administration to the plaintiff was also opposed by the said Thomas Graham Watson, who claimed that administration ought to be granted to him and to him alone on the ground that he was the lawful next-of-kin and heir according to Scots law of the said Andrew Vans Watson.

The facts of the case are not in dispute, and a great many of the arguments and contentions are common to all the parties. It is agreed by everybody that the land in question is what is called *immobilia* and that the law of England—and probably of every other country—is that *immobilia* are subject to the law of the place where they are situated. Now the place where this land is situated is China, and under ordinary circumstances the law applicable to its devolution would be the law of China, but it is said that this law ought not and cannot be applied in the present case. It is contended that the law of China is a non-Christian law and that it is of a nature which is quite opposed in some of its aspects to our notions of right and justice. For instance, it is said that in the succession of land the son of a concubine would be considered before the legitimate daughter of a wife. It is also contended that to apply Chinese law would be disastrous to a large portion of British land-holders in Shanghae. I am told that by Chinese law a man cannot devise his landed property by will; if this is so, as a large portion of land in Shanghae belonging to British subjects has passed by will, to hold that Chinese law governs its devolution would be to invalidate the title to a large portion of the land here. That the law with regard to land is not necessarily the *lex loci* where the country of its situation is a non-Christian one, and where British subjects have extra-territorial rights seem to be shown by the cases of Turkey and Morocco. In Turkey it has been considered necessary by special provision of a Treaty to affirm that all matters connected with the land and its ownership shall be determined by the Turkish Tribunals; and in the case of Morocco it has been considered necessary to stipulate that the law of Morocco shall apply to land owned by British subjects there; from this it may, I think, reasonably be inferred that land in non-Christian countries where extra-territoriality exists does not, apart from Treaty, come under the law or the authorities of the place. Again, if we consider the reason why the common law of England says that the *lex loci* applies to immovables, we find that the reason does not apply to land situated here.

Mr. Dicey, in his book on the "Conflict of Laws," points out that the only law where immovables are concerned which is effective is the law of the place. And Mr. Westlake, in his "Private International Law," p. 188, says: "The principle of the *forum situs*, in its application to the land itself is incontrovertible. Since only the authorities that exist on the spot can

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employ force to give possession or take it away . . . ." But this is not true with regard to Chinese law and Chinese authorities as applied to land in Shanghae. The Chinese Courts and Chinese authorities have no jurisdiction over any property, whether movable or immovable, belonging to a British subject. It would be useless for a British Court when adjudicating with regard to land in France to say that it passed to "*A*" when the law of France said that it passed to "*B*," for the French Courts and French authorities would see that the land passed to "*B*" no matter what the English Court had decided. But the case here is entirely different. If an English Court decides that "*A*" is entitled to land in succession to the deceased owner, the Chinese Courts and authorities cannot in any way interfere, although that decision may be entirely contrary to the Chinese law upon the subject. When a piece of land in Shanghae is acquired by a British subject from the original Chinese owners the Chinese title-deeds are brought to the Consulate, they are sent in to the Chinese authorities, and if they are found in order what is called a Taotai's title-deed is issued by the Chinese authorities and is handed to the British subject through his Consular authorities. If this piece of land is transferred from a British subject to any other foreigner the transfer is executed in the land register of Her Majesty's Consulate-General and the Taotai (the territorial Chinese official) is informed that he may know from whom to claim the ground rent.

The British Consular authorities have always maintained, and successfully maintained, that the Chinese authorities have no right to do anything more than take note of and register the transfer. The Chinese authorities, once the land has passed into the possession of a British subject, have nothing more to do with it, have no jurisdiction over it, can make no Regulations concerning it, and are no longer, in fact, in any way interested in it, except to receive the small ground rent amounting to some 14*s.* an acre. It is true that in some of the title-deeds (of which that relating to the lot mentioned above is not one) forfeiture clauses are contained; but in practice these have never been enforced and their existence does not seem to me to affect the question now under consideration, because these forfeiture clauses cannot be enforced by the Chinese authorities, but only through the British Courts by the British authorities. I therefore think that I am justified in holding that the Chinese law does not affect the devolution of land belonging to British subjects although that land is situated in China. But although I hold that the Chinese law does not apply in such a case as the present, yet as the subject matter is undoubtedly immovable, the *lex loci*, according to the common law of England, must be applied to it; we have, therefore, to ascertain what the *lex loci* is.

Mr. Wilkinson, on behalf of the defendant, Thomas Graham Watson, has contended that the law of China being put aside, the law of the domicile of the owner should be the law to govern in this case. He alleged many reasons which have pressed me very much for applying the *lex domicilii*. He pointed out that a man probably knows how the law of his domicile will dispose of his immovable property if he does not direct by will how it shall be distributed, but he may be quite ignorant how any other law will dispose of it, and he argued that the intention of the owner of property who died intestate will be best carried out if we apply the *lex domicilii*. This may be so, and it may be more consonant with justice that the *lex domicilii* should be applied, but I think that for me to determine in such a case as the present that the *lex domicilii* applies would be making and not interpreting the law. What has been the practice here in Shanghae, where land has been owned by British subjects for more than fifty years? For a long period it was treated as personalty, and at first it is probable that this way of looking at the land owned by British subjects here was correct; for most, if not all, the land which was first leased was leased by merchants and formed part of the partnership property. So long as it formed part of the partnership property it was properly treated as personalty. As years went on, partners in the firms went home, but left some of their money in the houses and land on which their business had been conducted, and let to the continuing partners the land and houses which belonged to them; but it did not occur to them or to anybody else at the time that this turned the land from personalty, as it may be contended that it had been before, to realty as it is contended that it became afterwards.

The Law Officers of the Crown have now determined that for probate duty purposes the land here is realty, not personalty; but during the whole of this time sales, leases, and mortgages of land have taken place and have been carried out in accordance with the law of England as modified by the Orders in Council.

If the law of the domicile of the owner is to govern in the case of succession to land here it must also govern the mode of transfer of land. Now British subjects in Shanghae come from all parts of the Empire, some of them from Canada, some from Australia, some from Scotland, some from Ireland, and some from Her Majesty's Indian Empire. Many of these do, and all of them may, own land in Shanghae. According to Tootal's Trusts the British subject does not lose his domicile of origin by residing in China; the result of this is that in the transfer of land here in Shanghae, if we hold that the law of the domicile is to govern, we shall have to inquire on every occasion what the method of land transfer in the country of the domicile of the owner is; so that no piece of land could be safely transferred from a British subject without first inquiring what that British subject's domicile was, and next what the law of transfer is in, it may be the French provinces of Canada, it may be Scotland, Ireland, or some other part of Her Majesty's dominions. This does not seem to me to be reasonable, and whether it is reasonable or not it is certain that it has not been the practice here. I cannot be quite sure, but I think I am right in saying that in no case has the law of the domicile of the owner of land been considered when dealing with it.

But suppose it is held that the Chinese law applies. There is no such thing as a law regulating the devolution or dealing with land throughout China. The land is subject to the local customs and the custom of the family owning it. If we were to ask any Chinese Magistrate

what was the law relating to such land as that in question in this case, he would want to know what the custom was with regard to it, and it would never occur to him to disregard what had been the custom in dealing with it ever since this kind of tenure had come into existence. I think, therefore, that whatever way we look at it we come back to the same result, namely, that for my present purpose the *lex loci* in Shanghae is, in fact, that law which has been followed ever since land here has been owned by British subjects, *i.e.*, the law of England. I therefore hold that the property in question in the present case is of the nature of *immobilia*, that it is subject to the *lex loci*, that the *lex loci* is the law of England applicable to immovables in England as modified (if it has been modified) by Orders in Council.

The form of administration is reserved; costs of the parties to come out of the estate.

Shanghae, May 8, 1899.

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the trawler was fishing when first observed, whether she was then in the territorial waters, and at what precise times the various incidents successively occurred from the moment of first observation until the seizure; but Lord Salisbury, having regard to the special purpose of the present reference, does not think it necessary to trouble you for an expression of your views as to these points.

Assuming, therefore, that the evidence for the prosecution was correct, the question arises whether a vessel, having fished within the territorial limit, and having subsequently escaped beyond it, can be legally pursued and captured outside the limit.

The Lords Commissioners of the Admiralty, to whom this point was referred, state that the practice in this respect of Her Majesty's ships employed on fishery duty is not to arrest foreign fishing-vessels for trespassing unless they are actually in British territorial waters at the time of arrest; but their Lordships point out that their practice is somewhat within the legal limits indicated by writers on international law, and suggest that the question is one for reference to you.

You will perceive that the matter has on previous occasions been brought before the Law Officers of the Crown, and that on the 5th November, 1891, an opinion was expressed by them—

L.O.R. 1891 (Conf. 6207), p. 40*.

"That in arresting and bringing back the barque 'St. Mary's Bay' into the port of Valparaiso the Chilean authorities did not . . . . infringe any principle of international law. A private ship of British nationality is, whilst lying within a foreign port, bound to obey the Regulations of that port, and for an infraction of those Regulations the port authorities may pursue the ship into the open sea and there arrest her, provided that the pursuit is promptly undertaken whilst the ship is still within territorial waters, or has only just escaped from them."

I am also to draw your attention to a statement contained in a note from the late Sir R. Morier to Mr. Chichkine ("Russia No. 2 (1893)," p. 77), to the effect that, in order that the right of capture on the high seas . . . . should be made perfect, it is necessary that the offence and flight should be continuous, and pursuit begun whilst the offending vessel is still within the territorial waters; and I am to add that this note was settled after a reference to the then Law Officers of the Crown, who reported in approval of its terms on the 23rd November, 1892.

L.O.R. 1892 (Conf. 6347), p. 60 A.

Lord Salisbury will be glad to be informed—

1. Whether you concur in the view of your predecessors as above expressed.

2. Whether, if the Danish version of the facts be accepted in its entirety as correct, you consider that the general principles which were approved by your predecessors embrace, and can properly be applied to, the case of the "Fulmar."

3. Whether the pursuit in all cases must be begun before the territorial waters have been quitted by the offending ship in order to justify, on considerations of international law, its continuance on to the open sea.

Lord Salisbury will be glad at the same time to be favoured with any observations of a general character which you may have to offer on the doctrine of hot pursuit.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

Messrs. Pickering and Haldane	..	April	27, 1899
To Board of Trade	..	May	4, "
Sir E. Fane	(No. 36. Commercial)	May	9, "
Board of Trade	..	May	11, "
To Sir E. Fane	(No. 25. Commercial)	May	12, "
Mr. Doughty, M.P.	..	May	13, "
Sir E. Fane	(No. 39. Commercial)	May	15, "
Ditto	(No. 40. Commercial)	May	17, "
Messrs. Pickering and Haldane	..	May	19, "
To Sir E. Fane	(No. 29. Commercial)	May	19, "
Sir E. Fane	(No. 42. Commercial)	May	23, "
Count Moltke	..	May	23, "
Sir E. Fane	(No. 43. Commercial)	May	25, "
To Admiralty	..	May	26, "
Ditto	..	June	19, "

Blue Book, "Russia No. 2 (1893)" (Parliamentary 3538).

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Report.

1. We concur in the view taken in the opinion given by the Law Officers on the 5th November, 1891.

2. These principles can properly be applied to the case of the "Fulmar."

3. In order to justify a seizure beyond the territorial waters it is necessary that the pursuit should have been undertaken immediately on the commission of the offence. In most cases it is obvious that such pursuit will, in fact, have been begun within the territorial waters. But cases may occur in which, though the offence was committed just within the limits of the territorial waters, the offender passed these limits before the pursuing vessel had actually started in pursuit. It is a question of fact in each case whether the pursuit can be fairly described as immediate. If it were, a seizure in the open sea would not be unlawful, because, during the brief period that elapsed before the pursuing vessel got actually under way, the offender succeeded in passing out of the territorial waters.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 24, 1899.

EGYPT.

No. 18.

[August 1, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, July* 18, 1899.

Changes in Codes of Mixed Tribunals.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list relative to changes which the Egyptian Government propose to introduce in the Codes of the Mixed Tribunals, with a view to give criminal jurisdiction to those Tribunals in cases of fraudulent bankruptcy coming under their notice in the course of civil suits.

The proposed changes are the result of the labours of a Commission appointed by the Egyptian Government to consider the matter, and are embodied in seven draft Decrees which have been communicated by the Egyptian Minister for Foreign Affairs, in a Circular dated the 30th ultimo, to Her Majesty's Agent and Consul-General at Cairo for the approval of Her Majesty's Government as one of the Governments which took part in the establishment of the Mixed Tribunals (Lord Cromer, No. 124, 1st July, 1899, Paper E).

The report of the proceedings of the above-mentioned Commission is inclosed in Lord Cromer's despatch No. 126 of the 3rd July (Paper F).

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion as to whether Her Majesty's Government can properly give their assent to the proposed Decrees, and with any general observations which you may have to make on the papers now submitted to you.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) "Règlement d'Organisation Judiciaire."
(B.) "Code Pénal Mixte."
(C.) "Code d'Instruction Criminelle Mixte."
(D.) "Code de Commerce Mixte."
(E.) Lord Cromer.. .. .. .. (No. 124, and inclosures) July 1, 1899.
(F.) Ditto .. .. (No. 126, and inclosures) " 3, "

Report.

In our opinion Her Majesty's Government may properly give their consent to the proposed Decrees.

We do not quite understand the reference in the new Article 248 in Decree I to "Articles 205 et 206 du présent Code." The Articles 205 and 206 as they now stand in Decree H do not seem to us to refer to matters in respect of which the bankrupt could be punished. If Article 248 is intended to refer to Articles 205 and 206 of the Code as it existed before amendment, it seems to us that the numbers of the Articles to be mentioned in Article 248 should be Articles 202 and 203 out of Decree H.

There may, however, be some reason for adopting the words we have quoted above which we do not understand.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 1, 1899.

No. 19.

[August 8, 1899.]

Foreign Office to Solicitor-General.[*]

Zanzibari in Egypt threatening Sultan of Zanzibar: Where triable?

MR. VILLIERS presents his compliments to Her Majesty's Solicitor-General, and has the honour, by direction of the Marquess of Salisbury, to inclose, for his consideration, the papers noted in the accompanying list respecting the case of an Arab deserter from the service of the Sultan of Zanzibar, who is accused of sending threatening letters from Egypt to His Highness.

Mr. Villiers would feel obliged if the Solicitor-General will, at his early convenience, favour him with his opinion on the following points:—

1. Whether, in the first instance, it is advisable, in the circumstances, to make the inquiry suggested at the end of the Departmental Memorandum (Paper C).

2. Whether, in the circumstances, he should—

(*a.*) Be tried by Her Majesty's Consul at Cairo; or,

(*b.*) Be sent to Zanzibar from Cairo, under the provisions of "The Fugitive Offenders Act, 1881."

3. Whether, in the event of his being justiciable only by the Sultan's Courts at Zanzibar, Her Majesty's Consul at Cairo can properly be instructed to take any action in the matter.

Mr. Villiers would further be obliged if the Solicitor-General will favour him with any general observations he may think well to offer on the case.

Foreign Office,
August 7, 1899.

List of Papers.

(A.) Sir R. Rodd .. .. (Telegraphic) August 2, 1899.
(B.) Sir A. Hardinge to Mr. Maycock .. .. .. August 5, "
(C.) Memorandum, Mr. Maycock .. .. August 6, "
(D.) Zanzibar Order in Council, 1897 (Confidential 6934*).
(E.) Ottoman Orders in Council, pp. 87 and 156 (Confidential 2354).
(F.) Law Officers' Report (Confidential 6508, p. 8) .. .. June 8, 1893.
(G.) Fugitive Offenders Act, 1881 (44 & 45 Vict., cap. 69).

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[*] The Attorney-General was at this time absent from England in Paris, conducting the case for Her Majesty's Government before the British Guiana–Venezuelan Boundary Arbitration Tribunal.

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Memorandum by Solicitor-General as to Arab Deserter from Zanzibar now in Egypt.

It appears to me that Sir A. Hardinge takes the correct view of the status of this man.

He is apparently a Zanzibari, and as such would be justiciable by the Sultan's Court in Zanzibar, but when in other countries than Zanzibar he is a British-protected person as being a subject of a country under British protection, and is therefore justiciable in Her Majesty's Consular Court in Egypt.

I do not think that anything would be gained by inquiring whether the man would be justiciable at Zanzibar by the British Court or by the Sultan's Court. This seems to me, for the reasons given by Sir A. Hardinge, to make no difference with regard to the question of his justiciability in Egypt. I do not see any way of having the man taken to Zanzibar for trial. The Fugitive Offenders Act deals with the case of fugitives who, having committed a crime in one country take refuge in another, and the power of deportation could not be exercised to send this man to Zanzibar; nor, indeed, in the circumstances of this case, at all, till after conviction.

If there is to be a prosecution, I think it must be in Egypt in the Consular Court. As a British-protected person, although not registered, he is amenable to its jurisdiction. Before, however, any prosecution is instituted, the opinion of a competent lawyer in Egypt should be taken upon the case in order to see whether there is evidence enough to secure a conviction. The English law as to sending letters attempting to extort money by threats apparently applies to Egypt. The contents of the letters, and the fact that they were written and posted by the accused in Egypt, would have to be proved. Evidence from Zanzibar might be necessary as to the receipt and contents of the letters.

The whole question ought, I think, to be considered on a full statement of the facts from the point of view of policy as well as of law before it is determined to prosecute.

(Signed) ROBERT B. FINLAY.

House of Commons,
August 8, 1899.

Annexes.

(A.)

Paraphrase of Sir R. Rodd's telegram (Consular) to the Marquess of Salisbury.

Cairo, August 2, 1899.

HER Majesty's Consul at Zanzibar has telegraphed to me requesting that steps may be taken to arrest and send to Zanzibar for trial an Arab deserter from the Sultan's service, who is now in Cairo, and who has written to His Highness blackmailing letters of a scandalous character, and threatens to publish their contents in default of payment of large sums. As the offence of writing the letters has been committed in Cairo, it would appear that the trial should take place here, but I am in some doubt as to the extent to which British Consular jurisdiction in this country would cover natives from a British Protectorate. Mr. Consul Borg is of opinion that, as the man has not registered himself at Her Majesty's Consulate, he is not liable to the jurisdiction of the Consular Court.

I should be grateful for your Lordship's instructions as to the course which should be pursued in this matter.

(B.)

Sir A. Hardinge to Mr. Maycock.

(Private.)
(Extract.)

August 5, 1899.

The view which was always taken when I lived in Egypt and Turkey, was that the natives of "Protected States" were, for purposes of jurisdiction, in the same position as the subjects of their Protecting Powers. Thus a Tunisian, or a subject of the Nizam of Hyderabad, would have enjoyed all the immunities, and, as a consequence, been subject to all the liabilities of a French citizen or British subject in Cairo. We even tried at one time to bring in Afghans, but this the Sublime Porte thought was going rather far.

I should certainly, when I was in Egypt, have regarded a Zanzibari there as subject to British jurisdiction, and not to Egyptian, and I am sure the Egyptian Government (which regarded Tunisians and subjects of the Queen of Madagascar as French citizens) would have quite concurred.

I do not think registration so important. If an English tourist committed an offence in Cairo, Borg could punish him, whether he were registered or not.

I should say that the offence, having been committed in Cairo, the man should be charged before Borg. I do not see how you can deal with him under the Fugitive Offenders Act, as he has *not committed an offence in Zanzibar*; but if this were to be done, he would have to be sent to Cracknall or to Cave, who would hold that once he got back to Zanzibar, he would be justiciable by the Sultan's Court, and not by the Order in Council. We have, of course, no Extradition Treaty with the Sultan, but if a subject of the Sultan, after murdering someone at Zanzibar, were to escape to Aden, I presume we could return him (though we should not be bound to do so) to the Zanzibar authorities. I should say the latter would willingly send an officer in the present case to take charge of him.

But as I do not see where the Fugitive Offenders Act comes in here, I should say that the best course would be for the Consular Court to punish him at Cairo, and if he still continued to give trouble, to deport him. I do not know whether the power of deportation, under the Ottoman Order in Council, enables the Consul to make an order of deportation to a given place. If so, the place might be Zanzibar, and any expenses incidental to the deportation might, by private arrangement, be borne by the Sultan's Government.

No. 20.

[September 4, 1899.]

Foreign Office to the Solicitor-General.[*]

Arab deserter from Zanzibar in Egypt accused of blackmailing Sultan of Zanzibar.

MR. VILLIERS presents his compliments to Her Majesty's Solicitor-General, and with reference to his letter of the 7th ultimo, has the honour, by direction of the Marquess of Salisbury, to inclose, for his consideration, a despatch (Paper A) from Her Majesty's Acting Agent and Consul-General at Cairo respecting the case of the Arab deserter from the service of the Sultan of Zanzibar, who is accused of sending threatening letters from Egypt to His Highness.

A printed copy of the Solicitor-General's opinion, together with the papers on which it was framed, is annexed (Paper B), and the instructions which were thereupon addressed to Sir Rennell Rodd are likewise inclosed (Paper C).

L.O.R. 1863 (Conf. 1376), p. 104.

With regard to Article 17 of the Ottoman Order in Council relating to native Indian subjects to which Sir R. Rodd refers, Mr. Villiers is to observe that the Article also appears in the Ottoman Order in Council of 1864, and was apparently inserted after reference to the Law Officers of the Crown (see their Report of the 5th April, 1864† (Paper D)).

The provision has, however, been eliminated from the new consolidating Order approved by the Queen in Council on the 8th August, but which has not as yet come into force. A copy is inclosed (Paper E).

The reasons for its omission are explained on page 7 of Mr. Gray's Memorandum (Paper F, passage marked), and the attention of the Solicitor-General is invited especially to Articles 3, 5, and 165 *et seq.* of the new Order, which are marked in ink.

The question of jurisdiction over native Indian subjects has, however, only an indirect bearing upon the case under consideration, and it does not seem necessary to submit any observations with regard to the interpretation placed by Sir R. Rodd on the expression "protected persons." Sir R. Rodd is, of course, in error in supposing that the African Orders in Council contain any provision regulating the status of natives of Protectorates "when resident in the Dominions of foreign Governments." "The Zanzibar and East Africa Orders in Council, 1897" are herewith inclosed (Papers G and H), as also the Ottoman Orders in Council (Paper I).

Mr. Villiers would feel obliged if Her Majesty's Solicitor-General, after consideration of Sir R. Rodd's despatch, would state, for Lord Salisbury's information, whether he sees any reason to modify the opinion he has already been good enough to express, and favour his Lordship with any general observations he may think fit to offer.

Foreign Office,
September 1, 1899.

List of Papers.

(A.)	Sir R. Rodd	(No. 18. Treaty. Confidential)	August 23, 1899.
(B.)	Solicitor-General's Report ..	.. ..	August 8, ,,
(C.)	To Sir R. Rodd	(No. 21. Treaty. Confidential)	August 11, ,,
(D.)	Law Officers (Confidential 1376, p. 104)	.. .. ..	April 5, 1864.
(E.)	Ottoman Order in Council, 1899 (Confidential 7157*).		
(F.)	Memorandum by Mr. Gray.		
(G.)	Zanzibar Order in Council, 1897 (Confidential 6934*).		
(H.)	East Africa Order in Council, 1897 (Confidential 6933*).		
(I.)	Ottoman Orders in Council (Confidential 2354).		

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[*] The Attorney-General was at this time absent from England in Paris, conducting the case for Her Majesty's Government before the British Guiana-Venezuelan Boundary Arbitration Tribunal.

† This Report was erroneously printed in the Collection for 1863.

Report.

I have read and considered Sir R. Rodd's despatch dated the 23rd August last.

Article 17 of the Order in Council of the 12th December, 1873, does not apply, as it relates only to Indian subjects.

The question is as to the meaning of Article 16.

I find myself unable to concur with Sir R. Rodd in thinking that the words "protected person" in that Article do not include native subjects of British Protectorates. The words do not seem properly applicable to naturalized or colonial subjects as Sir R. Rodd suggests—these persons are British subjects—and I think that native subjects of British Protectorates are "protected persons" under Article 16.

The failure to register under that Article deprives the person of the right to claim British protection, but does not exempt him from British jurisdiction. Article 16 contains no words such as the concluding provision of Article 17 that jurisdiction shall not be exercised in the case of an Indian subject unless he has registered.

I therefore still think that Sir A. Hardinge was right in the view that this man is justiciable in the Consular Court.

But Sir R. Rodd states that the crime in question is cognizable by Egyptian law, and suggests that it would be more convenient that the prosecution should take place in the Egyptian Courts. As the Zanzibari in question has not registered he is not entitled to insist on being tried in the British Court, and may be tried in the Egyptian Court if Her Majesty's Government does not claim jurisdiction.

The question whether the prosecution should take place in the British or in the Egyptian Court should, I think, be settled in Egypt. It depends on questions of Egyptian law on the offence of blackmailing, and on the comparative convenience of the two systems of procedure.

(Signed) ROBERT B. FINLAY.

Royal Courts of Justice,
September 4, 1899.

Annex.

Sir R. Rodd to the Marquess of Salisbury.

(No. 18. Treaty. Confidential.)

Cairo, August 23, 1899.

My Lord,

I HAVE the honour to acknowledge the receipt of your Lordship's despatch No. 21, Treaty, of the 11th instant, on the subject of the alleged blackmailing of the Sultan of Zanzibar, inclosing, for my confidential information, a letter containing Sir Arthur Hardinge's views, and a Memorandum by the Solicitor-General.

I have telegraphed to Zanzibar to inquire into the nature of the evidence which can be produced, and have learned from Mr. Cave that the Sultan will send an Agent to Cairo, by the first opportunity, with full powers, and such evidence as is in his possession. It appears, however, that the accused intends shortly to proceed to Germany, and, from information which I am collecting here, I rather gather that he belongs to the faction of Seyyid Khaled, and is politically in opposition to the reigning Sultan.

I have taken note of the instructions that a prosecution, if there is to be one, should take place in Egypt, and that a competent legal opinion is to be obtained as to whether the evidence is of a nature to convict; but, in the meantime, I am anxious, with the utmost deference for the views expressed by Sir Arthur Hardinge, and indorsed by the Solicitor-General, to place before your Lordship one or two further points for consideration on the question of the Court in which precedent and analogy would make this man justiciable in Egypt.

Sir Arthur Hardinge writes that the view always taken in Egypt and Turkey was that natives of "Protected States" were, for purposes of jurisdiction, in the same position as the subjects of their Protecting Powers, and that consequently a Tunisian or a subject of the Nizam of Hyderabad would enjoy all the immunities and be subject to all the liabilities of a French citizen or a British subject in Cairo.

I will confine myself to the practice in Egypt.

In the first place, as regards Tunisians. Not only are they not claimed by the French Consular authorities if they do not register themselves, but I am informed that since 1889 the rule has been that if a Tunisian comes to Egypt, unless he brings a passport and declares himself a French protégé at once on arrival, he cannot afterwards claim French protection. Cases may of course arise where the French Consulate may wish to exercise protection, and plausible excuses may be found to explain

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why registration did not at once take place; but, so far as criminal prosecutions are concerned, if registration has not been made, they would be before the Native Courts. There are in Egypt a considerable number of Tunisian refugees, who came here on account of misunderstandings with the French authorities, and I am informed that these, if they should now wish to become French subjects, would not be accepted.

The case of Tunisians, however, does not perhaps offer a complete analogy to the case under discussion as they were originally Ottomans.

The second instance quoted by Sir Arthur Hardinge is, however, more to the point, and here I venture to join issue with him.

Unless a subject of a native Indian State, like Hyderabad, is in a more favoured position than any other native Indian subject, his status is very clearly defined by Article 17, Chapter IV, of the Order in Council for the Regulation of Consular jurisdiction in the dominions of the Ottoman Porte, of the 12th December, 1873.

Here it is definitely stated that a native Indian subject, not having registered at the Consulate, "shall not be entitled to sue in the Court, or to receive the support or protection of a Consular officer, nor shall a Consular officer exercise jurisdiction for the punishment of a crime or offence committed by a native Indian subject, unless at the date of the commission of the crime or offence, he or she was so registered."

Conformably to the provisions of this Order in Council native Indian subjects, not having registered at the Consulate, have always, I am informed, been considered justiciable in the Native Tribunals.

Article 16 of the same Order in Council also lays down that British subjects and protected persons, having failed to register themselves in the Consular district where they reside in the Ottoman dominions, shall not be entitled to be deemed subjects or protected persons; but it is not laid down specifically that a Consular officer shall not exercise jurisdiction over them for the punishment of offences, as it is in the case of native Indian subjects.

I have the honour to submit, however, that "protected persons" in the sense of this Article should be interpreted as referring rather to naturalized or colonial subjects than to native subjects of Protectorates, who would not appear on the face of it to have stronger claims to protection than Indian subjects.

At the same time when this Order in Council was issued African Protectorates, such as Zanzibar, had not yet come into being.

We are not at this Agency in possession of the African Orders in Council, but I believe I am right in supposing that an Order in Council exists, regulating the status of the native subjects of African Protectorates when resident in the dominions of foreign Governments. Unless under such an Order in Council, which is not referred to in Sir Arthur Hardinge's letter, or the Solicitor-General's Memorandum, other dispositions are laid down, I venture with all deference to submit that it would be logical to place such native subjects of British Protectorates, when in the Ottoman dominions, in the same category with native Indian subjects, who are justiciable in Egypt in the Native Courts, unless they have fulfilled the necessary obligations laid down for securing British protection.

In the case at present under consideration the course proposed would obviate the necessity for inviting a legal opinion on the evidence, as the case for the prosecution would be submitted to the Parquet, who would decide whether the evidence produced warranted a prosecution.

Should the Parquet decide in favour of the evidence, I am informed that the Native Tribunals would accept the prosecution. The penalty for blackmailing under the Egyptian Codes is a severe one.

I have, &c.
(Signed) RENNELL RODD.

No. 21.

[September 4, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 25, 1899.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you a despatch from Her Majesty's Acting Agent and Consul-General at Cairo, as marked in the margin,* forwarding a copy of a note from the Egyptian Acting Minister for Foreign Affairs, in which are inclosed two draft Decrees relating to pawnbroking establishments.

Draft Decrees relating to pawnbroking establishments in Egypt.

The object of the first of these Decrees is to confer upon the Egyptian Government the right of supervision and control over such establishments; whilst the second deals with a proposed modification of the law, as administered by the Mixed Courts, defining the conditions under which articles pawned on receipts to bearer may be legally sold.

A Minute by Lord Cromer will be found annexed to Sir R. Rodd's despatch recording his Lordship's opinion that the Decrees may be approved, as no British interests are involved, and as the proposed changes will be beneficial to Egypt.

I am to request that you will take these papers into your consideration, and will favour Lord Salisbury with your opinion as to whether these Decrees should receive the assent of Her Majesty's Government, as requested in the note from the Egyptian Acting Minister for Foreign Affairs.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

In our opinion, the two draft Decrees in question may properly receive the assent of Her Majesty's Government.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 4, 1899.

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* Sir R. Rodd, No. 146, August 4, 1899.

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Annex 1.

Draft Decree.

NOUS, Khédive d'Égypte,
Vu le Règlement d'Organisation Judiciaire;
Afin de permettre la réglementation des maisons de prêts sur gage;
Après accord intervenu entre notre Gouvernement et les Puissances qui ont adhéré à la Réforme Judiciaire,

Décrétons:

Article 1er. Il est interdit de fonder, sans autorisation du Gouvernement, une maison de prêt sur gage. Toutefois, ne tombent pas sous l'application du présent Décret les établissements de prêt sur gage incorporel (actions, obligations, &c.), ainsi que ceux faisant des prêts sur marchandises neuves et denrées agricoles.

Art. 2. L'autorisation est accordée par le Ministre de l'Intérieur qui pourra faire inspecter ces établissements lorsqu'il le jugera nécessaire. Les inspecteurs pourront prendre connaissance des livres, vérifier la consistance et l'état des gages, et constater si les prescriptions imposées par la loi ou par l'acte d'autorisation ont été observées.

Si le propriétaire de l'établissement est un étranger, avis préalable sera donné à son Consulat pour le mettre à même d'assister à l'inspection, s'il le croit opportun.

Art. 3. Tout établissement de prêt sur gage devra faire assurer contre l'incendie, par une Compagnie agréée par le Gouvernement, les objets donnés en gage ainsi que les locaux dans lesquels ils sont déposés.

En cas d'incendie ou de perte des gages, l'établissement sera responsable jusqu'à concurrence de leur estimation augmentée d'un quart.

Art. 4. En échange des fonds versés, les prêteurs reçoivent des reconnaissances au porteur.

Les reconnaissances doivent porter les indications suivantes; somme prêtée, intérêts y afférents, échéance de la reconnaissance et somme à rembourser.

Tout déposant sera tenu de signer l'acte de dépôt de l'objet engagé, et si le déposant est illettré, l'acte de dépôt sera signé par son répondant.

Pourront être exceptés de la formalité prescrite ci-dessus les actes de dépôt d'objets estimés au-dessous de 250 piastres tarif.

Art. 5. Le taux de l'intérêt stipulé ne pourra excéder 9 pour cent par an. Il pourra, en outre, être perçu un droit pour frais d'estimation, de mesurage, et d'emmagasinement.

Ce droit ne pourra excéder 4 pour cent si le prêt est inférieur à 250 piastres tarif, ni 3 pour cent si la somme prêtée est supérieure. Ce droit sera perçu pour une année entière, quelle que soit la durée du prêt.

Art. 6. Les prêts seront à trois ou six mois et pourront être renouvelés de commun accord entre le prêteur et l'emprunteur.

Art. 7. En cas de non remboursement à l'échéance, les gages seront réalisés conformément aux règles du Code relatives au gage commercial.

De plus, pour les prêts excédant £ E. 10, les individus qui auront signé les actes de dépôt seront prévenus par lettre recommandée, huit jours avant la remise de la requête au juge de service.

Art. 8. Si la somme produite par la vente dépasse la somme due par l'emprunteur en principal, intérêts, droits de garde et frais de réalisation, l'excédent sera tenu à la disposition de l'emprunteur pendant la durée de trois ans. Il ne sera pas productif d'intérêts. S'il n'est pas réclamé pendant ce délai, il sera acquis au prêteur.

Art. 9. L'ouverture ou l'exploitation d'une maison de prêt sur gage sans l'autorisation prescrite, sera punie d'un emprisonnement de un à sept jours. La fermeture de l'établissement sera toujours ordonnée par le Jugement.

Toutes autres contraventions au présent Décret seront punies d'un emprisonnement de vingt-quatre heures à une semaine et d'une amende de 10 à 100 piastres Turques, ou d'une de ces peines seulement. Les circonstances atténuantes pourront être admises, et la fermeture de l'établissement pourra être prononcée.

Art. 10. Il est interdit de prêter sur gage à des enfants âgés apparemment de moins de 12 ans, aux personnes en état d'ivresse, sous l'empire du hachiche, ou qui, à raison de leur état mental, sont manifestement incapables de contracter.

Art. 11. L'estimation des gages sera faite par des personnes autorisées à cet effet par le Ministère de l'Intérieur.

Art. 12. Lorsqu'un objet engagé sera revendiqué pour cause de vol ou pour toute autre cause, le propriétaire devra:—

1. Justifier dans les formes légales de son droit de propriété;
2. Rembourser, tant en principal qu'en intérêts, la somme pour laquelle l'objet a été engagé, à moins que, au moment du prêt, le prêteur ait pu savoir que l'objet déposé n'était pas la propriété de l'emprunteur ou que celui-ci ne pouvait pas l'engager.

Art. 13. Ces dispositions entreront en vigueur un mois après la publication qui en sera faite dans les formes prescrites par l'Article 35, Titre 1, du Règlement d'Organisation Judiciaire.

Art. 14. Nos Ministres de l'Intérieur et de la Justice sont chargés, chacun en ce qui le concerne, de l'exécution du présent Décret.

Annex 2.

Draft Decree.

NOUS, Khédive d'Égypte,
Vu le Règlement d'Organisation Judiciaire;
Vu le Code de Commerce Mixte et le Décret du 5 Décembre, 1886, qui l'a complété en ce qui concerne le gage commercial;
Après accord intervenu entre notre Gouvernement et les Puissances qui ont adhéré à la Réforme Judiciaire,

Décrétons:

Article 1er. Il est ajouté à l'Article 84 du Code de Commerce Mixte un paragraphe conçu dans les termes suivants:—

"En ce qui concerne les établissements de prêt sur gage autorisés, dont les reconnaissances sont au porteur, les numéros en retard seront affichés par ministère d'huissier, à la porte du siège ou des succursales des dits établissements, au Tableau du Tribunal, et à la Bourse de Commerce, avec déclaration que passé le délai de dix jours, la vente en sera poursuivie. La requête au juge de service comprendra collectivement tous les numéros affichés qui n'auront pas satisfait aux conditions contractuelles."

Art. 2. Ces dispositions entreront en vigueur un mois après la publication qui en sera faite dans les formes prévues par l'Article 35, Titre I, du Règlement d'Organisation Judiciaire.

Art. 3. Notre Ministre de la Justice est chargé de l'exécution du présent Décret.

No. 22.

[September 18, 1899.]

Foreign Office to the Solicitor-General.[*]

Foreign Office, September 16, 1899.

Arab deserter from Zanzibar in Egypt accused of blackmailing Sultan of Zanzibar.

Sir,

WITH reference to your reports of the 8th August and 4th instant respecting the case of the Arab deserter from Zanzibar who is accused of sending threatening letters from Egypt to the Sultan, I have the honour, by direction of the Marquess of Salisbury, to transmit to you a copy of a telegram from the Acting British Agent and Consul-General in Egypt, stating that the fugitive has escaped to Beyrout, where he is believed to be in quarantine until the 19th instant, and that he intends to proceed to Germany.

Sir R. Rodd requests instructions as to whether he may ask the British Consul at Beyrout to request the arrest and surrender of the fugitive if the legal authorities consider the evidence sufficient to justify his prosecution.

If jurisdiction over the accused is not to be claimed, it would seem, the offence having been committed in Egypt, that the Egyptian Government should apply for the arrest, and the proceedings should be taken against him in their name.

It is presumed, however, that if action is taken in the matter such as suggested by Sir R. Rodd, it must be on the ground that the accused is a British-protected person, and, in this case, that he must be tried before a British Court.

I am to return to you, for convenience of reference, your opinions of the 8th ultimo and 4th instant, together with the papers on which they were founded, and I am to state that Lord Salisbury would be glad to be favoured with your opinion as to the answer which should be returned to Sir R. Rodd.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

1. Sir R. Rodd .. .. .. (Telegraphic) September 15, 1899.
2. Papers accompanying Reference of September 1, 1899.

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[*] The Attorney-General was at this time absent from England in Paris conducting the case for Her Majesty's Government before the British Guiana–Venezuelan Boundary Arbitration Tribunal.

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Report.

The application for the arrest and surrender of the fugitive ought to be made by the British Consul, as suggested, only if it has been determined to proceed in the British Court.

If the prosecution is to be in the Egyptian Court, the application should be by the Egyptian Government, but might be supported informally by the British Consul.

(Signed) ROBERT B. FINLAY.

Royal Courts of Justice,
September 18, 1899.

Annex.

Sir R. Rodd to the Marquess of Salisbury.

Te legraphic. No. 4. (Treaty.) P. *Cairo, September* 15, 1899.

WITH regard to attempt to blackmail the Sultan of Zanzibar, it appears that the culprit has escaped to Beyrout, where he will presumably be kept in quarantine until the 19th instant. His ultimate destination is Germany. If legal authorities consider evidence sufficient to justify prosecution, may I request the Consul to ask for arrest and surrender, pending settlement of question of jurisdiction? The Sultan attaches much importance to the arrest, and the chances of surrender are much greater if the application is made by the British Consul.

No. 23.

[September 18, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 12, 1899.

Somaliland O. in C.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the draft of an Order in Council for the administration of justice in the territories comprised in the Somaliland Protectorate which has recently been transferred by the Government of India to the Imperial Government.

This draft Order has been prepared by Mr. Gray in consultation with Colonel Hayes Sadler, Her Majesty's Consul-General on the Somali Coast, and with this Department. An explanatory letter from Mr. Gray is annexed to the draft.

A copy of the East Africa Order in Council of 1897, on which the new Order is modelled, is also inclosed for convenience of reference.

I am to request that you will take this draft Order into your consideration, and favour Lord Salisbury with your opinion whether it can properly be submitted to Her Majesty in Council in its present form; and if not, to indicate such amendments and modifications as you may consider necessary or desirable.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

In our opinion, the draft Order in Council as initialled by us may properly be submitted to the Queen in Council for the approval of Her Majesty.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 18, 1899.

Annex.

SOMALILAND.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction with the territories comprised within the limits of this Order:

Now, therefore, Her Majesty, by virtue, and in exercise of the powers on this behalf by "The Foreign Jurisdiction Act, 1890," or, otherwise, in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

PART I.—*Preliminary.*

1. This Order may be cited as "The Somaliland Order in Council, 1899."

The limits of this Order are the territories comprised in the Somaliland Protectorate, which includes the territories bounded on the north by the Gulf of Aden, on the east and south by the territories under the Protectorate of Italy, and on the west by the territories of the Emperor of Ethiopia, and the French Protectorate of Jibuti.

If Her Majesty is pleased to direct that any other territories, for the time being under the protection of Her Majesty, shall form part of the Somaliland Protectorate, those territories shall, from and after a date fixed by an order of the Secretary of State, be deemed to be within the limits of this Order.

2. This Order is divided into Parts as follows:—
Part I. Preliminary.
Part II. Application and effect of Order.
Part III. Application of law of British India and of the United Kingdom.
Part IV. Criminal matters.
Part V. Civil matters.
Part VI. Miscellaneous.

3. In this Order—

(i.) "The Protectorate" means the territories for the time being comprised in Her Majesty's Somaliland Protectorate;

(ii.) "The Secretary of State" means one of Her Majesty's Principal Secretaries of State;

(iii.) "The Consul-General" means Her Majesty's Consul-General for the territories comprised within the limits of this Order, including a person acting temporarily, with the approval of the Secretary of State, as or for the Consul-General;

(iv.) "British subject" includes a British protected person, that is to say, a person who either (*a*) is a native of any Protectorate of Her Majesty beyond Africa and Arabia, and is for the time being in the Somaliland Protectorate, or (*b*) by virtue of "The Foreign Jurisdiction Act, 1890," or otherwise enjoys Her Majesty's protection in the Protectorate;

(v.) "Resident" means having a fixed place of abode in the Protectorate;

(vi.) "Native" means any person who is not a British subject, as hereinbefore defined, or of European or American race or parentage;

(vii.) "Foreigner" means a subject or citizen of a State in amity with Her Majesty, not being a native, as hereinbefore defined;

(viii.) "Protectorate Court" means the Court held by the Consul-General, or other Court exercising the principal civil and criminal jurisdiction in the Protectorate;

(ix.) "The Court" means the Protectorate Court and any Court subordinate thereto, as the case may be;

(x.) "Treaty" includes any Convention, Agreement, or Arrangement with any State or Government, King, Chief, people, or tribe, made by or on behalf of Her Majesty, or to the benefits of which Her Majesty has succeeded;

(xi.) "Administration" means (unless a contrary intention appears from the context) letters

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of administration, including the same with will annexed, or granted for special or limited purposes, or limited in duration;

(xii.) "Ship" includes any vessel used in navigation, however propelled with her tackle, furniture, and apparel, and any boat or other craft;

(xiii.) "Offence" means any act or omission made punishable by any law for the time being in force;

(xiv.) "Imprisonment" means imprisonment of either description, as defined in the Indian Penal Code;

(xv.) "Month" means calendar month;

(xvi.) "Will" means will, codicil, or other testamentary instrument;

(xvii.) "Person" includes Corporation;

(xviii.) Words importing the plural or the singular may be construed as referring to one person or thing, or to more than one person or thing, and words importing the masculine as referring to females (as the case may require).

4.—(1.) Where this Order confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2.) Where this Order confers a power or imposes a duty on the holder of an office, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by the holder of the office for the time being, or by a person duly appointed to act for him.

(3.) Where this Order confers a power to make Rules, Regulations, or Orders, the power shall be construed as including a power, exercisable in the like manner and subject to the like approval and conditions (if any) to rescind, revoke, amend, or vary the Rules, Regulations, or Orders.

(4.) Expressions defined in this Order shall have the same respective meanings in any Rules, Regulations, or Orders made under this Order unless other provision is made or the context otherwise requires.

PART II.—*Application and Effect of Order.*

5. The powers conferred by this Order shall extend to the persons and matters following in so far as by Treaty, grant, usage, sufferance, or other lawful means, Her Majesty has jurisdiction in relation to such persons and matters, that is to say: (*a*) British subjects; (*b*) foreigners; (*c*) the property and all personal or proprietary rights and liabilities in the Protectorate of British subjects and foreigners, including ships with their boats, and the persons and property on board thereof, or belonging thereto; and (*d*) natives, in the cases and according to the conditions specified in this Order, and not otherwise.

Provided that jurisdiction over any foreign ships under this Article shall not be exercised otherwise than according to the practice of the High Court in England in the exercise of jurisdiction over foreign ships.

6. All Her Majesty's jurisdiction exercisable in the Protectorate, for the hearing and determination of suits, or for the maintenance of order, or for the control or administration of persons or property, or in relation thereto, shall be exercised under and according to the provisions of this Order, so far as such jurisdiction relates to British subjects and foreigners. Jurisdiction over natives shall be exercised only in such matters and to such extent as the Court in its discretion thinks fit.

PART III.—*Application of Law of British India and of the United Kingdom.*

7.—(*a.*) Subject to the other provisions of this Order, and to any Treaties for the time being in force relating to the Protectorate, Her Majesty's criminal and civil jurisdiction in the Protectorate shall, so far as circumstances admit, be exercised on the principles of, and in conformity with, the enactments for the time being applicable as hereinafter mentioned of the Governor-General of India in Council, and of the Governor of Bombay in Council, and according to the course of procedure and practice observed by, and before, the Courts in the Presidency of Bombay beyond the limits of the ordinary original jurisdiction of the High Court of Judicature at Bombay according to their respective jurisdiction and authority, and so far as such enactments, procedure, and practice are inapplicable, shall be exercised under, and in accordance with, the Common and Statute Law of England.

(*b.*) The enactments mentioned in the Schedule to this Order are hereby made applicable to the Protectorate as from the commencement of this Order.

(*c.*) Any other existing or future enactments of the Governor-General of India in Council, or of the Governor of Bombay in Council, shall also be applicable to the Protectorate, but shall not come into operation until such times as may in the case of any of such enactments respectively be fixed by the Secretary of State.

(*d.*) Any act of the Governor-General of India in Council, or of the Governor of Bombay in Council, whether passed before or after the commencement of this Order, amending or substituted for any Act of either of those Legislatures which is by or under this Order made applicable to and brought into operation in the Protectorate, shall, subject to the provisions of this Article, also apply to the Protectorate.

(*e.*) For the purpose of facilitating the application of any such enactments as before mentioned—

(i.) The Court may construe any such enactment, with such alterations not affecting the substance, as may be necessary or proper to adapt the same to the matter before the Court;

(ii.) The Secretary of State may by order direct by what authority any jurisdiction, powers, or duties incident to the operation of any such enactment, and for the exercise or performance of which no convenient provision has been otherwise made, shall be exercised or performed;

(iii.) The Secretary of State may by order modify, for the purposes of this Order, any provision of any of the said enactments, or of any amending or substituted enactment;

(iv.) Any order of the Secretary of State made in pursuance of this Article shall be published in the Protectorate and in India, in such manner as he directs, and shall have effect as from a date to be specified in the order.

8. The enactments described in the first Schedule to "The Foreign Jurisdiction Act, 1890," shall apply to the Protectorate as if it were a British Colony or possession, but subject to the provisions of this Order and to the exceptions, adaptations, and modifications following, that is to say:—

(i.) The Consul-General is hereby substituted for the Governor of a Colony or British possession, and the Protectorate Court is hereby substituted for a Superior Court or Supreme Court and for a Magistrate or Justice of the Peace of a Colony or British possession.

(ii.) For the portions of the Merchant Shipping Acts, 1854 and 1867, referred to in the said Schedule shall be substituted Part XIII of "The Merchant Shipping Act, 1894."

(iii.) In section 51 of "The Conveyancing (Scotland) Act, 1874," and any enactment for the time being in force amending the same, the Protectorate Court is substituted for a Court of Probate in a Colony.

(iv.) With respect to "The Fugitive Offenders Act, 1881":—

(*a.*) So much of the 4th and 5th sections of the said Act as relates to sending a report of the issue of a warrant, together with the information, or a copy thereof, or to the sending of a certificate of committal and report of a case, or to the information to be given by a Magistrate to a fugitive, shall be excepted, and in lieu of such information the person acting as the Magistrate shall inform the fugitive that in the British possession or Protectorate to which he may be conveyed he has the right to apply for a writ of *habeas corpus* or other like process.

(*b.*) So much of the 6th section of the said Act as requires the expiration of fifteen days before issue of warrant shall be excepted.

(*c.*) The Consul-General shall not be bound to return a fugitive offender to a British possession unless satisfied that the proceedings to obtain his return are taken with the consent of the Governor of that possession.

(*d.*) For the purposes of Part II of the said Act, the Protectorate, Aden, Zanzibar, the East Africa and Uganda Protectorates, and British India shall be deemed to be one group of British possessions.

9. The Secretary of State may, by order published in such manner as he directs, declare that any of the Laws or Ordinances for the time being in force in any British possession, and not inconsistent with this order, shall have effect, and be administered in the Protectorate, with such modifications or adaptations as may be necessary; and thereupon such Laws or Ordinances as so modified or adapted shall have effect as if they had been applied by this Order.

PART IV.—*Criminal Matters.*

10. Subject to the other provisions of this Order, the Code of Criminal Procedure and the other enactments relating to the administration of criminal justice in India, for the time being applicable to the Protectorate, shall have effect as if the Protectorate were a Presidency of India.

For the purposes of those enactments—

(*a.*) The Consul-General shall hold and form a Court, to be called the Protectorate Court, which shall have all the powers of a Sessions Court in India; and

(*b.*) The Protectorate Court shall in relation to all Courts within the Protectorate have the same appellate jurisdiction and the same powers of revision as are possessed by a High Court in India; and

(*c.*) The powers both of the Governor-General in Council and of the Local Government under those enactments shall be exercisahle by the Secretary of State, or, with his previous or subsequent assent, by the Consul-General.

11. If any person smuggles or imports into or exports from the Protectorate any goods whereon any duty is charged or payable to the Government of the Protectorate, with intent to evade payment of the duty, he shall be punished with imprisonment for a term which may extend to two months, or with fine which may extend to 1,000 rupees, or with both.

12. Any act which if done in British India would be an offence against the law for the time being in force in British India relating to trade-marks, merchandize marks, copyright, designs, or

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inventions, shall, if done in the Protectorate, be an offence punishable with imprisonment for a term which may extend to two months, or with a fine which may extend to 1,000 rupees, or with both.

13.—(1.) In cases of murder or culpable homicide, if either the death or the criminal act which wholly or partly caused the death happened in the Protectorate, a Court acting under this Order shall have the like jurisdiction over any person charged either as a principal offender or as an abettor, as if both the criminal act and the death had happened in the Protectorate.

(2.) In the case of any offence committed on the high seas, or within the Admiralty jurisdiction, by any person who at the time of committing such offence was on board a British ship, or by any British subject on board a foreign ship to which he did not belong, a Court acting under this Order shall have jurisdiction as if the offence had been committed within the Protectorate.

(3.) In cases tried under this Article no different sentence can be passed from the sentence which could be passed in England if the offence were tried there.

14. When a sentence of death has been passed by the Protectorate Court the Consul-General shall consider whether it is or is not desirable that the sentence should be reconsidered by the Secretary of State.

If he considers that it is so desirable, he shall append to the Minutes a certificate under his hand to that effect, together with such observations as he may think fit, and shall, at the earliest opportunity, transmit the same to the Secretary of State.

If he considers that it is not so desirable, he shall, not sooner than seven days after the passing of the sentence, certify on the Minutes his confirmation of the sentence by writing under his hand.

The Secretary of State may confirm or remit or commute the sentence.

A sentence of death shall not be carried into effect until it is confirmed by the Consul-General or the Secretary of State, as provided in this Article, but upon such confirmation shall be carried into effect aceording to law.

When the Secretary of State commutes a sentence, the commuted sentence shall be carried into effect as if the Protectorate Court had passed, and had authority to pass, that sentence.

15.—(*a.*) The Consul-General may, if he thinks fit, by general order, prescribe the manner in which, and the places in the Protectorate at which, sentences of imprisonment are to be carried into execution.

(*b.*) The Consul-General may, if he thinks fit, in any case, by warrant under his hand and official seal, cause an offender convicted and sentenced to imprisonment before the Court to be sent and removed to, and imprisoned in, any place either in the Protectorate or in Aden.

16. Where an offender convicted before the Court is sentenced to imprisonment, and the Consul-General, proceeding under section 7 of "The Foreign Jurisdictiou Act, 1890," authority in that behalf being hereby given to him, considers it expedient that the sentence should be carried into effect within Her Majesty's dominions, the place shall be a place in some part of Her Majesty's dominions out of the United Kingdom, the Government whereof consents that offenders may be sent thither under this Article.

17.—(1.) Where it is shown by evidence on oath, to the satisfaction of the Consul-General, that any person subject to this Order has committed, or is about to commit, an offence against this Order, or is otherwise conducting himself so as to be dangerous to peace and good order in the Protectorate, or is endeavouring to excite enmity between the people of the Protectorate and Her Majesty, or is intriguing against Her Majesty's power and authority in the Protectorate, the Consul-General may, if he thinks fit, by order under his hand and official seal, prohibit that person from being in the Protectorate, during any time therein specified, not exceeding two years, or may order him to be deported in manner provided by this Order.

(2.) If the person named in the order of prohibition fails to obey, or acts in contravention of the order—

(i.) He shall be guilty of an offence against this Order, and, on conviction thereof, shall be liable to imprisonment for any term not exceeding two years, without prejudice to the operation of the order of prohibition.

(ii.) Whether the offender has been convicted of, or imprisoned for, that offence or not, the Consul-General may, if he thinks fit, order him to be deported.

(3.) The Consul-General, by order under his hand and official seal, may vary any order of prohibition (not extending the duration thereof), and may at any time revoke the same.

(4.) The Consul-General shall forthwith report to the Secretary of State every order made by him under this Article, and the grounds thereof, and the proceedings thereunder.

18.—(*a.*) Where a person is convicted of an offence, the Court before which he is convicted may, if it thinks fit, require him to give security to the satisfaction of the Court for his future good behaviour, and for that purpose may, if it thinks fit, cause him to come or be brought before the Court.

(*b.*) If any person required by an order under this Article, or under the law relating to criminal procedure for the time being in force, to give security for good behaviour or for keeping the peace, fails to do so, the Court may, if it thinks fit, order that he be deported from the Protectorate.

(*c.*) Any order of deportation mot made by the Consul-General must be approved by him.

19.—(*a.*) Any person ordered to be deported under this Order shall be, as soon as practicable, and in the case of a person convicted, either after execution of the sentence, or while it is in course of execution, removed in custody, under the warrant of the Consul-General, to the place named in the warrant and there discharged from custody.

(*b.*) The place shall be a place in that part (if any) of Her Majesty's dominions out of the United Kingdom to which the person belongs, or in some other part of those dominions, the Government whereof consents to the reception therein of persons deported under this order, or a place under the Protectorate of Her Majesty, or in the country out of Her Majesty's dominions to which the person belongs.

(*c.*) The Court, on making an order of deportation, may, if it thinks fit, order the person to be deported to pay all or any part of the expenses of his deportation, to be fixed by the Court in the order.

(*d.*) The Consul-General shall forthwith report to the Secretary of State every order of deportation made under this Order, and the grounds thereof, and the proceedings thereunder.

(*e.*) If a person deported under this Order returns to the Protectorate without permission in writing of the Consul-General or Secretary of State, he shall be punished with imprisonment for a term which may extend to two months, or with fine which may extend to 1,000 rupees, or with both.

(*f.*) He shall also be liable to be again deported under the original or a new order, and a fresh warrant of the Consul-General.

(*g.*) The Consul-General may at any time revoke or vary any order or warrant of deportation.

20.—(*a.*) Where, under this Order, a person is to be sent, or removed, or deported from the Protectorate, he shall, by warrant of the Consul-General under his hand and seal, be detained, if necessary, in custody, or in prison, until a fit opportunity for his removal or deportation occurs, and then, if he is to be deported beyond sea, be put on board one of Her Majesty's vessels of war, or, if none is available, then on board some other British or other fit vessel.

(*b.*) The warrant of the Consul-General shall be snfficient authority to the person to whom it is directed or delivered for execution, and to the Commander or master of the vessel, to receive and detain the person therein named, in the manner therein prescribed, and to send or remove and carry him to the place therein named, according to the warrant.

(*c.*) In case of sending or removal for any purpose other than deportation, the warrant of the Consul-General shall be issued in duplicate, and the person executing it shall, as soon as practicable after his arrival at the place therein named, deliver, according to the warrant, with one of the duplicates of the warrant, to a constable, or proper officer of police, or keeper of a prison, or other proper authority or person there, the person named in the warrant, to be produced on the order of the proper Court or authority there, or to be otherwise dealt with according to law.

21. The Consul-General, and every officer for the time being exercising the powers of a Magistrate, shall have in and for the Protectorate, province, or district, as the case may be, all the power and jurisdiction appertaining to the office of a Justice of the Peace.

22. A sentence of imprisonment under this Order, or any Regulations made under this Order, may be with or without hard labour, in the discretion of the Court, unless it is expressed to be without hard labour.

PART V.—*Civil Matters.*

23. Subject to the other provisions of this Order, the Code of Civil Procedure, "The Bombay Civil Courts Act, 1869," and the other enactments relating to the administration of civil justice for the time being applicable to the Protectorate, shall have effect as if the Protectorate were the Presidency of Bombay.

(*a.*) For the purposes of these enactments the Protectorate Court shall be deemed to be the High Court, and the Court authorized to hear appeals from and to revise the decisions of District Courts;

(*b.*) District Courts shall be established under the provisions of "The Bombay Civil Courts Act, 1869," as applied by this Order; and

(*c.*) The powers both of the Governor-General in Council and the Local Government under those enactments shall be exercisable by the Secretary of State, or, with his previous or subsequent assent, by the Consul-General.

24. The following enactments of "The Colonial Courts of Admiralty Act, 1890," that is to say, section 2, sub-sections (2) to (4), sections 5 and 6, section 16, sub-section (3), shall apply to

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the Protectorate Court as if in the said sections the said Court were mentioned in lieu of a Colonial Court of Admiralty, and the Protectorate were referred to in lieu of a British possession.

25.—(*a.*) Every District Court shall endeavour to obtain, as early as may be, notice of the death of every British subject or foreigner dying in the Protectorate leaving property to be administered, and all such information as may serve to guide the Court with respect to the securing and administration of his property.

(*b.*) On receiving notice of the death of such a person, the Court shall put up a Notice thereof at the Court-house, and shall keep the same there until probate or administration is granted, or, where it appears to the Court that probate or administration will not be applied for, or cannot be granted, for such time as it thinks fit.

(*c.*) The Court shall, where the circumstances of the case appear so to require, as soon as may be, take possession of the property in the Protectorate of the deceased, or put it under its seal (in either case, if the nature of the property or other circumstances so require, making an inventory), and so keep it until it can be dealt with according to law.

(*d.*) All expenses incurred by the Court in so doing shall be the first charge on the property of the deceased, and the Court shall, by sale of the property, or part thereof, or otherwise provide for the discharge of these expenses.

26. Where a British subject or foreigner dies in the Protectorate intestate, his property shall, until administration is granted, vest in the Consul-General.

27. If a person named executor in a will, to the establishment of whose title, as such, it is necessary to obtain probate of that will, takes possession of, and administers or otherwise deals with, any part of the property of the deceased, and does not obtain probate within one month after the death, or after the termination of any proceeding respecting probate or administration, he shall be liable to be punished with fine, which may extend to 1,000 rupees.

28. If any person other than the person named executor, or the administrator, or a person entitled to represent the deceased, without obtaining probate or letters of administration, or an officer of the Court, takes possession of and administers, or otherwise deals with, any part of the property of the deceased, he shall, as soon as practicable, notify the fact and the circumstances to the District Court, aod shall furnish to that Court all such information as the Court requires, and shall conform to any directions of the Court in relation to the custody, disposal, or transmission of the property, or the proceeds thereof, and, in case of any contravention of this Article, he shall be liable to be punished with fine, which may extend to 1,000 rupees.

29.—(1.) When the peculiar circumstances of the case appear so to require, for reasons recorded in its proceedings, the District Court may, if it thinks fit, of its own motion or otherwise, grant letters of administration to an officer or practitioner of the Court.

(2.) The person so appointed shall act under the direction of the Court, and shall be indemnified thereby; and, if he is a practitioner, he shall not act otherwise than as administrator in relation to the estate.

(3.) He shall publish such notices, if any, as the Court thinks fit in the Protectorate, Aden, the United Kingdom, and elsewhere.

(4.) The Court shall require and compel him to file, in the proper office of the Court, his accounts of his administration at intervals not exceeding three months.

(5.) The accounts shall be audited under the direction of the Court.

(6.) All expenses incurred in behalf of the Court in execution of this Article shall be the first charge on the estate of the deceased in the Protectorate; and the Court shall, by the sale of the estate or otherwise, provide for the discharge of those expenses.

30.—(*a.*) Every agreement for reference to arbitration to which a person subject to this Order is a party may, on the application of any party, be filed for execution in the proper office of the District Court.

(*b.*) The Court shall thereupon have authority to enforce the agreement, and the award made thereunder, and to control and regulate the proceedings before and after the award, in such manner and on such terms as the Court may think fit.

PART VI.—*Miscellaneous.*

31. Subject to the approval of the Secretary of State, the Protectorate Court may frame Rules of Procedure and other Rules, consistent with this Order, for the better execution of the provisions herein contained in respect of civil or criminal proceedings, and for regulating the conditions on which persons other than parties may be permitted to practice as advocates or solicitors in any Court, and for suspending or excluding (subject to a right of appeal) such persons from practice in case of misconduct: provided that any scales of remuneration fixed by such Rules shall have been sanctioned by the Treasury.

32. The Consul-General may make Regulations (to be called Queen's Regulations) for the following purposes, consistent with the provisions of this Order, that is to say:—

(i.) For the regulation of all matters relating to customs, inland revenue, post-office, land, highways, railways, money, agriculture, trade, and health.

(ii.) For the establishment of a constabulary or other force to be employed in the maintenance of order or (either with or without the limits of this Order) in defence of the Protectorate.

(iii.) For securing the observance of any Treaty for the time being in force relating to the Protectorate, or of any native or local law or custom; and

(iv.) For the registration of documents purporting or operating to create, declare, assign, limit, or extinguish any right, title, or interest in or over any immovable property situate in the Protectorate.

(v.) Generally for the peace, order, and good government of the Protectorate.

Any Regulations under this Article may provide for forfeiture of any goods, receptacles, or things in relation to which, or to the contents of which, any breach is committed of such Regulations, or of any Treaty, or any native or local law or custom, the observance of which is provided for by the Regulations.

Any Regulations under this Article with respect to the registration of documents may prescribe the period within which any documents are to be registered, and such penalties for non-registration, whether by stamp duties or otherwise, and whether, in lieu of, or in addition to, the other penalties provided by this Article; but nothing in any such Regulations shall make any instrument inadmissible in evidence in any criminal proceeding.

Any Regulations under this Article shall, when allowed by the Secretary of State, and published by the Consul-General, have effect as if contained in this Order: Provided that in case of urgency declared by any such Regulations, the same shall take effect before such allowance, and shall continue to have effect unless and until they are disallowed by the Secretary of State, and until notification of such disallowance is received and published by the Consul-General; and such disallowance shall be without prejudice to anything done or suffered under such Regulations in the meantime.

The Consul-General may fix such penalties for the breach of any Regulations as may seem proper, and, where no penalty is so fixed, any person guilty of such breach shall, on conviction, be liable to a fine which may extend to 1,000 rupees, or to imprisonment which may extend to two months, or both, in addition to any forfeiture as aforesaid.

33. The Consul-General may also make Queen's Regulations for the governance, visitation, care, and superintendence of prisons in the Protectorate, and for the infliction of corporal or other punishment on prisoners committing offences against the Prisons Regulations.

Any Regulations under this Article shall, when allowed by the Secretary of State, have effect, as if contained in this Order, and copies thereof shall be exhibited in every prison to which they apply in such manner as the Consul-General may direct.

Any breach of Regulations under this Article, committed by any officer of a prison, or by any other person (not being a prisoner), shall be punishable in like manner as a breach of Queen's Regulations under the last preceding Article.

34.—(*a.*) The Consul-General may, with the approval of the Secretary of State and concurrence of the Treasury, make rules imposing fees leviable in respect of any proceedings in, or processes issued out of, any Court established under this Order, and in respect of the registration of any instrument under this Order.

(*b.*) But the Court may in any case, if it thinks fit, on account of the poverty of a party, or for any other reason, dispense in whole or in part with the payment of any fee chargeable in respect of such matter.

(*c.*) Nothing in this Order shall affect any Order in Council prescribing a table of fees to be taken by Consular officers; and, where a fee is taken under that Order, no fee shall be taken in respect of the same matter under this Order.

35.—(*a.*) All fees, charges, expenses, costs, fines, damages, and other money payable under this Order, or under any law made applicable by this Order, may be enforced under order of the Court by attachment and sale of goods, and in case of deficiency by imprisonment (without hard labour), which may extend to one month.

(*b.*) Any bill of sale or mortgage, or transfer of property, made with the view of avoiding such attachment or sale, shall not be effectual to defeat the provisions of this Order.

(*c.*) All fees, penalties, fines, and forfeitures levied under this Order shall be paid to the public account, and shall be applied in such manner as the Secretary of State, with the consent of the Treasury, may direct.

36. Subject to the other provisions of this Order, all expenses of removal of prisoners and others, and the expenses of deportation and of the sending of any person to any part of Her Majesty's dominions or Protectorates, including expenses of maintenance, shall be defrayed in such manner as the Secretary of State, with the concurrence of the Treasury, directs.

37.—(*a.*) If an officer of any Court employed to execute an order loses, by neglect or omission, the opportunity of executing it, then, on complaint of the person aggrieved and proof of the fact alleged, the Court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof.

(*b.*) The order may be enforced as an order directing payment of money.

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38.—(*a.*) If a clerk or officer of the Court, acting under pretence of the process or authority of the Court, is charged with extortion, or with not paying over money duly levied, or with other misconduct, the Court may, if it thinks fit, inquire into the charge in a summary way, and may for that purpose summon and enforce the attendance of all necessary persons as in an action, and may make such order for the repayment of any money extorted, or for the payment over of any money levied, and for the payment of such damages and costs as the Court thinks fit.

(*b.*) The Court may also, if it thinks fit, on the same inquiry, impose on the clerk or officer a fine not exceeding 50 rupees for each offence.

(*c.*) A clerk or officer punished under this Article shall not, without the leave of the Protectorate Court, be liable to an action in respect of the same matter; and any such action, if already or afterwards begun, may be stayed by the Court in such manner and on such terms as the Court thinks fit.

(*d.*) Nothing in this Article shall be deemed to prevent any person from being prosecuted under any other law for any act or omission punishable under this Article, or for being liable under that other law to any higher punishment or penalty than that provided by this Article: Provided that no person shall be punished twice for the same offence.

39. The Consul-General, or any officer of the Protectorate Government appointed by him in that behalf, may exercise any power conferred on any Justices of the Peace within Her Majesty's dominions by any Act of Parliament, for the time being in force, regulating merchant seamen or the mercantile marine.

40. If a question arises whether any place is or is not within the Protectorate for the purposes of this Order, it shall be referred to and determined by the Consul-General, and a certificate under his hand and seal shall be conclusive on the question, and judicial notice thereof shall be taken by every Court constituted by or under this Order.

41. Not later than the 31st March in each year the Consul-General shall send to the Secretary of State a Report on the operation of this Order, up to the 31st December in the previous year, showing for the then last twelve months the number and nature of the proceedings, criminal and civil, taken under this Order, and the result thereof, and the number and amount of fees received, and containing such other information, and being in such form as the Secretary of State from time to time directs.

42. This Order shall commence and have effect as follows:—

(1.) As to the making of any warrant or appointment under this Order, immediately from and after the date of this Order.

(2.) As to the framing of Rules of Procedure or Regulations, and the approval thereof by the Secretary of State, immediately from and after the date of this Order.

(3.) As to all other matters and provisions comprised and contained in this Order, immediately from and after the expiration of one month after this Order is first exhibited in the public office of the Protectorate at Berbera; for which purpose the Consul-General is hereby required forthwith, on receipt by him of a copy of this Order, to affix and exhibit the same conspicuously in his public office, and he is also hereby required to keep the same so affixed and exhibited during one month from the first exhibition thereof; and notice of the time of such first exhibition shall, as soon thereafter as practicable, be published in such manner as the Consul-General directs; and, notwithstanding anything in this Order, the time of the expiration of the said month shall be deemed to be the time of the commencement of this Order.

(4.) Proof shall not in any proceeding or matter be required that the provisions of this Article have been complied with, nor shall any act or proceeding be invalidated by any failure to comply with any of such provisions.

43. A copy of this Order shall be kept exhibited conspicuously in the principal office of the Protectorate at Berbera.

Printed copies shall be provided and sold at such reasonable price as the Consul-General directs.

And the Most Honourable the Marquess of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein.

R. E. W
R. B. F

SCHEDULE.

Indian Acts applied.

Acts XXXV and XXXVI of 1858 relating respectively to Lunatics and Lunatic Asylums.
The Indian Penal Code (Act XLV of 1860).
"The Whipping Act, 1864" (Act VI of 1864).
The Indian Succession Act (Act X of 1865).

So much of "The Indian Post Office Act, 1866" (Act XIV of 1866) as relates to offences against the Post Office.
The Indian Divorce Act (Act IV of 1869), except so much as relates to divorce and nullity of marriage.
"The Bombay Civil Courts Act, 1869" (Act XIV of 1869), except sections 6, 15, 23, 31, 33, 34, 38 to 43 (both inclusive), the last clause of section 19, and the last two clauses of section 22.
"The Indian Evidence Act, 1872" (Act I of 1872).
"The Indian Contract Act, 1872" (Act IX of 1872).
"The Indian Oaths Act, 1873" (Act X of 1873).
The Indian Majority Act (Act IX of 1875).
"The Indian Limitation Act, 1877" (Act XV of 1877).
"The Transfer of Property Act, 1882" (Act IV of 1882).
The Code of Civil Procedure (Act XIV of 1882).
"The Provincial Small Cause Courts Act, 1887" (Act IX of 1887).
"The Indian Railways Act, 1890" (Act IX of 1890).
"The Prevention of Cruelty to Animals Act, 1890" (Act XI of 1890).
"The Land Acquisition Act, 1894" (Act I of 1894).
The Code of Criminal Procedure (Act V of 1898), except chapter 33.

FRANCE.

No. 24.

[March 3, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 20, 1899.

Claim of Harrison Smith and Co. against France on account of their Mining Concessions in Madagascar.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the papers noted in the accompanying list with reference to a claim by Messrs. Harrison Smith and Co. against the French Government on account of certain Mining Concessions owned by them in Madagascar.

These Mining Concessions, dating from the year 1893, were originally obtained and held by Messrs. Harrison Smith and Co. under contract with the Queen of the Hovas. (Papers A and C.)

Work had to be suspended on account of the French war with the Hovas, but on order being restored it was resumed on portions of the property.

In July 1896 a new Mining Law (Paper E) was promulgated by the French, who had taken possession of the island, and Messrs. Harrison Smith and Co. were in August of that year (Paper A) informed by the Resident-General that by that Law the working and sale of minerals without regular authorization was forbidden. The Resident-General invited the firm to "regularize" their position, and added that although the French Government attached no value to the ancient contracts, they had decided to recognize, as far as was permitted by the new Law, the rights of priority acquired by persons already established.

The firm accordingly send in their deed for legalization, and also supplied maps showing the limits of their Concessions, and they were shortly afterwards informed that a "Projet de Transaction" was about to be forwarded for the approval of the Minister of the Colonies.

Negotiations with regard to the legalization of the Concessions were continued in Paris, and in June 1897 Mr. Harrison Smith had an interview (Paper D 1) with Colonel Binger and M. Petit, representing the French Colonial Office, at which an arrangement was arrived at, and the French Representatives undertook that the Governor-General in Madagascar should be instructed to draw up the new Concessions in accordance with the terms then agreed upon.

The terms, as reported by Mr. Harrison Smith, were embodied in a note (Paper D 2) from Her Majesty's Embassy to the French Government and were subsequently (in December 1897) privately submitted by Sir M. Gosselin (Paper D 4) to Colonel Binger, who acknowledged that they were substantially correct.

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The French Government have, however, in their official correspondence, never recognized the arrangement, nor has it been so recognized by the Governor-General, whose offers for a settlement, made to the agent of the firm in Madagascar or tendered through the French Government, would virtually entail an expropriation of the larger and richer part of the firm's property.

Private and official representations by Her Majesty's Embassy at Paris have not resulted in any satisfactory settlement, and in May 1898, the French Government formally repudiated the arrangement made by Colonel Binger (Paper D 13); and in July (Paper D 17) renewed an offer previously made, and accompanied it with an intimation that, unless the offers of the colonial authorities were accepted, the Governor-General could no longer reserve the districts claimed by the firm.

Fresh representations were made by Her Majesty's Embassy at Paris, and further negotiations between Mr. Harrison Smith and the French Colonial Office took place, the eventual result being an offer from the French Government in October 1898 (Paper D 24) to submit the case to arbitration on the basis of the Mining Law of 1896.

This offer was refused by the firm. At their request (Paper D 26) a suggestion was submitted to the French Government that they should purchase, or give a guarantee to enable French capitalists to purchase, the claims of the firm, but this proposal has not been entertained in a manner which promises to be satisfactory.

Messrs. Harrison Smith and Co. now represent that they must maintain their demand that the arrangement made with them in June 1897 (Paper D 28) shall be carried into effect, and have asked that the correspondence may be published.

In the two years during which the negotiations have lasted the Mining Office in Madagascar have, according to the statements made by the firm, first registered claims of other persons to lands in districts covered by their Concessions, and have later made over to a French Syndicate the most valuable part of their property. The firm stated some months ago that they must close their workings and dismiss their agents, and more recently that their funds were exhausted, and that they must withdraw.

They appear to have met with great injustice, and Lord Salisbury is disposed to think that a formal protest should be made to the French Government against the application of the Mining Law of 1896 to destroy rights and privileges regularly granted to British subjects by the proper authority, previous to the annexation of Madagascar by the French.

L.O.R. 1896 (Conf. 6918), p. 49.

You are aware of the circumstances under which the annexation took place, and have already in your Report (Paper G) of the 23rd June, 1896, dealt with the question of the extent and nature of the liability of France with regard to the pre-existing Treaty rights of Great Britain in Madagascar.

Protests have from time to time (Paper F) been addressed to the French Government with regard to measures which Her Majesty's Government have held to constitute infringements of those rights, and these protests have throughout been founded on the assumption that the French annexation could have no effect upon the rights created first, by the covenant in 1890 that the then existing Treaties should be respected under a Protectorate; and, secondly, by the assurance given at the time of the war which preceded the annexation that the Protectorate was not to be disturbed.

It might, perhaps, be considered that the effect of any protest against the application of the Mining Law of 1896 to Messrs. Harrison Smith and Co.'s Concessions has been weakened to some extent by the fact that the representations hitherto made in this particular case has been directed to the method of applying the Law rather than against the right to apply it. The question, however, is essentially one of equitable application in respect of rights previously existing.

I am to call your attention to a correspondence (Paper H) between the United States' and French Governments, which has recently been published, with reference to a Notice issued by the latter Government with regard to Concessions. The representations made by the United States' Government drew from that of France an assurance that the requirements of the Notice in question had no other object than to establish the validity of the Concessions granted by the Hova Government, and would not affect property acquired in a regular manner; and the United States' Government, in their reply, emphasized the fact that they could not admit the right of the French Government, in the event of the non-compliance of an American citizen with the order, to treat his Concession as forfeited.

Her Majesty's Government may, in Lord Salisbury's opinion, equally claim that Concessions granted to British subjects shall be treated on this footing.

I am, accordingly, to request that you will take the inclosed papers into your consideration, and favour Lord Salisbury with your opinion as to whether a formal protest can properly be addressed to the French Government against the application of the Mining Law of the 17th July, 1896, to the Concessions owned by Messrs. Harrison Smith and Co. at the time of the annexation, except upon equitable conditions to be arranged between the two Governments; and, if so, that you will indicate the arguments by which you consider that such a protest can most advantageously be supported.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Messrs. Harrison Smith and Co.		October	3, 1896.
(B.)	Ditto	(Received)	October	14, ,,
(C.)	Ditto (Incloses copies of Concessions.)		December	11, ,,
(D.)	Memorandum of January 23, 1899 (giving résumé of correspondence from June 2, 1897). Correspondence in question:—			
(D 1.)	Messrs. Harrison Smith and Co.		June	9, 1897.
(D 2.)	Mr. Gosselin	(No. 189. Africa)	..	,,
(D 3.)	Messrs. Harrison Smith and Co.		October	23, ,,
(D 4.)	Mr. Gosselin	(No. 461. Africa)	..	,,
(D 5.)	Messrs. Harrison Smith and Co.		January	12, 1898.
(D 6.)	Sir E. Monson	(No. 44)	..	,,
(D 7.)	Messrs. Harrison Smith and Co.		February	10, ,,
(D 8.)	Sir E. Monson	(No. 133)	..	,,
(D 9.)	Messrs. Harrison Smith and Co.		March	15, ,,
(D 10.)	Ditto		April	27, ,,
(D 11.)	Ditto		April	28, ,,
(D 12.)	Sir E. Monson	(No. 222)	May	7, ,,
(D 12 A.)	Ditto	(No. 270)	June	2, ,,
(D 13.)	Ditto	(No. 271)	..	,,
(D 14.)	To Mr. Gosselin	(Private)	June	7, ,,
(D 15.)	Mr. Gosselin	(Private)	June	12, ,,
(D 16.)	Messrs. Harrison Smith and Co.		June	30, ,,
(D 17.)	Sir B. Boothby	(No. 351)	..	,,
(D 18.)	Ditto	(No. 352)	..	,,
(D 19.)	Sir E. Monson	(No. 117. Telegraphic)	..	,,
(D 20.)	Ditto	(No. 388)	..	,,
(D 21.)	Messrs. Harrison Smith and Co.		July	29, ,,
(D 22.)	Sir E. Monson	(No. 361)	July	19, ,,
(D 23.)	Messrs. Harrison Smith and Co.		August	30, ,,
(D 24.)	Sir E. Monson	(No. 528)	..	,,
(D 25.)	To Messrs. Harrison Smith and Co.		December	10, ,,
(D 26.)	Messrs. Harrison Smith and Co.		December	2, ,,
(D 27.)	Ditto		December	15, ,,
(D 28.)	To Sir E. Monson	(No. 464)	..	,,
(D 29.)	Messrs. Harrison Smith and Co.		January	20, 1899.

(E.) Mining Law of July 17, 1896.
(F.) Protests addressed to French Government with regard to Madagascar.
(G.) Law Officers' Report of June 23, 1896 (Confidential 6918, p. 49).
(H.) United States' Foreign Relations. Correspondence for 1897.

Report.

In our opinion, a formal protest may properly be addressed to the French Government against the manner in which they have dealt with the Concessions owned by Messrs. Harrison Smith and Co.

These Concessions were private property, and there is no pretence for saying that they can be forfeited on the conquest of the island by the French.

Messrs. Harrison Smith and Co. might have been properly required to register these Concessions, but this they were willing to do. The French Government, pending negotiations as to the recognition of these Concessions, have allotted to others the ground covered by them. We are unable to see on what ground of international law, or of ordinary justice, the course pursued by the French Government in this matter can be defended.

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We think that Her Majesty's Government may properly insist that equitable terms to be arranged between the two Governments should be conceded to Messrs. Harrison Smith and Co.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 3, 1899.

No. 25.

[March 20, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 8, 1899.

Gentlemen,

Claims against France arising out of events in West Africa.

I HAVE the honour, by direction of the Marquess of Salisbury, to submit to you, for your opinion and report, the following cases arising out of recent events in West Africa, which, it has been suggested, should be made the subject of formal representation by Her Majesty's Government to that of France.

These cases are as follows:—

(1.) *Asikasso.*

In May 1897 the duties of Resident at Kumasi were being performed by an officer who had not long arrived in the country. He was applied to for a warrant to arrest two British subjects who were stated to be resident at Sikasso. This place is in British territory. The warrant was given, but it turned out that the place meant was Asikasso, which is situated some three hours over the frontier and in French territory.

The warrant was intrusted for execution to a corporal and two privates of the Haussas. These men crossed the frontier by the usual, though not the shortest, route (for route, see annexed map), and were accompanied by five native rubber-traders as far as Akaso.

At Asikasso they were joined by about forty native traders, resident in French territory.

The Haussas were the only armed persons.

The two British subjects were arrested and were being removed in custody when the party was overtaken at Sumejesso by a party of French soldiers under a white officer, who, without further notice, opened fire, killing the Haussa corporal.

The body was beheaded, and the head given to Ashmore, one of the arrested British subjects.

One of the privates was captured, being wounded, and taken to Yanta before a French officer. The latter examined the warrant of arrest given by the British officer, and then gave orders for the Haussa to be shot. This was done, and the body was afterwards mutilated.

The third Haussa had been left at Asikasso in charge of one of the prisoners, Munday. On the French soldiers arriving there he was sitting in the street outside the lock-up. The French opened fire, which he returned; he was then shot. His body was beheaded, his neck partially flayed, and the skin taken off it preserved.

The case has been most carefully investigated by Captain Cramer of the Gold Coast Constabulary, and his Report, with copies of the evidence, is annexed hereto.

Her Majesty's Government hold that there was nothing in the proceedings of the Haussas, although admittedly they had no *locus standi* in French territory, to justify their being shot down in cold blood, and they claim the sum of 1,500*l.* as compensation.

(2.) *Ncompah.*

Subsequent to the general Agreement of 1891 between Great Britain and France as to the western boundary of Sierra Leone, but before that boundary had been absolutely laid down by Commissioners, a party of natives living in the British sphere were engaged, under the superintendence of four men of the British Frontier Police, in making roads to Ncompah, which was believed by them to be in the British sphere. It was reported to Government that they had been fired upon by a party of French soldiers near Ncompah, and five killed and one wounded.

Captain Campbell, the Acting Inspector-General of Police, Sierra Leone, was sent to make inquiries.

It appears from the evidence taken by him that a lance-corporal with three privates, and a good number of people, were engaged on the 31st January and the 1st February in clearing the road. On the 1st the police were in the rear of the workmen, when they heard a volley fired, and then independent shots.

The working party were unarmed, the police had their rifles. It is stated that no notice was given or remonstrance made, but the French soldiers opened fire, with the results above stated. The investigation proved that Ncompah was on the French side of the boundary.

(3.) *Claim of Royal Niger Company.*

The grounds upon which this claim was advanced by the Company are set out in their letter to the Earl of Rosebery of the 25th May, 1893.

The general history of the case is given in the accompanying extract from a Memorandum, dated the 6th May, 1895.

Briefly it is as follows:

Lieutenant Mizon, an officer in the French service, conducted two expeditions into the River Niger. The first took place in October 1890, and was described to Lord Salisbury by M. Waddington as having been sent out by a Commercial Syndicate in France to explore the territory beyond Yola on the Benué. It got into difficulties with the natives through entering the Niger by a disused branch, and though aided by the Company, and able subsequently to proceed, it failed in its object, and its failure was attributed by its leader and the French press to the action of the Niger Company.

The second expedition was in 1892. The Niger Company were alarmed at the preparations of a military nature being made in France on account of the expedition, and, in consequence, Lord Salisbury called the attention of the French Government to the expedition, and asked for explanations of its character and intentions.

M. Waddington replied that the expedition was one for essentially commercial and scientific exploration, which had been organized by certain French merchants, and was intended to reach Adamawa "en passant par Yola," which lies within the Company's territory.

Further, that it had strict injunctions from the French Government to observe all the requirements of the Brussels Act as to arms, &c.

With much misgiving, Lord Rosebery, who, by that time, was at the Foreign Office, consented to allow the expedition to proceed; but it soon displayed its real character by selling arms, by landing and assisting the natives of British territory in their slave raids on one another, by settling at Yolo, and by a complete disregard of the Niger Company's authority and Regulations. Lieutenant Mizon was eventually recalled by the French Government to explain his conduct; his ship, the "Sergent Malamine," was seized, as shown elsewhere, and condemned by the Company's tribunals, and the Company sent in a claim for 100,000*l.* damages on account of injury to its interests as a Government.

This claim was one of others which we were at one time ready to wipe out in a general agreement, but that agreement not having been come to, we hold that it is open to us to advance it, and to urge its settlement.

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(4.) *The case of the "Sergent Malamine."*

A statement of the facts relating to this case is contained in the Judgment of the Supreme Court of the Niger Territories, dated the 5th October, 1893.

The French Government have never allowed that the confiscation was justified, and claim compensation for the owners of the vessel and the merchandize.

It is, therefore, a counter-claim by France on Great Britain. The question is whether Her Majesty's Government are justified on legal or other grounds in resisting the claim, which, for the reasons set forth in the draft to the Treasury of the 20th March, 1897, has been the subject of diplomatic negotiations between the two Governments.

(5.) *Murder of King of Samoir.*

The King of Samoir is a native of territory under British protection. His town of Bolugu was held by a British post when in March last a party of French soldiers visited it, killed three of the inhabitants, and threatened to kill the men forming the British post and take away the flag.

This action formed the subject of a protest by the British Commandant.

The claim of the King to British protection was thus well known to the local French officers.

Notwithstanding this, on the 15th April Lieutenant Mercier arrested the King in the town of Wa, also under British protection.

The King had on that day been to Major Walker, Commanding the British forces at Wa, who directed him to keep quiet till communications had been exchanged with the French Officer Commanding at Leo as to his return to Samoir.

Immediately on hearing of his arrest Major Walker wrote to Lieutenant Mercier, but hearing that the latter with an escort of ten men was taking the King out of Wa he sent Captain Haslewood with an orderly to convey the letter and protest verbally.

Captain Haslewood overtook the party, rode up to Lieutenant Mercier and protested against the arrest, at the same time producing Major Walker's letter.

Without reading the letter Lieutenant Mercier gave a hurried order to his men, and the King was at once shot dead.

Captain Haslewood galloped back to report, and Major Walker immediately dispatched Assistant Colonel-Surgeon Storrs with a party to render what assistance he could, or bury the King if dead. On arrival at the spot it was found that the body had been mutilated by the head being cut off.

The disparity in the numbers of the British and French parties—two of the former and eleven of the latter—preclude the possibility of the acceptance of Lieutenant Mercier's plea that he thought a rescue was intended. For this gross outrage Her Majesty's Government demand an indemnity of 10,000*l*.

(6.) *Violation of Territory and Damages to Villages in Lagos Territory south of the 9th Parallel.*

At the end of June 1897, a French force of 100 armed men with three European officers passed through Meko on their way to Bariba viâ Igagun; it was followed by a French officer going to Kishi, a town claimed by Great Britain as south, and by France as north, of the 9th parallel.

On the 27th August, 1897, M. Berand, accompanied by an escort, arrived at Meko from Kishi by way of Igagun and Saki; this route, through what was admittedly British territory, was used by the French in order the more quickly to effect the occupation of Kishi, which they knew was claimed by Great Britain.

On the 1st September, 1897, Lieutenant Brot, a French officer, arrived at Igagun from Porto Novo with sixty-two native soldiers and thirty-eight carriers. He met the British District Officer, but refused to halt or return, and, impressing carriers by force, proceeded on his way.

This force engaged in hostilities with the natives in the neighbourhood of Saki, and attacked Ilesha, where several natives of British territory lost their lives.

The occupation of Kishi by French forces was attended by such circumstances of oppression to the natives that the latter finally turned and expelled the French post.

The following Table shows the extent of the damages at the various villages south of the 9th parallel, for which compensation is claimed :—

	£
Saki	
Five horses	100
100 loads yams	5
160 impressed carriers (two days)	20
Compensation for illegal entry and disturbance	500
Ilesha	
Five men killed	500
Three men wounded	150
Five sheep killed	2
Compensation for illegal attack	1,000
Aha.	
200 impressed carriers	15
Sheep, goats, and fowls taken without payment	20
Compensation for illegal entry and disturbance	500
Sape-Pere.	
220 impressed carriers	20
Sheep, goats, and fowls taken without payment	20
Compensation for illegal entry and disturbance	500
Igboho.	
200 impressed carriers	15
Sheep, cattle, goats, fowls, &c., taken without payment	25
Compensation for illegal entry and disturbance	500

(7.) *Kishi.*

The sufferings entailed upon the natives of Kishi by the French occupation have been very great: the town was treated as a conquered place, the men lived on the inhabitants, helping themselves to what they wanted, and paying for nothing.

Eight cases have been proved in which women were forcibly abducted and carried away. The French Government will admit that the sum of 2,000*l*., which is asked in compensation for these injuries, is only moderate.

The evidence in regard to the Kishi claims is contained in the Colonial Office letter of the 26th July, which is annexed hereto.

(8.) *Waima.*

The incident dealt with in this case occurred on the 27th December, 1893.

At that time the boundary between the British and French spheres in the Hinterland of Sierra Leone had been fixed by Agreements of 1889 and 1891, but the portion near which the incident took place had not been laid down on the spot. A predatory tribe known as the Sofas were out near the frontier, and a British force, under the command of Colonel Ellis, 1st West India Regiment, was sent in pursuit. The force had encamped at Waima on the 22nd December, and before daylight next

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morning was attacked by a French force under Lieutenant Maritz. Before the mistake was discovered, the British had lost Captain Lendy, D.S.O., Lieutenant Liston, 2nd Lieutenant Wroughton, one sergeant-major, and six privates killed, and seventeen wounded.

The French loss is not exactly known, but Lieutenant Maritz and ten French soldiers were amongst the killed, and a large number of natives.

Lieutenant Maritz was not the Commandant of any French post, but was moving about with an armed party.

At the time of the conflict the British had no doubt that Waima was in British territory; the fact was contested by the French, but has since been established by observations taken on the spot by officers of the Royal Engineers, who have fixed it as 12 miles on the British side of the boundary.

Her Majesty's Government do not assert that Lieutenant Maritz made an attack on a British post knowing it to be such, but they contend that there was culpable neglect on his part to ascertain where he was, which justifies them in making a claim for reparation from the French Government, and for compensation amounting to 8,000*l.* for the families of the European officers killed,* and 1,000*l.* for those of the native non-commissioned officers and men.

(9.) *Violations of Territory in Ivory–Gold Coast Hinterland, and illegal acts against British subjects.*

[Extract from letter dated the 29th October, 1898, from Governor of the Gold Coast to Governor of the Ivory Coast.

"3. *Violations of territory.*—

(*a.*) On or about the 10th August, the principal Mahommedan Chief of Bontuku, named Edumaim, proceeded across the frontier with armed natives to Pamu, the residence of the King of Wam, and thence through the British town of Pulliano to Bontuku.

"(*b.*) On or about the 11th August, a French white officer in command of a detachment of about twenty soldiers crossed the frontier to Pamu, where he interviewed the King. He, too, went on to the British town of Pulliano, and thence to Bontuku, sleeping in the district of Wam, at a village called Kwoku Daikrum. Your officers, I am aware, have excellent maps of the country (Cartes Binger), and there seems to me, under the circumstances, no reasonable explanation of this act. I must ask you to issue stringent orders against the entry of armed parties into British territory, and against similar violations of the frontier in future.

"4. *Acts against individuals.*—

"(*a.*) The execution on or about the 30th August of Chief Pappae, of British Gaman, at Bontuku, by order of the officer in charge of that post: Chief Pappae was, I am advised, shot on the representation of a native interpreter named Tano Kwassie, and met his death with two other Gaman Chiefs (French) named Bassa Kow and Kwami Framee. With regard to this matter, I beg to be informed upon what charge Pappae was shot, whether the sentence was one passed upon him by a Court of Justice, and whether he was afforded any opportunity of showing that he was a British subject. The matter was, I learn from Captain Armitage, mentioned by him to Captain Deane, who stated that the Chief was shot without any order on his part.

"(*b.*) The summoning of Edu Yow, Chief of a village of that name in British territory, to Asikasso by, it would seem, the order of Kobina Appia, on pain of being shot if he did not come. His case was represented by Captain Armitage to Captain Deane in a letter dated the 25th September, and the Chief's immediate release and return to his village was requested. I shall be glad to learn from you that this has been accomplished, and that no fine was levied upon him or other punishment inflicted. If there is any complaint against this Chief, I will, upon receiving full particulars of it, cause it to be investigated.

"(*c.*) The seizure by M. Le Filliatre of the wife of a Gold Coast native because his own 'small boy' or servant had been lost: This was another matter brought to the notice of Captain Deane, by whom an informal inquiry was held. At this inquiry the interpreter of M. Le Filliatre admitted the act, and Captain Deane promised to

restore the woman to her husband. I have the honour to inquire whether this act of restitution has been effected.

"(*d.*) The shooting, early in July, of a Mahommedan named Serike, at Asikasso, who had been arrested with a Gold Coast native named Kwasi Dansu: Kwasi Dansu, it appears, managed to escape, after having been severely flogged, and then thrown into prison. He arrived at Debisu on the 16th August in a very pitiable condition, his back covered with partially-healed wounds, and with his hands almost useless, the skin on the backs and palms being dead and peeling off owing to the tightness of the cords which had bound him. This man was personally seen and examined by Captain Armitage, so that I am in a position to vouch for the accuracy of this statement as to his condition, and I beg to be informed whether his case was dealt with in a Court of Justice, and, if so, whether the sentence was carried out in accordance with law. The shooting of Serike was, I am advised, in accordance with an order given by Captain Deane, who informed Captain Armitage that he had been brought to him by a party of Gamans, who asserted that he had taken part in the disturbances around Asikasso. Serike appears to have been shot by order, without any investigation as to his guilt.

"5. There are other cases the details of which I could mention, but I have, I think, brought forward sufficient evidence to warrant the appeal made to you in my telegram of the 27th August, and in my paragraph 3 of my despatch of the same date. namely, that you would exercise your good offices in seeing that British subjects arrested within French territory on suspicion of implication in the attack on Asikasso, or on other grounds, receive a fair trial, and are dealt with in accordance with French law.

"I will now give a few instances of the acts of Ashmore and the French Chiefs Krappa and Kobina Appia:—

"*Ashmore.*—(*a.*) In the month of December 1896 Ashmore crossed the frontier and appeared at Debisu, where he extorted the sum of 10*l.* from a native, an English subject named Tchrei; and

"(*b.*) On the same occasion extorted the sum of 14*l.* from one Ottiri The Chief of Debisu, Kofi Tah, and a man named Yow Khan, are in a position to bear evidence of these acts of extortion.

"*Krappa.*—(*a.*) This Gaman Chief has either led in person or has sent armed bands of Gamans into Wam to arrest and confiscate the property of the English rubber traders resident in that country. In October 1897, Krappa and Kobina Appia entered Wam with 150 armed Gamans.

"(*b.*) In December 1897 Krappa entered the village of Krasu (Wam), and came on to Pamu with his followers, on the pretext of meeting the English rubber brokers in conference. On this occasion he arrested a rubber broker, an English subject named Kwamin Ahini, at Imbeisu, who was afterwards released at the King of Wam's request.

"(*c.*) In the same month (December 1897) Krappa sent 80 armed men to Aduabu to seize the property of one Akosi Addai.

"(*d.*) Towards the end of December 1897 Krappa sent an armed party to Imbeisu, where Kwoku Teburajei, Kudjoe Fojo, and Kwame Sarah lost all their property which they had left at that village. At the same time, Kwoku Mensah and Kwame Ku were arrested, and all their property confiscated.

"(*e.*) In July 1898 Kobina Ebin was arrested at Bonadi, near Amasu, by ten armed Gamans sent by Krappa, together with Kwame Enim and Kwoku Wirudu. These three men were made to pay the sum of 23*l.* between them before being released.

"*Kobina Appia.*—(*a.*) In October 1897 this Gaman Chief raided with Krappa into Wam country.

"(*b.*) In August 1897 Appia's linguist, Akka, acting under the former's ill-instructions, arrested two English subjects named Yow Emufu and Osei Yow at Amasu (Wam). The former paid 40*l.* and the latter 20*l.* before being released. All their property was confiscated.

"(*c.*) In March 1898 Appia's servants, acting under his orders, came to Krasu (Wam), and took all the property of Eckuah Dakuah, who had been left there in charge of trade-goods by her husband.

	£
* Mrs. Liston	4,000
Mrs. Lendy	2,000
Mrs. Wroughton	2,000

"(*d.*) In August 1898 Yow Dumfei states that he, together with other brokers, were attacked in a village called Ahmajinoa Krum (Wam) by one of Appia's bands of armed Gamans. They escaped, and met Captain Armitage on his way to Pamu.

"(*e.*) Kofi Enin states that on or about the 11th August, 1898, he was arrested at Chirimesu (Wam) by Gamans, acting under Appia's orders; that he was flogged, and 2*l.* 8*s.* and all his property were taken.

"(*f.*) Akka (Appia's linguist) also arrested, in his master's name, a man named Akosi Wurri (who had to pay 40*l.* for his release) at Asikasso (Wam), a little over a year ago."

Lord Salisbury will be obliged if you will take these various cases into your consideration, and will favour him with your opinion as to whether all, or any, and if so, which of them can properly be made the subject of a claim against the French Government.

I am further to inquire with reference to such claims, if any, as you may consider should be supported whether the amounts stated in each case are respectively such as may properly be put forward in their entirety, or whether they call for reduction to any, and if so, to what extent.

Lord Salisbury will be glad at the same time to be favoured with any observations of a general character which you may have to offer on the claims themselves.

I have, &c.
(Signed) MARTIN GOSSELIN.

Report.

(1.) *Asikasso.*

In our opinion this case may properly be made the subject of claim. Although the Haussas were by mistake upon French territory, there was no justification whatever for their being put to death. It is difficult to put a precise figure upon a claim of this kind, but we would suggest 1,000*l.*

(2.) *Ncompah.*

The killing of these men was absolutely unjustifiable, and the claim may properly be pressed.

(3.) *Claim of Royal Niger Company.*

The proceedings of Lieutenant Mizon were of a piratical character, carried out with gross breach of faith. No doubt he did a great deal of mischief in the Company's territory, but their claim of 100,000*l.* seems rather large, and such an amount ought not to be pressed without further full information as to how it is made up, and satisfactory proof that substantial damage was sustained by the Company.

(4.) *The case of "Sergent Malamine."*

We think that Her Majesty's Government are justified in resisting the claim for the loss of this vessel. The facts seem to bear out the finding of the Court that the Company's Regulations had been broken, and the forfeiture of the vessel thereby incurred. These Regulations as to the landing of goods do not appear to us to contravene the provisions of the Act of Berlin as to free navigation.

It must not be forgotten that Mizon's proceedings in stirring up hostilities among the natives had been of so extraordinary a character that there would have been a moral justification for seizing his vessel even without legal process as an act of State. We think, however, that the Judgment of the Court can be supported in point of law, and we advise that the claim should be resisted.

(5.) *Murder of King of Samoir.*

This was a cold-blooded murder, and we think that the indemnity of 10,000*l.* may properly be demanded.

(6.) *Violation of Territory and Damages to Villages in Lagos Territory south of the 9th Parallel.*

We think that these claims may properly be pressed, and, as far as we have materials for judging, we think that the amounts claimed are not unreasonable.

(7.) *Kishi.*

We think that this claim also may be pressed, and for the amount mentioned, 2,000*l.*

(8.) *Waima.*

The French were trespassing upon British territory, and there was no justification for the attack which they made on a British force. Though the attack was made under a mistake the French Government is bound to make compensation for the wrongful act of its officers, and the amount claimed is, we think, reasonable.

(9.) *Violations of Territory in Ivory-Gold Coast Hinterland, and illegal acts against British subjects.*

It appears to be the fact that the French have violated British territory, and have killed and otherwise ill-treated British subjects in an unjustifiable manner. Of course it is impossible for us to form an opinion on each item under this head, but, speaking broadly, we think that the claim should be pressed.

We have no materials for suggesting any amount.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 20, 1899.

No. 26.

[July 4, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, June* 24, 1899.

Limits of Territorial Waters of Tunis.

I HAVE the honour to transmit, by direction of the Marquess of Salisbury, a despatch which has been received from Her Majesty's Consul-General at Tunis, inclosing copy of a Decree issued by the Bey, and countersigned by the French Resident-General, which purports to extend the jurisdiction of the Tunisian Customs authorities beyond the territorial waters of the Regency.

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The Decree in question, which is designed to prevent the introduction into Tunisia of certain prohibited articles, gives power to Tunisian Custom-house officers to visit trading-vessels within a radius of 2 myriamètres (or about 13 statute miles) from the shore, and imposes penalties in cases in which masters of vessels refuse compliance with its provisions.

By the same Decree, Custom-house officers have authority to visit trading-vessels while in port, while lying in roadsteads, or while engaged in ascending or descending rivers.

The French Government is primarily responsible to foreign Powers for the acts of the native administration of Tunis, and consequently any objection which may be entertained by foreign Powers to administrative or legislative measures adopted by the Tunisian authorities must be addressed to France as the Suzerain Power.

For the reasons, amongst others, which are set out in the Memorandum (inclosed) by Mr. Davidson, Q.C., the Legal Adviser to this Department, the terms of the Decree render consideration, in so far as they purport to confer powers of visit and search in regard to foreign merchant-vessels outside the 3-mile limit, appear to be *ultra vires* in contemplation of international law, and open to grave objection.

I am therefore to request you to take the terms of the Beylical Decree into your consideration, and to favour Lord Salisbury with your opinion as to whether it is desirable for Her Majesty's Government to protest against its issue, and, if so, on what special grounds such a protest may most advantageously be based.

Lord Salisbury will be glad at the same time to be favoured with any observations of a general nature which you may desire to offer on the subject.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Sir H. Johnston	(No. 27)	June 10, 1899.
Memorandum by Mr. Davidson		June 15, 1899.

Report.

In our opinion, it is desirable that Her Majesty's Government should protest against the issue of the Decree in question.

The protest should be based on the ground that the Decree assumes jurisdiction over British ships beyond the limits of the territorial waters of Tunis.

There is no doubt that in former times jurisdiction was asserted, particularly for customs purposes, to a limit considerably exceeding that of 3 miles from the shore. One illustration is afforded by the "Hovering Act" of 1736 (9 Geo. II, cap. 35), and another by the Act of Congress of the United States of America of the 2nd March, 1799 (5th Congress, Session 3, Chapter 22), which, by the 25th, 26th, 27th, and 99th sections, assumed jurisdiction in the case of vessels bound for ports of the United States up to a limit of 4 leagues. The validity of such an extension of jurisdiction was maintained by the Supreme Court of the United States in the case of Church *v.* Hubbart (2 Cranch's Reports, 186), in the matter of a seizure by the Portuguese 4 or 5 leagues off the coast of Brazil. We may also refer in this connection to the observations of Lord Stowell in the case of Le Louis (2 Dodson's Admiralty Reports, pp. 245-246).

At the present day territorial jurisdiction cannot be regarded as conceded by international law beyond the 3-mile limit. It is recognized by our present Customs Act, and in "The Sea Fisheries Regulation Act, 1895," sec. 10, it was provided that the power of making bye-laws within the limit of 13 miles should be exercised only with the consent of all the States signatory of the North Sea Convention, 1882.

We are, therefore, of opinion that, in the absence of special agreement or of an extension of the limit by general assent, Her Majesty's Government should not acquiesce in the assertion by any foreign Power of jurisdiction over the sea beyond the 3-mile limit.

The propriety of that limit has been much discussed, and it might probably with advantage be extended, but until by international consent an extension has been arranged, we think that Her Majesty's Government ought to require that other Powers should observe the 3-mile limit as Her Majesty's Government does with reference to the sea adjoining British dominions.

We may add that in the case of the Decree now in question the power is a very wide one, and is not even confined to the case of vessels bound for Tunisian territory.

The protest should be based on the broad ground that territorial jurisdiction is not by international law recognized beyond the 3-mile limit, and that this Decree purports to assert it to a distance of 20 kilometres.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 4, 1899.

Annex.

Memorandum by Mr. Davidson.

1. A MYRIAMÈTRE is, I believe, 10,000 mètres, or 10 kilomètres.

2. The British "Hovering Act," passed in 1736 (9 Geo. II, cap. 35), was repealed in 1826 by Geo. IV, cap. 105, and 6 Geo. IV, cap. 105, was repealed by "The Statute Law Revision Act, 1873."

The "Hovering Act" of 1736 assumes, for certain revenue purposes (section 23), a jurisdiction of 4 leagues from the coast by prohibiting foreign goods to be transhipped within that distance without payment of duties.

But the Act of 1736 was based on the doctrines of an even earlier date, when we maintained our jurisdiction over the King's Chambers, and when the security of British commerce was provided for by express prohibitions against the roving or hovering of foreign ships of war so near the neutral coasts and harbours of Great Britain as to disturb or threaten vessels homeward or outward bound; and captures of enemies' vessels, if made within the King's Chambers, would in those days have been restored by the Court of Admiralty, which claimed jurisdiction over the King's Chambers.

[See "Wheaton's International Law," third English edition, 1889, pp. 272, 273.]

Our present Customs legislation ("The Customs Consolidation Act, 1876," section 179) does *not* assert jurisdiction in the case of *non*-British ships beyond the 3-mile limit, and section 179 by asserting jurisdiction over British ships with false bulkheads, &c., up to *3* leagues from the shore, while only claiming it over foreign ships in the like case up to *1* league from the shore, implicitly admits that our jurisdiction over foreign ships ceases with the 3-mile limit.

There remains for a passing notice the doctrine of "hot pursuit," whereby the pursuit of a vessel which has offended within the 3-mile limit, and which the authorities have unsuccessfully endeavoured to arrest while within the 3-mile limit, is continued outside the 3-mile limit.

This, of course, is an exceptional case, and no principle can be deduced from it—even if the right to continue a pursuit begun under such circumstances within the territorial waters into the high seas, which are the common property of nations, be admitted—on which to found a general claim to visit and rummage up to a distance of 20 kilom. from the shore.

I agree with Sir H. Bergne that such a claim is probably not inconsistent with the actual Treaty engagements of France if it should be applied equally and impartially to all vessels. But I think that it is, in the absence of express Treaty stipulation conceding it to France by this country, contrary to the general principles of international law.

I say conceding it to *France* because, although the Decree is nominally made by "Ali Pacha Bey, Possesseur du Royaume de Tunis," it is countersigned and approved by the French Resident-General. who represents the French Republic as the Suzerain Power, and as the Suzerain Power France is responsible to this country and to other foreign nations in regard to the matter.

I think the Decree ought to be referred to the Law Officers, with a short explanation of the circumstances, and that they should be asked whether it is, in their opinion, desirable that Her Majesty's Government should protest against the issue of this Decree, and, if so, on what special ground such a protest may most advantageously be based.

Having regard to the principle involved, which is that of the assertion of jurisdiction beyond the 3-mile limit—whether it be for customs purposes, for fishery purposes (as in the recent case of Iceland), or for what else is immaterial comparatively—I conceive that it is very important to protest against any attempt to extend the doctrine of the 3-mile limit otherwise than by general international agreement and consensus.

So long as we stick tenaciously to the 3-mile limit we have got a πoῦ στω ; but if this limit be once overstepped we shall lose our firm footing at once.

The 3-mile limit, at any rate, is universally accepted as a minimum ; if it is to be extended otherwise than by international consensus, then each nation can scarcely be prevented from extending it according to its own individual taste and fancy.

France is content to stop 20,000 mètres from low-water mark in the present case, but *non constat* that Germany, or Russia, or the United States of America may not claim to extend, in the case of their own waters, the limit still further. We can, so far as I know, oppose no better arguments against an extension of 3 miles to 20 miles than against an extension of 3 miles to 2 myriamètres, which is, I think, roughly speaking, about 13 miles. It is simply a question of degree once the time-hallowed 3-mile limit is passed.

W. E. D.

June 15, 1899

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No. 27.

[July 4, 1899.]

Foreign Office to Law Officers of the Crown.

Gentlemen, *Foreign Office, June* 19, 1899.

Validity of marriage of Miss A. Harding and Ahmad al Gamarti.

I AM directed by the Marquess of Salisbury to transmit to you the accompanying correspondence which has taken place with Sir H. Johnston, Her Majesty's Consul-General at Tunis, on the subject of the validity of a marriage solemnized in 1897 by his predecessor, Mr. Haggard, between Miss Ann Augusta Harding, a British subject, and a gentleman of Tunisian nationality, named Ahmad al Gamarti.

It will be seen that it is stated on the face of the certificate inclosed in Sir H. Johnston's despatch No. 7 of the 27th February last, that the marriage was solemnized according to the rites and ceremonies of "The Consular Marriage Act, 1849," which was repealed in 1892, five years before the certificate was issued. It was at first believed that the marriage had actually been celebrated under the provisions of the repealed Act, but inquiry has led to the belief that the ceremony was correctly performed in accordance with "The Foreign Marriage Act, 1892," although it was erroneously registered, as were all the other marriages performed at the Consulate-General since 1892, as having been solemnized in accordance with the earlier and then repealed Act.

There is, moreover, a further point to which I am to call your special attention in connection with this particular marriage. By Article 4 (1) (C) of "The Foreign Marriage Order in Council, 1892," Consular Officers, before solemnizing a marriage under the Foreign Marriage Act, must be satisfied, "if one of the parties is a British subject, and the other a subject or citizen of the country, that sufficient facilities do not exist for the solemnization of the marriage in the foreign country in accordance with the law of that country." Lord Salisbury is advised that the marriage having in fact been solemnized in accordance with "The Foreign Marriage Act, 1892," it would, in view of the validating clauses contained in section 13 (2) of the Act, be difficult now to throw doubt on its validity so far as English law is concerned. Some doubt has, however, arisen as to whether Mr. Haggard was at the time justified, on the ground that sufficient facilities were not provided by Tunisian law for the marriage of a Christian in Tunis, in marrying Miss Harding and al Gamarti.

A case arose in Morocco in 1872, in which a Mahometan applied to Her Majesty's Minister and Consul-General at Tangier to be married to a young Englishwoman; and the requirements of the Act of Parliament (as well as those of the law of Morocco) having been fulfilled, the marriage was duly solemnized at the British Consulate-General. The then Law Officers were consulted in the matter, and I am to transmit to you a copy of their Report, stating that, in their opinion, the marriage was by English law valid, and the Minister's proceedings in performing it quite in accordance with his duty. Should the circumstances of the two cases be held to be similar, and should you concur on this point with the opinion of your predecessors, it is presumed that the Report of the Law Officers of 1873 on the Morocco case would equally apply to the one at Tunis now under discussion.

L.O.R. 1873 (Conf. 4259), p. 88.

I am to request you to take these papers into your consideration, and to favour Lord Salisbury with your opinion.

1. As to whether the validity of the Ahmad al Gamarti and other similar marriages is in any way affected by the errors which have been made in entering them in the marriage register.

2. As to the propriety of Mr. Haggard's action in solemnizing the marriage in the circumstances.

The question as to the best method of correcting the erroneous entries already made in the marriage registry book of the Consulate has been referred to the Registrar-General for his suggestions.

I have, &c.
(Signed) F. H. VILLIERS.

GENERAL.

No. 27 A.

[June 23, 1899.]

Foreign Office to the Solicitor-General.

Sir, *Foreign Office, June* 20, 1899.

Countervailing duties on sugar imported into India under bounties.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, which relate to an Act passed this year by the Indian Government (Paper A) for the purpose of imposing countervailing duties on foreign sugar when imported into India under bounties.

The additional duties which are to be levied, as shown in Paper (B), are believed to be, as far as possible, exactly equivalent to the bounties granted, whether on production or export, in the respective foreign countries named.

A considerable amount of bounty-fed sugar is exported to India from Austria-Hungary, and it is believed that although the amount of Russian sugar imported into India is at present inappreciable, the trade might possibly be greatly extended in the future.

Under these circumstances, representations have been made by these two countries respecting the bearing of the recent Indian Act upon international obligations.

The Treaty between Great Britain and Austria-Hungary of the 5th December, 1876 (Paper C), contains the following stipulations:—

"ARTICLE II.

"The produce and manufactures of, as well as all goods coming from, Austria-Hungary which are imported into the territories and possessions, including the Colonies and foreign possessions, of Her Britannic Majesty, and the produce and manufactures of, as well as all goods coming from, British possessions which are imported into the Austro-Hungarian Monarchy, whether intended for consumption, warehousing, re-exportation, or transit, shall therein, during the continuance of this Treaty, be treated in the same manner as, and in particular shall be subjected to no higher or other duties than, the produce and goods of any third country, the most favoured in this respect.

"ARTICLE III.

"Every reduction in the Tariff of import and export duties, as well as every favour or immunity that one of the Contracting Parties grants to the subjects and commerce of a third Power, shall be participated in simultaneously and unconditionally by the other."

The Treaty of the 12th January, 1859, between Great Britain and Russia (Paper D), contains the following engagements:—

"ARTICLE II.

"No other or higher duties shall be imposed on the importation into the dominions and possessions of Her Britannic Majesty of any article the growth, produce, or manufacture of the dominions and possessions of His Majesty the Emperor of All the Russias from whatever place arriving, and no other or higher duties shall be imposed on the importation into the dominions and possessions of His Majesty the Emperor of All the Russias of any article the growth, produce, or manufacture of Her Britannic Majesty's dominions and possessions, from whatever place arriving, than are or shall be payable on the like article, the growth, produce, or manufacture of any other foreign country; nor shall any prohibition be imposed on the importation of any article the

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growth, produce, or manufacture of the dominions and possessions of either of the two Contracting Parties into the dominions and possessions of the other, which shall not equally extend to the importation of the like articles being the growth, produce, or manufacture of any other country.

"ARTICLE X.

"Her Britannic Majesty engages that in all matters relating to commerce and navigation, the subjects of His Majesty the Emperor of All the Russias shall, in the British dominions, be entitled to every privilege, favour, and immunity which is actually granted, or may hereafter be granted, by Her Britannic Majesty to the subjects or citizens of any other Power."

Both of these Treaties include India, and are now terminable by twelve months' notice on either side.

The aim and intent of the most-favoured-nation stipulations contained in the above quoted Treaties, and in others to a similar effect, is, that the goods of either Contracting State shall be placed in the territories of the other in no worse position than goods of any other country. It is certainly not meant that they should enjoy preferential treatment either to native goods—or to goods of the most favoured third country—and the question arises how far it is open to either Contracting Party, by Governmental administrative act, to secure for its goods the preferential position in the markets of the other which it was not designed by the Treaty that they should enjoy.

It has long been admitted internationally that natural circumstances, independent of Government agency or control, may be invoked in order to justify a prohibition of, or special treatment of, goods arriving under certain special conditions, although similar goods are admitted freely when such conditions are not present, notwithstanding the existence of Treaty stipulations guaranteeing most-favoured-nation treatment in these respects.

It is sufficient to cite as examples the restrictions imposed in Great Britain and in various other countries on the importation of cattle and plants suspected of disease, and the precautions frequently adopted to prevent the importation or circulation of rags and other substances supposed to be capable of transmitting infection.

It is true that express stipulations providing for a derogation from most-favoured-nation treatment in such cases are now frequently inserted in Commercial Treaties, but the precautions above alluded to are also taken in cases where most-favoured-nation clauses exist without any exception or qualification.

Lord Salisbury desires, however, in the present instance, to direct your attention more particularly to the case where a Government, by its own administrative act, overrides the spirit of the most-favoured-nation clause, and creates in favour of its own goods an inequality which it is the object of the Treaty to prevent, and which does not result from any natural or economic cause.

An instance in point is afforded by "The Foreign Prison-made Goods Act, 1897" [60 and 61 Vict., cap. 63], (Paper E). Although under this Act the importation of prison-made goods into the United Kingdom has been effectively stopped, notwithstanding the admission of similar goods not prison-made, no representations against the operation of the Act have been received by Her Majesty's Government from any foreign Power with whom most-favoured-nation clauses have existed, or do now exist.

The Government of the United States have for some years passed redressed by countervailing duties the inequality created by bounties on production or export, and you will find in Paper (F) a short statement of the arguments advanced by that Government to justify their action, to which I am to call your especial attention.

It will be within your recollection that the Law Officers of the Crown have on two previous occasions (see Opinions, Papers G and H) expressed opinions somewhat adverse to the action which has now been taken by the Indian Government, but I am also to inclose a legal opinion which has been given by Sir J. Edge, Q.C., and Sir A. Wilson (Paper I), to the effect that the Indian Act is not inconsistent with Treaty engagements.

Lord Salisbury is of opinion that the great extension and development of the bounty system in recent years constitutes a grave menace to British industry and enterprise, and is disinclined to admit that it is open to any Government to override by its own act the clear intention of Treaty stipulations, without its being open to the other Contracting Party, by corresponding legislative action, if such should seem to be expedient, to redress the balance of trade, which has been thus artificially disturbed.

I am therefore to invite your attention to the Papers now laid before you, and I am to inquire whether, having regard to the fact that representations on the subject of the Indian Act have been received from Austria-Hungary and from Russia, you would concur in a reply being made in the sense of the foregoing paragraph, accompanied by an intimation that, if either of these foreign countries be not willing to accept that view, Her Majesty's Government are prepared to give notice of termination of the Treaty.

I am further to request that you will also favour his Lordship with any general observations on the subject, if such should seem to you to be required.

In view of the fact that the Attorney-General is now in Paris, engaged in the Venezuelan Arbitration Case, his Lordship does not propose to trouble him for his opinion on this matter.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Indian Act.	
(B.) Schedule.	
(C.) Austrian Treaty, December 5, 1876, "Commercial No. 2 (1877)."	
(D.) Russian Treaty	January 12, 1859.
(E.) "Prison-made Goods Act, 1897."	
(F.) American Arguments (Sir J. Pauncefote, No. 18, Commercial, February 3, 1898).	
(G.) Law Officers	July 12, 1880.
(H.) Ditto	December 10, 1887.
(I.) Sir J. Edge and Sir A. Wilson's Opinion (in India Office, April 24, 1899).	

Report.

I think that a reply may be properly made to Austria-Hungary and to Russia in the sense proposed.

The Indian Act is not, in my opinion, a breach of the Treaties with either of these countries. The Act imposes upon bounty-fed sugars, from whatever country they come, an additional duty equal to the amount of the bounty. This is not giving preference to one country over another; it is treating all countries alike. The meaning of the Treaties seems to me to be that no higher duties shall be imposed in respect of the fact that the goods come from Austria-Hungary or Russia. The countervailing duty is not imposed in respect of the fact that the goods come from these countries. It is imposed on goods which come thence only because they are bounty-fed, and the Act would apply in the same way to the goods of any other country.

Other considerations would arise, if a condition imposed nominally on the goods of all countries alike were such that, owing to natural circumstances, it would affect one country prejudicially as compared to others. Bounties are given at the will of the foreign Government, and any foreign State can escape the operation of the countervailing duty by putting an end to the artificial state of things created by the grant of such bounty.

The "Foreign Prison-made Goods Act" and the Indian Act seem to me, for this purpose, to stand on the same footing. If it be a breach of these Treaties to impose a countervailing duty on goods which are bounty-fed, it is also a breach to prohibit the importation of goods produced in a foreign prison. The answer in each case is that the duty or the prohibition is not imposed in respect of the fact that the goods come from a particular country, or in respect of any natural circumstances applying to one country rather than another, but in respect of the fact that the goods have been produced or exported under artificial conditions the existence of which depends entirely upon the will of the foreign Government.

(Signed) ROBERT B. FINLAY.

Royal Courts of Justice,
June 23, 1899.

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No. 27 B.

[July 5, 1899.]

The Marquess of Salisbury to the Lord Chancellor.

Foreign Office, June 20, 1899.

My Lord,

Countervailing duties in India on bounty-fed sugar.

I HAVE the honour to transmit to you the papers noted in the accompanying list, which relate to an Act passed this year by the Indian Government (Paper A) for the purpose of imposing countervailing duties on foreign sugar when imported into India under bounties.

The additional duties which are to be levied, as shown in Paper (B), are believed to be, as far as possible, exactly equivalent to the bounties granted, whether on production or export, in the respective foreign countries named.

A considerable amount of bounty-fed sugar is exported to India from Austria-Hungary, and it is believed that, although the amount of Russian sugar imported into India is at present inappreciable, the trade might possibly be greatly extended in the future.

Under these circumstances, representations have been made by these two countries respecting the bearing of the recent Indian Act upon international obligations.

The Treaty between Great Britain and Austria-Hungary of the 5th December, 1876 (Paper C) contains the following stipulations:—

"ARTICLE II.

"The produce and manufactures of, as well as all goods coming from, Austria-Hungary which are imported into the territories and possessions, including the Colonies and foreign possessions, of Her Britannic Majesty, and the produce and manufactures of, as well as all goods coming from, British possessions which are imported into the Austro-Hungarian Monarchy, whether intended for consumption, warehousing, re-exportation, or transit, shall therein, during the continuance of this Treaty, be treated in the same manner as, and in particular shall be subjected to no higher or other duties than, the produce and goods of any third country, the most favoured in this respect.

"ARTICLE III.

"Every reduction in the Tariff of import and export duties, as well as every favour or immunity that one of the Contracting Parties grants to the subjects and commerce of a third Power, shall be participated in simultaneously and unconditionally by the other."

The Treaty of the 12th January, 1859, between Great Britain and Russia (Paper D), contains the following engagements:—

"ARTICLE II.

"No other or higher duties shall be imposed on the importation into the dominions and possessions of Her Britannic Majesty of any article the growth, produce, or manufacture of the dominions and possessions of His Majesty the Emperor of All the Russias, from whatever place arriving, and no other or higher duties shall be imposed on the importation into the dominions and possessions of His Majesty the Emperor of All the Russias of any article the growth, produce, or manufacture of Her Britannic Majesty's dominions and possessions, from whatever place arriving, than are or shall be payable on the like article, the growth, produce, or manufacture of any other foreign country; nor shall any prohibition be imposed on the importation of any article the growth, produce, or manufacture of the dominions and possessions of either of the two Contracting Parties into the dominions and possessions of the other, which shall not equally extend to the importation of the like articles being the growth, produce, or manufacture of any other country."

"ARTICLE X.

"Her Britannic Majesty engages that in all matters relating to commerce and navigation, the subjects of His Majesty the Emperor of All the Russias shall, in the British dominions, be entitled to every privilege, favour, and immunity which is actually granted, or may hereafter be granted, by Her Britannic Majesty to the subjects or citizens of any other Power."

Both of these Treaties include India, and are now terminable by twelve months' notice on either side.

The aim and intent of the most-favoured-nation stipulations contained in the above-quoted Treaties, and in others to a similar effect, is, that the goods of either Contracting State shall be placed in the territories of the other in no worse position than goods of any other country. It is certainly not meant that they should enjoy preferential treatment either to native goods—or to goods of the most favoured third country—and the question arises how far it is open to either Contracting Party, by Governmental administrative act, to secure for its goods the preferential position in the markets of the other which it was not designed by the Treaty that they should enjoy.

It has long been admitted internationally that natural circumstances, independent of Government agency or control, may be invoked in order to justify a prohibition of, or special treatment of, goods arriving under certain special conditions, although similar goods are admitted freely when such conditions are not present, notwithstanding the existence of Treaty stipulations guaranteeing most-favoured-nation treatment in these respects.

It is sufficient to cite as examples the restrictions imposed in Great Britain and in various other countries on the importation of cattle and plants suspected of disease, and the precautions frequently adopted to prevent the importation or circulation of rags and other substances supposed to be capable of transmitting infection.

It is true that express stipulations providing for a derogation from most-favoured-nation treatment in such cases are now frequently inserted in Commercial Treaties, but the precautions above alluded to are also taken in cases where most-favoured-nation clauses exist without any exception or qualification.

I desire, however, in the present instance, to direct your Lordship's attention more particularly to the case where a Government, by its own administrative act, overrides the spirit of the most-favoured-nation clause, and creates in favour of its own goods an inequality which it is the object of the Treaty to prevent, and which does not result from any natural or economic cause.

An instance in point is afforded by "The Foreign Prison-made Goods Act, 1897" [60 & 61 Vict., cap. 63], (Paper E). Although under this Act the importation of prison-made goods into the United Kingdom has been effectively stopped, notwithstanding the admission of similar goods not prison-made, no representation against the operation of the Act have been received by Her Majesty's Government from any foreign Power with whom most-favoured-nation clauses have existed or do now exist.

The Government of the United States have for some years past redressed by countervailing duties the inequality created by bounties on production or export, and you will find in Paper (F) a short statement of the arguments advanced by that Government to justify their action, to which I have to call your especial attention.

It will be within your recollection that the Law Officers of the Crown have on two previous occasions (see Opinions, Papers G and H) expressed opinions somewhat adverse to the action which has now been taken by the Indian Government, but I have also to inclose a legal opinion which has been given by Sir J. Edge, Q.C., and Sir A. Wilson (Paper I), to the effect that the Indian Act is not inconsistent with Treaty engagements.

I am of opinion that the great extension and development of the bounty system in recent years constitutes a grave menace to British industry and enterprise, and am disinclined to admit that it is open to any Government to override, by its own act, the clear intention of Treaty stipulations, without its being open to the other Contracting Party, by corresponding legislative action, if such should seem to be expedient, to redress the balance of trade which has been thus artificially disturbed.

I have therefore to invite your Lordship's attention to the papers now laid before you, and to inquire whether, having regard to the fact that representations on

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the subject of the Indian Act have been received from Austria-Hungary and from Russia, you would concur in a reply being made in the sense of the foregoing paragraph, accompanied by an intimation that, if either of these foreign countries be not willing to accept that view, Her Majesty's Government are prepared to give notice of termination of the Treaty.

I have further to request that you will also favour me with any general observations on the subject, if such should seem to you to be required.

I have, &c.
(Signed) SALISBURY.

List of Papers.

(A.) Indian Act.	
(B.) Schedule.	
(C.) Austrian Treaty, December 5, 1876, "Commercial No. 2 (1877)."	
(D.) Russian Treaty..	January 12, 1859.
(E.) "Prison-made Goods Act, 1897."	
(F) American Arguments (Sir J. Pauncefote, No. 18, Commercial, February 3, 1898).	
(G.) Law Officers	July 12, 1880.
(H.) Ditto	December 10, 1887.
(I.) Sir J. Edge and Sir A. Wilson's Opinion (in India Office, April 24, 1899).	

Opinion by the Lord Chancellor.

I entertain a very clear opinion that the imposition of countervailing duties, where the only objection to them arises from the operation of the most-favoured-nation clause, is no breach whatever of that clause in any of the Treaties.

I think it is comparatively immaterial to consider the exact language of any Treaty wherein the most-favoured-nation clause is either expressly or impliedly contained in such Treaty. I think the opinions of the Law Officers, with which I am unable to agree, have been founded on the mere language of the Treaties submitted to them without sufficiently considering the international understanding upon which those Treaties have been based.

But I think, also, without reference to this consideration, that if I were simply considering the instruments themselves, apart from the considerations to which I will advert presently, I should, nevertheless, be unable to concur with the views which those opinions support. Wherever either the substance or the words of the Treaty involve an agreement for equality of treatment, and the substance, of course, of all agreements which I have been describing involved that no undue favour shall be given to one nation in preference to another, and to no one part of the commerce of one nation in preference to that of another nation, there is, to my mind, no undue preference in making the circumstances under which such commerce is admitted equal in respect of treatment by the nation whose obligation is to treat all foreign commerce alike.

I think it would be true to say, even in an ordinary contract, that a wilful effort by one of the Contracting Parties to render more difficult, or, indeed, impossible the performance of his contractual obligation by the other party to the contract would both excuse the non-performance, and give a right to compensation to the party against whom such intentional obstruction was presented.

The mere difference of circumstances will justify differential treatment—a principle which is very familiar to the administration of the law, and has been repeatedly affirmed by Judges of great eminence in the Court of Common Pleas when they had judicially to decide whether a Railway Company was guilty of undue preference under the provisions of the Railways and Canal Traffic Act; and this observation, of course, becomes more conclusive when one is dealing, not with an unintended, and, in that sense, accidental difference of circumstance, but with acts deliberately intended to defeat the operation of the contract.

Now, it cannot be doubted that giving the bounty to a particular produce (say, sugar) will enable it to come into this country under very different circumstances from produce to which no bounty is given by the country of its export, and I think that upon the mere language of the contract such a preference could properly be defeated by countervailing duties.

But I think in respect of international relations a far wider question arises. One has to look not only at the language of the particular instrument. The relation of one country to another involves a consideration not only of the particular words of the Treaty, but the relation in which one country stands to the other in respect of that Treaty, and I think it would be true to say that there is an overriding understanding between all countries in respect of the most-favoured-nation clause, that nothing shall be done to interfere with the substance and effect of that clause, which is to provide for equality of treatment all round.

I think the bounties are themselves a breach of that understanding, and I entertain no doubt that countervailing duties may properly be imposed as a defence against that inequality of treatment which the bounties are intended to procure.

I am not able to rely upon the circumstance which is urged in one of the opinions submitted to me, that the bounty system did not exist when some of the Treaties were entered into. I see a note attached to that opinion that it is not the fact, but if it were the fact, I should say that it is immaterial, because, assuming them to be in existence at the time of the entering into the Treaty, in my view the bounty-giving nation was bound, if it observed good faith in carrying out the Treaty into which it entered, to cease doing that which necessarily created an undue preference on its side.

I entirely agree with the American view also that, as a mere measure of self-protection, the countervailing duties are defensible, for in no construction of the Treaty can it be supposed that this country agreed to place its produce at a disadvantage when contracting in terms for equal treatment to all.

(Signed) HALSBURY.

House of Lords, July 5, 1899.

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List of Papers.

Sir H. Johnston	(No. 7)	February 27, 1899.
To ditto	(No. 8)	May 19, „
Sir H. Johnston	(No. 25)	May 27, „
Law Officers' Report (Confidential 4259, p. 88)		April 7, 1873.

Report.

1. The validity of the marriages in question is not in any way affected by the errors which have been made in entering them in the marriage register.

2. Mr. Haggard's action in solemnizing the marriage in the circumstances was quite proper.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 4, 1899.

GENERAL.

No. 28.

[July 14, 1899.]

*Foreign Office to the Solicitor-General.**

Sir, *Foreign Office, July* 12, 1899.

Peace Conference.

Adaptation of principles of Geneva Convention to maritime warfare.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the Papers noted in the accompanying list relative to the proceedings of the Second Commission of the Peace Conference at The Hague, which has been considering the question of embodying in a Convention the Additional Articles to the Geneva Convention of 1864, framed in 1868 for the purpose of adapting the principles of the Geneva Convention to maritime warfare.

Sir J. Pauncefote, in his despatch No. 29 of the 17th ultimo (Paper B), transmitted the Articles as revised by the Commission, and after certain words had been added to the Xth Article, as reported in his Excellency's despatch No. 38 of the 23rd ultimo (Paper G), Lord Salisbury informed him, in his despatch No. 32 of the 29th ultimo (Paper I), that Her Majesty's Government agreed to the Articles, as revised, being embodied in a Convention.

At the meeting held by the Commission on the 20th ultimo (Sir J. Pauncefote, No. 38, 23rd June, Paper G), Captain Mahan, one of the Delegates of the United States proposed the addition of three further Articles relating to the status of combatants who, pending or after a naval engagement, may be saved from drowning by a neutral vessel.

Sir J. Pauncefote, in his despatch No. 50 of the 1st instant (Paper J), forwards a copy of a Report drawn up by Professor Renault on behalf of the Comité de Rédaction to which the Articles proposed by Captain Mahan were referred, and also a copy of a note on the second Additional Article proposed by Captain Mahan which has been furnished to his Excellency by Professor Renault at his request.

Sir J. Pauncefote considers that the propositions laid down by Professor Renault are hardly consistent with the rights secured to neutrals by international law, and he suggests that, even supposing that the Additional Articles proposed by Captain Mahan are acceptable to Her Majesty's Government, some declaration or reservation should be made on their behalf respecting the construction placed by Professor Renault on

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* The Attorney-General was at this time absent from England in Paris, conducting the case for Her Majesty's Government before the British Guiana–Venezuelan Boundary Arbitration Tribunal.

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Article IX of the revised Articles, and touching any doctrines laid down in his Report to which Her Majesty's Government are not prepared to assent.

Sir J. Pauncefote's despatch has been communicated to the Lords Commissioners of the Admiralty for their observations, and a copy of their reply, dated the 7th instant, is inclosed (Paper K).

Their Lordships are of opinion that the British Delegates should be instructed not to accept the three Additional Articles proposed by Captain Mahan, and they consider that the interpretation placed by M. Renault on the revised Articles should not be accepted by Her Majesty's Government.

They concur with Sir J. Pauncefote as to the necessity of a declaration being made on behalf of Her Majesty's Government respecting the construction placed by M. Renault on Article IX, but they suggest that, before his Excellency is instructed to make such a declaration, it would be advisable to obtain your opinion on the revised Articles and on the Report presented by M. Renault.

I am accordingly to request that you will take the Papers transmitted herewith into your consideration, and that you will favour Lord Salisbury, at your early convenience, with your opinion on the revised Articles and on M. Renault's Report, and with any general observations which you may have to make on the matters dealt with in the inclosed correspondence.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Geneva Convention and Additional Articles of 1868.		
(B.)	Sir J. Pauncefote	(No. 29)	June 17, 1899.
(C.)	Ditto	(No. 31)	June 19, ,,
(D.)	Admiralty		June 21, ,,
(E.)	To Sir J. Pauncefote	(No. 28)	June 21, ,,
(F.)	Sir J. Pauncefote	(No. 35)	June 22, ,,
(G.)	Ditto	(No. 38)	June 23, ,,
(H.)	Admiralty		June 27, ,,
(I.)	To Sir J. Pauncefote	(No. 32)	June 29, ,,
(J.)	Sir J. Pauncefote	(No. 50)	July 1, ,,
(K.)	Admiralty		July 7, ,,

Report.

In my opinion the British Delegates ought not to accept the three Articles which Captain Mahan proposes. They involve an admission that the neutral flag does not protect the passenger.

I further think that a declaration should be made on behalf of Her Majesty's Government that the interpretation placed by M. Renault on the revised Articles cannot be accepted.

This interpretation appears to me to be in no way supported by the terms of the Articles and to be contrary to international law.

I ought to point out that Article X, adopted by the Conference, is one which could not be carried out in this country except under powers conferred by an Act of Parliament. The acceptance of this Article might be supposed to involve an undertaking to take the steps necessary to give effect to it, and I do not think that Her Majesty's Government should enter into any such undertaking.

The alternative would be to refuse shelter to wounded belligerents, which in the interests of humanity, ought to be granted.

The other Articles do not seem to be open to any special objection.

R. B. F.

House of Commons,
July 14, 1899.

No. 29.

[September 18, 1899.]

Foreign Office to the Law Officers of the Crown.

Peace Conference.

As to signature of Convention for pacific settlement of International differences.

Gentlemen, *Foreign Office, August* 22, 1899.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list relating to the proceedings of the Peace Conference which recently assembled at the Hague.

The results of the deliberations of the Conference are recorded in a document entitled the "Acte Final" (Paper A), which has been signed by the Representatives of all the Powers who sent Delegates to the Hague.

To this document are appended three Conventions and three Declarations which are submitted by the Conference for the signature of the Plenipotentiaries of the various Powers, and which will be kept open for such signature until the 31st December next.

The first of the Conventions annexed to the "Acte Final" is entitled "Convention pour le règlement pacifique des Conflits Internationaux" (Paper B), and is the only one of the documents submitted for signature which his Lordship thinks necessary to refer to you for consideration.

The nature and scope of this Convention are very clearly and fully explained in the Report made to the Conference by the Chevalier Descamps, one of the Delegates of Belgium, who presided over the Committee specially charged with the question of Arbitration (Paper C).

It will be observed that the Convention has been already signed by sixteen out of the twenty-six Powers represented at the Conference.

I am to request that you will take the accompanying papers into your consideration, and favour Lord Salisbury with your opinion whether the Convention, as it now stands, may properly be signed on behalf of Her Majesty's Government, and also with any general observations you may have to offer on the subject.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	"Acte Final" of Conference.		
(B.)	"Convention pour le règlement pacifique des Conflicts Internationaux."		
(C.)	Sir Julian Pauncefote (containing M. Descamps' Report) ..	(No. 71)	July 31, 1899.

Report.

In our opinion, the Convention, as it now stands, may properly be signed on behalf of Her Majesty's Government.

The qualifications which it contains and the optional character of its provisions are, we think, sufficient to prevent danger from its adoption.

Articles XXX to LVII will require consideration when any proposal for a particular arbitration is accepted. It would be beyond the scope of this Report to discuss the details of those Articles, but the important incident which during the sitting of the British Guiana–Venezuela Boundary Arbitration Tribunal occurred in Paris on Wednesday, the 6th September, with reference to the desire expressed by some members of the Tribunal to see a confidential document, and the refusal of Great Britain to produce it, shows the kind of question which may arise under an Article worded as Article XLIV is now framed; and which might necessitate some modification of its terms in certain cases.

We should also have regarded Article XLVIII (which gives power to the Tribunal of Arbitration to determine the extent of the reference and of its powers) with some

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misgiving but for the fact that its operation may, under Articles XXX and XXXI, be limited or, if necessary, excluded.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 18, 1899.

No. 30.

[October 19, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, October* 13, 1899.

Peace Conference.
Convention as to Laws and Customs of War.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list relating to the Convention concerning the laws and customs of war which has been framed by the Peace Conference at The Hague, and submitted for the signature of the various Governments.

This Convention (see Document B), has been already signed by some of the Powers represented at the Conference, and will be kept open for the signature of such other of those Powers as may desire to adhere to it until the 31st December next.

Lord Salisbury has consulted the Secretary of State for War on the question whether Her Majesty's Government may properly sign this Convention, and his opinion is contained in the letter from the War Office of the 11th instant (Document A).

I am to draw your special attention to the Report made to the Conference by M. Rolin, the Reporter of the Commission appointed by the Conference to consider this question, and also to a Memorandum on the subject by Major-General Sir John Ardagh, the British Military Delegate. Both these documents will be found as inclosures in Sir Julian Pauncefote's despatch No. 52 of the 6th July (Document C).

The text of the Geneva Convention of the 22nd August, 1864, referred to in M. Rolin's Report, will be found in the accompanying volume (Document D), Part B, pp. 2–6, and that of the proposals made at the Conference of Brussels in 1874 in the same volume, Part B, pp. 8–13.

I am to request that you will examine the various points submitted for consideration in the second inclosure to the letter from the War Office (Document A), and favour Lord Salisbury, at your earliest convenience, with your observations on those points so far as they raise any question of international or municipal law, and that you will generally advise his Lordship as to whether the Convention may properly be signed on behalf of Her Majesty's Government.

The question of the Declarations recommended by the Peace Conference, and referred to in Inclosure 4 of the War Office letter, is reserved for further consideration.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	War Office	October 11, 1899.
(B.)	Convention concernant les Lois et Coutumes de la Guerre sur Terre.	
(C.)	Sir J. Pauncefote .. .. (No. 52)	July 6, „
(D.)	Actes et Documents relatifs au Programme de la Conférence de la Paix.	

Report.

We have carefully considered the various points raised with reference to the Convention, and are of opinion that there is no objection from the point of view of international or municipal law to its provisions. We think that it may be properly signed on behalf of Her Majesty's Government.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 19, 1899.

No. 31.

[December 5, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November* 21, 1899.

Interpretation of "bay" in North Sea Fisheries Convention.

I HAVE the honour to inform you, by direction of the Marquess of Salisbury, that the Danish Minister at this Court has represented to his Lordship the desirability of arriving at an understanding as to the precise interpretation to be placed upon the word "bay" in Article II of the North Sea Fisheries Convention by the officers charged by the British and Danish Governments with the execution of that Agreement.

With this object in view a Conference of Representatives of this Office, the Admiralty, the Board of Trade, and the Scottish Office was held to discuss the subject, and it was by them agreed that the term "bay" in the Article in question might, with advantage, be defined as including all indentations of the coast, irrespective of size.

Though the North Sea Fisheries Convention is appended as a Schedule to "The Sea Fisheries Act, 1883," the term "bay" as there employed is not further defined either in the Act or the Convention; nor has it, so far as Lord Salisbury is aware, been the subject of any judicial interpretation.

Under these circumstances, I am to request that you will furnish his Lordship with your opinion as to whether, for the purposes of "The Sea Fisheries Act, 1883," a "bay" may safely be taken to include all indentations of the coast irrespective of size, or, if not, what definition (if any) you would suggest as preferable.

His Lordship would, at the same time, be glad to be favoured with any general observations which you may have to offer on the subject.

I have, &c.
(Signed) MARTIN GOSSELIN.

Report.

In our opinion, it is not expedient to define a bay for the purposes of "The Sea Fisheries Act, 1883," as including all indentations of the coast irrespective of size. As no coast is quite straight, such a definition will occasion great inconvenience in practice.

We do not think it expedient that any attempt should be made further to define the term. Each case should be decided as it arises. It is quite clear that a bend in the coast, very shallow in proportion to its lateral extension, is not a bay, and no limit can be fixed by way of general definition. On the other hand, to define bay as including what are generally called gulfs might lead to difficulties of another sort, as territorial jurisdiction is, in many cases, claimed over gulfs, though more than 10 miles across if they extend far inland.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 5, 1899.

No. 32.

[December 22, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 16, 1899.

Consular Fees O.s in C. for China and Corea and for Japan.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to two proposed Orders in Council establishing new Tables of Consular Fees in China and Corea and in Japan, respectively.

An Interdepartmental Committee was appointed to consider the question of modifying these fees, and a copy of their Report is transmitted to you (Paper A), together with printed copies of the correspondence which the Committee had before them when deliberating upon the matter (Paper B). It will be seen that the Committee recommend the establishment of two separate Fee Tables—

1. For China and Corea,
2. For Japan,

drafts of which are inclosed (Papers C and D).

Orders in Council for the purpose of putting these Tables into force have been drafted by Mr. Gray (Papers E and F). They are in substitution for "The Consular Fees (China, Japan, and Corea) Order in Council, 1892" (Paper G).

I also inclose a copy of "The Consular Salaries and Fees Act, 1891" (54 & 55 Vict., cap. 36), under the authority of which it is proposed to issue these Orders (Paper H).

The draft Fee Tables have already been submitted to, and approved by, the Lords Commissioners of Her Majesty's Treasury, and I am to request that you will take the draft Orders in Council into your consideration, and favour Lord Salisbury with your opinion whether they are right and proper to be submitted to the Queen in Council for Her Majesty's approval.

In connection with Article 4 of the China and Corea Order, and the notes appended to Fees 17 and 37 in the China and Corea Table, I am to explain that a special local Regulation applicable to the port of Swatow, made on the 9th May, 1864, and ultimately legalized by "The China and Japan Order in Council, 1881," contains provisions similar to, though not identical with, those to be introduced by these notes for all Chinese ports. It is necessary that the new Order in Council should repeal the local Regulation applicable to Swatow, of which a copy is annexed (Paper I), in order to prevent any clashing with the general provisions of the Fee Table.

As it is believed that Her Majesty the Queen may hold a Council before the end of the year, Lord Salisbury would be glad if these Orders could be submitted for approval on that occasion. I am therefore to request that your Report may be transmitted to his Lordship at your early convenience.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Report of Interdepartmental Committee.
(B.) Printed papers containing correspondence on which Report was based.
(C.) Proposed Fee Table for China and Corea.
(D.) ,, ,, Japan.
(E.) and (F.) Draft Orders in Council putting Tables in force.
(G.) "Consular Fees (China, Japan, and Corea), Order in Council, 1892" (Confidential 6239*).
(H.) Consular Salaries and Fees Act (54 & 55 Vict., cap. 36).
(I.) Regulation for port of Swatow of May 9, 1864.

Report.

We approve the draft Orders as initialled by us.

As regards the dates fixed by Article 5 of the Chinea and Corea Order, and Article 3 of the Japan Order, it would, perhaps, be better to fix a later date, but this can, if necessary, be dealt with under the subsequent words of the Article.

Although the matter scarcely falls within our province, we should have doubted the advisability of imposing a fee on registration where such registration is compulsory. (See Fee 64, China and Corea Table, and Fee 65, Japan Table.)

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 22, 1899.

Annex (A).

JAPAN.

Japan (Consular and Marriage Fees) Order in Council, 1899.

WHEREAS by "The Consular Salaries and Fees Act, 1891," Her Majesty the Queen is authorized by Order in Council to fix the fees to be taken in respect of any matter or thing done by a Consular officer in the execution of his office, and to vary such fees by way of increase or decrease, and to abolish fees and to create new fees;

And whereas by "The Foreign Marriage Act, 1892," and by "The Foreign Marriages Order in Council, 1892," made in pursuance of that Act, it is provided that certain things may or shall be done on payment of the proper fee, and that Act further provides that the proper fee shall be such fee as may for the time being be fixed under the first recited Act, and that the fee so fixed as respects a Consul shall be the fee which shall be taken by any marriage officer;

And whereas under "The Foreign Jurisdiction Act, 1890," Her Majesty in Council has power to make Orders in Council, and also to revoke or vary Orders in Council made or deemed to have been made in pursuance of that Act;

And whereas it is expedient that the Table of Fees fixed by "The Consular Fees (China, Japan, and Corea) Order in Council, 1892," should in certain respects be amended, and that the whole of the fees to be taken by Consular officers and marriage officers in Japan should be stated in sterling currency and should be fixed by an Order in Council made under the provisions of "The Consular Salaries and Fees Act, 1891:"

Now, therefore, in pursuance of the before-mentioned Acts, it is hereby ordered by Her Majesty, by and with the advice of her Privy Council, as follows:—

1. This Order may be cited as "The Japan (Consular and Marriage Fees) Order in Council, 1899."

2. The several fees set forth in the Tables annexed to this Order are hereby established, and the said Tables and notes thereto shall be construed as part of this Order.

3. This Order shall come into force on the 1st day of April, 1900, or at such later day as in the case of any particular Consular jurisdiction or part thereof, one of Her Majesty's Principal Secretaries of State, by any general or particular instructions, may from time to time direct.

4. On and after the day on which this Order comes into operation in any place in Japan, "The Consular Fees (China, Japan, and Corea) Order in Council, 1892," shall be repealed as to that place, but this repeal shall not affect any right or liability existing at the time when this Order so comes into operation.

5. In this Order the expression "Consular jurisdiction" means and includes the district, place, or places for which a Consular officer acts.

6. This Order shall extend to all places in Japan.

And the Marquess of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

Annex 2 of print.

[Insert Table of Fees.]

(Initialled) R. E. W
R. B. F.

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Annex (B).

China and Corea.

"The China and Corea (Consular and Marriage Fees) Order in Council, 1899."

WHEREAS by "The Consular Salaries and Fees Act," 1891, Her Majesty the Queen is authorized by Order in Council to fix the fees to be taken in respect of any matter or thing done by a Consular officer in the execution of his office, and to vary such fees by way of increase or decrease, and to abolish fees, and to create new fees.

And whereas by "The Foreign Marriage Act, 1892," and by "The Foreign Marriages Order in Council," 1892, made in pursuance of that Act, it is provided that certain things may or shall be done on payment of the proper fee, and that Act further provides that the proper fee shall be such fee as may for the time being be fixed under the first recited Act, and that the fee so fixed as respects a Consul shall be the fee which shall be taken by any marriage officer:

And whereas under "The Foreign Jurisdiction Act, 1890," Her Majesty in Council has power to make Orders in Council, and also to revoke or vary orders in Council made or deemed to have been made in pursuance of that Act:

And whereas it is expedient that the Table of Fees fixed by "The Consular Fees (China, Japan, and Corea) Order in Council, 1892," should in certain respects be amended, and that the whole of the fees to be taken by Consular officers and marriage officers in China and Corea should be fixed by an Order in Council made under the provisions of "The Consular Salaries and Fees Act, 1891."

Now, therefore, in pursuance of the before-mentioned Acts, it is hereby ordered by Her Majesty, by and with the advice of her Privy Council as follows:—

1. This Order may be cited as "The China and Corea (Consular and Marriage Fees) Order in Council, 1899."

2. The several fees set forth in the Tables annexed to this Order are hereby established, and the said Tables and notes thereto shall be construed as part of this Order.

3. Such provisions of any Order in Council made or continued in force under the provisions of "The Foreign Jurisdiction Act, 1890," and relating to China or Corea, as are inconsistent with anything in this Order, are hereby revoked; and the provisions of this Order and of the said Tables shall be and are hereby substituted for such last-mentioned provisions and shall be taken accordingly.

4. The Regulations for steamers engaged in the coasting trade between Foochow and Hong Kong and intermediate ports, made on the 9th May, 1864, are hereby repealed.

5. This Order shall come into force on the [?] 1st day of April, 1900, or at such later day as in the case of any particular Consular jurisdiction or part thereof, one of Her Majesty's Principal Secretaries of State, by any general or particular instructions, may from time to time direct.

6. On or after the day on which this Order comes into operation in any place in China or Corea "The Consular Fees (China, Japan, and Corea) Order in Council, 1892," shall be repealed as to that place, but this repeal shall not affect any right or liability existing at the time when this Order so comes into operation.

7. In this Order the expression "Consular jurisdiction" means and includes the district, place, or places for which a Consular officer acts.

8. This Order shall extend to all places in China and Corea.

And the Marquess of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

Annex 2 of print.

[Insert Table of Fees.]

(Initialled) R. E. W.
R. B. F.

No. 33.

[December 29, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 18, 1899.

Somali and Brunei (Repeal) Order in Council.

I HAVE the honour, by direction of the Marquess of Salisbury, to state that the draft Order in Council for the Somaliland Protectorate, which formed the subject of your Report of the 18th September last, received the approval of the Queen in Council on the 7th October.

Lord Salisbury's attention has, however, been drawn to the fact that the Somaliland Order in Council of 1889, which, owing to certain practical difficulties, was never brought into force, has not been expressly repealed by the recently passed Order of 1899. Copies of both Orders are inclosed herewith.*

Although it is unquestionable that the Order of 1889 has no operation, the necessary directions for putting it into force never having been given by the Secretary of State, it appears possible that misunderstanding and inconvenience may arise if it be maintained on the list of effective Orders in Council.

Lord Salisbury understands that the removal of the Order in question from that list can only be effected by repeal, and I am accordingly to transmit the accompanying draft of an Order in Council which has been framed to meet the case.

It has been thought advisable to take advantage of the opportunity afforded by the repeal of the Somali Order in Council to repeal at the same time "The Brunei Order in Council, 1890." This Order was passed under a misapprehension as to the numbers of British subjects affected by it, but it has never been brought into force by the means provided in Articles 116 (3) and 117.

Sir Charles Mitchell, the Governor of the Straits Settlements, when he visited Brunei in 1896 in his capacity of High Commissioner and Consul-General for the Sultan's territory, was empowered to exercise his discretion in bringing the Order into operation. He, however, reported that he had decided, after a very full consideration, not to complete the technical steps necessary to make it of force. and that he did not recommend that he should be directed to take such steps. Sir Charles stated, as his reasons for arriving at this decision, that the British subjects resident in Brunei were not of British birth; that the machinery necessary for bringing an appeal was altogether too cumbrous; and that the simpler system—which still obtains—of asking the intervention and assistance of Her Majesty's Consul was all that was really necessary.

It was at that time suggested by the Colonial Office that an Order in Council should be passed suspending the Order of 1890 until the Secretary of State should instruct the Consul to exhibit it in his office at Brunei, but as the latter Order had never come into force, Lord Salisbury considered that the better course would be to repeal the Order on the first favourable opportunity which occurred for this being done, without thereby drawing attention to the delay which had occurred in bringing it into force.

The draft Order for the repeal of the Somaliland Order in Council of 1889 has accordingly been drawn so as to include in its provisions the repeal of the Brunei Order in Council of 1890.

I am to inclose, for convenience of reference, a copy of "The Brunei Order in Council, 1890,"† together with a copy of the paragraph in Sir C. Mitchell's Report, which deals with the question.‡

I am to request that you will take the draft "Somali and Brunei (Repeal) Order in Council, 1899," into your consideration, and favour Lord Salisbury with your opinion whether it can properly be submitted to Her Majesty in Council in its present form, and, if not, that you will indicate such amendments or modifications as you may consider necessary or desirable.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

In our opinion, the accompanying draft Order in Council, as initialled by us, may properly be submitted to the Queen in Council for Her Majesty's approval.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
December 29, 1899.

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* "The Somali Order in Council, 1889" (Confidential 5866*); ditto, 1899 (Confidential 7202*).

† "The Brunei Order in Council, 1890" (Confidential 6003*).

‡ Sir C. Mitchell, No. 4, November 16, 1896 (Extract).

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Annex.

Draft Order in Council.

SOMALI AND BRUNEI.

"*The Somali and Brunei* (*Repeal*) *Order in Council*, 1900."

WHEREAS by Treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction in the territories comprised within the limits of "The Somali Order in Council, 1889," and "The Brunei Order in Council, 1890:"

And whereas, since the passing of the said Orders, other provision has been made for the exercise of Her Majesty's jurisdiction in the said territories respectively, and it is expedient that the said Orders should be expressly repealed:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows:—

1. "The Somali Order in Council, 1889," and "The Brunei Order in Council, 1890," are hereby repealed as from the passing of this Order.

2. This Order may be cited as "The Somali and Brunei (Repeal) Order in Council, 1900."

R. E. W.
R. B. F.

ITALY.

No. 34.

[May 26, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 13, 1899.

Proceedings in Neapolitan Courts *re* "Utopia."

L.O.R. 1897 (Conf. 7058), p. 70.

WITH reference to the report on the then condition of the case of the steamship "Utopia," with which you favoured the Marquess of Salisbury on the 30th November, 1897, I have now the honour, by his Lordship's direction, to transmit to you the correspondence noted in the accompanying list, dealing with the further stages through which the proceedings instituted in the Neapolitan Courts against Messrs. Henderson Bros., as managing owners of the "Utopia" have subsequently passed.

In accordance with your advice, Messrs. Henderson were at the time informed that before Her Majesty's Government could consider the propriety of making diplomatic representations on their behalf to the Italian Government, the appeal to the Court of Cassation must be proceeded with, unless a distinct opinion could be obtained from Italian lawyers of eminence that an appeal to that Court would be useless (letters to Messrs. Henderson of the 10th December, 1897, and the 2nd February, 1898, marked respectively AB and AF).

Messrs. Henderson, whilst unable to produce an opinion to this effect, nevertheless continued strongly to urge that unless pressure were brought to bear upon the Italian Government at that stage, the appeal to the Court of Cassation would prove entirely fruitless. In consideration of the admitted difficulty of the position in which the British firm found itself placed, and the gravity, from the point of view of British shipping interests generally, of the issues involved, Lord Salisbury, whilst expressing his inability to depart from the decision arrived at, authorized Her Majesty's Ambassador at Rome once more to approach the Italian Government unofficially with reference to the case, should such a step appear to His Excellency likely to serve a useful purpose (instruction to Sir Clare Ford, No. 5, Consular, the 5th March, 1898. Paper marked AK).

The Ambassador thereupon took an opportunity of speaking to the Secretary-General of the Ministry for Foreign Affairs, who, however, only repeated the intimation made on a previous similar occasion, that his Government could not in any way interfere in a case which was the subject of a law suit pending before the Tribunals of the country, and respecting which the parties dissatisfied with the decisions already pronounced, were free to appeal to a higher Court.

The conversation which took place on this occasion will be found reported in the despatch from the late Sir C. Ford, No. 6, Consular, of the 18th March, 1898. (Paper marked AM.)

Messrs. Henderson on learning the result of the Ambassador's action, now finally arranged to proceed with the appeal, and, in accordance with a suggestion made by them, Lord Salisbury instructed the Ambassador to retain the services of an Italian advocate, of standing and distinction, to watch the proceedings before the Court of Cassation on behalf of Her Majesty's Government, with the view to his making a Report thereon to His Excellency. The gentleman eventually selected for this purpose was Professor Enrico Pessina, Senator and President of the Society of Advocates at Naples. The instruction given to Signor Pessina was to attend the hearing of the case, and, on its termination, to furnish a Report, giving his expert opinion as to whether the proceedings and ultimate judgment of the Court were in accordance with the practice and principles of the law of Italy governing the matter, and, if not, in what respects either the procedure followed or the decision given, might be impeached as unsound. (Telegram to Sir P. Currie, the 16th December, 1898. Paper marked AW.)

After repeated delays the case came on for hearing on the 28th January last. The judgment pronounced the same day, but not published until the 27th February, confirmed, on all the principal points, the previous judgments of the lower Courts. The text of the final judgment, and an English translation of it will be found, as Inclosures 1 and 2, in the despatch from Her Majesty's Ambassador at Rome, No. 8 Consular, of the 31st March last (Papers marked BB, BB1, and BB2), which, itself, gives a clear and succinct statement of the various phases through which the case has successively passed in the Neapolitan Tribunals.

The Ambassador forwarded at the same time an English translation of Signor Pessina's Report (Paper BB 3), as well as a copy of a Memorandum drawn up by Mr. Embleton, representing Messrs. Henderson, in which he comments upon the final judgment (Paper BB 4).

All these documents Lord Salisbury decided, in the first instance, to submit to Messrs. Henderson, who had already laid before his Lordship a statement dealing with the several issues involved for their further observations. That firm have now communicated a further series of comments by their solicitor regarding Signor Pessina's Report (letters from Messrs. Henderson of the 23rd March and 2nd May, 1899, marked AZ and BE respectively). Having exhausted all the legal remedies open to them, Messrs. Henderson conclude by appealing to Her Majesty's Government to obtain redress for the gross injustice which they allege has been inflicted upon them as a result of the proceedings in the Neapolitan Courts.

Lord Salisbury will be glad if you will take the papers now submitted into your consideration, and will favour his Lordship with your opinion as to whether Her Majesty's Government are now in a position to make a formal protest to the Italian Government, and, if so, on what special grounds such formal protest or remonstrance may most properly and advantageously be based, and what particular form of redress might be suggested as best meeting the justice of the case. His Lordship will be glad at the same time to be favoured with any observations or suggestions of a more general nature which you may have to offer with regard to the present position of the case.

A copy of your previous Report of the 30th November, 1897, accompanied by the correspondence then before you, is re-transmitted herewith, for convenience of reference, and with this same view the papers to which specific allusion is made in my present letter, have been arranged in a separate bundle and distinguished by a blue pencil mark.*

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

*	(AA.)	Law Officers (Confidential 7058, p. 70)	November 30, 1897.
*	(AB.)	To Messrs. Henderson	December 10, "
	(AC.)	Messrs. Henderson	December 29, "
	(AD.)	To Messrs. Henderson	January 6, 1898.
	(AE.)	Messrs. Henderson	January 18, "
*	(AF.)	To Messrs. Henderson	February 2, "
	(AG.)	Messrs. Henderson	February 8, "
	(AH.)	Ditto	February 14, "
	(AI.)	Ditto	February 25, "

* See asterisks.

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*	(AK.)	To Sir C. Ford	(No. 5)	March	5, 1898.
	(AL.)	To Messrs. Henderson		March	5, „
*	(AM.)	Sir C. Ford	(No. 6)	March	18, „
	(AN.)	To Messrs. Henderson		March	30, „
	(AO.)	Messrs. Henderson		April	19, „
	(AP.)	Ditto		November	15, „
	(AQ.)	To Messrs. Henderson		November	17, „
	(AR.)	To Sir P. Currie	(Telegraphic)	November	17, „
	(AS.)	Sir P. Currie	(Telegraphic)	November	21, „
	(AT.)	Ditto	(Telegraphic)	November	24, „
	(AU.)	To Sir P. Currie	(Telegraphic)	December	3, „
	(AV.)	Sir P. Currie	(No. 23)	December	10, „
*	(AW.)	To Sir P. Currie	(Telegraphic)	December	16, „
	(AX.)	Sir P. Currie	(No. 2)	January	10, 1899,
	(AY.)	Messrs. Henderson		January	31, „
*	(AZ.)	Ditto		March	23, „
	(BA.)	To Messrs. Henderson		March	27, „
*	(BB.)	Lord Currie	(No. 8)	March	31, „
*	(BB 1.)	Judgment of Court of Cassation		January	28, „
*	(BB 2.)	Translation of above		January	28, „
*	(BB 3.)	Signor Pessina's Report		March	18, „
*	(BB 4.)	Memorandum by Mr. Embleton		March	25, „
*	(BB 5.)	Mr. Embleton to Lord Currie		March	29, „
	(BC.)	Messrs. Henderson		April	5, „
	(BD.)	To Messrs. Henderson		April	24, „
*	(BE.)	Messrs. Henderson		May	2, „

Report.

In our opinion, Her Majesty's Government is now in a position to make a formal protest to the Italian Government on behalf of Messrs. Henderson.

We do not indeed think that the competency of the Italian Courts to entertain the action could be successfully disputed.

It further appears to us that there was a clear case of negligence on the part of the captain of the "Utopia" leading to the disaster, and that although the procedure of the Italian Courts in refusing to allow evidence on this point to be adduced was, according to our ideas of procedure, irregular, no substantial point can be made on this head on behalf of Messrs. Henderson.

But it appears to us that grave injustice has been done to Messrs. Henderson by holding them subject to liability without limit.

In the first place we think that the contract ought to have been treated as being governed by the law of the flag, that is, English law, and, therefore, subject to the limit of liability which that law prescribes. The general rule is clear that, in the absence of provisions in the contract to the contrary, the law of the flag governs the liability of the shipowner with reference to the contract for the use of his ship, either for passengers or for goods. In the present case it does not appear that there was anything in the terms of the contract to exclude this general rule.

But, further, even if it could be maintained that the Italian Courts were justified in applying Italian law on the question of the liability of Messrs. Henderson, we think it quite clear there has been a miscarriage of justice.

It was sought to exclude the right of Messrs. Henderson to limitation of liability to the amount of the value of the ship and freight on the ground that they had been guilty of personal default. Personal default was charged in two respects:—

1. An insufficient supply of coal.
2. Deficiency of life-saving apparatus on board the "Utopia."

Both these grounds appear to us quite idle.

As a matter of fact, there were 22 tons of coal on board the "Utopia," and the statement of the captain that he had only 5 or 6 was unfounded, but even if he had been short of coal, this would not be personal default on the part of Messrs. Henderson immediately connected with the disaster. There is nothing to show that the shortage of coal, if it existed, was due to any fault of theirs; on the contrary, the captain could have supplied himself at Naples, and even if it existed, it was not the cause of the disaster. It might have led to the captain trying to enter the port at night, but this was not the cause of the disaster; the cause was the negligence of the captain in the way in which he entered.

As to deficiency of life-saving apparatus it is manifest it had nothing whatever to do with the disaster. The circumstances were such that it would not have saved life had it been there.

It was further contended that the liability of Messrs. Henderson was unlimited because they were under personal liability within the meaning of Article 491 of the Italian Code, by reason of the contract to carry. We entirely concur in the strictures passed upon the decisions of the Italian Courts on this point in the Report of Professors Pessina and Fiore, and have nothing to add to their observations. It appears to us to be perfectly clear that the mere fact that the shipowner has entered into a contract with regard to the use of the ship does not exclude his right to limitation of liability under that Article. The personal liability which excludes his right within the meaning of that Article is confined to cases where he has himself been guilty of some act or default which makes him liable. We are at a loss to conceive on what grounds any Court could take the view which was taken in the Italian Courts against Messrs. Henderson upon this point as the reasoning of Professors Pessina and Fiore seems to us to be incontrovertible.

Upon the whole it appears to us that injustice of a very grave kind has been done to Messrs. Henderson by the judgment of the Italian Courts, and that Her Majesty's Government may properly present a remonstrance to the Italian Government.

We need hardly point out that, apart from the injustice to Messrs. Henderson in the particular case, the action of the Italian Courts in this instance is calculated most seriously to prejudice the interests of British ship-owners whose vessels touch at Italian ports.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 26, 1899.

No. 35.

[July 4, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 14, 1899.

"Utopia": Draft Protest to Italian Government against Judgment of Court of Cassation.

Gentlemen,

WITH reference to your letter of the 26th ultimo, relative to the case of the steam-ship "Utopia," I have the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the draft of a despatch which his Lordship proposes to address to Her Majesty's Chargé d'Affaires at Rome, instructing him to make a protest to the Italian Government in respect to the grave injustice which will be inflicted on the owners of the vessel by the execution of the Judgment delivered by the Neapolitan Court of Cassation on the 28th January last.

Lord Salisbury would be glad to be informed, at your early convenience, whether you concur in the terms of the proposed instruction, or whether you consider that it may be advantageously modified or amended in any, and, if so, in what, respects.

For convenience of reference, the papers enumerated in the accompanying list, which were before you when you advised his Lordship in this case, are retransmitted herewith, together with your letter of the 26th ultimo.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

1.	Report of proceedings before, and decisions of the Marine Court at Gibraltar, held on March 23 and 25, 1891.		
2.	Judgment of the Neapolitan Court of First Instance ..	February	27, 1896.
	(Inclosure in Messrs. Henderson, February 4, 1897.)		
3.	Judgment of the Neapolitan Court of Appeal	June	18, 1897.
	(Inclosure in Messrs. Henderson, August 3, 1897.)		
4.	Judgment of the Neapolitan Court of Cassation	January	28, 1899.
	(Inclosure in Lord Currie's No. 8, Consular, March 31, 1899.)		
5	Report by Signori Pessina and Fiore	March	18, „
	(Inclosure in Lord Currie's No. 8, Consular, March 31, 1899.)		
6.	Law Officers (Confidential 7058, p. 70)	November	30, 1897.
7.	Ditto	May	26, 1899.

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Report.

In our opinion the proposed instructions to Her Majesty's Chargé d'Affaires at Rome, contained in the accompanying draft despatch, as altered and initialled by us, are appropriate to the circumstances of this case.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
July 4, 1899.

Annex.

Draft of Despatch from the Marquess of Salisbury to Sir G. Bonham.

(No. .)

Foreign Office, July 1899.

Sir,

I HAVE conferred with the Law Officers of the Crown with regard to the final decision given in the case of the British steam-ship "Utopia" by the Court of Cassation in Naples, which formed the subject of Lord Currie's despatch No. 8, Consular, of the 31st March last.

~~You are aware of the deep interest taken by British ship-owners generally in the important issues involved in this case, and of the solicitude with which Her Majesty's Government have watched the proceedings before the Neapolitan Courts.~~ *You are aware that the importance of that decision is not confined to the particular case of the "Utopia." It affects the interests of all British ship-owners trading from Italian ports, and Her Majesty's Government have therefore watched the proceedings with great solicitude, not only in the interests of Messrs. Henderson, but also in those of the shipping trade in general.* It seems unnecessary here to set out in detail the circumstances out of which the litigation has arisen, but it will be convenient briefly to recapitulate the principal features of the case:—

The steam-ship "Utopia," of Glasgow, owned by Henderson Brothers, of that city, sailed from Naples on the 12th March, 1891, bound for New York, with 815 Italian emigrants on board. Before she left Naples, the Italian port authorities issued a certificate to the effect that the vessel was fully provided and furnished according to law, with everything necessary for undertaking the voyage. At the same time, a security amounting to 97,000 lire was, in accordance with Italian law, given by Messrs. Holme and Co., the owners' agents at Naples, as guarantee for the due fulfilment of the obligations incurred towards the passengers. The "Utopia" reached the Bay of Gibraltar on *the night of* the 17th March, 1891, ~~but~~ *and*, in endeavouring to ~~enter~~ *reach* the ~~port, for the purpose of coaling, she foundered, after~~ *anchorage behind the New Mole in the port of Gibraltar, came into* collision with Her Majesty's ship "Anson" *and sank*. Part of the crew and 564 of the Italian emigrants lost their lives.

On the following day, the master of the "Utopia" made a declaration, technically called a "protest," before a notary public at Gibraltar, in which he ascribed the disaster to the accident of the collision and to the strong gale and heavy sea prevailing at the time. A Coroner's inquest was, on the same day, opened on the ship-wrecked bodies, and a verdict of "accidental death" was returned. A few days later, a Marine Court of Inquiry was assembled, to hold an investigation into the circumstances of the disaster. In the course of the evidence taken, the master of the "Utopia" stated that, in ~~steering the course which brought him into collision with the "Anson,"~~ *endeavouring to enter the port, instead of lying outside till morning*, he had been largely influenced by the shortness of his coal supply, the actual amount on board at the time of the collision being estimated by the third engineer at about 6 tons.

The Marine Court unanimously decided that the master of the "Utopia" had "committed a grave error in judgment:—

"1. In attempting to enter the anchorage behind the New Mole without having first opened out and ascertained what vessels were there;

"2. In attempting to turn his ship out across the bows of Her Majesty's ship "Anson.""

The charge involved in this finding, namely, that of a grave error in judgment, was in due course inquired into at an adjourned meeting of the Marine Court, who thereupon declared unanimously "that the decision already recorded sufficiently marks the finding of the Court, and that it is not deemed by the Court necessary to deal in any way with the master's certificate."

There was no evidence given at the inquiry, nor could there have been that the course steered by the master in endeavouring to reach the anchorage was in any way affected by the alleged deficiency of coal.

The "Utopia" was eventually raised by order of the Gibraltar authorities, when it was found that there were fully 22 tons of coal in her hold. The vessel was taken to the Clyde, where she still remains.

Within a few months of the disaster a Syndicate of Neapolitan lawyers, in the name of the relatives of the persons who had been drowned, instituted proceedings against Messrs. Henderson, as owners of the "Utopia," and against Messrs. Holme and Co., as their agents, in order to obtain compensation for the loss of life, and an indemnity in respect of the breach of the contract of transport.

It was held by the Court of First Instance at Naples, before which the case was tried, that the Italian Courts had no jurisdiction over a British ship lost in British waters, but this decision was reversed on appeal, on the ground that the Italian Courts were undoubtedly competent to deal with all questions arising in connection with the non-fulfilment of the contracts entered into at Naples with the Italian passengers by the agents of Messrs. Henderson. The case was consequently sent back for trial before the Court of First Instance *at Naples*, who delivered their Judgment on the 27th February, 1896.

This Judgment was adverse to the defendants on all the main issues. It was in turn confirmed by the Neapolitan Court of Appeal on the 18th June, 1897, and, on further appeal, finally upheld, save on one point, which was not, however, considered of sufficient importance to invalidate the decision, by the Judgment delivered by the Court of Cassation on the 28th January of this year, and published on the 27th February last. The principal points of importance in the final decision are ~~these~~ *as follows*:—

The claims of the plaintiffs are declared to be purely such as arise out of the non-fulfilment of the contract entered into by the owners of the "Utopia" with the Italian emigrants. It was accordingly for the defendants to show, if they could, that the disaster was of the nature of an accident, in respect to which no responsibility rested with them. The plea to this effect put forward by Messrs. Henderson is rejected by the Italian Courts on the following grounds:

That the responsibility of the master of the vessel for the disaster must be considered as clearly established by his own statement, made when giving evidence before the Marine Court at Gibraltar, that he was obliged ~~to shorten his course~~ *to endeavour to enter the port* owing to lack of coal, whereby he was prevented from opening out the vessels at anchor behind the New Mole before entering the port of Gibraltar. *That* the neglect of this precaution was by the same Marine Court found to have constituted a grave error in judgment. *That* the fatal manœuvre ordered by the master was, therefore, caused, not by any accidental circumstance beyond his control, but by his consciousness of the lack of coal; that the deficiency of coal ~~really existed~~ was ~~declared to be equally~~ proved by the master's own—and at the time uncontradicted—admission before the Marine Court. *That* it was therefore ~~considered~~ unnecessary, and entirely useless, to hear or take cognizance of the evidence which Messrs. Henderson repeatedly asked to be allowed to offer in order to prove that the disaster was not caused by any negligence on the part of the master; ~~that the decision of, and the evidence given before, the Marine Court at Gibraltar would not in any proceedings before an English Court be admitted as constituting proof of such negligence~~; and that, so far from there being a deficiency of coal, 22 tons of coal were found in the hold of the vessel when she was subsequently raised.

The shortage of coal and the responsibility of the master of the "Utopia" for the accident being thus considered as clearly established, it ~~is~~ *was* further declared that his employers, that is to say the owners of the vessel, ~~are,~~ *were*, on their part, responsible for the non-fulfilment of the contracts with the passengers who lost their lives.

Messrs. Henderson had *further* pleaded, ~~subsidiarily,~~ that even if they could be held thus responsible, at least their liability should be limited to the value of the ship and freight (which they were ready to abandon) in accordance with the provisions of Article 491 of the Italian Commercial Code. With reference to this plea, the Court of Cassation, confirming the decision of the lower Courts, declare~~s~~*d* that the limitation of liability ~~can~~ *could* not be accorded to Messrs. Henderson because they contracted a "personal" obligation towards the passengers, principally in entering, through their agents at Naples, into the contracts to carry the passengers to their destination, and secondarily in not supplying their ship with the necessary amount of coal.

As a result of the several judgments of the Italian Courts, Messrs Henderson, besides having to bear not only their own costs, but also almost the whole of the costs incurred by the plaintiffs in the prolonged proceedings, now stand condemned "to make good all the damages resulting from the wreck, including passage money and effects lost by those who were wrecked," the precise amount of the damages to be assessed by an Arbitrator appointed by the Neapolitan Court of First Instance, or should his decision not be acceptable to the parties, by that Court itself.

This final sentence appears to Her Majesty's Government to involve a great injustice to the owners of the "Utopia," and to be calculated most seriously to prejudice the interests of all British ship-owners whose vessels touch at Italian ports.

Her Majesty's Government do not wish to dispute the competency of the Italian Courts to entertain the action. Nor do they contest the fact that there was a ~~clear~~ case of negligence on the part of the master of the "Utopia," leading to the disaster; and although the procedure of the Italian Courts in refusing to allow evidence on this point to be adduced was, according to the views of procedure prevailing in English Courts, undoubtedly irregular, Her Majesty's Government do not desire to press this point unduly.

But it appears to Her Majesty's Government that grave injustice has been done to Messrs. Henderson by holding them subject to liability without limit:

1. In the first place in the opinion of Her Majesty's Government the contract between the owners of the "Utopia" and the passengers ought to have been treated as being governed by the law of the flag, that is, English law, and therefore subject to the limit of liability which that law prescribes. The general rule is clear that in the absence of provisions in the contract to the contrary, the law of the flag governs the liability of the ship-owner with reference to the contract for the use of his ship, either for passengers or for goods. In the present case it does not appear that there was anything in the terms of the contract to exclude the application of this general rule. *This point is of the greatest general importance and is one which Her Majesty's Government must most strongly press. It was English and not Italian law which governed the contract of carriage, and it is quite clear that by English law the liability of the ship-owners was not unlimited.*

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2. But further, if it could be maintained that the Italian Courts were justified in applying Italian law on the question of the liability of Messrs. Henderson, it appears to be abundantly clear that there has been a miscarriage of justice. It was sought to exclude the right of Messrs. Henderson to limitation of liability to the amount of the value of the ship and freight on the grounds that they had been guilty of personal default, and that they were under personal liability within the meaning of Article 491 of the Italian Code, by reason of the contract to carry.

As regards the first of these grounds, personal default was originally charged in two respects: first, an insufficient supply of coal; secondly, deficiency of life-saving apparatus on board the "Utopia." On this second point, however, the Court of Cassation did not uphold the decision of the lower Courts, but declared that for the purposes of the action it was clearly sufficient for the owners of the ship to have complied, as they did comply, in regard to the carriage of life-saving apparatus, with the requirements of Italian law.

There remains, therefore, the alleged insufficiency of the coal supply, as a ground for personal default. But this ground is surely quite idle, and beside the point. As a matter of fact, there were 22 tons of coal on board the "Utopia," as could have been readily proved if the Italian Courts had not refused to allow proof to be adduced; and the statement made ~~by the third engineer of the vessel~~ before the Marine Court at Gibraltar that there were only about 6 tons of coal on board was, in truth, unfounded and contrary to fact. But even had there been a deficiency of coal, this would not constitute, on the part of the owners, personal default ~~immediately connected with the disaster~~. There is nothing to show that the shortage of coal, if it existed, was due to any fault of theirs. On the contrary, the captain could have supplied himself at Naples. And, lastly, if the shortage existed, it was not the cause of the disaster. It might have led to the master trying to enter the port at night; but this again was not the cause of the disaster—the cause was the negligence of the master in the way in which he entered.

With regard to the contention that the liability of Messrs. Henderson was unlimited, because they were under "personal" liability by reason of the contract to carry, Her Majesty's Government are at a loss to conceive on ~~that~~ *what* grounds any Court could take upon this point the view which was taken in the Italian Courts. Article 491 of the Italian Commercial Code provides as follows:—

"Ship-owners are responsible for the acts of the master and other members of the crew, and are answerable for all liabilities contracted by the master in so far as the ship and the voyage are concerned.

"All owners and part owners, however, who shall not have contracted personal liabilities, may in every case, by the abandonment of the ship- and freight-money paid or still due, free themselves from the responsibilities and liabilities aforesaid, save as regards salaries and wages for officers and crew."

The all-important question arising out of the provisions of this Article in connection with the present case is: What constitutes the contracting of a "personal" liability on the part of the owners of a vessel? It appears to Her Majesty's Government perfectly clear, and they are so advised by eminent experts in Italian law, that the mere fact of having entered into a contract with regard to the use of his ship, does not exclude the ship-owner's right to limitation of liability under the Article above quoted.

As a general principle, it may be admitted that the non-fulfilment of a contract would properly give rise to a claim for damages. But whether such claim must be recognized in a particular case, and to what extent, depends upon the causes of the failure to carry out the contract. The failure may be due to the direct acts or intervention of the ship-owner, who would in that case be rightly held to have contracted personal liability in respect to all consequences flowing from such acts or intervention, and would on this ground be denied the right to limit his responsibility to the abandonment of the ship and freight-money. If, on the other hand, the failure to execute the contract be due to circumstances over which the ship-owner has no control, and which cannot therefore be laid to his personal charge, he cannot be ~~held answerable under Article 1226 of the Italian Civil Code, which provides that "the debtor shall be under no obligation to make amends for damages, whenever, by circumstances beyond his control or accident unforeseen, he shall have been prevented from giving or doing that which he had undertaken."~~ *denied the right to limitation of liability under Article 491.*

Yet, again, if the failure arises out of acts done or liabilities incurred by the master of the vessel on his own initiative and in respect to a matter in which he alone has, by law, authority to decide and act—such as the navigation of his ship—then, indeed, under the provisions of the first paragraph of Article 491 of the Commercial Code already quoted, the ship-owner is to be held responsible for the master's acts, but his responsibility is, under the second paragraph of the same Article, limited to the value of the ship and freight.

It is not denied that by the issue of passage tickets a ship-owner incurs the obligation to convey the passenger to the stipulated destination. He does so, however, under the conditions laid down by law. One of these conditions is clearly defined in Article 107 of the Italian Code, which provides that—

"The command of a ship, as regards its management and navigation, belongs exclusively to the master. Any special arrangement tending to elude the provisions of this Article is forbidden."

The ship-owner cannot consequently avoid intrusting the master with the management and navigation of the ship. And if, owing to an accident to the vessel, there arises a failure to carry out the contract made with the passengers, the question whether or not the owners should be held "personally" responsible therefor must obviously be answered according as the accident was due to a cause which the owners had power to prevent, or one which was beyond their control. But, according to the decisions of the Italian Courts, *in this case* the owners of a vessel are held to have incurred "personal" and unlimited liability by reason merely of the contract involved in the issue of passage tickets by their agents. If such a decision were good in law, then it would seem clearly impossible for ship-owners, under any circumstances whatever, to escape unlimited liability, since the carriage not only of passengers but of every kind of cargo is invariably undertaken in virtue of some species of contract stipulating for the conveyance of such passengers or cargo to a certain destination. The provisions of the second part of Article 491 of the Commercial Code would therefore be entirely meaningless and nugatory.

To put the matter in a more concrete form: ~~If a ship-owner had contracted to carry a number of passengers to a certain port, and had made use, for this purpose, of a vessel which was not seaworthy, then he would rightly be held personally liable for any accident directly caused by the unseaworthiness of the vessel, inasmuch as he would undoubtedly be personally answerable for the quality of the ship employed for carrying out the contract made with the passengers.~~

If, ~~on the other hand,~~ a ship, fit in every respect to take the sea, and properly manned and equipped according to law, be wrecked in direct consequence of an error in judgment committed by the master in manœuvring or navigating his ship, it cannot be pretended that the consequent failure to carry out the contract made with the passengers embarked on the vessel, constitutes "personal" default on the part of the owner, for which he must be held answerable without limit of liability. The owner cannot be "personally" responsible for the mistaken order given by the master relative to the navigation of his ship, for the law expressly forbids any attempt on his part to relieve the master from any responsibility under this head. Such a mistaken order accordingly constitutes, in respect to the owner, a circumstance physically and legally altogether beyond his control, and a failure of contract caused entirely by such a circumstance is clearly not one in regard to which the owner can be held to have incurred "personal" liability.

In the result, therefore, it appears to Her Majesty's Government that injustice of a very grave kind has been done to Messrs. Henderson by the judgments of the Italian Courts, and that the case is one in which it is their duty to present a strong protest to the Italian Government. It is, of course, not for me to suggest in what particular manner the Italian Government should afford the redress to Messrs. Henderson which Her Majesty's Government consider to be due to them. But I request you, in making a representation to the Minister for Foreign Affairs in the sense of this despatch, to express on behalf and in the name of Her Majesty's Government the earnest hope that the Italian Government will take such steps as they may consider best calculated to insure that the owners of the "Utopia" are indemnified for any losses which would be unjustly imposed upon them in the event of the decision of the Court of Cassation being enforced against them.

Her Majesty's Government also claim that the attention of the Italian Government should be drawn to the very serious effects which any such decisions in the future would have upon trade by English vessels with Italian ports, and to the necessity of steps being taken to prevent any recurrence of such injustice in other cases.

You are authorized to read this despatch to the Minister for Foreign Affairs, and to leave a copy of it with his Excellency should he desire it.

I am, &c.

R. E. W.
R. B. F.

JAPAN.

No. 36.

[January 23, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 6, 1899.

Gentlemen,

Status of British Colonial subjects in Japan under Treaty of 1894.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to the question of the status of colonial subjects of Her Majesty residing in, or trading with, Japan as affected by the Treaty between this country and Japan of the 16th July, 1894, which will come into force on the 17th July, 1899.

By that Treaty (Paper A) the right of extra-territorial jurisdiction now possessed

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by the Queen over Her Majesty's subjects in Japan is surrendered, while, on the other hand, such subjects acquire full liberty to travel, reside, or trade in any part of the Japanese dominions, instead of being restricted in these matters, as hitherto, to the Treaty ports.

Moreover, in accordance with the Tariff annexed to the Treaty, British goods, as regards the articles enumerated therein, are admitted into Japan at a lower rate of duty than that provided by the Japanese General Tariff.

Other privileges and advantages are secured to British subjects under the new Treaty, into which, however, for the purposes of this reference, it seems unnecessary to enter more fully.

Article XIX provides that the stipulations of the Treaty shall be applicable, so far as the laws permit, to all the Colonies and foreign possessions of Her Majesty, except—

India,
The Dominion of Canada,
Newfoundland,
The Cape of Good Hope,
Natal, and the
Colonies of Australasia.

It was further provided that the stipulations of the Treaty should apply to any of the above-named Colonies on whose behalf notice to that effect should have been given within two years from the date of the exchange of ratifications.

Of the above-named Colonies and possessions Natal and Queensland are the only ones on whose behalf the prescribed notice has been given, although quite recently the Government of India have expressed the desire that India should be included in the Treaty if this is still possible, the time allowed for a decision having expired, and this question is now before the Japanese Government.

All the other Colonies named declined to take advantage of the provision in the Treaty above referred to, and in a letter dated the 18th June, 1897 (Paper B), the Colonial Office inquired what would be the position in Japan of British subjects "domiciled" in Colonies which have refused to be included in the Treaty, and of the trade and commerce of such Colonies with Japan when the Treaty comes into operation.

The question put by the Colonial Office has reference specifically to the position of British subjects "domiciled" in non-adhering Colonies. It appears, however, to be a matter worthy of consideration whether, if any discrimination adverse to British subjects in non-adhering Colonies can properly, under the terms of the Treaty, be applied by the Japanese Government, the test of its application is not afforded by residence, rather than domicil, in such a Colony on the part of the British subjects affected.

If the ability or disability of a British subject to enjoy the full benefits of the Treaty is dependent on whether he be not, or be, domiciled at the moment in a non-adhering Colony, then such British subject so domiciled will continue to be prejudicially affected, although he may be resident in an adhering Colony or in the United Kingdom; and conversely a British subject domiciled in the United Kingdom or in an adhering Colony will not be adversely affected, although he be for the time resident in, and carrying on business from, a non-adhering Colony.

On the other hand, the test afforded by residence, though more easy of determination, and possibly in itself more logical than that supplied by "domicil," might probably turn out in practice to be somewhat difficult of application, and inequitable in its operation.

Some of the objections to such a test are forcibly set forth in the accompanying Memorandum by Mr. Farnall, of this Department; and the alternative suggestion made therein, to the effect that the proper course for Japan to follow, and for Great Britain to allow, would be to exclude from the operation of the Treaty all such persons as would be excluded if the non-acceding Colonies concerned were not portions of Her Majesty's dominions but of foreign States not parties to the Treaty, seems worthy of consideration.

In the reply of this Department, dated the 2nd July, 1897 (Paper C), it was stated that Her Majesty's Minister at Tôkiô, who was then at home on leave of absence, observed that he had thought it unadvisable, by putting a question on the first point to the Japanese Government, to suggest that the position of British colonial subjects would be different from that of other British subjects.

That the Civil Code of Japan, as at present worded, provided that foreigners would have all the civil rights enjoyed by Japanese subjects, except such as are expressly denied to them by legislation, as, for instance, the right to hold land in fee simple, and that of owning and publishing newspapers.

That the position of the trade and commerce of the Colonies not acceding to the Treaty would, no doubt, be affected, as they would be governed by the Japanese General Tariff instead of by the Conventional Tariff under the Treaty with Great Britain.

Subsequently a correspondence took place between this Department, the India Office, and Messrs. Freshfields and Williams (Papers D, E, F, G, H) as to whether Mr. Tata, a Parsee merchant of Bombay, is, or is not, entitled to all the advantages which an Englishman would have as regards residing and trading in Japan; in consequence of which a reference was made to Her Majesty's Minister at Tôkiô, in which he was requested to furnish his observations on the subject.

Sir Ernest Satow, in his reply (Paper K), states that *primâ facie* he is inclined to the opinion that the privileges stipulated for on behalf of British subjects in the Treaty would not extend to British subjects domiciled in any of the Colonies and possessions enumerated in Article XIX, unless the Governments of those Colonies or possessions have acceded to the Treaty.

He, however, observes that he has no grounds for supposing that the Japanese Government contemplate treating British subjects from India or the Colonies now in question differently from those who are domiciled in Great Britain, and that the press, in discussing the non-accession of India and the Colonies, has pointed out the difficulty of exercising discrimination between them. On the other hand, in the case of Colonies which have legislated, or are contemplating legislation, against the immigration of Japanese subjects (a question on which the Japanese Government feel very strongly), and in order to reserve to themselves complete freedom of action in this respect, have declined to accede to the Treaty, would Japan be justified, Sir E. Satow asks, in treating persons domiciled in such Colonies differentially?

Mr. Wilkinson, the Judge of Her Majesty's Court for Japan, in the Memorandum which he has furnished to Her Majesty's Minister, and a copy of which is annexed to his despatch, would appear to hold the views that while all British subjects without exception are entitled under the Treaty to trade, travel, or reside in any part of the Japanese dominions and possessions, there are certain portions of the dominions and possessions of Her Majesty where Japanese subjects will not have a corresponding right in virtue of the Treaty of the 16th July, 1894.

I am to observe, with regard to the above train of argument, that if Mr. Wilkinson's view be correct, the provisions of the Treaty would not be entirely reciprocal, a point to which the Japanese Government have throughout the negotiation of the new Treaties with the Powers attached the utmost importance.

I am to request that you will take the question into your consideration, and that you will favour Lord Salisbury with your opinion as to the reply which should be sent to Sir E. Satow, who asks that he may be furnished with instructions as to the language which he should hold to the Japanese Government on the subject should the occasion arise.

His Lordship would further be glad to receive any observations of a general character in regard to the question which you may desire to offer.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Treaty between Great Britain and Japan (Treaty No. 957)		July	16, 1894.
(B.)	Colonial Office		June	18, 1897.
(C.)	To Colonial Office		July	2, „
(D.)	Messrs. Freshfields and Williams		April	27, 1898.
(E.)	To Messrs. Freshfields and Williams		June	20, „
(F.)	Messrs. Freshfields and Williams		July	4, „
(G.)	To Messrs. Freshfields and Williams		August	17, „
(H.)	India Office		November	29, „
(I.)	Sir C. M. Kennedy (Memorandum)		January	1, 1891.
(J.)	To Sir E. Satow	(No. 54)	July	12, 1898.
(K.)	Sir E. Satow	(No. 142)	September	6, „
(L.)	Mr. Farnall (Memorandum)		December	28, „

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Report.

In our opinion Article XIX of the Treaty has not the effect of limiting the rights of British subjects connected with non-adhering Colonies or possessions. The question who are British subjects for the purposes of the Treaty is one of British law. Many of the persons resident in the Colonies would be British subjects even if they had been born in a foreign country, as being the children, or grand-children, of natural-born subjects, and it is impossible to suppose that such persons lose the benefits of this Treaty owing to the fact that they have been born in a British Colony and not in a foreign country.

No test can be suggested for discrimination against persons connected with non-adhering Colonies or possessions. The inhabitants of such Colonies or possessions are generally, and not locally merely, British subjects. They enjoy the privileges of citizenship all over the Empire.

The reasons given in the papers before us show that the test of domicil could not be applied in practice, and the suggested test of residence appears to us to be even more impracticable, as residence varies from time to time, and it could not be said of any colonist who came to Japan that he was then resident in the Colony.

We cannot see that the test suggested in Mr. Farnall's Memorandum would meet the case. It is quite impossible to say who are the persons who would cease to be British subjects if the Colonies in question ceased to be part of the British Empire.

It must be recollected that British subjects inhabiting non-adhering Colonies and dependencies are affected by this Treaty, inasmuch as when it comes into force it puts an end to the earlier Treaties under which they enjoyed a right to exterritoriality.

We think that the fair meaning of the Treaty is that all persons who by British law are recognized as possessing the rights of British citizenship all over the world are entitled to the benefits of its stipulations, and this test includes the inhabitants—being British subjects—of all Colonies and dependencies, whether they adhere to the Treaty or not.

Article XIX, in our opinion, does not discriminate between different classes of British subjects, nor create a distinction unknown to British law and almost impossible of definition. Its effect is, in our opinion, merely to provide that the privileges and obligations of the Treaty shall not enure for the benefit of non-adhering Colonies and dependencies. For instance, goods the produce or manufacture of a non-adhering Colony or dependency would not be entitled to the Tariff prescribed by the Treaty.

We advise that, if the question arises, Her Majesty's Minister in Japan should be instructed to advocate the construction of the Treaty which we suggest. He should point out the impossibility of the proposed distinction, and that the discrimination introduced by Article XIX, is territorial merely, and not personal.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 23, 1899.

No. 37.

[August 4, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, July 28, 1899.

Draft Order in Council abolishing Consular jurisdiction.

BY Article XX of the Treaty between Great Britain and Japan of the 16th July, 1894, of which a copy is inclosed, it was agreed that that Treaty should be substituted in the place of the previous Convention and of all arrangements and agreements subsidiary thereto, and that the jurisdiction exercised by British Courts in Japan and all the exceptional privileges, exemptions and immunities enjoyed by British subjects in that country should cease and determine from the date when the Treaty came into force.

In compliance with the stipulations of Article XXI, the Japanese Minister gave notice on the 17th July, 1898, that it was the wish of the Japanese Government to have the Treaty brought into operation on the 17th July, 1899, but they have since consented, as will be seen from Sir E. Satow's despatch No. 104 of the 15th June, 1899, which is also inclosed, that Her Majesty's Courts in Japan shall continue to exercise jurisdiction until the 4th August next.

I have the honour to transmit to you by direction of the Marquess of Salisbury, a draft Order in Council which has been prepared by Mr. A. Gray, in accordance with the precedent of the accompanying Tunis Order in Council of the 31st December, 1883, providing that as regards all matters and cases affected by the Treaty with Japan, of the 16th July, 1894, the operation of the jurisdictional Orders in Council now applicable to Japan shall cease to be in force, and operative within that Empire on and after the 4th August, 1899, except as regards any judicial matters pending in the British Consular Courts at that date.

His Lordship requests that you will be so good as to inform him at your earliest convenience whether you approve the terms of the draft Order in Council.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Tunis Order in Council (Confidential 4905*)		December 31, 1883.
Treaty (Great Britain and Japan) (Treaty No. 957)		July 16, 1894.
Sir E. Satow	(No. 104)	July 15, 1899.
Draft Order in Council.		

Report.

We approve the draft Order in Council as altered and initialled by us.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 4, 1899.

Annex.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction in the Empire of Japan:

And whereas the exercise of the power and jurisdiction aforesaid is now regulated by "The China and Japan Order in Council, 1865," and subsequent amending Orders in Council:

And whereas by Treaty between Her Majesty and the Emperor of Japan, signed at London on the 16th July, 1894, it was agreed that from the date when that Treaty should come into force, certain Conventions, Arrangements, and Agreements with respect to Her Majesty's jurisdiction in Japan should cease to be binding, and in consequence that the jurisdiction then exercised by British Courts in Japan, and all the exceptional privileges, exemptions, and immunities then enjoyed by British subjects as a part of, or appurtenant to, such jurisdiction, should absolutely cease and determine, and thereafter all such jurisdiction should be assumed and exercised by Japanese Courts:

And whereas *the said Treaty came into force on the 17th day of July,* 1899, *but it has been agreed by and between Her Majesty and the Emperor of Japan that its operation as regards Her Majesty's Consular jurisdiction should be suspended until the 4th day of August,* 1899, ~~under the provisions of the said Treaty, as modified by subsequent arrangement, it has been agreed that the said Treaty shall come into force on the 4th day of August, 1899~~.

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

As regards all such matters and cases as come within the jurisdiction of the Japanese Courts, the operations of the Orders in Council regulating Her Majesty's Consular jurisdiction in the Empire of Japan shall cease to be in force and operation within the said Empire *as from*

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~~on and after~~ the 4th day of August, 1899, except as regards any judicial matters pending in any of Her Majesty's Consular Courts in Japan on the day above mentioned.

And the Most Honourable the Marquess of Salisbury, K.G., one of Her Majesty's Principal Secretaries of State, and the Lords Commissioners of the Treasury, and the Lords Commissioners of the Admiralty are to give the necessary directions herein as to them may respectively appertain.

R. E. W.
R. B. F.

No. 38.

[October 13, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, September* 21, 1899.

Protection in Japan of Industrial Property of British Indian and Colonial subjects.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to the question of the rights of Indian and Colonial subjects of Her Majesty to the protection of their industrial property in Japan as affected by the Treaty between this country and Japan of the 16th July, 1894, which came into force on the 17th July last (see Paper A), and by the International Convention for the Protection of Industrial Property, signed at Paris on the 20th March, 1883 (Paper G).

On the 6th January last you were consulted as to the interpretation of Article XIX of the Treaty dealing with the general status of British subjects belonging to Colonies or possessions that had not adhered to the Treaty, and you were furnished with a Memorandum, drawn up by Mr. Justice Wilkinson, Judge of Her Majesty's Court for Japan, in which certain Articles were expressly enumerated, to the benefit of which British subjects, no matter where domiciled or resident, were, in his opinion, entitled (see Papers B and C).

Among these Articles was No. XVII, which runs as follows:—

"The subjects of each of the High Contracting Parties shall enjoy in the dominions and possessions of the other the same protection as native subjects in regard to patents, trade-marks, and designs, upon fulfilment of the formalities prescribed by law."

In your reply, dated the 23rd January (see Paper D), you reported that in your opinion "all persons who, by British law, are recognized as possessing the rights of British citizenship all over the world are entitled to the benefits of its" (*i.e.*, the Treaty's) "stipulations, and this test includes the inhabitants, being British subjects, of all Colonies and dependencies whether they adhere to the Treaty or not" (see Paper D).

Although Article XVII was not specifically mentioned in your Report, no exception was taken to its inclusion by Mr. Justice Wilkinson among those to the benefit of which all British subjects were entitled.

Your opinion was communicated to Her Majesty's Minister at Tôkiô for his guidance, and a despatch has now been received from him (see Paper F) pointing out the absence of any specific reference to Article XVII in your Report, and suggesting the advisability of his being furnished with explicit instructions as to the view taken by Her Majesty's Government in regard to the rights under that Article of British subjects residing or domiciled in any of the British Colonies or possessions that have not adhered to the Treaty.

I am to request that you will be so good as to inform Lord Salisbury what instructions should, in your opinion, be sent to Sir E. Satow on this point.

A further question arises in consequence of both Great Britain and Japan being parties to the International Convention of the 20th March, 1883, for the Protection of Industrial Property (Paper G), to which certain British Colonies and possessions have not adhered.

That Convention, like the new Treaty between Great Britain and Japan, treats industrial property from the point of view of the owner, and does not appear to admit, between Colonies that have and Colonies that have not adhered to it, any such geographical discrimination in regard to industrial property as will, in accordance

with the opinion expressed in your Report of the 23rd January last (Paper D), arise, under the Treaty of 1894 (Paper A), in regard to the produce of the several British Colonies. Article II of the Convention contains the following provision:—

"Les sujets ou citoyens de chacun des États Contractants jouiront, dans tous les autres États de l'Union, en ce qui concerne les brevets d'invention, les dessins ou modèles industriels, les marques de fabrique ou de commerce et le nom commercial, des avantages que les lois respectives accordent actuellement ou accorderont par la suite aux nationaux."

According to the opinion expressed in your Report of the 23rd January last (Paper D), a British subject, who is one owing to his connection with a British Colony or possession which has not adhered to the Treaty between Great Britain and Japan, is, nevertheless, entitled under that Treaty to the privileges granted by it to "British subjects" in Japan.

Lord Salisbury would be glad to be furnished with your opinion as to whether British subjects residing or domiciled in British Colonies or possessions which have not adhered to the International Convention for the Protection of Industrial Property are, under Article II of that instrument, entitled in Japan to the benefits secured by the Convention to the subjects of States which are parties to it.

I am also to request that you will favour his Lordship with any general observations that you may have to make on the matters dealt with in the papers now submitted to you.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Treaty between Great Britain and Japan (Treaty No. 957)	July	16, 1894.
(B.)	To Law Officers	January	6, 1899.
(C.)	Sir E. Satow .. .. .. (No. 142)	September	6, 1898.
(D.)	Law Officers	January	23, 1899.
(E.)	To Sir E. Satow .. .. .. (No. 23)	February	22, „
(F.)	Sir E. Satow .. .. (No. 133. Confidential)	July	27, „
(G.)	International Convention for the Protection of Industrial Property (Treaty No. 729)	March	20, 1883.

Report.

In our opinion, British subjects though residing, or domiciled in Colonies or possessions which have not adhered, *are* entitled to the benefits of Article XVII of the Treaty, and of Article II of the Convention.

The right is conferred on those who are British subjects, and is not lost by their being resident or domiciled either in a foreign country, or in a Colony which has not adhered.

The right under the Convention is also conferred by Article III on foreigners domiciled in one of the Contracting States. Of course, domicil in a non-adhering Colony would not be effectual for this purpose, as the test is, in this instance, local, not personal as in the case of British subjects. This distinction is also illustrated by Articles IV and VI of the Convention, which would not apply in the case of non-adhering Colonies.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 13, 1899.

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No. 39.

[October 27, 1899.]

Foreign Office to the Law Officers of the Crown.

Import duties in Japan on goods of British Colonies not parties to Treaty of 1894.

Gentlemen, *Foreign Office, October* 6, 1899.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to the question of the import duties to be paid in Japan on goods the produce or manufacture of British Colonies or possessions which are not parties to the Treaty between Great Britain and Japan of the 16th July, 1894.

A copy of the Treaty, followed by a Protocol signed on the same day, is inclosed (Paper A).

In your Report of the 23rd January last (Paper B), you stated your opinion that the fair meaning of the Treaty is that all persons who by British law are recognized as possessing the rights of British citizenship all over the world are entitled to the benefits of its stipulations; that Article XIX does not discriminate between different classes of British subjects, and that its effect is merely to provide that the privileges and obligations of the Treaty shall not enure for the benefit of non-adhering Colonies or dependencies. That, for instance, goods, the produce or manufacture of a non-adhering Colony or dependency, would not be entitled to the tariff prescribed by the Treaty.

Your opinion was communicated to Her Majesty's Minister at Tôkiô for his guidance (to Sir E. Satow, No. 23, February 22, Paper C), and he took an opportunity of informing the Japanese Government of the views of Her Majesty's Government on the matter (Sir E. Satow, No. 125, July 21, Paper D).

In two previous despatches from Sir E. Satow (No. 6, January 9, Paper E, and No. 13, January 13, Paper H) the question is, however, raised whether British Colonies and possessions not parties to the Treaty, although they are excluded from participation in the advantages conferred by it, are not entitled to the benefits of the Tariff annexed to the Protocol of the same date.

The same question is raised in a letter from the Colonial Office of the 8th September (Paper I), which is also inclosed, together with Minutes written on it in this Department. The inclosure in this letter argues that, no reference being made in the Protocol to Article XIX of the Treaty, and the Protocol being made to regulate certain matters "apart from the Treaty," British Colonies which have not adhered to the Treaty are nevertheless entitled to the benefits of the Tariff annexed to the Protocol, although not to the benefit of the most-favoured-nation and other stipulations contained in the Treaty.

I have the honour to request that you will favour Lord Salisbury with your opinion on this point, and with any general observations which you may have to make on the matters dealt with in the inclosed papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Treaty and Protocol (Great Britain and Japan)	(Treaty 957)	July	16,	1894.
(B.)	Law Officers (with all papers then referred to them)	..	January	23,	1899.
(C.)	To Sir E. Satow	(No. 23)	February	22,	„
(D.)	Sir E. Satow	(No. 125)	July	21,	„
(E.)	Ditto	.. (No. 6)	January	9,	„
(F.)	Ditto	(No. 3. Telegraphic)	January	9,	„
(G.)	To Sir E. Satow	(No. 3. Telegraphic)	January	10,	„
(H.)	Sir E. Satow	.. (No. 13)	January	13,	„
(I.)	Colonial Office (with Minutes thereon)	.. ..	September	8,	„

Report.

The construction contended for on behalf of Canada is by no means an impossible one, and if Her Majesty's Government would be justified in contending that the arrangement embodied in the Protocol constituted a bargain between Great Britain and Japan, independently of the Treaty, we think that contention might be supported.

It is, however, quite clear that the Treaty and the Protocol were negotiated together as part of one arrangement, and, under these circumstances, we are of opinion that the Protocol, with its Schedule, must be read as applying, after the coming into force of the Treaty of 1894, only to such of the Colonies and possessions enumerated in Article XIX as accede to the Treaty.

Moreover, the Treaty and Protocol were signed on the same day; the ratification of the Treaty was to constitute approval of the Protocol, and the reference to Articles V and XV of the Treaty seems to indicate that the scope of the two was to be co-extensive. We attach no importance to the omission of any reference to Article XIX; the only Articles which are referred to are those which might modify the amount of the duties, and it seems to be contemplated that these Articles were to apply to all Colonies and possessions to which the Protocol applied after the Treaty came into force.

We therefore think upon the whole that the expression "the dominions and possessions of Her Britannic Majesty" in the Protocol were to be the same to which the Treaty applied when it began to operate.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 27, 1899.

MEXICO.

No. 40.

[January 20, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 23, 1898.

Navigation of territorial waters of British Honduras and Mexico.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, a despatch from Her Majesty's Minister at Mexico relative to the question of the navigation of the territorial waters of British Honduras and Mexico.

L.O.R. 1898 (Conf. 7199), p. 56.

On the receipt of your Report of the 23rd August last, of which a printed copy is inclosed for convenience of reference, Her Majesty's Minister was instructed to communicate the substance of it, in such manner as he might think most convenient, to the Mexican Government.

Sir H. Dering's despatch contains an account of an interview which he had in consequence with Señor Mariscal, the Mexican Minister for Foreign Affairs, on the subject.

It will be seen that M. Mariscal accepts all the conclusions at which you arrived on the various questions submitted to you in my letter of the 10th August, except with regard to one point, namely, the conveyance of prisoners on board Mexican public vessels which have obtained permission to pass through the territorial waters of the Colony.

M. Mariscal suggests a modification to the effect that vessels which obtain permission to traverse British territorial waters shall carry no prisoners for ordinary offences nor prisoners of war other than such as are of Mexican nationality; and he

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states that with this modification he would be willing to embody the Regulations in a Convention, which would be binding on both parties.

It appears to Lord Salisbury that, in view of the proposal that the matter should be made the subject of a formal Convention, it is important that care should be taken to avoid creating what might turn out to be an inconvenient precedent by appearing to yield as matter of right a point which Her Majesty's Government may only be prepared to concede as a matter of courtesy, and in view of the special circumstances attaching to the case now under consideration.

At the same time, having regard to the friendly spirit in which the Mexican Minister for Foreign Affairs has received the representations made to him by Sir H. Dering, Lord Salisbury would be glad to meet his views, if possible, in the matter.

Moreover, so long as the conveyance of the prisoners through the territorial waters of British Honduras is confined to prisoners of Mexican nationality, on board of Mexican public ships, and so long as it is clearly understood that even such limited conveyance cannot be claimed by Mexico, and is not allowed by Great Britain, as matter of right, his Lordship does not apprehend that there can be any great objection to granting it as a matter of courtesy in the special and somewhat peculiar circumstances of the present case.

It is, moreover, suggested that, in the somewhat unlikely event of such a prisoner, while within the territorial waters of the Colony, attempting to sue out a writ of *habeas corpus*, any practical difficulty which might, under other circumstances, arise, would be avoided by the fact that the process of the Queen's Courts could not be executed on board of a public vessel in the naval service of a foreign Government.

I am to request that you will take the matter into your consideration, and that you will favour Lord Salisbury with your opinion as to the instructions which should be given to Sir H. Dering on the subject.

His Lordship would also be glad to receive any general observations which you may desire to offer in connection with the question.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Sir H. Dering	(No. 58)	November 30, 1898.
To ditto	(No. 23)	September 9, „
Law Officers (Confidential 7199, p. 56)		August 23, „
Treaty between Great Britain and Mexico (Treaty No. 1006) ..		July 8, 1893.

Report.

We understand that M. Mariscal is willing to confine the power of bringing prisoners through British territorial waters, whether for common offences, or prisoners of war, to the case of Mexicans.

We do not think that any distinction between these two classes is desirable, and we consider that, if permission to carry prisoners is granted, it should apply without distinction.

The phrase "prisoners of war" is not strictly applicable to the case of Indians who are at the outside mere insurgents.

We think that M. Mariscal's proposal may be acceded to in the case of all prisoners who are Mexican subjects carried on Mexican war vessels or transports.

If, as a matter of policy, it is considered desirable to give a licence facilitating the deportation of Indian or other prisoners, Her Majesty's Government is, in our opinion, entitled to give such licence.

We do not think the case should be dealt with by Convention. Her Majesty's Government does not propose to enter into any permanent engagement, and we think that a despatch stating the terms upon which Her Majesty's Government propose to grant a licence for passage through the British territorial waters would answer all purposes. It should be distinctly stated that the licence may be at any time revoked at the pleasure of Her Majesty's Government.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 20, 1899.

MOROCCO.

No. 41.

[January 4, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, December 23, 1898.

Communication to Mr. H. Grey of copies of his letters to Globe Venture Syndicate as to expedition in "Tourmaline" to Sûs.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, copies of the correspondence noted in the accompanying List, relative to a request received from Mr. Henry Grey to be furnished with copies of certain documents which are in the possession of the Foreign Office, or, failing that, to be allowed at least to have access to them.

L.O.R. 1898 (Conf. 7199), p. 59.

Mr. Grey was a member of the expedition dispatched in the course of last year to the Sûs districts of Morocco under the auspices of the Globe Venture Syndicate, an account of whose proceedings was contained in the letter addressed to you from this Office on the 25th May last (Paper J), and having on that occasion landed in Morocco and been arrested by the soldiers of the Sultan, he was eventually brought to Tangier, tried in the Consular Court on a charge of smuggling, and sentenced to a term of imprisonment.

On the receipt of Mr. Grey's first application (Papers A, B, C, and H) to be furnished with copies of the letters sent to the Globe Venture Syndicate warning them of the illegal character of the enterprise, he was informed (Paper D) that the originals of any such letters were presumably in the possession of the Syndicate, and that he should consult his solicitors as to the means by which discovery and inspection of those documents might be obtained, and their production at the time of his action, if necessary, be secured.

Mr. Grey has, however, since explained (Papers E, F, and G) that it is with a view to arriving at a decision as to whether he has good ground of action against the Syndicate—no action having as yet been begun—that he desires to have copies of the warnings sent to them, or, if that is not possible, to be allowed to read them.

I am, accordingly, to request that you will take the papers into your consideration, and favour Lord Salisbury with your opinion as to what answer should be returned to Mr. Grey.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) Minutes, November 23–28, on Mr. Grey's personal application.	
(B.) Sir M. Gosselin to Sir T. Sanderson	November 27, 1898.
(C.) Mr. H. Grey	November 29, „
(D.) To Mr. Grey	December 3, „
(E.) Record of conversation with Mr. Grey by Sir M. Gosselin ..	December 7, „
(F.) Mr. H. Grey	December 9, „
(G.) Minutes, December 9–14, on Mr. Grey's letter (F).	
(H.) Revise, with correspondence with Globe Venture Syndicate and Major Spilsbury, referred to in Paper A marked.	
(J.) Law Officers' Report (Confidential 7199, p. 59)	June 8, „

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Report.

In our opinion, copies of the letters passing between the Foreign Office and the Globe Venture Syndicate should not at present be shown to Mr. Grey.

In the event of his taking proceedings against the Syndicate, he may become entitled to obtain copies or information as to their contents, but in the present stage of the proceedings he should be left to take such action as he thinks fit. He should be informed that Her Majesty's Government are not able to give him the information he desires, or to permit inspection of the copies of documents in their possession.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 4, 1899.

NETHERLANDS.

No. 42.

[November 11, 1899.]

Foreign Office to the Law Officers of the Crown.

Mr. J. Godden's complaint against authorities of Curaçao and Aruba.

Gentlemen, *Foreign Office, October* 18, 1899.

I AM directed by the Marquess of Salisbury to transmit herewith the accompanying Papers, as specified in the inclosed list, relating to the complaint of Mr. John Godden against the action of the Netherland Colonial authorities in the Islands of Curaçao and Aruba.

This case, as appears from the Foreign Office Memorandum of March 1888, has been brought to the notice of successive Law Officers of the Crown on three separate occasions.

Mr. Godden's first complaint referred to the assessment of his estate at Santa Barbara in Curaçao for purposes of taxation. The local authorities, it seems, decided to tax the land according to its mineral value rather than according to its value as agricultural land. The amount payable by Mr. Godden was consequently greatly increased. The matter was referred in March 1886 by the Earl of Rosebery to the then Law Officers of the Crown and to Dr. Deane, Q.C., who were of opinion that the interpretation placed upon the terms of the Ordinance No. 20 of the 20th December, 1881, by the Netherland Government was not incorrect, and that the case afforded no ground for the further intervention of Her Majesty's Government.

Mr. Godden subsequently submitted a statement of his grievances against the Colonial authorities of Curaçao and Aruba in respect of a Concession of lands obtained by him in the latter island for agricultural and breeding purposes.

The right to work the lime phosphate deposits was, however, put up for public tender and granted, notwithstanding Mr. Godden's protest, to another concessionnaire, who afterwards transferred his rights to the Aruba Phosphate Company, whose operations, as Mr. Godden alleged, were prejudicial to his agricultural interests.

He further complained that he was not permitted to blast stones on Aruba, although the right to do so was conceded to the Aruba Phosphate Company.

A third grievance was that he was not allowed to store gunpowder in Aruba, the Regulations in force in Curaçao not being applicable in that island, while the Aruba Phosphate Company kept their powder close to their works.

The system of assessment applied in the case of Santa Barbara estate was again brought forward, and, owing to the refusal of the authorities to supply the complainant with a copy of the Register of Mortgages for the Island of Aruba, and this further (and fifth) grievance was submitted at a later period.

MUSCAT.

No. 41A. [India Office.]

[March 8, 1899.]

Statement of Case for Opinion.

Independence of Muscat: Position of Her Majesty's Government towards France as to.

IN 1862 "Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French, taking into consideration the importance of maintaining the independence of His Highness the Sultan of Muscat (and of His Highness the Sultan of Zanzibar), have thought it right to engage reciprocally to respect the independence of those Sovereigns." Thereon their Plenipotentiaries declared in consequence "that their said Majesties take reciprocally that engagement."

2. Her Majesty's Government have in various ways exercised a preponderant influence in Muscat affairs. In 1856, when disputes arose between the sons of a former Sultan as to the possession of Zanzibar and Muscat, Lord Canning acted as Arbitrator, and decided that Zanzibar should be severed from Muscat, and should pay annually 40,000 crowns to the Muscat Sultan. Zanzibar has, since 1873, ceased to pay this subsidy; but the Government of India has undertaken to pay it so long as the Sultan "continues faithfully to fulfil his Treaty engagements and to manifest his friendship towards the British Government." Each Sultan of Muscat, since the death of Sultan Said in 1856, has received the formal recognition of the British Government; and at the present moment a rival claimant is being detained in India. On several occasions the Indian Government has intervened to uphold the Sultan's authority against internal revolt by using its naval forces for the purpose. Certain Chiefs were warned in 1895 that the Government of India would not permit attacks on Muscat, and when the French Government deprecated unilateral action of this nature, Lord Dufferin was instructed on the 4th April, 1896, to state that there was "no intention on the part of Her Majesty's Government to depart from the engagement of 1862." British trade interests are predominant in Muscat, and the police of the seas of Oman has been exercised for years past by Her Majesty's ships alone.

3. On the 20th March, 1891 the present Sultan did "pledge and bind himself, his heirs and successors, never to cede, to sell, to mortgage, or otherwise give for occupation, save to the British Government, the dominions of Muscat and Oman or any of their dependencies." Owing to the breach of this and other Treaty stipulations, and of personal assurances formally entered into by the Sultan, a Memorandum was recently presented to the Sultan by the Government of India which, after recapitulating the engagements of the Sultan of Muscat to Her Majesty's Government, and the acts of friendliness and of material support afforded to them, particularly in checking the attacks of hostile tribes on Muscat, made the following demands upon the Sultan:—

(*a.*) The abrogation of a cession of a piece of territory for a coaling station to France (to which he had agreed without the knowledge of Her Majesty's Government).

(*b.*) The dismissal of a confidential adviser, Abdul Aziz, who was notoriously inimical to British interests.

(*c.*) Payment of interest on certain sums due as an indemnity to British subjects.

(*d.*) Cessation of the levy of taxes on British subjects which were not compatible with his Treaty engagements.

(*e.*) The issue of orders to his subjects for the exclusive use of the Muscat flag.

Under threat of force the Sultan formally complied with these terms, and wrote to the French Consul declining to receive Abdul Aziz (who was the Consul's Munshi) as French Agent.

4. Under this statement the Law Officers are requested to advise the Secretary of State on two questions:

(1.) Does the Declaration of 1862 (paragraph 1 above) require the British Government to abstain from exercising a preponderant influence in Muscat? It is admitted that neither party to it may acquire by lease or otherwise practical sovereignty over any portion of the territory of Muscat. But the whole trend of our policy, as shown in paragraph 2 above, both before and since 1862, has been to assert and exercise a preponderant influence over the administration of Muscat by its independent Ruler, who has been recognized and protected and subsidized by the Government of India.

2. Should we be justified, notwithstanding the Declaration of 1862, in punishing and even deposing a particular Sultan who having entered into engagements with us deliberately broke them? The Sultan has been required to dismiss his adviser who is notoriously hostile to ourselves, and this and other demands, as shown in paragraph 3, have been presented to him and accepted by him. Should he now fail to carry out his acceptance, should we be precluded from deposing him until the French gave their assent? If so, would the answer be the same if he committed some outrageous breach of international law and refused reparation?

Opinion.

1. The Declaration of 1862 does not, in our opinion, require the British Government to abstain from exercising a preponderating influence in Muscat, so long as that influence is not exerted in any way inconsistent with the independence of Muscat. For instance the subsidy, and the terms on which it was made payable, involved no breach of the Declaration.

2. We think that the British Government would be justified in punishing or even deposing a particular Sultan who broke his engagements with the British Government. The undertaking contained in the Declaration is an engagement to respect the independence of the Sovereigns of Muscat as representing the country, and does not carry with it an inability to punish any particular Sovereign for breaches of Treaty or of international law. For this the consent of France is not necessary. But it would be a breach of the Declaration if, after deposing a particular Sultan, a successor was set up who was not independent.

We should add that, whilst the question whether the Sultan could consistently with the Declaration be required to dismiss a particular adviser must depend on the special circumstances of the case, it is hardly compatible with the independence of Muscat that the Sultan should be compelled to accept Ministers and advisers who are acceptable to the British Government.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Law Officers' Department,
March 8, 1899.

Mr. Godden also stated that he had appealed to the Courts of Law, but that no qualified person would undertake the conduct of his case.

The points raised in Mr. Godden's complaints involved a number of questions of Dutch law, and Her Majesty's Minister at the Hague was requested to obtain the opinion of a Netherland jurist thereon. In the meanwhile a sixth complaint was received from Mr. Godden, who stated that a Decree of the Government of Curaçao, dated the 23rd November, 1868, No. 654, permitted concessionnaires on Aruba, who had been in possession for three years, as from the 1st January, 1869, to acquire the ownership of the soil by paying into the Colonial Treasury a reasonable amount for the properties. Mr. Godden, however, declared that on applying to the authorities for leave to take advantage of this Regulation, the Governor of Aruba had replied that the Government was "not disposed, for the present, to grant in property grounds in Aruba to any one, whomsoever it may be." This point was submitted with the other to the legal expert at the Hague, who afterwards gave it as his opinion that none of Mr. Godden's complaints were well founded.

The case was then again laid before the Law Officers of the Crown, who dissented from the view taken by the Netherland jurist in respect of Mr Godden's first complaint, viz., that in granting to Mr. Godden his agricultural Concession in Aruba, the Netherland authorities had reserved the minerals, and were entitled to grant to other parties the right to work them.

L.O.R. 1887 (Conf. 5597), p. 74.

The Law Officers considered that the language of the Ordinance relating to such Concessions (May 8–9, 1867, No. 4) did not amount to a reservation of the property in the minerals, and still less of any right of going upon the land in order to take them. They held that the Colonial Government was not authorized to put up to tender, and to grant to another concessionnaire a licence to go upon Mr Godden's laud and extract minerals therefrom.

They further thought that Mr. Godden ought not to be expected to sue Netherland subjects in a Netherland Court of Justice for wrongs due to the action of the Netherland Government; and they stated that in their opinion a claim could be made for payment to Mr. Godden and those claiming under him, of a fair equivalent for the profit made by the Aruba Phosphate Company out of the deposits on his land.

The Law Officers also considered that the refusal of the local authorities to give Mr. Godden a copy of the register of mortgages was a substantial grievance.

The Netherland Government denied all liability in respect of the extraction of the phosphates from Mr. Godden's land, and referred him to the Courts of Law. They, however, admitted that an error had been committed in refusing a copy of the Register of Mortgages, and expressed their regret.

The reply of the Netherland Government was referred to the Law Officers, who were of opinion that the explanations given by them should be accepted.

L.O.R. 1888 (Conf. 5785), p. 48.

As regards Mr. Godden's other complaints, their view coincided with those of the Netherland expert.

Mr. Godden was accordingly informed that no further representations would be made on his behalf.

This was the state of the case in March 1888.

On the 24th July last Mr. Godden again addressed a letter to the Marquess of Salisbury in support of his claims, transmitting copies of certain documents relative to the action taken by him.

The first of these is a statement in which he recapitulates his grievances against the Administration of Curaçao. He begins by adducing a number of Ordinances which he alleges to have been contravened to his prejudice, and states that the local Government have received 235,000*l.* for royalty, export duty, and share of profits in the phosphates out of the land in dispute, and that the Aruba Phosphate Company has made a net profit of over 136,000*l.*

In 1891 Mr. Godden addressed a memorial to the Netherland Minister for the Colonies. In this he emphasizes the fact that the Concession granted to work certain estates in Aruba gives the owners the right to work them for agricultural purposes, "which right necessarily implies the prerogative to hold and use the surface of the soil to the exclusion of every other person." The grant of Concessions to another person or persons to work phosphate deposits was, he considered, a direct infringement of his rights.

Another point to which he draws attention is that in the Concession granted to Mr. Sewell (who afterwards sold it to the Aruba Phosphate Company), it is stipulated that "the concessionnaire is obliged to allow upon the lands granted, the exercise of

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rights to those who may have obtained them, upon any portion of such lands for the purposes of agriculture.

It is undoubtedly the case that the operations of the Phosphate Company must interfere with agriculture as the phosphate deposits from the actual surface soil of that part of the island.

Mr. Godden then proceeds to dilate on the delays to which his suit has been exposed in the Courts of Justice at Curaçao, and states that the counsel for the defendants has openly declared that it is proposed to endeavour to delay proceedings until the deposits are exhausted.

He next points out that there is a clause in the Concession of the Aruba Phosphate Company which prescribes that the Concession shall be null and void whenever the concessionnaire fails to carry out any of the obligations imposed on him. Mr. Godden contends that the Government of Curaçao ought to apply this clause because his rights have been infringed by the Phosphate Company, although the Administration recognizes the existence of these rights by receiving every year the special tax levied on his Concession. He then alludes to the refusal of the Governor of Curaçao to entertain his request to be permitted to acquire the ownership of the soil by payment to the Treasury.

Mr. Godden requested the Netherland Minister of the Colonies to cause the nullity clause to be applied to the Aruba Concession, to sell the ownership of the land to himself or rather to the Alliance Phosphate Company (which he represented, being Managing-Director and chief shareholder) and to cause a portion of the sum of 2,324,500 guilders to be paid to him.

The Netherland Minister for the Colonies refused to accede to these requests.

In a letter to the Minister for the Colonies, Mr. Godden contests the reasons on which this refusal is founded, more especially with reference to the request to acquire the ownership of the land.

From the Foreign Office Memorandum of March 1888, p. 5, it will be perceived that the Netherland's legal expert was of opinion that Mr. Godden had no "right" to have his Concession in Aruba converted into ownership.

The Dutch Government, however, contended that only the concessionnaires of the three years 1869, 1870, and 1871 could have acquired the ownership, whilst persons who obtained their Concessions only in 1873 and 1874 (Mr. Godden purchased his on the 1st December, 1875), were debarred from any such right. Mr. Godden points out that this argument was not employed by the Lieutenant-Governor of Aruba, who based his refusal to accede to Mr. Godden's request on his own arbitrary will and pleasure.

The Netherland Minister for Foreign Affairs would not modify the decision previously come to with regard to Mr. Godden's case.

Mr. Godden has obtained both a Dutch and an English legal opinion on the Law of the 23rd November, 1868, by which concessionnaires who have been in possession for three years can acquire absolute ownership, in support of his contention that this Law does not only apply to the years 1869, 1870, and 1871, and that the Netherland Government are bound to compensate him for the infringements of his rights by the grant of a Concession to the Aruba Phosphate Company. The English legal expert considers that the interpretation placed on the Law by the Dutch Minister of the Colonies is not in accordance with the principles of general jurisprudence.

There is one point which calls for observation, although it has not been specifically raised by Mr. Godden himself. It certainly does not seem to be equitable, whether it be in accordance with the letter of Dutch law or not, that he should be called upon to pay taxes upon the estimated mineral value of his land while another party enjoys the sole right of working the minerals therein to the detriment of the operations carried on by Mr. Godden as agricultural concessionnaire.

I am to request that you will be good enough to consider the inclosed papers, and to favour his Lordship with your opinion as to whether, on a consideration of the fresh arguments now adduced by Mr. Godden in support of Mr. Godden's claims, any, and, if so, what, grounds present themselves on which a renewed representation to the Netherland Government in his favour may properly be based.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

1. Memorandum (F.O.) .. .. March 10, 1888.
2. Mr. Godden .. .. July 24, 1899.
3. Statement of Case.
4. Memorial of Mr. Godden to Netherland Government, and reply, January 8 and March 7, 1891.
5. Letter to Netherland Government, and reply, September 11 and November 4, 1891.

(Nos. 3, 4, and 5 are Inclosures in No. 2.)

Report.

We do not think there is any ground for renewed representations to the Netherland Government in favour of Mr. Godden.

The Concession to Mr. Godden was only for agricultural purposes. It is, in our opinion, quite clear that he had not under this Concession any right to remove the phosphates. His claim, therefore, can at the outside be only for disturbance of agricultural operations. This is not the claim which he makes, and his claim to the value of the phosphate which has been realized appears to us to be quite unfounded.

In this respect we think the Report of the Law Officers of the 30th March, 1887, went too far in suggesting that a claim might be made for the profit made in working the phosphates.

It is, in our opinion, open to very serious question whether Mr. Godden has any claim even for damage to his agricultural operations. The question depends upon Dutch law, and we are not in a position to dissent from the view which M. de Brauw takes as to the effect of the reservation of minerals. If phosphate of lime be included in this reservation, it is possible that there would be a right on the part of the Government to authorize the breaking up the surface for the purpose of getting these minerals, even though they themselves formed the surface of the ground. It is, however, enough to say that Mr. Godden's claim is not for damage sustained by him in pursuit of agriculture.

It appears from M. de Brauw's supplementary opinion that the effect of the Resolution of the 23rd November, 1868, has been misunderstood by Mr. Godden and his advisers. According to M. de Brauw, this Resolution had not the force of law, but was a mere Resolution of the Executive Government which might, or might not, be acted on at their discretion, and upon this view, from which we see no reason to dissent, it conferred no right upon any one to the acquisition of the fee. Moreover, M. de Brauw states that this Resolution has been mistranslated by Mr. Godden, and, according to the translation which he gives as being correct, the Resolution was only in favour of those who had occupied for three years consecutively, reckoning from the 1st January, 1869. This Resolution, if M. de Brauw is correct in his translation, would have no application to Mr. Godden.

We should add that it is by no means clear that acquisition under the Resolution would enlarge the rights of the concessionnaire so as to confer a title to the minerals.

Upon the whole we are unable to advise Her Majesty's Government further to press Mr. Godden's case.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 11, 1899.

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NICARAGUA.

No. 43.

[November 3, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, October 18, 1899.

Gentlemen,

Commercial Treaty with Nicaragua.

I AM directed by the Marquess of Salisbury to transmit herewith papers, as specified in the inclosed list, relating to a Treaty of Commerce which it is proposed to conclude between the United Kingdom and the Republic of Nicaragua.

Certain amendments having reference more particularly to the VIth and IXth Articles of the draft Treaty inclosed have been suggested by the Board of Trade, and have been accordingly inserted in the draft in red ink.

As regards Article VI, the alteration proposed is as follows:—

"In all that relates to the succession to personal estate by will or otherwise and the disposal of property of any sort in any manner whatsoever which they may lawfully acquire, the subjects of each Contracting Party shall enjoy, in the dominions and possessions of the other, the same privileges, liberties, and rights, and shall be subject to no other or higher imposts or charges than native subjects, or subjects or citizens of the most favoured nation."

The grounds on which the Board of Trade base their view of the desirability of this change, is that in its original form the Article might, under certain circumstances, have been found to conflict with existing legislation—as, for instance, in the case of a Nicaraguan citizen dying while domiciled in the United Kingdom, and leaving personal property in Nicaragua.

In such a case the Board point out that "our Courts would hold that the personalty descended according to English law," and this would be in opposition to the Treaty provision as it originally stood.

In the case of Article IX, the Board of Trade were asked, in the first instance, whether any provision existed in English law under which effect could be given to that part of the Article which deals with the indemnification by Government for losses incurred by vessels on account of embargo.

The Board thereupon obtained a legal opinion on the point, and in consequence of the criticism therein contained the word "movable" has been inserted before the words "property belonging to subjects or citizens of one of the Contracting States" in the first paragraph, to which the following addition has been made:—"or on conditions not less favourable to such party than those applicable to natives or to subjects and citizens of the most favoured nation."

The second paragraph of Article IX has been omitted as unnecessary.

In Article XXV the word "Customs" has been inserted before "dues or charges," as it is pointed out by the Board of Trade that dock and quay dues should not be exempted from payment, because docks and quays are not as a rule under Government administration in the United Kingdom.

Lord Salisbury desires me to request you to favour him with any observations you may have to offer on the draft Articles as amended in accordance with the suggestions of the Board of Trade.

The remaining Articles of the draft Treaty call for no observations, as they have been drawn up in strict accordance with the precedents observed in framing similar instruments which are already in force.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

1. Draft Treaty of Friendship, Commerce, and Navigation between Her Majesty and the President of the Republic of Nicaragua.	
2. Board of Trade	September 5, 1899
3. Colonial Office	September 19, „
4. India Office	October 5, „

Report.

Article VI, as originally drafted, seems to us to have been intended to apply to immovable property only as the succession to movable property had been dealt with by Article V. We think Article VI should be retained with the alterations we have suggested.

Article VI, as altered by us, deals with the holding of immovable property, and states the rule of succession to such property with the qualification of most-favoured-nation treatment if there should be any modification in favour of any other nation—an event which in this country is very unlikely.

The Article VI, as proposed by the Board of Trade, deals with a different subject, which has already been adequately dealt with by Article V, subject to the insertion therein after "nations" of the words "or subjects or citizens of the most-favoured-nation."

We approve of the first paragraph of Article IX as altered by the Board of Trade, subject to the drafting alteration which we have made in black ink.

We agree with the Board of Trade that the second paragraph of Article IX had better be left out.

We have altered the last paragraph of Article IX, and subject to these alterations we approve of it.

Our reasons for these alterations are the following:—

The Article should, we think, extend to immovable as well as movable property, as British citizens should be secured against having their lands in Nicaragua taken without compensation.

This involves leaving out the arbitration clause, the machinery of which is not applicable to lands taken in England.

The provision should not be confined to the case of persons *resident* in the territory of the Power taking or using the property, they should be protected though they reside elsewhere.

We suggest the omission of the word "legitimate"—the provision should apply to the acts of any *de facto* Government.

Subject to these observations and to the alterations and additions which we have made in black ink,[*] we approve of the draft initialled by us.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
November 3, 1899.

Annex.

Draft Treaty of Friendship, Commerce, and Navigation between Her Majesty and the President of the Republic of Nicaragua.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Excellency the President of the Republic of Nicaragua, being desirous of maintaining and strengthening friendly relations, and of promoting commercial intercourse between the dominions of Her Britannic Majesty and the territories of the Republic of Nicaragua, have resolved to conclude a Treaty of Friendship, Commerce, and Navigation, and have appointed as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland,

His Excellency the President of the Republic of Nicaragua,

Who, after communicating to each other their respective full powers, found to be in due and proper form, have agreed on the following Articles:—

ARTICLE I.

There shall be perpetual peace and friendship between Great Britain and the Republic of Nicaragua, and between their respective subjects and citizens, without exception of persons or places.

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[*] Shown in italics and erased type.

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ARTICLE II.

There shall be reciprocal, full, and entire freedom of commerce and navigation for the subjects and ships of the two High Contracting Parties in the towns, ports, and other places the entry to which is at present, or may be hereafter, permitted to the subjects and citizens and to the ships of any other nation.

ARTICLE III.

British subjects and citizens of Nicaragua respectively may, with full liberty, enter, travel, or remain in any part of the territories and possessions of the other High Contracting Party, and shall enjoy, with regard to their persons and property, the same protection and security as natives. They may, in each of the two countries, carry on their trades and transact business, wholesale or retail, own and rent any houses, manufactories, warehouses, shops, or lands that they may require, transport merchandize and money from place to place, and receive consignments from the interior or from abroad on the same conditions as natives. They may conduct their business personally or by appointing duly authorized persons to represent them, whether it be for the purchase or sale of goods, property, and merchandize, or for making declarations at the Custom-house, or for the loading, unloading, or dispatching of ships. They shall not be subject to other charges, contributions, taxes, or imposts of any kind than those established by law for natives.

ARTICLE IV.

The subjects and citizens of both nations shall enjoy in both countries complete protection for their persons and properties. They shall have the power to have recourse to the Courts of Justice to obtain their rights in all the instances and grades of jurisdiction established by law. They shall have the power to employ counsel, attorneys, and agents of any kind whom they may think necessary to represent them, in conformity with the laws of the country; they shall, in a word, enjoy, in all the matters referred to in this Article, the same rights and privileges as natives, and shall be subject, for the enjoyment of these rights, to the same conditions as natives.

The dwellings, manufactories, warehouses, and shops of the subjects and citizens of each of the Contracting Parties in the dominions and possessions of the other, and all premises appertaining thereto, destined for purposes of residence or commerce, shall be respected. Except under the conditions and with the forms prescribed by the laws for natives of the country, such dwellings and premises shall be exempt from search or domiciliary visit, and books, papers, or accounts shall be exempt from examination or inspection.

ARTICLE V.

The subjects of Great Britain in Nicaragua, and the citizens of Nicaragua in Great Britain, shall have the power, in the same manner as natives, to acquire, hold, and alienate, by succession, will, donation, or in any other manner, movable property, without being obliged to pay other or higher succession or transmission duties than those which *either* natives *or subjects or citizens of the most favoured nation* would have to pay in the same circumstances. ~~With regard to the holding of immovable property, the subjects and citizens of the two High Contracting Parties shall be treated in the same manner as the subjects and citizens of the most favoured nation.~~

ARTICLE VI.

~~In all that relates to the succession to personal estate by will or otherwise, and the disposal of property of any sort in any manner whatsoever which they may lawfully acquire, the subjects of each Contracting Party shall enjoy, in the dominions and possessions of the other, the same privileges, liberties, and rights, and shall be subject to no other or higher imposts or charges than native subjects, or subjects or citizens of the most favoured nation.~~

With regard to the holding of immovable property, the subjects and citizens of the two High Contracting Parties shall be treated in the same manner as the subjects or citizens of the most favoured nation.

The succession to immovable property shall be governed by the laws of the country in which it is situated, provided that most-favoured-nation treatment shall be enjoyed in this respect by the subjects and citizens of the High Contracting Parties.

ARTICLE VII.

The subjects of Great Britain in Nicaragua, and the citizens of Nicaragua in Great Britain, shall be exempted from personal service in the army or navy, or in the national guard or militia, as well as from war contributions and forced loans, unless the imposts and contributions fall upon landed property situated in the country, in which case they must pay them under the same conditions as natives.

ARTICLE VIII.

The subjects or citizens of each of the Contracting Parties shall have, in the dominions and possessions of the other, the same rights as natives in regard to patents for inventions, trade-marks, and designs, upon fulfilment of the formalities prescribed by law.

ARTICLE IX.

Ships, cargoes, merchandize, or *other* movable property belonging to subjects or citizens of one of the Contracting States shall not in the other be subjected to embargo, or retained for military expeditions, or for any public purpose, except upon agreement with the interested party, or on conditions not less favourable to such party than those applicable to natives or to subjects and citizens of the most favoured nation.

~~It is likewise stipulated that~~ In the event of the property of a subject or citizen of either of the High Contracting Parties ~~resident in the territories of the other~~ being taken, used, or injured by the ~~legitimate~~ authorities of *the other High Contracting Party* ~~that country~~ for public purposes, full indemnity or compensation shall be paid to him by the Government of the country in which the measure is taken. ~~And in case the amount of such indemnity cannot be arranged in an amicable manner, the determination thereof shall be submitted to Arbiters named, the one by the Government author of the embargo or measure which gives rise to the claim, and the other by the Government of the nation to which the vessel detained, or proprietor injured, may belong. In case these Arbiters cannot agree, the final determination, without appeal, shall be referred to the Government of a third friendly Power.~~

ARTICLE X.

The subjects and citizens of either State shall enjoy in the other complete liberty of conscience and of worship. They shall not, therefore, be disturbed or molested on account of their religious belief, nor in the legitimate exercise of their worship in the chapels or places of worship set apart for that object, or in private houses, provided that in so doing they observe the decorum and respect owed to divine worship and to the laws of the country. They shall also be at liberty to bury their dead in suitable and adequate places set apart and appropriated by the local authorities for their co-religionists, or in such as they may themselves choose, with the approval of the said authorities where there are no special cemeteries.

ARTICLE XI.

If, unfortunately, the peace should be broken between the two countries, and war should be declared, it is agreed, in order to lessen the evils therefrom ensuing, that the subjects and citizens of the one country residing in the towns, ports, or territories of the other, and engaged in commerce or any industry or profession, shall be free to continue their business so long as they do not commit any offence against the laws of the country. In the event of their conduct being such as to cause them to lose this privilege, or of the Government concerned thinking it necessary to order them to leave, they shall be given sufficient time to arrange their affairs. In no case, even should their be war or hostility between the two nations, shall the property, of whatever nature it be, of the subjects or citizens of one country be put under embargo or confiscated, by the other, or other charges and contributions levied than those to which natives or subjects or citizens of the most favoured nation are subject. Nor shall it be possible to put under embargo, sequestrate, or confiscate letters of credit, bank-notes, or any other papers belonging to the subjects or citizens of the other State, on account of war, to their prejudice and for the benefit of the country in which the said property is.

ARTICLE XII.

In case of any canal, railway, road, or other mode of transit, either by land or water, being established in Nicaragua, British subjects, commerce, and navigation of all kinds shall enjoy, as regards such transit, the same rights and privileges in all respects, and subject to the same conditions, as the most favoured nation.

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ARTICLE XIII.

The two High Contracting Parties agree to grant to the Envoys, Ministers, and Agents each of the other the same privileges, favours, and immunities that are enjoyed, or that hereafter shall be enjoyed by the Envoys, Ministers, or Agents of the most favoured nation.

The two High Contracting Parties, being desirous to avoid anything that might disturb their friendly relations, agree that their Diplomatic Representatives shall not interfere officially, unless for the purpose of obtaining amicable settlements, in the claims or complaints of private persons concerning matters within the cognizance of the Civil or Criminal Courts, and which are before the Judges and Tribunals of the country, excepting in cases of denial of justice, delay of proceedings contrary to usage or law, or of the non-execution of judgments passed in due form.

ARTICLE XIV.

Each of the Contracting Parties may appoint Consuls-General, Consuls, Vice-Consuls, and Consular Agents to reside respectively in towns or ports in the dominions and possessions of the other Power, each one of them reserving the right of excepting those place where it may not appear convenient to admit them whenever this exception is extended to the Consular functionaries of all other nations.

Such Consular officers, however, shall not enter upon their functions until after they shall have been approved and admitted in the usual form by the Government to which they are sent. They shall exercise whatever functions, and enjoy whatever privileges, exemptions, and immunities are, or may hereafter be, granted there to Consular officers of the most favoured nation.

ARTICLE XV.

The Consuls-General, Consuls, Vice-Consuls, and Consular Agents of each of the Contracting Parties, residing in the dominions and possessions of the other, shall receive from the local authorities such assistance as can by law be given to them for the recovery of deserters from the vessels of their respective countries.

ARTICLE XVI.

Joint Stock Companies and other Associations, commercial, industrial, and financial, constituted in conformity with the laws in force in either of the Contracting States, may exercise in the dominions and possessions of the other all their rights, including that of appearing before Tribunals for the purpose of bringing an action or of defending themselves, with the sole condition, in exercising such rights, of always conforming themselves to the laws in force in the respective countries.

It is understood that these dispositions shall be applicable as well to the Companies and Associations constituted and athorized previously to the signature of this Treaty as to those which may subsequently be so constituted and authorized.

ARTICLE XVII.

No other or higher duties shall be imposed on the importation into the dominions and possessions of Her Britannic Majesty of any article, the produce and manufacture of Nicaragua, from whatever place arriving; and no other or higher duties shall be imposed on the importation into Nicaragua of any article, the produce or manufacture of the dominions and possessions of Her Britannic Majesty, from whatever place arriving, than on the like article produced or manufactured in any other foreign country; nor shall any prohibition be maintained or imposed on the importation of any article, the produce and manufacture of the dominions and possessions of either of the High Contracting Parties, into the dominions and possessions of the other, from whatever place arriving, which shall not equally extend to the importation of the like article, being the produce or manufacture of any other country. This last provision is not applicable to the sanitary and other prohibitions occasioned by the necessity of protecting the safety of persons, or of cattle, or of plants useful to agriculture.

ARTICLE XVIII.

No other or higher duties or charges shall be imposed in the dominions and possessions of either or the High Contracting Parties on the exportation of any article to the dominions and possessions of the other than such as are, or may be, payable on the exportation of the like article to any other foreign country; nor shall any prohibition be imposed on the exportation of any article from the dominions and possessions of either of the two Contracting Parties to the dominions and possessions of the other, which shall not equally extend to the exportation of the like article to any other country.

ARTICLE XIX.

The two High Contracting Parties engage not to grant to the subjects or citizens of any other nation, in the matter of navigation and commerce, any privilege without making it extend to the commerce and navigation of the other High Contracting Party; and both nations shall reciprocally enjoy all privileges, favours, and immunities that have been granted, or that may hereafter be granted, to any other nation. Goods belonging to the subjects or citizens of one of the High Contracting Parties in transit through the territory of the other shall not be subjected to other or higher dues than those for which goods of the subjects of the most favoured nation are, or may be, liable. Nevertheless, the special Laws of each State shall remain in force with regard to articles the transit of which is, or may be, forbidden; and the two High Contracting Powers reserve the right to make the transit of arms and munitions of war subject to special permission.

ARTICLE XX.

In all that concerns the police of the ports, the loading and unloading of vessels, and the storing of goods and merchandize, the subjects or citizens of both countries shall submit to the local Laws and Regulations, but in none of these respects shall they be subjected to any restrictions or Regulations more onerous than those to which native subjects or citizens, or the subjects or citizens of any other nation, are, or may be, liable.

ARTICLE XXI.

British ships arriving at Nicaraguan ports, and Nicaraguan ships arriving at British ports, with cargoes or in ballast, shall not pay higher tonnage, port, light, pilotage, or any other dues than those to which *either* native ships or the ships of the most favoured nation are, or may hereafter be, subjected.

In all that concerns the treatment and location of ships, their loading and unloading, taxes, and dues of whatever kind, and generally with regard to all formalities or provisions to which merchant-vessels, their crews and cargoes, may be subjected, the ships of the two High Contracting Parties shall enjoy the same privileges, favours, and advantages as are, or may be, enjoyed by native ships or the ships of the most favoured nation.

ARTICLE XXII.

Navigation, tonnage, and other dues which are determined by the capacity of the ship shall be levied in accordance with the papers and certificates in possession of their ship's officers, issued by the proper authorities in conformity with the laws of the respective countries, and certified by the Consul of the other Power (if there is one) at the port from which the vessel sails.

ARTICLE XXIII.

The coasting trade and the fishing industry remain regulated by the laws of the respective High Contracting States, provided that the subjects and ships of the High Contracting Parties shall not be subjected to less favourable conditions and Regulations in these respects than are applied to the subjects and ships of the most favoured nation.

ARTICLE XXIV.

Whenever the subjects or citizens of one of the Contracting Parties are obliged, by stress of weather, or from any other cause, to take refuge with their ships in the ports, roadsteads, rivers, or in any part of the territory of the other, they shall be received and treated with all the friendly consideration due to their position, without prejudice to the precautionary measures which the Governments may think it necessary to take against smuggling.

They shall accordingly be granted every facility for repairing the damage they have suffered, for procuring provisions, and for continuing their voyage, without obstacle or impediment of any kind. The merchant-vessels of one of the High Contracting Parties may engage seamen in the territory of the other, so long as they conform to the local Laws and Regulations, and so long as the engagement is entirely voluntary on the part of the seamen.

ARTICLE XXV.

When a ship belonging to the subjects or citizens of one of the High Contracting Parties is wrecked or suffers any damage on the coasts or within the territory of the other, she shall receive the same assistance and protection which is granted to the ships of natives in the country where

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the accident occurs. If necessary, the ship may be unloaded, without the goods and merchandize having to pay any customs ~~dues or charges~~ *duties*, unless cleared for consumption, in which case they are to be treated in the same manner as the goods of the most favoured nation under the same circumstances.

ARTICLE XXVI.

The ships of war of the two High Contracting Parties may enter, remain in, and take in provisions in each other's ports. They shall be subject to the same Regulations, and shall enjoy the same honours, advantages, and exemptions as those of the most favoured nation.

ARTICLE XXVII.

In cases where the Government of Nicaragua may accord special rates of customs duties to the products of any other Central American State, it is understood that such special rates cannot be claimed by Great Britain by reason of the right of the most favoured nation, so long as they are not also accorded to any third State which does not form part of the Central American Republics.

ARTICLE XXVIII.

Any disputes which may arise with regard to the interpretation or execution of the present Treaty, or in consequence of any violation of the same, shall be submitted to the decision of an Arbitrator, when all means of settling them directly by friendly arrangement have been tried in vain. The method of arbitration shall be decided upon by mutual agreement between the two High Contracting Parties. The Award of the Arbitrator shall be binding upon both Governments.

ARTICLE XXIX.

The stipulations of the present Treaty shall not be applicable to any of Her Britannic Majesty's Colonies or possessions beyond the seas, unless notice to that effect shall have been given, on behalf of any such Colony or possession, by Her Britannic Majesty's Representative at Guatemala to the Nicaraguan Minister for Foreign Affairs, within one year from the date of the exchange of the ratifications of the present Treaty.

It is understood that, under the provisions of this Article, Her Majesty's Government can, in the same manner, give notice of adhesion on behalf of any British Protectorate or sphere of influence, or on behalf of the Island of Cyprus, in virtue of the Convention of the 4th June, 1878, between Great Britain and Turkey.

ARTICLE XXX.

The present Treaty shall continue in force for ten years from the day of the exchange of the ratifications; and in case one of the two High Contracting Parties shall not have given notice twelve months before the expiration of the said period of ten years, of its intention to terminate the present Treaty, it shall remain in force until the expiration of one year from the day on which one of the two High Contracting Parties has given notice of termination.

Her Britannic Majesty's Government shall also have the right to separately terminate the present Treaty at any time on giving twelve months' notice to that effect, on behalf of any British Colony, possession, or Dependency, as specified in Article XXIX, which may have acceded thereto.

ARTICLE XXXI.

The present Treaty shall be ratified, and the ratifications shall be exchanged as soon as the formalities prescribed by the Constitutional Laws of the two States have been complied with.

In faith whereof the respective Plenipotentiaries have signed the same, and have affixed their seals.

Done in duplicate

***Declaration** (to be signed ou day of Exchange of Ratifications).*

The Undersigned, Her Britannic Majesty's Minister Resident, &c., duly authorized to that effect, hereby gives notice that the stipulations of the Treaty of Commerce between Great Britain and the Republic of Nicaragua, signed on the   will be applicable

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PACIFIC ISLANDS.

No. 43*.

[April 12, 1899.]

Memorandum by the Law Officers as to the Executive Powers which can, according to English Law, be conferred on the Special Commissioner sent to Samoa.

Executive powers of Special Commissioner to Samoa.

WE do not think that any difficulty can arise or any question be properly raised in respect of any action taken by the three Commissioners against subjects of other nations than those of the three Powers appointing the Commissioners. The case is different from that of the New Hebrides, and as far as we know without exact precedent. The three Powers parties to the Berlin Act establish by means of the three Commissioners a Provisional Government with full executive authority. This authority must include any measures necessarily taken for the restoration of peace and good order, including, if necessary, the punishment of persons endangering or preventing the restoration of peace. The Acts of the Commissioners would be regarded as Acts of State, and no action could be brought in respect of any punishment inflicted by the Commissioners upon a Samoan or upon a subject of any nation other than the three Powers.

As regards action against British subjects or the subjects of Germany or the United States, the question is more difficult, but in case of extreme necessity, as, for instance, putting down armed resistance or riot, any necessary exercise of force could, we think, be justified.

R. E. W.
R. B. F.

April 12, 1899

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to India, including the territories of any native Prince or Chief in India under the suzerainty of the British Government, subject to the following reservations:—

1. The Government of India reserve the discretionary power to prevent any foreigner from residing or sojourning in, or travelling through, India, as above defined, without their consent.

2. In regard to the native States of India the rights of citizens of the Republic of Nicaragua under the provisions of the said Treaty are subject to the same limitations as those which are, or may be, in force as regards the European British subjects.

3. The right to appoint Consuls under Article XIV of the said Treaty shall, in India, be restricted to the sea-port towns of the provinces under the direct administration of the Government of India.

R. E. W.
R. B. F.

PERSIA.

No. 44.

[February 1, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 28, 1899.

Production of F. O. papers in Lord Mayor's Court respecting importation of arms into Persia.

I AM directed by the Marquess of Salisbury to transmit to you the papers noted in the accompanying list relative to a request which has been made by Messrs. Stacpoole, Batten, and Stacpoole, that, in an action pending before the Lord Mayor's Court at Guildhall, the authenticity of certain letters from this Office respecting the importation of arms into Persia may be proved and the accuracy of the statements in them confirmed.

The circumstances leading to this request are as follows: Messrs. Stacpoole represent Messrs. C. W. Andrews, a Birmingham and London firm of gunmakers, who sold to Messrs. Malcolm, Blunker, and Co., of London, 500 rifles "for forward delivery at an English port." It is admitted that Messrs. Andrews must have known that these arms were purchased for shipment to Muscat or Bushire. 300 out of the 500 rifles were shipped in the steam-ship "Baluchistan," which vessel was seized in December 1897 off Muscat by Her Majesty's ship "Lapwing." Messrs. Malcolm accepted delivery of these 300 rifles and paid for them, but have refused to take delivery of the remaining 200, and plead in an action brought against them by Messrs. Andrews that the plaintiffs entered into such contract in breach of the law laid down by Her Majesty's Government for the regulation of the trade with Persia, and are, therefore, not entitled to enforce the said contract, which is void.

The defendants, having been interrogated upon oath, allege that the law referred to was a Regulation made by order of Her Majesty's Minister for Foreign Affairs on or after the 12th December, 1897; that they do not know how, when, or where such Regulation was made or published, except that after the date above mentioned they found that it was known and enforced by the authorities at the ports of London and Manchester, and rendered it impossible to put any arms on board a vessel for importation to Persia.

Messrs. Stacpoole thereupon addressed a letter to this Office, dated the 8th November, 1898 (Paper A), explaining these circumstances, and asking to be supplied with particulars and evidence as to the existence or publication of the Regulation in question.

A reply was returned to them on the 16th November (Paper B) describing the nature of the only Regulations or Notifications in connection with the subject known to this Department, none of which corresponded with the description of the Regulation given in their letter, and stating that the Foreign Office had no knowledge of any Regulation of the character described by them.

Shortly afterwards, in a letter dated the 25th November, the plaintiffs, Messrs. C. W. Andrews, inquired whether there was any restriction as to the shipment to Bunder Abbas of cartridge-filling implements for Martini-Henry rifles and shot-guns (Paper C).

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They were informed in reply, on the 2nd December, that as the importation of arms and ammunition into Persia had been prohibited by the Persian Government, it would be necessary to refer the matter to them for decision, and that inquiry would be made through Her Majesty's Minister at Tehran (Paper D). This inquiry was duly made, but no reply has yet been received from Her Majesty's Minister.

Messrs. Stacpoole have now stated in a letter, dated the 18th instant (Paper E), that the defendants in the action refuse to admit the authenticity of the two letters from this Office (Papers B and D), addressed to Messrs. Stacpoole and Messrs. Andrews respectively, and the plaintiffs' solicitors ask that a gentleman may attend the hearing of the action at the Lord Mayor's Court on the 3rd proximo to prove the authenticity of the letters in question and the accuracy of the statements made in them.

Lord Salisbury is of opinion that the request of Messrs. Stacpoole may be complied with to the extent of sending a gentleman from this Office to attend the sitting of the Court with authority to prove the authenticity of the two letters in question by verifying the signatures of the originals now in the hands of Messrs. Stacpoole, and also to produce such documents as it may be considered possible to give without detriment to the public interest in support of the statements made in the letters in question. But his Lordship considers that any evidence which is tendered by this Department in support of those statements should be strictly confined to the production and identification of documents which will speak for themselves as to their own contents, and should not purport to be based on the personal knowledge of the gentleman sent to the Court on behalf of this Office.

The first of the letters (Paper B) enumerates three Regulations or Notifications, which are the only ones known to this Office in connection with the subject.

Firstly, there is a Notification and Proclamation by the Sultan of Muscat, dated the 13th January, 1898.

In proof of this statement, it is proposed to produce official translations of the Persian texts of the Notification and Proclamation respectively, which form two of the inclosures in a despatch addressed by the Political Resident in the Persian Gulf to the Government of India on the 22nd January, 1898 (see Paper F, Inclosure 2, last page). This despatch was communicated by the Viceroy of India to the India Office, whence it was forwarded in a letter to this Department dated the 4th March, 1898 (Paper F).

It is naturally impossible, within the limits of time remaining before the case comes on for hearing, to produce technically conclusive evidence of the accuracy of the translations of these documents; but if it should be necessary to prove the signatures of the Viceroy of India and of the members of the Supreme Council respectively, a gentleman could attend from the India Office for that purpose.

Secondly, reference is made to a Regulation issued by the Persian Government in 1881. No copy of this Regulation exists in the archives of this Department, but it is proposed to produce a despatch from Mr. R. Thomson, at the time Her Majesty's Minister at Tehran, dated the 12th July, 1881, inclosing the translation of a note from the Persian Minister for Foreign Affairs announcing that the Shah had issued orders prohibiting the importation of arms into the country (Paper G). In support of the assertion that this prohibition was subsequently renewed, it is proposed to produce a paraphrase of the opening sentence, as marked, of the telegram from Mr. Hardinge, Her Majesty's Chargé d'Affaires at Tehran, of the 26th March, 1898 (Paper H), showing that the Shah reiterated the order of prohibition in 1891.

It is not thought desirable in the public interest to produce the rest of the telegram.

Thirdly, there is a Notice to exporters issued by Her Majesty's Board of Customs on the 26th February, 1898. Although the proof of the genuineness of this Notice should properly be furnished by the Board, Lord Salisbury thinks that probably the Court would regard as sufficient the production of the Notice and the Order accompanying it, as forwarded in the letter from the Treasury to this Office of the 5th March, 1898 (Paper I).

With regard to the letter to Messrs. Andrews of the 2nd December, 1898 (Paper D), no necessity appears to arise for verifying the statements contained in it.

I am to request that you will be good enough to take the accompanying papers into your consideration, and to favour Lord Salisbury at your earliest convenience with your views as to whether all the papers proposed may be properly produced in the manner suggested, and, if not, whether any of them, and, if so, which should be withheld.

Lord Salisbury would be also glad to receive any general observations which you may wish to offer on the course of procedure to be followed.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Messrs. Stacpoole, Batten, and Stacpoole		November 8, 1898.
(B.)	To Messrs. Stacpoole, Batten, and Stacpoole		November 16, „
(C.)	Messrs. C. W. Andrews		November 25, „
(D.)	To Messrs. C. W. Andrews		December 2, „
(E.)	Messrs. Stacpoole, Batten, and Stacpoole		January 18, 1899.
(F.)	India Office		March 4, 1898.
(G.)	Mr. Thomson	(No. 6) Communicated	July 12, „
(H)	Mr. Hardinge	(No. 45. Telegraphic)	March 26, „
(I.)	Treasury		March 5, „

Report.

In our opinion, all the papers proposed may be properly produced in the manner suggested.

Questions may arise as to the legal sufficiency of the evidence, but this is a matter for the parties.

We think that the Foreign Office does all that can be reasonably expected of it by producing these papers as proposed. The gentleman who attends with them should *not* give any evidence as to the facts, but only produce the papers.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 1, 1899.

No. 45.

[August 15, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 5, 1899.

Gentlemen,

Issue of bank notes in violation of Concession to Imperial Bank.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit the papers noted in the accompanying list relating to the issue of paper money by various Associations in Persia, which is held to constitute an infringement of the Concession signed in 1889 by the Persian Government granting to the Imperial Bank of Persia the monopoly of the issue of notes throughout that country.

Under the terms of Article 3 of this Concession (Paper A) the Imperial Bank, as the State Bank, was to have the exclusive right of issuing notes to bearer payable at sight; and the Persian Government engaged not to issue any kind of paper money during the term of the Concession, nor to authorize the creation of any other bank or other institution possessing a like privilege.

In a despatch dated the 16th February last (Paper B) Her Majesty's Minister at Tehran brought the question of the issue of native notes to Lord Salisbury's notice, and an inclosure to that despatch shows that as early as 1892 the Manager of the local branch of the bank at Shiraz called the attention of the Chief Manager in Tehran to the fact that bank notes were being issued by a firm calling itself the "Fars Trading Company."

In January 1893 the Chief Manager protested officially to the Sadr Azam against what he considered as an infringement of the Bank Concession, at the same time forwarding to his Highness a specimen of the notes issued by the Fars Trading Company. The Persian Government accordingly sent orders on the 21st January, 1893, to Shiraz to stop the illegal issue of notes, but their instructions were evaded

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and soon became a dead letter. On the 26th December, 1895, the matter was placed by the Bank in the hands of Her Majesty's Legation.

During the next three years the Bank made repeated representations, both through Her Majesty's Legation and direct to the Persian Government, but although stringent orders were sent from Tehran the issue of notes by firms other than the Imperial Bank continues in many of the principal towns of Persia.

In February last, all representations to the Persian Government proving to be useless, Sir M. Durand recommended (Paper B) that, as the case involved serious injustice to the Bank, a formal demand should be presented to the Persian Government for the withdrawal of all bank notes issued by firms other than the Imperial Bank, and suggested that a period of one month might be fixed within which the withdrawal should take place.

On the 31st March last Sir M. Durand was authorized by telegraph (Paper C) to make the demand he proposed, but to extend the period during which the withdrawal of notes was to take place to two months instead of one month. At the same time he was not to pledge himself to any ulterior action.

Meanwhile, a letter was addressed to the Bank asking for further details (Paper D), and requesting that, if possible, some specimens of the notes complained of might be furnished for Lord Salisbury's inspection.

On the 21st July last the Imperial Bank of Persia forwarded an extract (Paper E) of a letter from their Acting Manager at Tehran with specimens of the notes, and reported that they were still largely in circulation at Shiraz and Bushire.

On the 27th July Sir M. Durand (Paper F) reported by telegraph that the Persian Government admitted that the notes issued at Bushire and by the Fars Trading Company were illegal, and declared their firm resolution to suppress all notes having the appearance and character of bank notes. The Persian Government, however, gave no definition of a bank note, and proposed to authorize firms to issue to holders of illegal notes, in place of such notes, others payable to bearer on demand and not requiring endorsement. Sir M. Durand refused to concur in this proposal, and has submitted the matter to the decision of Lord Salisbury.

Lord Salisbury feels some doubt whether the failure of the Persian Government to restrain by penalty the native Trading Companies from issuing these notes does, in fact, constitute an infraction of the Concession. He is rather disposed to interpret the wording of the Concession as limiting to the Imperial Bank of Persia the right of issuing notes which are legal tender, and thinks that it would even be a strained interpretation of the text to construe it as meaning that no promissory notes other than those issued by the Imperial Bank should be enforceable on the issuer in a court of law. But in Lord Salisbury's opinion, as at present advised, the further contention that it is now illegal and a punishable offence for any one to negotiate or sign a transferable cheque in Persia except the Imperial Bank would be altogether outside the language of the Concession.

I am to request that you will take the papers herewith transmitted into your consideration, and that you will favour his Lordship with your opinion on these points, and on the question whether Her Majesty's Government have sufficient grounds for objecting to the failure of the Persian Government to punish the acts referred to. Lord Salisbury would be glad also to be favoured with any general observations which you may have to offer on the case, and on the principles by which Her Majesty's Government should be guided in regard to it.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Translation of the Concession for the Imperial Bank of Persia, 1889.			
(B.)	Sir M. Durand..	(No. 21)	February	16, 1899.
(C.)	To Sir M. Durand	(Telegraphic)	March	31, „
(D.)	To Imperial Bank of Persia		April	3, „
(E.)	Imperial Bank of Persia		July	21, „
(F.)	Sir M. Durand..	(Telegraphic)	July	27, „

Report.

The 3rd Article of the Concession appears to us to relate only to the issue of bank notes, *i.e.*, notes to bearer at sight issued by a person carrying on the business of banking.

No bank other than the Imperial Bank is to issue such notes; they are to be legal tender, and the Government is not to issue, or authorize any other institution to issue, paper money. This seems to us to be the effect of the 3rd Article.

As regards its restriction on other bankers, it is analogous to the restriction imposed in England by Statute upon bankers other than the Bank of England.

It does not invalidate promissory notes issued by other persons, nor does it interfere with transferable cheques given in the ordinary course of business. The whole effect of the Article is to prevent other banks from competing with the Imperial Bank as banks of issue, and to make the notes of the Imperial Bank the only paper money which is legal tender.

It would appear from the statement of facts that the notes complained of are not mere promissory notes given in payment for goods, or similar mercantile transactions, but are issued by persons who, whether they call themselves bankers or not, are, in fact, carrying on the business of banking, and for circulation as bank notes.

We therefore think that the Concession is being violated by the permission of the issue of these notes, and that Her Majesty's Government have sufficient ground for objecting to the failure of the Persian Government to prevent the continuance of the acts referred to.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
August 15, 1899.

SIAM.

No. 46.

[February 8, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 24, 1899.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the papers, as noted in the accompanying list, relating to the question of registration in Siam, in connection with which a Report was furnished by you on the 31st July, 1897. (Print No. 18, p. 24.) Registration in Siam.

I am in the first place to invite your attention to the instructions addressed to Mr. Greville, Her Majesty's Minister Resident and Consul-General in Siam, on the 14th September, 1897, and to his reply of the 18th February last, which will be found in Nos. 26 and 41 on pp. 28 and 36 of the printed Papers (B) respectively.

Upon receipt of this last-mentioned despatch from Mr. Greville fresh instructions were drafted in this Department, which will be found on p. 43 of the print. These instructions were first submitted for the concurrence of the Secretary of State for India in Council and of the Secretary of State for the Colonies, whose views and observations will be found in the letters of September 14th and 22nd, respectively Nos. 44 and 45 of printed Papers, pp. 45 and 46.

Certain controversial questions arose in consequence with respect to the registration of the wives of British subjects of Asiatic origin, and of their issue born in Siam, and they will be found set out in Mr. Robertson's Memorandum of the 7th November

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(Paper C), and succinctly summarized in Sir Martin Gosselin's Memorandum of the same date (Paper D).

By Lord Salisbury's direction, these points were referred for the decision of the Lord Chancellor on the 18th November, 1898 (see Paper E). His Lordship's opinion, dated the 10th instant, is also inclosed (see Paper F), and it will be seen, upon reference to Paper (G), that the portion of the draft instructions to Mr. Greville, which relates to this part of the subject, has been amended in accordance with it.

The paragraph which has been inserted in consequence may therefore be looked upon as definitively settled.

I am to request that you will take these papers into your consideration, and that you will favour Lord Salisbury with your opinion—

1. As to whether you concur in the changes which it is proposed in Paper (C) to make in Rule 4 of the Regulations (see Paper H); and

2. Whether, subject to any specific alterations you may think it desirable to suggest, you concur generally in the terms of the proposed instructions to Mr. Greville.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Order in Council (Siam), 1889 (Confidential 5860*).	
(B.) Printed correspondence.	
(C.) Memorandum by Mr. Robertson, with Minutes thereon by Mr. Davidson.	
(D.) Memorandum by Sir Martin Gosselin, with Minute by Lord Salisbury, and with Minutes (three) attached.	
(E.) Draft to the Lord Chancellor	November 18, 1898.
(F.) Report by Lord Chancellor (with Minutes)..	January 10, 1899.
(G.) Draft to Mr. Greville	January , „
(H.) Draft Regulations (amended as proposed in (C)).	

Report.

We concur in the changes which it is proposed to make in Rule 4 of the Regulations,* subject to the alteration which we have inserted.†

2. In other respects we concur in the proposed despatch, subject to the following observations:—

We think that these Regulations should be embodied in an Order in Council. They cut down the right to be registered as British subjects in the case of delay in the application, and in the case of those born in Siam of the second generation of Asiatic parents. This seems to us to go rather beyond the scope of Regulations under the Order in Council. It might be contended that such Regulations are *ultra vires*, and we think it would be better that there should be a Supplementary Order in Council embodying them, in which the case of those entitled to be registered as British-protected persons, as distinguished from British subjects strictly so-called, might also be dealt with.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 8, 1899.

Annex.

Draft Rules for Guidance of Her Majesty's Consular Officers in Siam in regard to Registration.

PERSONS, other than those of Asiatic descent, entering Siam, and applying to be registered as British subjects, shall be registered at the discretion of Her Majesty's Consul or Vice-Consul after such inquiry as he deems fit.

2. The children and grand-children of natural-born British subjects, other than persons of Asiatic descent, registered as British subjects, shall also be registered as British subjects, provided always that they are entitled to such status in contemplation of English law. No illegitimate child of a natural-born British subject shall be registered as a British subject.

3. Persons of Asiatic descent, provided with a passport as British subjects from British India, or a British Colony, entering Siam shall be registered as British subjects, provided that if they fail to register themselves within one month after their arrival, in accordance with Article 94 of "The Siam Order in Council, 1889," they shall not be so registered unless they can excuse their failure to so register themselves to the satisfaction of Her Majesty's Consul or Vice-Consul.

4. Persons of Asiatic descent entering Siam unprovided with a passport shall be registered as British subjects on their filing an affidavit or sworn declaration with any other proof which Her Majesty's Consul or Vice-Consul may require, showing that they were born within the Queen's dominions, or **within the territory of any Prince or** *State* **in India under the suzerainty of,** *or in alliance with,* **the Queen, or** naturalized within the United Kingdom, and containing such other particulars as Her Majesty's Consul or Vice-Consul may require, provided that natives of Upper Burmah or the British Shan States shall not be registered as British subjects, if it appears that they became domiciled in Siam before the 1st January, 1886, **and that they do not intend to return to their respective countries of origin, and do not own property there.**

5. Persons of Asiatic descent entering Siam unprovided with a passport, and failing to register themselves within one month after their arrival, in accordance with Article 94 of "The Siam Order in Council, 1889," shall be registered as British subjects if they can excuse their failure to so register themselves to the satisfaction of Her Majesty's Consul or Vice-Consul, provided that any such person applies to be registered as a British subject only. After the institution of a complaint, action, or prosecution against him, Her Majesty's Consul or Vice-Consul may refuse to register him as a British subject.

6. Widows of persons of Asiatic descent registered as British subjects shall themselves be registered as British subjects if their name appears on the husband's certificate before his death.

7. The sons born in Siam of persons of Asiatic descent, registered as British subjects, shall be registered as British subjects if their birth occurred subsequently to the date of their father's registration, and they may be registered as British subjects notwithstanding the non-registration or tardy registration of the father, if it appears that owing to special causes it was not in the father's power to obtain registration at all or previously to his son's birth.

8. The lists kept at Her Britannic Majesty's Consulates in Siam shall be open to the inspection of a properly authorized Representative of the Siamese Government on proper notice being given, and if the Siamese Government itself claim jurisdiction over any person of Asiatic descent whose name is inscribed in the said lists as a British subject, an inquiry shall be likewise held, under the provisions of Article 9, to determine the jurisdiction under which the person of Asiatic descent in question properly falls.

9. The inquiry contemplated in Clause 8 shall be held at Her Britannic Majesty's Consulate by Her Britannic Majesty's Consul-General; and a Representative of the Siamese Government shall be invited to attend.

If the person, in respect of whom the inquiry is held, come within the conditions for registration laid down in the preceding clauses, he may, if not yet registered, forthwith be registered as a British subject and provided with a certificate of registration at Her Britannic Majesty's Consulate; otherwise he shall be recognized as falling under Siamese jurisdiction, and if already on the lists of Her Britannic Majesty's Consulate his name shall be erased.

R. E. W.
R. B. F.

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* Printed in black type. † Printed in italics

No. 47.

[April 17, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 14, 1899.

Gentlemen,

Imprisonment of A. Quintal, a Portuguese, in British Consular gaol, and his forcible removal in a British ship.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the correspondence, noted in the inclosed list, relative to the case of one Antonio Quintal, in connection with which a question has arisen as to the legality or correctness of certain proceedings on the part of Her Majesty's Consul at Bangkok.

The facts of the case, so far as they are material to the question at issue, may be briefly stated as follows:—

Antonio Quintal, apparently a Portuguese subject resident at Bangkok, having been cited for some offence before the Portuguese Consular Court at that place, was ordered by the presiding Consul-General to be removed to Macao—whether in execution of a sentence of deportation, or for the purpose of undergoing trial before a higher Court at Macao, is not quite clear.

It appears that there is no Portuguese Consular gaol at Bangkok, and that Portuguese ships do not visit that place except on very rare occasions, so that the Portuguese Consular Court had at its disposal no means of giving effect to its own

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decision. With a view, therefore, of getting this order carried out, and of securing the man's detention pending removal, the Portuguese Consul-General had recourse to the good offices of Her Majesty's Consul, Mr. Archer, who was accordingly asked to issue a warrant to the master of any British ship which might be available, directing him to convey Quintal to Hong Kong, whence, with the assistance of the British Colonial authorities, he would be handed over to the Macao police. Pending the issue of such warrant, it was requested that Quintal should be imprisoned in the British Consular gaol.

To these requests Mr. Archer acceded. Quintal was lodged in the Consular gaol and subsequently sent in charge of the (British) Consular Constable on board a British steamer, and delivered to the Captain with a warrant, of which a copy is annexed to Consul Archer's Report inclosed in Mr. Greville's despatch No. 12, Consular, of the 1st July, 1898.

In a subsequent despatch (forwarded by Her Majesty's Minister on the 8th February last) Consul Archer quotes a number of precedents in support of the correctness of the action taken by him as regards the temporary detention of Quintal in the gaol of the Consulate, as well as the issue of the warrant to the Captain of the British ship, and explains that in complying with requests of this kind made from time to time by foreign Consular Officers at Bangkok, he and his predecessors had thought they were fulfilling an obligation of international courtesy, and had acted not in the capacity of judicial officers exercising the functions vested in them under British Orders in Council, but in virtue of the general authority inherent in the Consular office.

Lord Salisbury is, however, doubtful whether the explanations furnished and the precedents quoted can be held to be sufficient warrant for proceedings which involve the imprisonment in a British Consular gaol, and the forcible removal in a British ship, of a foreign subject, by one of Her Majesty's Consuls, acting not under the authority and in the execution of a Judgment or Order duly pronounced by a British Consular, or other competent British Court of Law, but solely at the private request of a foreign Consular Officer.

I am accordingly to ask that you will take the matter into your consideration and favour his Lordship with your opinion as to—

1. Whether the action of Her Majesty's Consul in ordering the imprisonment and deportation of a foreign subject in the circumstances described, is such as should receive the approval of the Secretary of State; and, in the event of your answer to the foregoing question being in the negative;

2. Whether you can suggest some other mode of procedure on the part of Her Majesty's Consuls, which would not be open to the same objection, and by adopting which they might yet be able to meet, at least in a measure, the wishes of such of their foreign colleagues as may in future apply to them for assistance in similar circumstances.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

Mr. A. Quintal		March 31, 1898.
Mr. Greville	(No 13. Consular)	July 1, „
To ditto	(No. 29. Consular)	December 30, „
To Mr. A. Quintal		December 30, „
Mr. Greville	(No. 2. Consular)	February 8, 1899.

Report.

We are of opinion that there is no substantial objection to the course pursued with reference to the detention of prisoners of other nationalities in the Consular prison at Bangkok. The use of the prison for this purpose is given to the Consular authorities of the nation to which prisoner belongs. It ought, however, to be made clear in the answer to any such applications that the detention by the gaoler will be upon the warrant of the foreign Power, and not under the orders of Her Majesty's Consul, who merely permits such power to use the British gaol for this purpose.

The warrant of the authorities of the prisoner's nation would be a complete answer to any application for a *habeas corpus*, if such an application were possible.

We think that the course taken in issuing a warrant for the deportation of the foreign prisoner is objectionable. The British Consul has no authority to issue any such warrant to the master of a British ship.

There is no valid objection to the course taken in 1892 so far as the deportation to Hong Kong is concerned. In cases of urgent necessity the British Consul may properly use his friendly offices on behalf of a foreign Power to secure the carriage of a prisoner in a British ship to another port, but he ought not to issue any warrant or order for the purpose. The transport must be effected solely on the responsibility, at the expense, and under the indemnity of the Foreign Consul.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 17, 1899.

SPAIN.

No. 48.

[February 10, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 31, 1899.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the papers enumerated in the accompanying list, with reference to the claim of the Western Railway of Havana (Limited) against the Spanish Government on account of the damage occasioned to their property in Cuba during the insurrection in that island.

Claim of Western Railway of Havana on Spanish Govt. for damages during insurrection.

On the 17th January, 1896, the Company brought to the notice of the Secretary of State (Paper A) the injury that was being done to their property by the insurgents in Cuba, with a view to proper steps being taken, when the time should arrive, to protect the Company's interests and to secure to them compensation. They were informed, in reply (Paper B), that Her Majesty's Government would not be justified in supporting any claim on behalf of the Company unless it could be shown that the Spanish Government had given compensation in similar circumstances to its own subjects or the subjects of other countries.

In a further letter the Company endeavoured to establish the fact that the Spanish Government has granted compensation in similar cases; and they stated that Spain in such matters acts upon the principle of reciprocity, and that, as damages done by riots and tumults in England are compensated, "the Spanish Government would wish, as regards an English Company, to do the like."

The letters of the Company were referred to Her Majesty's Ambassador at Madrid, and in his Excellency's despatch No. 59 of the 15th March, 1896 (Paper D), will be found inclosed the opinion of Señor Azcarate, the Legal Adviser of the Embassy, to the effect that the Company has no right whatever to claim from the Spanish Government any indemnity for the damages caused by the Cuban rebels, but that at the conclusion of the war they might, with other parties who had suffered damage, solicit that an indemnity analogous to that granted on other occasions in similar circumstances be conceded to them as an act of grace.

On the 14th January, 1897, the Company once more (Paper E) called attention to their losses. They complained of the refusal of certain Judges in Cuba to allow them to lodge notarial protests putting on record the amount of the damages sustained, and they expressed a hope that their claim would be transmitted to the Spanish Government with due recommendation thereof.

On the 20th May of the same year (Paper F) the Company forwarded extracts from a Petition presented by their Manager to the Governor-General of Cuba setting forth their losses, and requesting that an order might be given for payment.

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These papers also were forwarded to Sir H. D. Wolff, who, in his despatch No. 175 of the 6th July, 1897 (Paper G), transmitted further opinions by Señor Azcarate, adhering to the views he had previously expressed, and pointing out that there was no ground for representations on account of the denial of justice alleged by the Company by reason of the action of the Judges in Cuba.

The Company were informed of the purport of the views held by Señor Azcarate, but, as it was understood that they were in possession of legal opinions to a contrary effect, an assurance was given that, if they would communicate them, the whole case would be reconsidered in the light of those opinions, with a view, if necessary, to its submission to you.

The Company have since (Paper H) forwarded a Memorandum setting forth in detail the arguments upon which they rely in support of their claim to compensation as a matter of right; and they have also transmitted (Paper J) the legal opinion above referred to.

Briefly stated the arguments appear to be—

(*a*.) That Spanish subjects would in this country be entitled to compensation for losses sustained in similar circumstances; and that on the score of reciprocity British subjects are consequently entitled to compensation in Spain;

(*β*.) That the Spanish Government have in similar circumstances granted compensation; and

(*γ*.) That the losses inflicted on the Company by the insurgents were in a large measure due to the action of the Spanish authorities.

I am to request that you will take these papers into your consideration, and favour Lord Salisbury with your opinion as to whether the claim of the Company is one which Her Majesty's Government would be justified in supporting; and that you will be good enough to make in your Report any comments or observations which in your judgment may be of assistance to his Lordship in arriving at a decision on the case.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Western Railway of Havana (Limited)		January	17, 1896.
(B.)	To Western Railway of Havana (Limited)		January	30, „
(C.)	Western Railway of Havana (Limited)		February	13, „
(D.)	Sir H. Drummond Wolff	(No. 59)	March	15, „
(E.)	Western Railway of Havana (Limited)		January	14, 1897.
(F.)	Ditto		May	20, „
(G.)	Sir H. Drummond Wolff	(No. 175)	July	6, „
(H.)	Western Railway of Havana (Limited)		April	14, 1898.
(J.)	Legal Opinion, communicated by Western Railway of Havana (Limited)		May	26, „

Report.

It must be remembered that the Company have no greater rights against the Spanish Government than a Spanish Company or subject would have had. We think, therefore, that the Company should be required to satisfy Her Majesty's Government that redress by legal proceedings in the Spanish Courts, or by other ordinary procedure, is impossible.

The Counsel to the Spanish Embassy advises that no such proceedings will lie, but a good many of the statements in the argument presented on behalf of the Company appear to suggest that there is a liability on the Spanish Government to indemnify the Company by Spanish law. It was probably, however, not intended to assert that this liability could be enforced by legal proceedings. If it be made clear that such legal proceedings are impossible, we think that Her Majesty's Government may properly make informal representations to the Spanish Government in support of the Company's claim.

The damage to the Company's property was the result of the use made by the Spanish military authorities of the railway line. It is stated that when the Spanish Government so used the line they knew that it was probable, if not certain, that the rebels would destroy the permanent way and the plant of the Company, in consequence of the use that the Government were making of them. We think that under these circumstances, there is ground for a claim to compensation analogous to the right to payment which exists when the "droit d'angarie" is enforced against the property of foreigners.

We think that representations should in the first instance be informal only. It will be a matter for subsequent consideration whether formal diplomatic representations on the subject should be made if the Spanish Government refuse to admit the claim.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 10, 1899.

No. 49.

[April 11, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 31, 1899.

Gentlemen,

Claim of Philippines Mineral Syndicate on Spanish Government for destruction of their explosives at Longos.

I HAVE the honour to transmit to you herewith, by direction of the Marquess of Salisbury, a letter from the Philippines Mineral Syndicate (Limited),* requesting his Lordship to intervene on their behalf in order to obtain redress from the Spanish Government for the loss incurred by the Syndicate through the seizure and destruction of certain explosives kept by them at their establishment at Longos in Luzon under licence for use in their mines in that island.

In June last the Spanish local authorities seized and destroyed these explosives, which are valued at 260*l*., and a protest against such seizure was made by the representation of the Syndicate before the Acting British Consul at Manila on the 27th October, 1898.

A copy of this protest is inclosed.

The Syndicate represent that the seizures of the explosives has prevented the further working of their mines, and they accordingly claim, in addition to the actual value of the explosives seized, and interest since their destruction at the rate of 10 per cent. per annum, a sum of 2,500*l*. for indirect consequential losses.

Lord Salisbury would be disposed to support the claim for the repayment of the actual value of the property, together with 10 per cent. appreciation for compulsory seizure and interest, from the date of seizure to the date of repayment, at the ordinary legal rate prevailing in Luzon. But his Lordship, as at present advised, is disposed to question the propriety of advancing the further demand in respect of indirect consequential losses.

Before, however, formally supporting a claim even for the actual value of the explosives seized, his Lordship is desirous of having the advantage of your advice on the matter; and I am accordingly to request that you will be good enough to take these papers into your consideration, and to favour Lord Salisbury with your opinion as to whether the claim advanced by the Syndicate is one which Her Majesty's Government can properly support to any, and, if so, to what extent.

His Lordship would at the same time be glad to be favoured with any observations of a general nature which you may have to offer on the case.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

We are of opinion that Her Majesty's Government may properly support the claim for the value of the dynamite seized, and interest thereon from the date of seizure, but that the claim for losses consequential on the inability to use the dynamite ought not to be supported.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 11, 1899.

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* Philippines Mineral Syndicate, March 25, 1899.

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TURKEY.

No. 50.

[June 22, 1899.]

Foreign Office to the Law Officers of the Crown.

Consolidation of Ottoman Orders in Council.

Foreign Office, May 20, 1899.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Salisbury, to inclose, for your consideration, a revised draft of an Order which has been prepared for the purpose of consolidating and amending "The Ottoman Orders in Council, 1873–1896."

The cancelled type and the italicized type in this draft show respectively the eliminations and additions or amendments which have been made since the date of your Report of the 7th November, 1898.

I am to request that Lord Salisbury may be informed at your early convenience whether, in your opinion, the draft Order, as it now stands, may properly be submitted for the approval of the Queen in Council.

I have, &c.
(Signed) F. H. VILLIERS.

Report.

As altered and initialled by us, the draft Order in Council may properly be submitted to the Queen in Council for Her Majesty's approval.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
June 22, 1899.

Annex.

Draft Order in Council as approved by the Law Officers.

[The following words were added by Mr. Gray, subsequent to the approval by the Law Officers:—
In Article 11, after the words, "civil and criminal,"—"including any jurisdiction by this Order conferred expressly on a Provincial Court."]

WHEREAS by Treaty, Capitulation, Grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within the dominions of the Ottoman Porte:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased by and with the advice of Her Privy Council to order, and it is hereby ordered, as follows:—

PART I.—PRELIMINARY AND GENERAL.

1. This Order is divided into parts, as follows:—

Parts.	Subject.	Articles.
I	Preliminary and General	1—6
II	Constitution and Powers of Courts	7—24
III	Criminal matters	25—62
IV	Civil matters	63—135
V	Procedure, Criminal and Civil	136—149
VI	Ottoman and Foreign Subjects and Tribunals	150—157
VII	Miscellaneous	158—172
	Schedule of Repealed Orders.	

2. The limits of this Order are the dominions of the Sublime Ottoman Porte, but, as respects Egypt, do not extend to any place south of the 22nd parallel of north latitude; and the expressions "Ottoman Dominions" and "Egypt" shall, for the purposes of this Order, be construed accordingly.

3. In the construction of this Order the following words and expressions have the meanings hereby assigned to them, unless there be something in the subject or context repugnant thereto, that is to say:—

"Administration" means letters of administration, including the same with will annexed or granted for special or limited purposes or limited in duration.

"The Ambassador" means Her Majesty's Ambassador, and includes Chargé d'Affaires or other chief Diplomatic Representative of Her Majesty in the Ottoman dominions for the time being.

"Agent for Egypt" means Her Majesty's Agent and Consul-General for Egypt, and includes any person temporarily appointed to act for that office.

"British merchant-ship" means a merchant ship being a British ship within the meaning of "The Merchant Shipping Act, 1894."

"British subject" includes a British protected person, that is to say, a person who either (*a*) is a native of any Protectorate of Her Majesty, and is for the time being in the Ottoman dominions; or (*b*) by virtue of Section 15 of "The Foreign Jurisdiction Act, 1890," or otherwise, enjoys Her Majesty's protection in the Ottoman dominions.

"Consular district" means the district in and for which a Consular officer usually acts, or for which he may be authorized to act, for all or any of the purposes of this Order by authority of the Secretary of State.

"Consular officer" means a Consul-General, Consul, Vice-Consul, Consular Agent, or pro-Consul of Her Majesty resident in the Ottoman dominions, including a person acting temporarily, with the approval of the Secretary of State, as or for a Consul-General, Consul, Vice-Consul, or Consular Agent of Her Majesty so resident; and—

(*a.*) "Commissioned Consular officer" means a Consular officer holding a commission of Consul-General, Consul, or Vice-Consul from Her Majesty, including a person acting temporarily, with the approval of the Secretary of State, as or for such a commissioned Consular officer;

(*b.*) "Uncommissioned Consular officer" means a Consular officer not holding such a commission, including a person acting temporarily, with the approval of the Secretary of State, as or for such an uncommissioned Consular officer.

"Consulate" and "Consular office" refer to the Consulate and office of a Consular officer.

"The Court," except when the reference is to a particular Court, means any Court established under this Order, subject, however, to the provisions of this Order with respect to powers and local jurisdictions.

"Foreigner" means a subject or citizen of a State in amity with Her Majesty, other than the Sublime Ottoman Porte.

"Judge," in relation to any Court, includes any person temporarily appointed to act as Judge of that Court.

"Legal practitioner" includes barrister-at-law, advocate, solicitor, writer to the Signet, and any person possessing similar qualifications.

"Lunatic" means idiot or person of unsound mind.

"Master," with respect to any ship, includes every person (except a pilot) having command or charge of that ship.

"Month" means calendar month.

"Oath" and "affidavit" in the case of persons for the time being allowed by law to affirm or declare, instead of swearing, include affirmation and declaration, and the expression "swear," in the like case, includes affirm and declare.

"Offence" includes crime, and any act or omission punishable criminally in a summary way or otherwise.

"Office copy" means a copy made under the direction of the Court, or produced to the proper officer of the Court for examination with the original, and examined by him and sealed with the seal of the Court.

"Ottoman subject" means a subject of the Sublime Ottoman Porte.

"Ottoman Tribunal" means any Ottoman Tribunal of Commerce, Ottoman Civil Tribunal, or Ottoman Maritime Court, or other Ottoman Tribunal.

"Ottoman waters" means the territorial waters of the Ottoman dominions.

"Person" includes Corporation.

"Pounds" means pounds sterling.

"Prescribed" means prescribed by Rules of Court.

"Prosecutor" means complainant or any person appointed or allowed by the Court to prosecute.

"Proved" means shown by evidence on oath, in the form of affidavit, or other form, to the satisfaction of the Court or Consular officer acting or having jurisdiction in the matter, and "proof" means the evidence adduced in that behalf.

"Resident" means having a fixed place of abode in the Ottoman dominions.

"Rules of Court" means rules of Court made under the provisions of this Order.

"Secretary of State" means one of Her Majesty's Principal Secretaries of State.

"Ship" includes any vessel used in navigation, however propelled, with her tackle, furniture, and apparel, and any boat or other craft.

"The Treasury" means the Commissioners of Her Majesty's Treasury.

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"Treaty" includes any Convention, Agreement, or Arrangement, made by or on behalf of Her Majesty with any State or Government, King, Chief, people, or tribe, whether His Majesty the Sultan is or is not a party thereto.

"Will" means will. codicil, or other testamentary instrument.

Expressions used in any rules, regulations, or orders made under this Order shall, unless a contrary intention appears, have the same respective meanings as in this Order.

4.—(1.) Words importing the plural or the singular may be construed as referring to one person or thing, or to more than one person or thing, and words importing the masculine as referring to the feminine (as the case may require).

(2.) Where this Order confers any power or imposes any duty, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(3.) Where this Order confers a power, or imposes a duty on, or with respect to, a holder of an office, as such, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by, or with respect to, the holder for the time being of the office or the person temporarily acting for the holder.

(4.) Where this Order confers a power to make any rules, regulations, or orders, the power shall, unless a contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, vary, or amend the rules, regulations, or orders.

(5.) This Article shall apply to the construction of any rules, regulations, or orders made under this Order, unless a contrary intention appears.

5. The jurisdiction conferred by this Order extends to the persons and matters following, in so far as by Treaty, grant, usage, sufferance, or other lawful means, Her Majesty has jurisdiction in relation to such matters and things, that is to say:—

(i.) British subjects, as herein defined, within the limits of this Order.

(ii.) The property and all personal or proprietary rights and liabilities within the said limits of British subjects, whether such subjects are within the said limits or not.

(iii.) Ottoman subjects and foreigners in the cases and according to the conditions specified in this Order and not otherwise.

(iv.) Foreigners with respect to whom any State, King, Chief, or Government, whose subjects, or under whose protection they are, has by any Treaty as herein defined or otherwise agreed with Her Majesty for, or consents to, the exercise of power or authority by Her Majesty.

(v.) British ships with their boats, and the persons and property on board thereof, or belonging thereto, being within the Ottoman dominions.

6. All Her Majesty's jurisdiction exercisable in the Ottoman dominions for the hearing and determination of criminal or civil matters, or for the maintenance of order, or for the control or administration of persons or property, or in relation thereto, shall be exercised under and according to the provisions of this Order, and not otherwise.

PART II.—CONSTITUTION AND POWERS OF COURTS.

7.—(1.) There shall be a Court styled "Her Britannic Majesty's Supreme Consular Court for the Dominions of the Sublime Ottoman Porte" (in this Order referred to as the Supreme Court, and comprised in the term "the Court").

(2.) Subject to the provisions of this Order there shall be two Judges of the Supreme Court, that is to say, a Judge, and an Assistant Judge, who shall respectively be appointed by Her Majesty by warrant under Her Royal Sign Manual.

Each shall be at the time of his appointment a member of the Bar of England, Scotland, or Ireland, of not less than seven years' standing.

(3.) Each of the Judges may hold a Commission from Her Majesty as Consul-General or Consul.

(4.) The Judges shall sit together for the purposes described in this Order, and the Supreme Court so constituted is hereinafter in this Order referred to as "the Full Court."

(5.) There shall be attached to the Supreme Court a Registrar, a Marshal, and so many officers and clerks under such designations as the Secretary of State thinks fit; but unless and until the Secretary of State otherwise appoints, the Assistant Judge shall act as Registrar of the Supreme Court.

(6.) In case of the death, illness, or other incapacity, or of the absence or intended absence from the Consular district of Constantinople of either of the Judges, the Ambassador may, if he thinks fit, appoint a fit person to be Acting Judge, or Acting Assistant Judge, as the case may be. If the appointment has to be made to the office of Acting Judge, the Assistant Judge, if present and not incapacitated, shall, unless the Secretary of State otherwise directs, be appointed, and if he is so appointed, the Ambassador may, if he thinks fit, appoint a fit person to act as Assistant Judge.

(7.) The Secretary of State may temporarily attach to the Supreme Court such persons, being Consular officers, as he thinks fit.

A person thus attached shall discharge such duties in connection with the Court as the Judge, with the approval of the Secretary of State, may direct.

8.—(1.) Every commissioned Consular officer, with such exceptions (if any) as the Secretary of State thinks fit to make, shall for and in his own Consular district hold and form a Court, in this Order referred to as a Provincial Court.

(2.) Every uncommissioned Consular officer, with such exceptions (if any) as the Supreme Court, by writing under the hand of the Judge and the seal of that Court, thinks fit to make, shall for and in his own Consular district, subject to the provisions of this Order, hold and form a Court, in this Order referred to as a Local Court.

(3.) Every Provincial and Local Court shall be styled "Her Britannic Majesty's Consular Court at Smyrna" (or as the case may be).

(4.) Every reference in this Order to a Provincial Court in relation to a Local Court shall be deemed to be a reference to a Provincial Court held by the commissioned Consular officer, under whose superintendence the uncommissioned Consular officer holding the Local Court acts.

(5.) Every Provincial Court shall, with the approval of the Supreme Court, and every Local Court may, with the approval of the Provincial Court, appoint a competent person, or persons, to perform such duties and to exercise such powers as are by this Order and any Rules of Court imposed or conferred upon the Registrar and Marshal, and any person so appointed shall perform such duties and exercise such powers accordingly.

9.—(1.) The Secretary of State may, when he thinks fit, under his hand, appoint a competent person to act temporarily as Special Judge of the Supreme Court. He shall be a person qualified to be appointed a Judge of the Supreme Court under this Order.

(2.) The Secretary of State may by order assign any case, civil or criminal, and whether pending at or commenced after the commencement of this Order, to be tried by or before the Special Judge, and in relation to any case so assigned, all the powers, authority, and jurisdiction of the Supreme Court shall be vested in and exercised by the Special Judge, and if the Order so provides, the Judges shall not exercise any jurisdiction therein.

(3.) The Special Judge may, subject to any directions of the Secretary of State, sit in any part of the Ottoman dominions.

(4.) If in any criminal case so assigned the Special Judge is of opinion that a jury or assessors cannot conveniently be obtained, he may act without a jury or assessors.

(5.) If any civil case so assigned, whether before or after the commencement of this Order, is set down for rehearing, the same shall be reheard before the Special Judge, with or without either of the Judges of the Supreme Court, or, when the attendance of the Special Judge seems no longer necessary, before the full Court, as the Secretary of State may by the order or any subsequent order direct.

(6.) The remuneration and expenses of any Special Judge shall be paid as the Secretary of State, with the consent of the Treasury, directs.

10. The Supreme Court shall have a seal, bearing the style of the Court and such device as the Secretary of State approves, but the seal in use at the commencement of this Order shall continue to be used until a new seal is provided.

In each of the Provincial and Local Courts the official seal of the Consular officer shall be used.

11. All Her Majesty's jurisdiction, civil and criminal, *including any jurisdiction by this Order conferred, expressly on a Provincial Court*, shall for and within the district of the Consulate of Constantinople be vested exclusively in the Supreme Court as its ordinary original jurisdiction.

12. All Her Majesty's jurisdiction, civil and criminal, not under this Order vested exclusively in the Supreme Court, shall to the extent and in the manner provided by this Order be vested in the Provincial and Local Courts.

Provided that as regards all such matters and cases as come within the jurisdiction of any Egyptian Courts established with the concurrence of Her Majesty, the operation of this Order is hereby suspended until Her Majesty by and with the advice of Her Privy Council shall otherwise order.

13. The Supreme Court shall have in all matters, civil and criminal, an original jurisdiction, concurrent with the jurisdiction of the several Provincial and Local Courts, to be exercised subject and according to the provisions of this Order.

14. The Supreme Court shall ordinarily sit at Constantinople and as occasion requires at Alexandria or Cairo; but may, on emergency, sit at any other place within the Ottoman dominions, and may at any time transfer its ordinary sittings to any such place as the Secretary of State approves. Under this Article the Judges may sit at the same time at different places, and each sitting shall be deemed to be a sitting of the Supreme Court.

15.—(1.) The Registrars of the Provincial Courts at Alexandria and Cairo respectively shall be also District Registrars of the Supreme Court.

(2.) They shall, subject to Rules of Court, perform the like duties in respect of proceedings of the Supreme Court pending in their respective District Registries, as are performed by the Registrar of the Supreme Court in respect of proceedings pending in the Registry of the Court at Constantinople.

(3.) Summonses for the commencement of actions in the Supreme Court shall be issued by the District Registrars when thereunto required, and all such further proceedings as might be taken and recorded in the Registry of the Supreme Court at Constantinople may be taken and recorded in the District Registry in any actions pending in such District Registries respectively.

(4.) The exercise of powers and performance of duties by District Registries at Alexandria and Cairo shall be subject to the control and direction of the Provincial Courts of Alexandria and Cairo respectively in the same manner and to the same extent, subject to Rules of Court, as the

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exercise of powers and performance of duties by the Registrar of the Supreme Court at Constantinople are subject to the control and direction of a Judge of the Supreme Court.

Provided that where a Judge of the Supreme Court is present in Alexandria or Cairo the said control and direction shall be exercised exclusively by such Judge.

16. The Judge or under his directions the Assistant Judge of the Supreme Court may visit, in a magisterial or judicial capacity, any place in the Ottoman dominions, and there inquire of, or hear and determine, any case, civil or criminal, and may examine any records or other documents in any Provincial or Local Court, and give directions as to the keeping thereof.

17. A Provincial Court shall have in all matters, civil and criminal, an original jurisdiction concurrent with the jurisdiction of the several Local Courts (if any) held within its district to be exercised subject and according to the provisions of this Order.

18.—(1.) Where any case, civil or criminal, commenced in a Local Court, appears to that Court to be beyond its jurisdiction, or to be one which for any other reason ought to be tried in the Provincial Court or the Supreme Court, the Local Court shall report the case to the Provincial Court for directions.

(2.) Subject to any directions of the Supreme Court under this Article, a Provincial Court may of its own motion, or on the report of a Local Court, or on the application of any party concerned, require any case, civil or criminal, pending in a Local Court, to be transferred to the Provincial Court, or in the case of any such report or application, may direct that the case shall proceed in the Local Court.

(3.) Where any case, civil or criminal, commenced in a Provincial Court, or reported or transferred to that Court under this Article, appears to the Provincial Court to be beyond its jurisdiction, or to be one which for any other reason ought to be tried in the Supreme Court, the Provincial Court shall report the case to the Supreme Court for directions.

(4.) The Supreme Court may of its own motion, or upon the report of a Provincial Court, or on the application of any party concerned, require any case, civil or criminal, pending in any Provincial or Local Court to be transferred to, or tried in, the Supreme Court, or may direct in what Court and in what mode, subject to the provisions of this Order, any such case shall be tried.

19. The Supreme Court, and each Provincial Court shall, in the exercise of every part of its jurisdiction, be a Court of Record.

20.—(1.) Every Provincial and Local Court shall execute any writ or order issuing from the Supreme Court, and shall take security from any person named in a writ or order for his appearance personally or by attorney, and shall, in default of security being given, or when the Supreme Court so orders, send the person on board one of Her Majesty's vessels of war to Constantinople, or such other port as may be named in the order, or, if no vessel of war is available, then on board some British or other fit vessel.

(2.) The order of the Court shall be sufficient authority to the commander or master of the vessel to receive and detain the person, and deliver him up at the port named according to the order.

21. The Supreme Court, and each Provincial and Local Court, shall be auxiliary to one another in all particulars relative to the administration of justice, civil or criminal.

22. Each Provincial and Local Court shall at such time as may be fixed by rules of Court furnish to the Supreme Court an annual report of every case, civil and criminal, brought before it, in such form as the Supreme Court directs.

The report of a Local Court shall be sent through the Provincial Court.

23. Subject to the provisions of this Order, criminal and civil cases may be tried as follows:—

(*a.*) In the case of the Supreme Court, by the Court itself, or by the Court with a jury, or with assessors.

(*b.*) In the case of a Provincial Court, by the Court itself, or by the Court with assessors.

(*c.*) In the case of a Local Court, by the Court itself, without assessors or jury.

24.—(1.) Notwithstanding anything in this Order, the Court shall not exercise any jurisdiction in any proceeding whatsoever over the Ambassador, or over his official or other residences, or his official or other property.

(2.) Notwithstanding anything in this Order, the Court shall not exercise, except with the consent of the Ambassador signified in writing to the Court, any jurisdiction in any proceeding over any person attached to or being a member of, or in the service of, the Embassy.

(3.) If in any case under this Order it appears to the Court that the attendance of the Ambassador, or of any person attached to or being a member of the Embassy, or being in the service of the Embassy, to give evidence before the Court is requisite in the interest of justice, the Court may address to the Ambassador a request in writing for such attendance.

(4.) A person attending to give evidence before the Court shall not be compelled or allowed to give any evidence or produce any document, if, in the opinion of the Ambassador, signified by him personally or in writing to the Court, the giving or production thereof would be injurious to Her Majesty's service.

(5.) This Article shall apply to Her Majesty's Agency in Egypt, and the foregoing provisions shall for the purpose of this application be read as if "Her Majesty's Agent and Consul-General" were substituted for "the Ambassador," and "Agency" for "Embassy," wherever those words respectively occur.

PART III.—CRIMINAL MATTERS.

25.—(1.) Except as regards offences against the Capitulations, Articles of Peace, and Treaties between Her Majesty and the Subline Ottoman Porte, or against any rules and regulations for the observance thereof, or for the maintenance of order among British subjects in the Ottoman dominions, made by or under the authority of Her Majesty, or against any of the provisions of this Order;—

Any act that would not by a Court or Justice having criminal jurisdiction in England be deemed an offence in England, shall not, in the exercise of criminal jurisdiction under this Order, be deemed an offence, or be the subject of any criminal proceeding under this Order.

(2.) Subject to the provisions of this Order, criminal jurisdiction under this Order shall, as far as circumstances admit, be exercised on the principles of, and in conformity with, the statute and other law for the time being in force in and for England, and with the powers vested in the Courts of Justice and Justices of the Peace in England, according to their respective jurisdiction and authority.

26.—(1.) If any person is guilty of an offence against this Order not distinguished as a grave offence against this Order, he is liable, on summary conviction—

(i.) To a fine not exceeding 5*l.*, without any imprisonment; or

(ii.) To imprisonment not exceeding one month, without fine; or

(iii.) To imprisonment not exceeding fourteen days, with a fine not exceeding 50*s.*

(2.) Imprisonment under this Article is without hard labour.

27.—(1.) If any person is guilty of an offence against this Order, distinguished as a grave offence against this Order, he is liable, on summary conviction before the Supreme Court or a Provincial Court—

(i.) To a fine not exceeding 10*l.*, without imprisonment; or

(ii.) To imprisonment not exceeding two months, without fine; or

(iii.) To imprisonment not exceeding one month, with a fine not exceeding 5*l.*

(2.) Imprisonment under this Article is, in the discretion of the Court, with or without hard labour.

28. Every Court may cause to be summoned or arrested, and brought before it, any person subject to, and being within the limits of, its jurisdiction, and charged with having committed an offence cognizable under this Order, and may deal with the accused according to the jurisdiction of the Court and in conformity with the provisions of this Order; or when the offence is liable and is to be tried in England, to take the preliminary examination, and to commit the accused for trial, and cause or allow him to be taken to England.

29. For the purposes of criminal jurisdiction every offence and cause of complaint committed or arising in the Ottoman dominions shall be deemed to have been committed or to have arisen, either in the place where the same actually was committed or arose, or in any place in the Ottoman dominions where the person charged or complained of happens to be at the time of the institution or commencement of the charge or complaint.

30. Where a British subject is charged with the commission of an offence the cognizance whereof appertains to the Court, and it is expedient that the crime or offence be inquired of, tried, determined, and punished within Her Majesty's dominions elsewhere than in England, the accused may (under "The Foreign Jurisdiction Act, 1890," section 6) be sent for trial to Bombay or Malta.

The Supreme Court may, where it appears so expedient, by warrant under the hand of the Judge and the seal of the Court, cause the accused to be sent for trial to Bombay or Malta accordingly.

The warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named, and to carry him to and deliver him up to Bombay or to Malta (as the case may be), according to the warrant.

Where any person is to be so sent to Bombay or to Malta, the Court before which he is charged shall take the preliminary examination, and shall bind over such of the proper witnesses as are British subjects in their own recognizances to appear and give evidence on the trial.

31.—(1.) The Supreme Court may adjudge punishment as follows:—

(*a.*) Imprisonment, not exceeding twenty years, with or without hard labour, and with or without a fine not exceeding 500*l.*; or

(*b.*) A fine not exceeding 500*l.*, without imprisonment; and

(*c.*) In case of a continuing offence, in addition to imprisonment or fine, or both, a fine not exceeding 1*l.* for each day during which the offence continues after the day of the commission of the original offence.

(2.) A Provincial Court may adjudge punishment as follows:—

Imprisonment not exceeding twelve months, with or without hard labour, and with or without a fine not exceeding 50*l.*; or

A fine not exceeding 50*l.*, without imprisonment.

(3.) A Local Court may adjudge punishment as follows:—

A fine not exceeding 5*l.*, without imprisonment; provided that a Local Court shall not hear and determine any charge unless the offence is punishable on summary conviction.

32.—(1.) Every accused person shall be tried upon a charge, which shall state the offence charged, with such particulars as to the time and place of the alleged offence, and the person (if

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any) against whom or the thing (if any) in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2.) The fact that a charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(3.) Where the nature of the case is such that the particulars above mentioned do not give such sufficient notice as aforesaid, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will give such sufficient notice.

33. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases following, that is to say—

(*a.*) Where a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences he may be charged with, and tried at one trial for any number of them not exceeding three.

(*b.*) If in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.

(*c.*) If the acts alleged constitute an offence falling within two or more definitions or descriptions of offences in any law or laws, the accused may be charged with, and tried at one trial for each of such offences.

(*d.*) If several acts constitute several offences, and also, when combined, a different offence, the accused may be charged with, and tried at one trial for, the offence constituted by such acts when combined, or one or more of the several offences, but in the latter case shall not be punished with more severe punishment than the Court which tries him could award for any one of these offences.

(*e.*) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the offences; and if it appears in evidence that he has committed a different offence for which he might have been charged, he may be convicted of that offence, although not charged with it.

34. When more persons than one are accused of the same offence or of different offences committed in the same transaction, or when one is accused of committing an offence and another of abetting or attempting to commit that offence, they may be charged and tried together or separately, as the Court thinks fit.

35.—(1.) Any Court, if sitting with a jury or assessors, may alter any charge at any time before the verdict of the jury is returned or the opinions of the assessors are expressed; if sitting without jury or assessors, at any time before judgment is pronounced.

(2.) Every such alteration shall be read and explained to the accused.

(3.) If the altered charge is such that proceeding with the trial immediately is likely, in the opinion of the Court, to prejudice the accused or the prosecutor, the Court may adjourn the trial for such period as may be necessary.

36.—(1.) No error or omission in stating either the offence or the particulars shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission.

(2.) When the facts alleged in certain particulars are proved and constitute an offence, and the remaining particulars are not proved, the accused may be convicted of the offence constituted by the facts proved, although not charged with it.

(3.) When a person is charged with an offence and the evidence proves either the commission of a minor offence, or an attempt to commit the offence charged, he may be convicted of the minor offence or of the attempt.

37.—(1.) If the accused has been previously convicted of any offence, and it is intended to prove such conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction shall be stated in the charge.

(2.) If such statement is omitted, the Court may add it at any time before sentence is passed.

(3.) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted, as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(4.) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted, as alleged in the charge.

(5.) If he answers that he has been so previously convicted, the Court may proceed to pass sentence on him accordingly, but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the Court shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

38.—(1.) In each of the two following cases, namely:—

(i.) Where the offence charged is felony; or,

(ii.) When it appears to the Court at any time before the trial, the opinion of the Court being recorded in the Minutes, that the offence charged, if proved, would not be adequately punished by imprisonment for three months with hard labour, or by a fine of 20*l.*, or both such imprisonment and fine—

The charge shall be triable with a jury or assessors (according to the provisions of this Order applicable to the Court); but may, with the consent of the accused, be tried without assessors or jury. In the Supreme Court, when the accused does not so consent, the charge shall be tried with a jury, unless the Court is of opinion that a jury cannot be obtained.

(2.) The Supreme Court may, for any special reason, direct that any case shall be tried with assessors or a jury, and a Provincial Court may, for any special reason, direct that any case shall be tried with assessors. In each such case the special reason shall be recorded in the Minutes.

39.—(1.) The Registrar of the Supreme Court when the duties of that officer are not performed by the Assistant Judge shall, subject to any directions of the Supreme Court, hear and determine such criminal cases in that Court as may, under this Order, be heard and determined without assessors or jury, and for this purpose shall exercise all the powers and jurisdiction of a Provincial Court.

(2.) The officer performing the duties of Registrar, in a Provincial or Local Court, shall, when required by the Court, act as public prosecutor, and conduct the prosecution in any criminal case.

40.—(1.) Where a charge made in a Provincial or Local Court appears to that Court to be one which ought under the provisions of this Order to be reported, the Provincial or Local Court shall proceed to make a preliminary examination of the charge in the prescribed manner, and shall send the depositions and a Minute of other evidence (if any) together with its Report, in the case of a Provincial Court, to the Supreme Court, or in the case of a Local Court, to the Provincial Court.

(2.) Where a charge, reported to a Provincial Court under this Article appears to that Court to be one which ought to be reported to the Supreme Court, the Provincial Court shall send the depositions, Minutes, and Report of the Local Court, with a covering Report, to the Supreme Court.

41.—(1.) Where a person charged with an offence is arrested on warrant issuing out of any Court, he shall be brought before the Court within forty-eight hours after the execution of the warrant, unless in any case circumstances unavoidably prevent his being brought before the Court within that time, which circumstances shall be recorded in the Minutes.

(2.) In every case, he shall be brought before the Court as soon as circumstances reasonably admit, and the time and circumstances shall be recorded in the Minutes.

42.—(1.) Where the accused is ordered to be tried before a Court with a jury or with assessors, he shall be tried as soon after the making of the order as circumstances reasonably admit.

(2.) As long notice of the time of trial as circumstances reasonably admit shall be given to him in writing, under the seal of the Court, which notice, and the time thereof, shall be recorded in the Minutes.

43.—(1.) Where an accused person is in custody, he shall not be remanded at any time for more than seven days, unless circumstances appear to the Court to make it necessary or proper that he should be remanded for a longer time, which circumstances, and the time of remand, shall be recorded in the Minutes.

(2.) In no case shall a remand be for more than fourteen days at one time, unless in case of illness of the accused or other case of necessity.

44.—(1.) The Court may in its discretion, admit to bail a person charged with any of the following offences, namely:—

Any felony.

Riot.

Assault on any officer in the execution of his duty, or on any person acting in his aid.

Neglect or breach of duty by an officer.

But a person charged with treason or murder shall not be admitted to bail except by the Supreme Court.

(2.) In all other cases the Court shall admit the accused to bail unless the Court, having regard to the circumstances, sees good reason to the contrary, which reason shall be recorded in the Minutes.

(3.) The Supreme Court may admit a person to bail although a Provincial or Local Court has not thought fit to do so.

(4.) The accused who is to be admitted to bail, either on remand or on or after trial ordered, shall produce such surety or sureties as, in the opinion of the Court, will be sufficient to insure his appearance as and when required, and shall with him or them enter into a recognizance accordingly.

45.—(1.) Where after a preliminary examination the accused is ordered to be tried, the Court shall bind by recognizance the prosecutor and every witness to appear at the trial to prosecute, or to prosecute and give evidence, or to give evidence (as the case may be).

(2.) If a British subject refuses to enter into such recognizance the Court may send him to prison, there to remain until after the trial, unless in the meantime he enters into a recognizance.

(3.) But if afterwards, from want of sufficient evidence or other cause, the accused is discharged, the Court shall order that the person imprisoned for so refusing be also discharged.

(4.) Where the prosecutor or witness is not a British subject, the Court may require him either to enter into a recognizance or to give other security for his attendance at the trial, and if he fails to do so may in its discretion dismiss the charge.

46.—(1.) Where an accused person is convicted of murder, the proper officer of the Supreme Court, under the direction of the presiding Judge, shall, in open Court require the

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offender to state if he has anything to say why judgment of death should not be recorded against him.

(2.) If the offender does not allege anything that would be sufficient in law to prevent judgment of death if the offence and trial had been committed and had in England, the Judge may order that judgment of death be entered on record.

(3.) Thereupon the proper officer shall enter judgment of death on record against the offender, as if judgment of death had been actually pronounced on him in open Court by the Judge.

(4.) The presiding Judge shall forthwith send a Report of the Judgment, together with a copy of the Minutes and of the notes of evidence and any observations which he thinks fit to make, to the Secretary of State for his direction respecting the punishment to be actually imposed.

(5.) The punishment actually imposed shall not in any case exceed the measure of imprisonment and fine which the Supreme Court is empowered by this Order to impose.

47.—(1.) The Court may, if it thinks fit, order a person convicted of an assault to pay to the person assaulted by way of damages any sum not exceeding 10*l*.

(2.) Damages so ordered to be paid may be either in addition to or in lieu of a fine, and shall be recoverable in like manner as a fine.

(3.) Payment of such damages shall be a defence to an action for the assault.

48.—(1.) The Court may, if it thinks fit, order a person convicted before it to pay all or part of the expenses of his prosecution, or of his imprisonment or other punishment, or of both the amount being specified in the order.

(2.) Where it appears to the Court that the charge is malicious, or frivolous and vexatious, the Court may, if it thinks fit, order the complainant to pay all or part of the expenses of the prosecution, the amount being specified in the order.

(3.) In these respective cases the Court may, if it thinks fit, order that the whole or such portion as the Court thinks fit of the expenses so paid be paid over to the complainant or to the accused (as the case may be).

(4.) In all cases the reasons of the Court for making any such order, or for refusing it if applied for, shall be recorded in the Minutes.

49. Subject to Rules of Court made under this Order, the Court may order payment of the reasonable expenses of any complainant or witness attending before the Court on the trial of any criminal case by a jury or with assessors, and also of the reasonable expenses of the jury or assessors.

50.—(1.) The Supreme Court may by general order approved by the Secretary of State prescribe the manner in which, and the prisons in the Ottoman dominions at which, unishments passed by any Court or otherwise awarded under this Order are to be carried into execution.

(2.) The warrant of any Court shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named in any prison so prescribed.

51.—(1.) Where an offender is sentenced to imprisonment, and the Supreme Court thinks it expedient that the sentence be carried into effect within Her Majesty's dominions, and the offender is accordingly, under section 7 of "The Foreign Jurisdiction Act, 1890," sent for imprisonment to a place in Her Majesty's dominions, the place shall be either Malta or Gibraltar, or a place in some other part of Her Majesty's dominions out of the United Kingdom, the Government whereof consents that offenders may be sent thither under this Article.

(2.) The Supreme Court may, by warrant under the hand of a Judge and the seal of the Court, cause the offender to be sent to Malta or Gibraltar, or other such place as aforesaid, in order that the sentence may be there carried into effect accordingly.

(3.) The warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named and to carry him to and deliver him up at the place named, according to the warrant.

52. "The Fugitive Offenders Act, 1881," and "The Colonial Prisoners Removal Act, 1884," shall apply to Egypt and to the Ottoman dominions other than Egypt as if those places were respectively British possessions and parts of Her Majesty's dominions.

Subject as follows :—

(*a.*) As respects Egypt, Her Majesty's Agent and Consul-General, and as respects the Ottoman dominions (other than Egypt), the Ambassador at Constantinople is hereby substituted for the Governor or Government of a British possession.

(*b.*) The Supreme Court, or in Egypt, during the absence of a Judge of the Supreme Court, the Provincial Court at Alexandria is hereby substituted for a Superior Court of a British possession.

(*c.*) The Supreme Court and each Provincial Court is substituted for a Magistrate of any part of Her Majesty's dominions.

(*d.*) For the purposes of Part II of the said Act of 1881, and of this Article in relation thereto, the Ottoman dominions and Malta and Gibraltar shall be deemed to be one group of British possessions.

53.—(1.) The Supreme Court may, if it thinks fit, report to the Secretary of State recommending a mitigation or remission of any punishment awarded by any Court; and thereupon the punishment may be mitigated or remitted by the Secretary of State.

(2.) Nothing in this Order shall affect Her Majesty's prerogative of pardon.

54. Where a person charged with an offence escapes or removes from the Consular district within which the offence was committed and is found within another Consular district, the Court within whose district he is found may proceed in the case to trial and punishment, or to preliminary examination (as the case may require), in like manner as if the offence had been committed in its own district; or may, on the requisition or with the consent of the Court within whose district the offence was committed, send him in custody to that Court, or require him to give security for his surrender to that Court, there to answer the charge and to be dealt with according to law.

Where any person is to be so sent in custody, a warrant shall be issued by the Court within whose district he is found, and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named, and to carry him to and deliver him up to the Court within whose district the offence was committed, according to the warrant.

55.—(1.) In cases of murder or manslaughter if either the death, or the criminal act which wholly or partly caused the death, happened within the jurisdiction of a Court acting under this Order, that Court shall have the like jurisdiction over any British subject who is charged either as the principal offender, or as accessory before the fact to murder, or as accessory after the fact to murder or manslaughter, as if both the criminal act and the death had happened within that jurisdiction.

(2.) In the case of any offence committed on the high seas, or within the Admiralty jurisdiction, by any British subject on board a British ship, or on board a foreign ship to which he did not belong, the Court shall, subject to the provisions of this Order, have jurisdiction as if the offence had been committed within the jurisdiction of that Court. In cases tried under this Article, no different sentence can be passed from the sentence which could be passed in England if the offence were tried there.

(3.) The foregoing provisions of this Article shall be deemed to be adaptations, for the purposes of this Order and of "The Foreign Jurisdiction Act, 1890," of the following enactments, that is to say :—

"The Admiralty Offences (Colonial) Act, 1849."
"The Admiralty Offences (Colonial) Act, 1860."
"The Merchant Shipping Act, 1894," section 686.

56. Where the Supreme Court or a Provincial Court issues a summons or warrant against any person on a charge of an offence committed on board of or in relation to a British ship, then, if it appears to the Court that the interests of public justice so require, that Court may issue a warrant or order for the detention of the ship, and may cause the ship to be detained accordingly, until the charge is heard and determined, and the order of the Court thereon is fully executed, or for such shorter time as the Court thinks fit; and the Court shall have power to make all such orders as appear to it necessary or proper for carrying this provision into effect.

57. Any act which, if done in the United Kingdom or in a British possession, would be an offence against any of the following Statutes of the Imperial Parliament, or Orders in Council, that is to say :—

"The Merchandize Marks Act, 1887 ;"
"The Patents, Designs, and Trade Marks Acts, 1883 to 1888 ;"

Any Act, Statute, or Order in Council for the time being in force relating to copyright, or to inventions, designs, or trade-marks ;

Any Statute amending or substituted for any of the above-mentioned Statutes ;

Shall, if done by a British subject in the Ottoman dominions, be punishable as a grave offence against this Order, whether such act is done in relation to any property or right of a British subject, or of a foreigner, or native, or otherwise, howsoever :—

Provided—

(1.) That a copy of any such Statute or Order in Council shall be published in the public office of the Consulates at Constantinople and Alexandria, and shall be there open for inspection by any person at all reasonable times ; and a person shall not be punished under this Article for anything done before the expiration of one month after such publication, unless the person offending is proved to have had express notice of the Statute or Order in Council.

(2.) That a prosecution by or on behalf of a prosecutor who is not a British subject shall not be entertained unless the Court is satisfied that effectual provision exists for the punishment in Consular or other Courts in the Ottoman dominions of similar acts committed by the subjects of the State or Power of which such prosecutor is a subject, in relation to, or affecting the interests of, British subjects.

58.—(1.) The Supreme Court shall, when required by the Secretary of State, send to him a report of the sentence of the Court in any case tried before that Court with a jury or assessors, with a copy of the Minutes and notes of evidence, and with any observations which the Court thinks fit to make.

(2.) Every Provincial Court shall, in accordance with Rules to be made under this Order, send to the Supreme Court a report of the sentence of the Court in every case tried by the Court with assessors, with such Minutes, notes of evidence, and other documents as such Rules may direct, and with any observations which the Court thinks fit to make.

59.—(*a.*) The Court shall have and discharge all the powers, rights, and duties appertaining to the office of Coroner in England, in relation not only to deaths of British subjects happening in the district of the Court, but also to deaths of any persons having happened at sea on board British ships arriving in the district, and to deaths of British subjects having happened at sea on board foreign ships so arriving.

(*b.*) Every inquest shall be held with a jury of not less than three persons comprised in the jury list of the Court summoned for that purpose.

(*c.*) If any person fails to attend according to such summons, he shall be liable to a fine not

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exceeding the fine to which he would be liable in case of failure to attend as a juror in civil or criminal proceedings.

(*d.*) In this Article the expression "the Court" includes the Registrar of the Supreme Court, but does not include a Local Court.

60.—(1.) Where it is proved that there is reasonable ground to apprehend that a British subject is about to commit a breach of the public peace,—or that the acts or conduct of a British subject are or is likely to produce or excite to a breach of the public peace,—the Court may, if it thinks fit, cause him to be brought before it and require him to give security to the satisfaction of the Court, to keep the peace, or for his future good behaviour, as the case may require;

(2.) Where a British subject is convicted of an offence before the Court, or before a Court in the sentence of which one of Her Majesty's Consular officers concurs, the Court for the district in which he is may, if it thinks fit, require him to give security to the satisfaction of the Court for his future good behaviour, and for that purpose may (if need be) cause him to be brought before the Court;

(3.) In either of the foregoing cases, if the person required to give security fails to do so, the Court may order that he be deported from the Ottoman dominions to such place as the Court directs.

(4.) The place shall be a place in some part (if any) of Her Majesty's dominions out of the United Kingdom, to which the person belongs, or the Government of which consents to the reception of persons deported under this Order, or in some part of a Protectorate of Her Majesty appointed by the Secretary of State.

(5.) A Provincial Court shall report to the Supreme Court any order of deportation made by it, and the grounds thereof, before the order is executed. The Supreme Court may reverse the order, or may confirm it with or without variation, and in case of confirmation, shall direct it to be carried into effect.

(6.) The person to be deported shall be detained in custody until a fit opportunity for his deportation occurs.

(7.) He shall, as soon as is practicable,—and in the case of a person convicted, either after execution of the sentence or while it is in course of execution—be embarked in custody under the warrant of the Supreme Court, or, in Egypt (during the absence of a judge of the Supreme Court), of the Provincial Court at Alexandria, on board one of Her Majesty's vessels of war, or, if there is no such vessel available, then on board any British or other fit vessel bound to the place of deportation.

(8.) The warrant shall be sufficient authority to the commander or master of the vessel to receive and detain the person therein named, and to carry him to and deliver him up at the place named, according to the warrant.

(9.) The Court may order the person to be deported to pay all or any part of the expenses of his deportation. Subject thereto, the expenses of deportation shall be defrayed in such manner as the Secretary of State, with the concurrence of the Treasury, may direct.

(10.) The Supreme Court shall forthwith report to the Secretary of State any order of deportation made or confirmed by it and the grounds thereof, and shall also inform the Ambassador, or if in Egypt, Her Majesty's Agent.

(11.) If any person reported under this or any former Order returns to the Ottoman dominions without permission in writing of the Secretary of State (which permission the Secretary of State may give) he shall be deemed guilty of a grave offence against this Order; and he shall also be liable to be forthwith again deported.

(12.) A Local Court shall not exercise any jurisdiction under this Article.

61.—(1.) Where a person is convicted before a Provincial or Local Court—

(*a.*) If he considers the conviction erroneous in law, then, on his application within the prescribed time (unless it appears merely frivolous, when it may be refused); or

(*b.*) If the Provincial or Local Court thinks fit to reserve for consideration of the Supreme Court any question of law arising on the trial;

the Provincial or Local Court shall state a case, setting out the facts and the grounds of the conviction, and the question of law, and send it to the Supreme Court.

(2.) Thereupon the Provincial or Local Court shall, as it thinks fit, either postpone judgment on the conviction, or respite execution of the judgment, and either commit the person convicted to prison, or take security for him to appear and receive judgment or to deliver himself for execution of the judgment (as the case may require) at an appointed time and place.

(3.) The Supreme Court, sitting without a jury or assessors, shall hear and finally determine the matter, and thereupon shall reverse, affirm, or amend the judgment given, or set it aside, and order an entry to be made in the Minutes that in the judgment of the Supreme Court the person ought not to have been convicted, or order judgment to be given at a subsequent sitting of the Provincial or Local Court, or make such other order as the Supreme Court thinks just, and shall also give all necessary and proper consequential directions.

(4.) The judgment of the Supreme Court shall be delivered in open Court, after the public hearing of any argument offered on behalf of the prosecutor or of the person convicted.

(5.) Before delivering judgment, the Supreme Court may, if necessary, cause the case to be amended by the Provincial or Local Court.

(6.) The Supreme Court shall not annul a conviction or sentence, or vary a sentence, on the ground—

(*a.*) Of any objection which, if stated during the trial, might, in the opinion of the Supreme Court, have been properly met by amendment by the Provincial or Local Court; or

(*b.*) Of any error in the summoning of assessors: or

(*c.*) Of any person having served as assessor who was not qualified; or

(*d.*) Of any objection to any person as assessor which might have been raised before or at trial; or

(*e.*) Of any informality in the swearing of any witness; or

(*f*) Of any error or informality which, in the opinion of the Supreme Court, did not affect the substance of the case or subject the convicted person to any undue prejudice.

62. There shall be no appeal in a criminal case to Her Majesty the Queen in Council from a decision of the Supreme Court, except by special leave of Her Majesty in Council.

Part IV.—Civil Matters.

63. Subject to the provisions of this Order, the civil jurisdiction of every Court acting under this Order shall, as far as circumstances admit, be exercised on the principles of, and in conformity with, the Statute and other law for the time being in force in and for England.

64.—(1.) Every civil proceeding in the Court shall be taken by action, and not otherwise, and shall be designated an action.

(2.) For the purposes of any statutory enactment or other provision applicable under this Order to any civil proceeding in the Court, an action under this Order shall comprise and be equivalent to a suit, cause, or petition, or to any civil proceeding, howsoever required by any such enactment or provision to be instituted or carried on.

65.—(1.) Every action shall be heard and determined in a summary way.

(2.) Every application in the course of an action may be made to the Court orally, and without previous formality, unless in any case the Court otherwise directs, or the Rules of Court otherwise provide.

(3.) No action or proceeding shall be treated by the Court as invalid on account of any technical error or mistake in form or in words.

(4.) All errors and mistakes may be corrected, and times may be extended, by the Court in its discretion, and on such terms as the Court thinks just.

66.—(1.) The sittings of the Court for the hearing of actions shall, where the amount of business so requires, be held on stated days.

(2.) The sittings shall ordinarily be public, but the Court may, for reasons recorded in the Minutes, hear any particular case in the presence only of the parties and their legal advisers and the officers of the Court.

67. Every action shall commence by a summons, issued from the Court, on the application of the plaintiff, and served on the defendant (in this Order referred to as an original summons).

68. The Registrar shall keep a book, called the Action Book, in which all actions brought in the Court shall be entered, numbered consecutively in each year, in the order in which they are commenced, with a short statement of the particulars of each action, and a note of the several proceedings therein.

69.—(1.) An original summons shall not be in force for more than twelve months from the day of its date (including that day).

(2.) If any defendant named therein is not served therewith, the plaintiff may, before the end of the twelve months, apply to the Court for renewal thereof.

(3.) The Court, if satisfied that reasonable efforts have been made to serve the defendant, or for other good reason, may order that the summons be renewed for six months from the date of renewal, and so, from time to time, during the currency of the renewed summons.

(4.) The summons shall be renewed by being resealed with the seal of the Court, and a note being made thereon by the Registrar stating the renewal and the date thereof.

(5.) A summons so renewed shall remain in force and be available to prevent the operation of any Statute of Limitation, and for all other purposes, as from the date of the original summons.

(6.) The production of a summons purporting to be so renewed shall be sufficient evidence of the renewal and of the commencement of the action, as of the date of the original summons, for all purposes.

70. If an action is not proceeded with and disposed of within twelve months from service of the original summons, the Court may, if it thinks fit, without application by any party, order the same to be dismissed for failure to proceed.

71. The Court may at any time, if it thinks fit, either on or without application of a defendant, order the plaintiff to put in further particulars of his claim.

72. There shall ordinarily be no written pleadings; but the Court may at any time, if it thinks fit, order the plaintiff to put in a written statement of his claim, or a defendant to put in a written statement of his defence.

73. The evidence on either side may, subject to the direction of the Court, be wholly or partly oral, or on affidavit, or by deposition.

74.—(1.) Subject to the provisions of this Order, every action in the Supreme Court which involves the amount or value of 50*l.* or upwards shall, on the demand of either party in writing, filed in the Court seven days before the day appointed for the hearing, be heard with a jury.

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(2.) Any other suit may, on the suggestion of any party, at any stage, be heard with a jury if the Court thinks fit.

(3.) Any suit may be heard with a jury if the Court, of its own motion, at any stage thinks fit.

75.—(1.) The Supreme Court may, if it thinks fit, hear any action with assessors.

(2.) A Provincial Court shall (subject to the provisions of this Order) hear with assessors every action which involves the amount or value of 300*l.* or upwards.

(3.) In all other cases a Provincial Court may, as it thinks fit, hear the action either with or without assessors.

76.—(1.) After the issue of a summons by any Court, the decision of that Court may be given upon a special case submitted to the Court by the parties.

(2.) Any decision of a Provincial Court may be given subject to a case to be stated by, or under the direction of, that Court for the opinion or direction of the Supreme Court.

77. The following provisions apply to a Local Court :—

1. Such Court shall not exercise jurisdiction where the amount or value involved exceeds 10*l.*

2. A Local Court shall, within fourteen days after the determination of any action, report the action to the Provincial Court, and transmit to that Court a copy of the proceedings.

3. A Local Court shall have power to enforce any order by execution on the goods of the party ordered to pay, and not otherwise.

4. An appeal to the Supreme Court from a Local Court shall lie as of course on the appellant making a deposit of 1*l.* for costs to abide the decision on appeal, and execution shall thereupon be suspended.

5. After one month from the date of the decision of the Local Court an appeal shall not lie except by leave of the Supreme Court.

6. The proceedings with respect to an appeal under this Article shall be conducted as nearly as may be according to the provisions of this Order relating to appeals from Provincial Courts.

7. In any case the Supreme Court may, if it thinks fit, on the application of any party, direct that the appeal be heard and determined by the Provincial Court or in the Supreme Court.

78.—(1.) Notwithstanding anything in this Order, the Court (for reasons recorded in the Minutes) may at any time do any of the following things, as the Court thinks just :—

(i.) Defer or adjourn the hearing or determination of any action, proceeding, or application ;

(ii.) Order or allow any amendment of any pleading or other document ;

(iii.) Appoint or allow a time for, or enlarge or abridge the time appointed or allowed for, or allow further time for, the doing of any act or the taking of any proceeding.

(2.) Any order within the discretion of the Court may be made on such terms respecting time, costs, and other matters as the Court thinks fit.

79.—(1.) The Supreme Court may, if it thinks fit, on the application of any party, or of its own motion, order a rehearing of any action, or of an appeal, or of any arguments on a verdict, or on any other question of law.

(2.) The provisions of this Order respecting a hearing with a jury or assessors shall extend to a rehearing of an action.

(3.) The Supreme Court may, if it thinks fit, direct any hearing to be before the full Court.

(4.) If the party applying for a rehearing has by any order been ordered to pay money or do any other thing, the Court may direct either that the order be carried into execution, or that the execution thereof be suspended pending the rehearing, as it thinks fit.

(5.) If the Court directs the order to be carried into execution, the party in whose favour it is given shall, before the execution, give security to the satisfaction of the Court for performance of such order as shall be made on the rehearing.

(6.) If the Court directs the execution of the order to be suspended, the party against whom it is given shall, before an order for suspension is given, give security to the satisfaction of the Judge for the performance of such order as shall be made on the rehearing.

(7.) An application for a rehearing shall be made within the prescribed time.

80. Subject to the provisions of this Order and the Rules of Court, the costs of and incident to all proceedings in the Court shall be in the discretion of the Court, provided that if the action is tried with a jury, the costs shall follow the event, unless the Court shall for good cause (to be entered in the Minutes) otherwise order.

81.—(1.) A Minute of every order, whether interlocutory or final, shall be made by the Court in the Minutes of Proceedings at the time when the Judgment or order is given or made.

(2.) Every such Minute shall have the full force and effect of a formal order.

(3.) The Court may at any time order a formal order to be drawn up on the application of any party.

82. Where the Court delivers a decision in writing, the original, or a copy thereof, signed by the Judge or officer holding the Court, shall be filed in the proper office of the Court with the papers in the action.

83.—(1.) An order shall not be drawn up in form except on the application of some party to the action, or by direction of the Court, and shall then be passed and be certified by the affixing thereto of the seal of the Court, and it shall then be deemed to form part of the record in the action.

(2.) An order shall not be enforced or appealed from, nor shall an office copy of it be granted, until it forms part of the record.

(3.) An order shall bear the date of the day of the delivery of the decision on which the order is founded.

(4.) Any party to an action or proceeding is entitled to have an office copy of any order made therein.

84.—(1.) Ordinarily, an order of a Provincial or Local Court shall not be enforced out of the Consular district of the Consular officer making the order.

(2.) Where, however, a Provincial Court thinks that the urgency or other peculiar circumstances of the case so require, that Court may, for reasons recorded in the Minutes, order that any particular order be enforced out of the particular district.

85. All money ordered by the Court to be paid by any person shall be paid into an office of the Court, unless the Court otherwise directs.

86. Where money ordered by the Court to be paid is due for seamen's wages, or is other money recoverable under "The Merchant Shipping Act, 1894," or other law relating to ships, and the person ordered to pay is master or owner of a ship, and the money is not paid as ordered, the Court, in addition to other powers for compelling payment, shall have power to direct that the amount unpaid be levied by seizure and sale of that ship.

87. Where an order ordering payment of money remains wholly or in part unsatisfied, whether an execution order has been made or not, the person prosecuting the order (in this Order called the judgment creditor) may apply to the Court for an order ordering the person by whom payment is to be made (in this Order called the judgment debtor) to appear and be examined respecting his ability to make the payment ; and the Court shall, unless it sees good reason to the contrary, make an order accordingly.

Where the order for the payment of money was made by a Local Court, the application under this Article shall be made to the Provincial Court.

88.—(1.) On the appearance of the judgment debtor, he may be examined on oath by or on behalf of the judgment creditor, and by the Court, respecting his ability to pay the money ordered to be paid, and for discovery of property applicable thereto, and respecting his disposal of any property.

(2.) He shall produce, on oath or otherwise, all books, papers, and documents in his possession or power relating to any property applicable to payment.

(3.) Whether the judgment debtor appears or not, the judgment creditor, and any witness whom the Court thinks requisite, may be examined, on oath or otherwise, respecting the same matters.

(4.) The Court may, if it thinks fit, adjourn the examination from time to time, and require from the judgment debtor such security for his appearance as the Court thinks fit ; and, in default of his finding security, may, by order, commit him to the custody of an officer of the Court, there to remain until the adjourned hearing, unless sooner discharged.

89. If it appears to the Court, by the examination of the judgment debtor or other evidence, that the judgment debtor then has sufficient means to pay the money directed to be paid by him, and he refuses or neglects to pay the same according to the order, then and in any such case the Court may, if it thinks fit, by order, commit him to prison for any time not exceeding forty days.

90. On the examination, the Court, if it thinks fit, whether it makes an order for commitment or not, may rescind or alter any order for the payment of money by instalments or otherwise, and may make any further or other order, either for the payment of the whole amount forthwith, or by instalments, or in any other manner, as the Court thinks fit.

91.—(1.) The expenses of the judgment debtor's maintenance in prison shall be defrayed in the first instance by the judgment creditor, and may be recovered by him from the judgment debtor, as the Court directs.

(2.) The expenses shall be estimated by the Court, and shall be paid by the judgment creditor at such times and in such manner as the Court directs.

(3.) In default of payment, the judgment debtor may be discharged if the Court thinks fit.

92. Imprisonment of a judgment debtor under the foregoing provisions does not operate as a satisfaction or extinguishment of the debt or liability to which the order relates, or protect the debtor from being anew imprisoned for any new default making him liable to be imprisoned, or deprive the judgment creditor of any right to have execution against his goods, as if there had not been such imprisonment.

93. The judgment debtor, on paying at any time the amount ordered to be paid, and all costs and expenses, shall be discharged.

94.—(1.) Where the order of the Court is one ordering some act to be done other than payment of money, there shall be indorsed on the copy of it served on the person required to obey it a memorandum in the words or to the effect following :—

If you, the within-named A. B., neglect to obey this order within the time therein appointed, you will be liable to be arrested and your property may be sequestered.

(2.) Where the person directed to do the act fails to do it according to the order, the person prosecuting the order may apply to the Court for another order for the arrest of the disobedient person.

(3.) Thereupon the Court may make an order ordering and empowering an officer of the Court therein named to take the body of the disobedient person and detain him in custody until further order.

(4.) He shall be liable to be detained in custody until he has obeyed the order in all things that are to be immediately performed, and given such security, as the Court thinks fit, to obey the order in other respects (if any) at the future times thereby appointed.

95. If the debtor, against whom a warrant of arrest issues, cannot be found, or is taken or detained in custody without obeying the order, the person prosecuting the order may apply to the Court for an order of sequestration against his property.

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96.—(1.) On proof of great urgency or other peculiar circumstances, the Court may, if it thinks fit, before service of a writ or summons in an action, and without notice, make an order of injunction, or an order to sequester money or goods, or to stop the clearance of a vessel, or to hold to bail, or to attach property.

(2.) Before making the Order the Court shall require the person applying for it to enter into a recognizance, with or without a surety or sureties, as the Court thinks fit, as security for his being answerable in damages to the person against whom the order is sought.

(3.) The order shall not remain in force more than twenty-four hours, and shall, at the end of that time, wholly cease to be in force, unless within that time an action is regularly brought by the person obtaining the order.

(4.) The order shall be dealt with in the action as the Court thinks fit.

97.—(1.) An order to hold to bail shall state the amount, including costs, for which bail is required.

(2.) It shall be executed forthwith.

(3.) The person arrested under it shall be entitled to be discharged from custody under it on bringing into Court the amount stated in the order, to abide the event of such action as may be brought, or on entering into a recognizance, without or with a surety or sureties, as the Court thinks fit, as security that he will abide by the orders of the Court in any action brought.

(4.) He shall be liable to be detained in custody under the order for not more than seven days, if not sooner discharged; but the Court may, from time to time, if it thinks fit, renew the order.

(5.) No person, however, shall be kept in custody under any such order and renewed order for a longer time, in the whole, than thirty days.

98.—(1.) Where an action is brought for the recovery of a sum exceeding 5*l*., and it is proved that the defendant is about to abscond for the purpose of defeating the plaintiff's claim, the Court may, if it thinks fit, order that he be arrested and delivered into safe custody, to be kept until he gives bail or security, with a surety or sureties, in such sum, expressed in the order, as the Court thinks fit, not exceeding the probable amount of debt, or damages, and costs to be recovered in the action, that he will appear at any time when called on, while the action is pending, and until execution or satisfaction of any order made against him, and that, in default of appearance, he will pay any money and costs which he is ordered to pay in the action.

(2.) The expenses incurred for the subsistence of the defendant while under arrest shall be paid by the plaintiffs in advance at such rate and in such amounts as the Court directs; and the total amount so paid may be recovered by the plaintiff in the action, unless the Court otherwise directs.

(3.) The Court may at any time, on reasonable cause shown, discharge or vary the order.

99.—(1.) Where it is proved that the defendant, with intent to obstruct or delay the execution of any order obtained or to be obtained against him, is about to remove any property out of the jurisdiction of the Court, the Court may, if it thinks fit, on the application of the plaintiff, order that property to be forthwith seized and secured.

(2.) The Court may at any time, on reasonable cause shown, discharge or vary the order.

100.—(1.) On proof of great urgency or other peculiar circumstances, after an action is brought, the Court may, if it thinks fit, on the application of a plaintiff, or of its own motion, make an order for stopping the clearance of, or for the arrest and detention of, a vessel about to leave the district, other than a vessel enjoying immunity from civil process.

(2.) The Court may at any time, on reasonable cause shown, discharge or vary the order.

101.—(1.) If it appears to the Court that any order made under any of the last four foregoing Articles of this Order was applied for on insufficient grounds, or if the plaintiff's action fails, or judgment is given against him, by default or otherwise, and it appears to the Court that there was no sufficient ground for his bringing the action, the Court may, if it thinks fit, on the application of the defendant, order the plaintiff to pay to the defendant such amount as appears to the Court to be a reasonable compensation to the defendant for the expense and injury occasioned to him by the execution of the order.

(2.) Payment of compensation under this Article is a bar to any action for damages in respect of anything done in pursuance of the order, and any such action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks fit.

102.—(1.) Any agreement in writing between any British subjects to submit present or future differences to arbitration, whether an arbitrator is named therein or not, may be filed in the Court by any party thereto, and, unless a contrary intention is expressed therein, shall be irrevocable, and shall have the same effect as an order of the Court.

(2.) Every such agreement is in this Order referred to as a submission.

(3.) If any action is commenced in respect of any matter covered by a submission, the Court, on the application of any party to the action, may by order stay the action.

103.—(1.) In any action—

(*a*.) If all parties consent, or

(*b*.) If the matters in dispute consist wholly or partly of matters of account, or require for their determination prolonged examination of documents or any scientific or local examination, the Court may at any time refer the whole action, or any question or issue arising therein, for inquiry and report, to the Registrar or any special Referee.

(2.) The Report of the Registrar or special Referee may be adopted wholly or partially by the Court, and if so adopted may be enforced as a judgment of the Court.

(3.) The Court may also in any case, with the consent of both parties to an action, or of any parties between whom any questions in the action arise (such consent being signified by a submission) refer the action or the portions referred to in the submission to arbitration, in such manner and upon such terms as it shall think reasonable or just.

(4.) In all cases of reference to a Registrar, special Referee, or Arbitrator, under any order of the Court, the Registrar, special Referee, or Arbitrator shall be deemed to be an officer of the Court, and shall have such powers and authority, and shall conduct such reference or arbitration in such manner as may be prescribed by any Rules of Court, and subject thereto as the Court may direct.

104. Subject to the Rules of Court, the Court shall have authority to enforce any submission, or any award made thereunder, and to control and regulate the proceedings before and after the award, in such manner and on such terms as the Court thinks fit.

105.—(1.) Each Court shall, as far as circumstances admit, have, for and within its own district, with respect to the following classes of persons being either resident in the Ottoman dominions, or carrying on business there, namely, resident British subjects and their debtors and creditors, being British subjects, or Ottoman subjects or foreigners submitting to the jurisdiction of the Court, all such jurisdiction in bankruptcy as for the time being belongs to the High Court and the County Courts in England.

(2.) Proceedings in bankruptcy shall be originated by a summons to the party to be made bankrupt to show cause why he should not be adjudicated bankrupt, or by a summons issued by a debtor himself to his creditor, or any of his creditors, to show cause why he (the debtor) should not be adjudicated bankrupt.

(3.) On or at any time after the issue of such a summons, the Supreme Court may stay any proceedings pending in any Court in any action, execution, or other legal process against the debtor in respect of any debt provable in bankruptcy, or it may allow such proceedings, whether pending at the commencement of the bankruptcy or begun during the continuance of the bankruptcy, to proceed on such terms as the Court thinks fit.

(4.) The Court may, on or at any time after the issue of such a summons, appoint a receiver or manager of the property or business of the debtor, or of any part thereof, and may direct immediate possession to be taken by an officer of the Court, or under the control of the Court, of that property or business, or of any part thereof.

106.—(1.) The Supreme Court shall have Admiralty jurisdiction for and within the Ottoman dominions and Ottoman waters, and over vessels and persons coming within the same.

(2.) The following enactments of "The Colonial Courts of Admiralty Act, 1890," that is to say, section 2, sub-sections (2) to (4); sections 5 and 6; section 16 (sub-section (3); shall apply to the Supreme Court as if that Court were a Colonial Court of Admiralty, and as if the Ottoman dominions were a British possession; and for the purpose of this application the expressions "judgment" and "appeal" shall in the enactments so applied have the same respective meanings as are assigned thereto in section 15 of the said Act.

(3.) During the absence from Egypt of a Judge of the Supreme Court, the jurisdiction of the Supreme Court under this Article shall, subject to any Rules of Court, be exercised by the Provincial Court at Alexandria.

107. The Supreme Court shall, as far as circumstances admit, have for and within the Ottoman dominions, with respect to British subjects, all such jurisdiction, except the jurisdiction relative to dissolution or nullity or jactitation of marriage, as for the time being belongs to the High Court in England.

108.—(1). The Supreme Court shall, as far as circumstances admit, have, for and within the Ottoman dominions, in relation to British subjects, all such jurisdiction relative to the custody and management of the persons and estates of lunatics, as for the time being belongs to the Lord Chancellor or other Judge or Judges in England intrusted by virtue of Her Majesty's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics.

(2.) A Provincial Court shall, as far as circumstances permit, have, in relation to British subjects, such jurisdiction relative to the custody and management of the persons and estates of lunatics as for the time being may be prescribed by Rules of Court, and until such rules are made, and so far as such rules do not apply, as may be exercised in England by the judicial authority and by the Masters in Lunacy under the provisions of "The Lunacy Act, 1890," and any Act amending the same.

(3.) In any such case the Provincial Court may, of its own motion, or on the application of any person interested, take or authorize such steps as to the Court may seem necessary or expedient for the immediate protection of the person and property of any person appearing to the Court to be a lunatic, and may, from time to time, revoke, or vary, or supplement any order or proceeding taken in the matter.

(4.) Subject to the provisions of this Article and to any Rules of Court, a Provincial Court shall not proceed in any such matter except under and according to the directions of the Supreme Court.

(5.) Sections 5 to 7 of "The Lunatics Removal (India) Act, 1851" (14 & 15 Vict., cap. 81), shall apply to the Ottoman dominions, with the substitution of "the Supreme Court" for "the Supreme Court of Judicature at any of the Presidencies of India." Provided that the jurisdiction of the Supreme Court under those sections may, during the absence of a Judge thereof, be exercised in and for Egypt by the Provincial Court at Alexandria.

109.—(1.) The Supreme Court shall, as far as circumstances admit, have, for and within the Ottoman dominions, with respect to the wills and the property in the Ottoman dominions of deceased British subjects, all such jurisdiction as for the time being belongs to the High Court in England.

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(2.) A Provincial Court shall have power to grant probate or letters of administration where there is no contention respecting the right to the grant, and it is proved that the deceased was resident at his death within the particular jurisdiction.

(3.) Probate or administration granted by a Court under this Order shall have effect over all the property of the deceased within the Ottoman dominions, and shall effectually discharge persons dealing with an executor or administrator thereunder, notwithstanding that any defect afterwards appears in the grant.

(4.) Notwithstanding anything in this Order, the Court shall not exercise the jurisdiction conferred by this Article in any case where the deceased, though a protected person, was at the time of his death an Ottoman subject, and in the construction of the provisions of this Order relating to probate and administration, the expression "British subject" shall not include any such protected person.

110. A British subject may in his lifetime deposit for safe custody, in the Court, his own will, sealed up under his own seal and the seal of the Court.

111.—(1.) Where probate, administration, or confirmation is granted in England, Ireland, or Scotland, and therein, or by a Memorandum thereon signed by an officer of the Court granting the same, the testator or intestate is stated to have died domiciled in England, Ireland, or Scotland (as the case may be), and the probate, administration, or confirmation is produced to, and a copy thereof is deposited with, the Supreme Court, the Court shall write thereon a certificate of that production and deposit under the seal of the Court; and thereupon notwithstanding anything in this Order, the probate, administration, or confirmation shall, with respect to the personal property in the Ottoman dominions of the testator or intestate, have the like effect as if he had been resident in those dominions at his death, and probate or administration to his personal property there had been granted by the Supreme Court.

(2.) Any person who, in reliance on an instrument purporting to be a probate, administration, or confirmation granted in England, Ireland, or Scotland, and to bear such a certificate of the Supreme Court as in this Article prescribed, makes or permits any payment or transfer, in good faith, shall be, by virtue of this Order, indemnified and protected in respect thereof, in the Ottoman dominions, notwithstanding anything affecting the validity of the probate, administration, or confirmation.

(3.) The following shall be the terms of the certificate of the Supreme Court in this Article prescribed, namely:—

This probate has [*or* these letters of administration have, *or* this confirmation has] been produced in this Court, and a copy thereof has been deposited with this Court.

112. Section 51 of "The Conveyancing (Scotland) Act, 1874," and any enactment for the time being in force amending or substituted for the same, are hereby extended to the Ottoman dominions, with the adaptation following, namely:—

The Supreme Court is hereby substituted for a Court of Probate in a Colony.

113.—(1.) Each Consular officer shall endeavour to obtain, as early as may be, notice of the death of every British subject dying within the particular jurisdiction, whether resident or not, and all such information respecting his affairs as may serve to guide the Court with respect to the securing and administration of his property.

(2.) On receiving notice of the death the Consular officer shall put up a notice thereof at the Court-house, and shall keep the same there until probate or administration is granted, or where it appears to him that probate or administration will not be applied for, or cannot be granted, for such time as he thinks fit.

114.—(1.) Where a British subject resident dies in the Ottoman dominions, or elsewhere, intestate, then, until administration is granted, his personal property in the Ottoman dominions shall be vested in the Judge of the Supreme Court.

(2.) Where a British subject not resident dies in the Ottoman dominions, the Court within whose particular jurisdiction he dies—and where a British subject resident dies elsewhere, the Court within whose jurisdiction any property of the deceased is situate—shall, where the circumstances of the case appear to the Court so to require, forthwith on his death, or as soon after as may be, take possession of his personal property within the particular jurisdiction, or put it under the seal of the Court (in either case if the nature of the property or other circumstances so require, making an inventory), and so keep it until it can be dealt with according to law.

115. If any person named executor in the will of the deceased takes possession of and administers or otherwise deals with any part of the personal property of the deceased, and does not obtain probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he shall be guilty of an offence and shall be liable to a fine not exceeding 50*l.*

116. If any person, other than the person named executor or an administrator or an officer of the Court, takes possession of and administers or otherwise deals with any part of the personal property of a deceased British subject, whether resident or not, he shall be deemed guilty of a contempt of Court, and shall be liable to a fine not exceeding 50*l.*

117. Where a person appointed executor in a will survives the testator, but either dies without having taken probate, or, having been called on by the Court to take probate, does not appear, his right in respect of the executorship wholly ceases; and, without further renunciation, the representation to the testator and the administration of his property shall go and may be committed as if that person had not been appointed executor.

118.—(1.) Where a British subject dies in the Ottoman dominions, any other such subject having in his possession, or under his control, any paper or writing of the deceased, being or purporting to be testamentary, shall forthwith bring the original to the Court within whose particular jurisdiction the death happens, and deposit it there.

If any person fails to do so for fourteen days after having knowledge of the death of the deceased, he shall be guilty of an offence and liable to a fine not exceeding 50*l.*

(2.) Where it is proved that any paper of the deceased, being or purporting to be testamentary, is in the possession or under the control of a British subject, the Court may, whether a suit or proceeding respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

(3.) Where it appears to the Court that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary (although it is not shown that the paper is in his possession or under his control) the Court may, whether a suit or proceeding for probate or administration is pending or not, order that he be examined respecting it before the Court or elsewhere, and that he do attend for that pupose, and after examination order that he do produce the paper and deposit it in Court.

119.—(1.) A person claiming to be a creditor or legatee, or the next-of-kin, or one of the next-of-kin, of a deceased person may apply for and obtain a summons from the Court requiring the executor or administrator (as the case may be) of the deceased to attend before the Court and show cause why an order should not be made for the administration of the property under the direction of the Court.

(2.) On proof of service of the summons, or on appearance of the executor or administrator, and on proof of all such other things (if any) as the Court thinks fit, the Court may, if it thinks fit, make an immediate order for such administration.

(3.) The Court shall have full discretionary power to make or refuse any such order, or to give any special directions respecting the carriage or execution of it, and in the case of applications for such an order by two or more different persons or classes of persons, to grant the same to such one or more of the claimants, or classes of claimants, as the Court thinks fit.

(4.) If the Court thinks fit, the carriage of the order may subsequently be given to such person, and on such terms, as the Court thinks fit.

(5.) On making such an order, or at any time afterwards, the Court may, if it thinks fit, make any further or other order for compelling the executor or administrator to bring into Court for safe custody all or any part of the money, or securities, or other property of the deceased, from time to time coming to his hands, or otherwise for securing the safe keeping of the property of the deceased, or any part thereof.

(6.) If the extreme urgency or other peculiar circumstances of the case appear to the Court so to require (for reasons recorded in the Minutes), the Court may of its own motion issue such a summons, and make such an order or such orders and cause proper proceedings to be taken thereon.

120.—(1.) In a case of apparent intestacy where the circumstances of the case appear to the Court so to require (for reasons recorded in the Minutes), the Court may, if it thinks fit, of its own motion, grant administration to an officer of the Court.

(2.) The officer so appointed shall act under the direction of the Court, and shall be indemnified thereby.

(3.) He shall publish such notices, if any, as the Court thinks fit, in the Ottoman dominions, the United Kingdom, India, and elsewhere.

(4.) The Court shall require and compel him to file in the Court his accounts of his administration at intervals not exceeding three months.

(5.) The accounts shall be in all cases audited by the Supreme Court, for which purpose every Provincial Court shall, on the 1st day of February and the 1st day of August in every year, send to the Supreme Court all accounts so filed in the then last preceding half-year.

(6.) A commission of 5 per cent., or such less amount as the Secretary of State directs, may be charged on an estate administered under this Article, and the amount thereof shall be calculated and applied as the Secretary of State directs.

(7.) All expenses incurred on behalf of the Court in the execution of this Article and the said commission shall be the first charge on the personal property of the deceased in the Ottoman dominions, and the Court shall, by sale of part of that property or otherwise, provide for the discharge of those expenses and the payment of the said commission.

121. Where it appears to the Court that the value of the property or estate of a deceased person does not exceed 100*l.*, the Court may, without any probate or letters of administration, or other formal proceeding, pay thereout any debts or charges, and pay, remit, or deliver any surplus to such persons, subject to such conditions (if any) as the Court thinks proper, and shall not be liable to any action, suit, or proceedings in respect of anything done under this Article. Every proceeding of the Court under this Article shall be recorded in the Minutes.

122.—(1.) Where an action in a Provincial Court involves the amount or valve of 50*l.* or upwards, any party aggrieved by any decision of that Court, with or without assessors, in the action shall have the right to appeal to the Supreme Court against the same, on the following conditions, namely:—

(i.) The appellant shall give security to the satisfaction of the Provincial Court to an amount not exceeding 100*l.* for prosecution of the appeal, and for payment of any costs that may be ordered by the Supreme Court on the appeal to be paid by the appellant to any person;

(ii.) The appellant shall pay to the Provincial Court such sum as the Provincial Court thinks reasonable, to defray the expense of the making up and transmission of the record to the Supreme Court.

(2.) In any other case a Provincial Court may, if it thinks fit, give leave to appeal on the conditions aforesaid.

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(3.) In any case the Supreme Court may give leave to appeal on such terms as it thinks fit.

(4.) After three months from the date of a decision of the Provincial Court, an appeal against it shall not lie except by leave of the Supreme Court.

(5.) After six months from the date of a decision of the Provincial Court application for leave to appeal against it shall not be entertained by the Supreme Court.

123.—(1.) Where a person ordered to pay money, or to do any other thing, appeals, the Provincial Court shall direct either that the decision appealed from be carried into execution, or that the execution thereof be suspended pending the appeal, as that Court thinks fit.

(2.) If the Provincial Court directs the decision to be carried into execution, the person in whose favour it is given shall, before the execution of it, give security to the satisfaction of the Court for performance of any order to be made on appeal.

(3.) If the Provincial Court directs the execution of the decision to be suspended, the person against whom it is given shall, before an order for suspension is made, give security to the satisfaction of the Provincial Court for performance of such order as shall be made on appeal.

124.—(1.) The appellant shall file an appeal motion-paper in the Provincial Court.

(2.) He may at the same time file any argument which he desires to submit to the Supreme Court in support of the appeal.

(3.) Copies of the motion-paper and the argument (if any) shall be served on such persons as respondents as the Provincial Court directs.

125.—(1.) A respondent may, within the prescribed time after service of the motion-paper, file in the Provincial Court a motion-paper of cross-appeal (if any) and such argument as he desires to submit to the Supreme Court on the appeal and cross appeal, if any.

(2.) Copies thereof shall be furnished by the Provincial Court to such persons as that Court thinks fit.

126.—(1.) On the expiration of the prescribed time last referred to the Provincial Court shall, without the application of any party, make up the record of appeal, which shall consist of the writ of summons, statements of claim and defence (if any), orders, and proceedings, all written and documentary evidence admitted or tendered, or a certified copy thereof, and the notes of the oral evidence, the appeal and cross-appeal motion-paper, and the arguments (if any).

(2.) The several pieces shall be fastened together, consecutively numbered; and the whole shall be secured by the seal of the Court, and be forthwith forwarded by it to the Supreme Court.

(3.) The Provincial Court shall not, except for some special cause, take on itself the responsibility of the charge, or of the transmission to the Supreme Court, of original letters or documents produced in evidence. They shall be returned to the parties producing them; and those parties shall produce the originals, if required by the Supreme Court, at or before the hearing of the appeal.

127.—(1.) After the record of appeal is transmitted, until the appeal is disposed of, the Supreme Court shall be in exclusive possession of the whole action, as between the parties to the appeal.

(2.) Every application in the action, as between the parties to the appeal, shall be made to the Supreme Court, and not to the Provincial Court; but any application may be made through the Provincial Court.

128.—(1.) The Supreme Court shall, after receiving the record of appeal, fix a day for the hearing of the appeal, and shall give notice thereof through the Provincial Court to the parties to the appeal, such a day being fixed as will allow of the parties attending in person or by counsel or solicitor, if they so desire.

(2.) But if all the separate parties to an appeal appear in person before the Supreme Court or appoint persons there to represent them as their counsel or solicitors in the appeal, and cause the appearance or appointment to be notified to the Supreme Court, the Supreme Court may dispose of the appeal, without being required to give notice through the Provincial Court, to the parties to the appeal, of the day fixed for the hearing thereof.

129. The Supreme Court may, if it thinks fit, require a party to an appeal to appear personally before it on the hearing of the appeal, or on any occasion pending the appeal.

130. It is not open, as of right, to a party to an appeal to adduce new evidence in support of his original case, but a party may allege any material facts that have come to his knowledge after the decision of the Provincial Court, and the Supreme Court may in any case, if it thinks fit, allow or require new evidence to be adduced.

131.—(1.) The Supreme Court may make any orders necessary for determining the real question in controversy in the action as among the parties to the appeal, and for that purpose may amend any defect or error in the record of appeal, and may enlarge the time for any proceeding except as otherwise by this Order expressly provided.

(2.) The Supreme Court may direct the Provincial Court to inquire into, and certify its finding, on any question, as between the parties to the appeal, or any of them, which the Supreme Court thinks fit to determine before final judgment is given in the appeal.

(3.) Generally, the Supreme Court shall, as among the parties to the appeal, have as full jurisdiction over the whole action as if it had been originally instituted and prosecuted in the Supreme Court by parties subject to the original jurisdiction of the Supreme Court.

(4.) The Supreme Court may, if it thinks fit, remit the action to the Provincial Court, to be reheard, or to be otherwise dealt with as the Supreme Court directs.

(5.) The powers of the Supreme Court under this Order may be exercised, notwithstanding that the appeal is brought against part only of the decision of the Provincial Court.

(6.) Those powers may be exercised in favour of all or any of the parties to the action, although they have not appealed from, or complained of, the decision.

132.—(1.) Notwithstanding anything in this Order, an appeal to the Supreme Court shall not lie from an order of the Provincial Court, made on the application of one party, without notice to the other party.

(2.) But, if any person thinks himself aggrieved by such an order, he may, on notice to the other party, apply to the Provincial Court to vary or discharge the order, and an appeal shall lie from the decision on that application.

133.—(1.) Where a final judgment or order of the Supreme Court made in a civil action involves the amount or value of 500*l.* or upwards, any party aggrieved thereby may, within the prescribed time, or, if no time is prescribed, within fifteen days after the same is made or given, apply by motion to the Supreme Court for leave to appeal to Her Majesty the Queen in Council.

(2.) The applicant shall give security to the satisfaction of the Court to an amount not exceeding 500*l.* for prosecution of the appeal, and for payment of all such costs as may be awarded to any respondent by Her Majesty in Council, or by the Lords of the Judicial Committee of Her Majesty's Privy Council.

(3.) He shall also pay into the Supreme Court a sum estimated by that Court to be the amount of the expense of the making up and transmission to England of the transcript of the record.

(4.) If security and payment are so given and made within one month from the filing of the motion-paper for leave to appeal, then, and not otherwise, the Supreme Court shall give leave to appeal, and the appellant shall be at liberty to prefer and prosecute his appeal to Her Majesty in Council according to the rules for the time being in force respecting appeals to Her Majesty in Council from her Colonies, or such other rules as Her Majesty in Council from time to time thinks fit to make concerning appeals from the Supreme Court.

(5.) In any case the Supreme Court, if it considers it just or expedient to do so, may give leave to appeal on the terms and in the manner aforesaid.

134.—(1.) Where leave to appeal to Her Majesty in Council is applied for by a person ordered to pay money or do any other act, the Supreme Court shall direct either that the order appealed from be carried into execution, or that the execution thereof be suspended pending the appeal, as the Court thinks just.

(2.) If the Court directs the order to be carried into execution, the person in whose favour it is made shall, before the execution of it, give security to the satisfaction of the Court for performance of such order as Her Majesty in Council may think fit to make.

(3.) If the Court directs the execution of the order to be suspended, the party against whom it is given shall, before an order for suspension is made, give security to the satisfaction of the Court for performance of such order as Her Majesty in Council may think fit to make.

135. This Order shall not affect the right of Her Majesty at any time, on the humble petition of a person aggrieved by a decision of the Supreme Court, to admit his appeal thereon on such terms and in such manner as Her Majesty in Council may think fit, and to deal with the decision appealed from in such manner as may be just.

Part V.—Procedure, Criminal and Civil.

136. It shall be lawful for the Supreme Court to make Rules of Court and to prescribe Forms of Procedure as to all civil or criminal matters, subject to the approval of the Secretary of State.

Until such rules and forms have been made, or in relation to matters to which they do not extend, a Court may adopt and use any procedure or forms heretofore in use in the Consular Courts in the Ottoman dominions, or any Regulations or Rules made thereunder and in force immediately before the commencement of this Order, with any modifications or adaptations which may be necessary.

No proceeding shall be invalidated by any informality, mistake, or omission, so long as, in the opinion of any Court before which any question arises, the essential requisites of law and justice have been complied with.

Provision may, amongst other things, be made by rules under this Article—

(*a.*) For authorizing the Court to grant and enforce such warrants;

(*b.*) For regulating the procedure in the case of references or arbitrations before Registrars, special Referees, or Arbitrators appointed by the Court and for enforcing awards;

(*c.*) For enforcing by distress, or by attachment, or commitment, judgments or orders of the Court, or payment of any damages, costs, penalties, fines, or forfeitures;

(*d.*) For the sale of things forfeited;

(*e.*) For garnishee process;

(*f.*) For attachments of property in order to compel appearance or submission to the jurisdiction or process of the Court, and authorizing the Court to compel, by fine, distress, or recognizance, or in default of security by commitment, the attendance of witnesses before the Court, or before a Colonial or other Court to which a case is sent for trial;

(*g.*) For regulating the mode in which legal practitioners are to be admitted to practise as such, and for withdrawing the right to practise on grounds of misconduct;

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(*h.*) For prescribing and enforcing the fees to be taken in respect of any proceedings under this Order, not exceeding, as regards any matters provided for by "The Consular Salaries and Fees Act, 1891," fees fixed and allowed from time to time by any Order in Council made under that Act;

(*i.*) For prescribing a scale of payments to be made to a complainant or witness, or a jury, or assessors (in criminal cases only), and the conditions upon which an order may be made by the Court for such payments;

(*j.*) For prescribing scales of costs to be paid to practitioners;

(*k.*) For taking and transmitting depositions of witnesses for use at trials in a Colony or in England.

Provided that the scales of all fees, expenses, and costs prescribed under the provisions of this Order shall have been sanctioned by the Treasury.

Provided also that any legal practitioner, whose right to practise before the Supreme Court has been withdrawn, shall be entitled to appeal to Her Majesty in Council.

137.—(1.) The Court may, in any case, if it thinks fit, on account of the poverty of a party, or for any other reason, provisionally dispense with the payment of any fee in whole or in part.

(2.) Payment of fees payable under any rules to be made in pursuance of this Order, and of costs and of charges and expenses of witnesses, prosecutions, punishments, and deportations, and of other charges and expenses, and of fines respectively payable under this Order, may be enforced under order of the Court by seizure and sale of goods, and, in default of sufficient goods, by imprisonment as a civil prisoner for a term not exceeding one month, but such imprisonment shall not operate as a satisfaction or extinguishment of the liability.

(3.) Any bill of sale or mortgage, or transfer of property made with a view of avoiding seizure or sale of goods or ship under any provision of this Order, shall not be effectual to defeat the provisions of this Order.

138.—(1.) Every summons, order, and other document issuing from the Court shall be in English, French, or Italian.

(2.) Every pleading and other document filed in the Court in a civil or criminal proceeding by a party thereto shall be in English, or French, or Italian.

(3.) Every affidavit used in the Court shall be in English, or in the ordinary language of the person swearing it.

(4.) An affidavit in any language other than English, or French, or Italian shall be accompanied by a sworn translation into English, or French, or Italian, procured by and at the expense of the person using the affidavit.

(5.) Where there is a jury, all the proceedings before the jury shall be conducted in English—evidence, if given in any other language, being interpreted.

139.—(1.) Summonses, orders, and other documents issuing from the Supreme Court, shall be sealed with the seal of that Court.

(2.) Those issuing from a Provincial or Local Court shall be sealed with the official seal of the Consular officer by whom they are issued.

140.—(1.) In every case, civil or criminal, Minutes of the proceedings shall be drawn up, and shall be signed by the Judge or Consular officer before whom the proceedings are taken, and shall where the trial is held with assessors, be open for their inspection and for their signature if concurred in by them.

(2.) These Minutes, with the depositions of witnesses, and the notes of evidence taken at the hearing or trial by the Judge or Consular officer, shall be preserved in the public office of the Court.

141.—(1.) Every person doing an act or taking a proceeding in the Court as plaintiff in a civil case, or as making a criminal charge against another person, or otherwise, shall do so in his own name and not otherwise, and either—

(*a.*) By himself; or

(*b.*) By a legal practitioner; or

(*c.*) By his attorney or agent thereunto lawfully authorized in writing and approved by the Court.

(2.) Where the act is done or proceeding taken by an attorney (other than a legal practitioner), or by an agent, the power of attorney, or instrument authorizing the agent, or an authenticated copy thereof, shall be first filed in the Court.

(3.) Where the authority has reference only to the particular proceeding, the original document shall be filed.

(4.) Where the authority is general, or has reference to other matters in which the attorney or agent is empowered to act, an authenticated copy of the document may be filed.

142.—(1.) In any case, criminal or civil, and at any stage thereof, the Court, either of its own motion or on the application of any party, may summon a British subject to attend to give evidence, or to produce documets, or to be examined.

(2.) If the person summoned, having reasonable notice of the time and place at which he is required to attend, and his reasonable expenses having been paid or tendered, fails to attend and be sworn, and give evidence, or produce documents, or submit to examination accordingly, and does not excuse his failure to the satisfaction of the Court, he shall be guilty of an offence against this Order.

(3.) A person punished under this Article shall not be liable to an action in respect of the same matter; and any such action, if begun, shall be stayed by the Court in such a manner and on such terms as the Court thinks fit.

143. If, in a criminal case, a witness appearing before the Court, either in obedience to a summons, or on being brought up under a warrant, refuses to take an oath, or, having taken an oath, to answer any question put to him, and does not excuse his refusal to the satisfaction of the Court, he shall be guilty of an offence, and shall be liable to be forthwith committed to prison, for not more than seven days.

144. The following Acts namely:—

"The Foreign Tribunals Evidence Act, 1856;"

"The Evidence by Commission Act, 1859;"

"The Evidence by Commission Act, 1885;" or so much thereof as is for the time being in force, and any enactment for the time being in force amending or substituted for the same, are hereby extended to the Ottoman dominions, with the adaptations following, namely:—

In the said Acts the Supreme Court is hereby substituted for a Supreme Court in a Colony.

145. The following Acts, namely:—

"The British Law Ascertainment Act, 1859;"

"The Foreign Law Ascertainment Act, 1861," or so much thereof as is for the time being in force, and any enactment for the time being in force amending or substituted for the same, are hereby extended to the Ottoman dominions, with the adaptation following, namely:—

In the said Acts the Supreme Court is hereby substituted for a Superior Court in a Colony.

146. If in any case, civil or criminal, a British subject wilfully gives false evidence on oath in the Court, or on a reference, he shall be deemed guilty of wilful and corrupt perjury.

147. The Supreme Court may, if it thinks fit, order that a Commission do issue for examination of witnesses at any place out of the Ottoman dominions, on oath, by interrogatories or otherwise, and may, by order, give such directions touching the time, place, and manner of the examination, or anything connected therewith, as to the Court appear reasonable and just.

148.—(1.) Every male resident subject,—being of the age of 21 years or upwards,—having a competent knowledge of the English language,—having or earning a gross income at such rate as may be fixed by Rules of Court,—not having been attainted of treason or felony, or convicted of any crime that is infamous (unless he has obtained a free pardon),—and not being under outlawry), shall be qualified to serve on a jury.

(2.) All persons so qualified shall be liable so to serve, except the following:—

Persons in Her Majesty's Diplomatic, Consular, or other Civil Service, in actual employment;

Officers, clerks, keepers of prisons, messengers, and other persons attached to or in the service of the Court;

Officers and others on full pay in Her Majesty's navy or army, or in actual employment in the service of any Department connected therewith;

Persons holding appointments in the civil, naval, or military service of the Sublime Ottoman Porte;

Clergymen and ministers in the actual discharge of professional duties;

Legal practitioners in actual practice;

Physicians, surgeons, and apothecaries in actual practice;

Persons disabled by mental or bodily infirmity.

(3.) A jury shall consist of five jurors.

(4.) In civil and in criminal cases the like challenges shall be allowed as in England,—with this addition, that in civil cases each party may challenge three jurors peremptorily.

(5.) A jury shall be required to give an unanimous verdict.

(6.) Where there is to be a hearing with a jury, the Court shall summon so many of the persons comprised in the jury list, not fewer than twelve, as seem requisite.

(7.) Any person failing to attend according to the summons shall be deemed guilty of a contempt of Court, and shall be liable to a fine not exceeding 10*l.*

149.—(1.) An assessor shall be a competent and impartial subject, of good repute, resident in the district of the particular Court, and nominated and summoned by the Court for the purpose of acting as assessor.

(2.) In the Supreme Court there may be one assessor or two assessors, as the Court thinks fit.

(3.) In a Provincial Court there shall ordinarily be not fewer than two, and not more than four, assessors. Where, however, by reason of local circumstances, the Court is able to obtain the presence of one assessor only, the Court may, if it thinks fit, sit with one assessor only: and where, for like reasons, the Court is not able to obtain the presence of any assessor, the Court may, if it thinks fit, sit without an assessor,—the Court, in every case, recording in the Minutes its reasons for sitting with one assessor only or without an assessor.

(4.) An assessor shall not have any voice in the decision of the Court in any case, civil or criminal; but an assessor dissenting, in a civil case, from any decision of the Court, or, in a criminal case, from any decision of the Court or the conviction or the amount of punishment awarded, may record in the Minutes his dissent, and the grounds thereof, and shall be entitled to receive, without payment, a certified copy of the Minutes. An assessor dissenting shall be entitled to receive, without payment, a certified copy of the Minutes.

PART VI.—OTTOMAN AND FOREIGN SUBJECTS AND TRIBUNALS.

150.—(1.) Where an Ottoman subject or foreigner desires to institute or take in the Court an action against a British subject, or a British subject desires to institute or take in the Court an action against an Ottoman subject or foreigner, the Court shall entertain the same, and shall hear

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and determine it, either by the Court sitting alone, or, if all parties desire, or the Court having regard to its jurisdiction, thinks fit to direct, a trial with a jury or assessors, then with a jury or assessors, but in all other respects according to the ordinary course of the Court.

(2.) Provided that the Ottoman subject or foreigner, if so required by the Court, first obtains and files in the Court the consent in writing of the competent authority on behalf of the Sublime Ottoman Porte or of his own nation (as the case may be) to his submitting, and does submit, to the jurisdiction of the Court, and, if required by the Court, give security to the satisfaction of the Court, and to such reasonable amount as the Court thinks fit, by deposit or otherwise, to pay fees, damages, costs, and expenses, and abide by and perform such decision as shall be given by the Court or on appeal.

(3.) A cross-action shall not be brought in the Court against a plaintiff, being an Ottoman subject or foreigner who has submitted to the jurisdiction, by a defendant, without leave of the Court first obtained, but the Court may, as a condition of entertaining the plaintiff's action, require his consent to any cross-action or matter of set-off being entertained by the Court.

(4.) The Court before giving leave may require proof from the defendant that his claim arises out of the matter in dispute, and that there is reasonable ground for it, and that it is not made for vexation or delay.

(5.) Nothing in this Article shall prevent the defendant from bringing in the Court any action against the Ottoman subject or foreigner after the termination of the action in which the Ottoman subject or foreigner is plaintiff.

(6.) Where an Ottoman subject or foreigner obtains in the Court an order against a defendant being a British subject, and in another suit that defendant is plaintiff and the Ottoman subject or foreigner is defendant, the Court may, if it thinks fit, on the application of the British subject, stay the enforcement of the order pending that other suit, and may set off any amount ordered to be paid by one party in one suit against any amount ordered to be paid by the other party in the other suit.

(7.) Where a plaintiff, being an Ottoman subject or foreigner, obtains an order in the Court against two or more defendants being British subjects jointly, and in another action one of them is plaintiff and the Ottoman subject or foreigner is defendant, the Court may, if it thinks fit, on the application of the British subject, stay the enforcement of the order pending that other action, and may set off any amount ordered to be paid by one party in one action against any amount ordered to be paid by the other party in the other action, without prejudice to the right of the British subject to require contribution from his co-defendants under the joint liability.

(8.) Where an Ottoman subject or foreigner is co-plaintiff in a suit with a British subject who is within the particular jurisdiction, it shall not be necessary for the Ottoman subject or foreigner to give security for costs, unless the Court so directs, but the co-plaintiff British subject shall be responsible for all fees and costs.

151.—(1.) Where it is proved that the attendance within the particular jurisdiction of a British subject to give evidence, or for any other purpose connected with the administration of justice, is required in a Court or before a judicial officer of the Sublime Ottoman Porte, or of a State in amity with Her Majesty, the Court may, if it thinks fit, in a case and in circumstances in which the Court would require his attendance before the Court, order that he do attend in such Court, or before such judicial officer, and for such purpose as aforesaid.

(2.) If the person ordered to attend, having reasonable notice of the time and place at which he is required to attend, fails to attend accordingly, and does not excuse his failure to the satisfaction of the Court, he shall (independently of any other liability) be guilty of an offence against this Order.

152. When a British subject invokes or submits to the jurisdiction of an Ottoman or foreign Tribunal, and engages in writing to abide by the decision of such Tribunal, or to pay any fees or expenses ordered by such Tribunal to be paid by him, any Court under this Order may, on such evidence as it thinks fit to require, enforce payment of such fees and expenses in the same manner as if they were fees payable in a proceeding by such person in that Court, and shall pay over or account for the same when levied to the proper Ottoman or foreign authority, as the Court may direct.

153.—(1.) Subject to the Rules, persons competent to be assessors in any Court under this Order may be required to attend as assessors in cases in which British subjects are parties before any Ottoman Tribunal; but every assessor so required must be acquainted with the French or Turkish language.

(2.) Any rules made by the Supreme Court in pursuance and in accordance with the provisions of this Order may comprise rules respecting the qualification, selection, appointment, registration, attendance, and remuneration of assessors in such cases as aforesaid, and respecting the establishment in any part of the Ottoman dominions, and the regulation of a fund, hereinafter called an Assessors' Fund, for the remuneration of assessors before any Ottoman Tribunals in such part of the Ottoman dominions.

(3.) Such rules may provide for compelling the service of any qualified person, and may prescribe penalties for neglect or refusal, without reasonable excuse, to serve in accordance with the terms of such regulations. Such penalties shall not exceed the equivalent of *5l.* in respect of any one day.

(4.) Any such penalties shall be recoverable in the Court as a civil debt by any Consular officer, and shall be carried to the Assessors' Fund.

(5.) Every person requiring the attendance of one or more assessors may be required to pay in advance such fee or fees as the rules direct.

(6.) The Court may, out of any moneys in its hands arising from fees of Court or other fees, or moneys received under this Order, advance or pay the amount of the salary or remuneration of an assessor.

(7.) The Court shall account for all receipts and payments in respect of the Assessors' Fund in such manner as the Secretary of State directs.

154.—(1.) If a British subject—

(i.) Publicly derides, mocks, or insults any religion established or observed within the Ottoman dominions; or

(ii.) Publicly offers insult to any religious service, feast, or ceremony established or kept in any part of those dominions, or to any place of worship, tomb, or sanctuary belonging to any religion established or observed within those dominions, or belonging to the ministers or professors thereof; or

(iii.) Publicly and wilfully commits any act tending to bring any religion established or observed within those dominions, or its ceremonies, mode of worship, or observances, into hatred, ridicule, or contempt, and thereby to provoke a breach of the public peace;

he shall be guilty of an offence, and on conviction thereof, before the Supreme Court or a Provincial Court, liable to imprisonment not exceeding two years, with or without hard labour, and with or without a fine not exceeding *100l.*, or to a fine alone not exceeding *100l.*

(2.) Notwithstanding anything in this Order, every charge under this Article shall be heard and determined by the Court alone, without jury or assessors, and any Provincial Court shall have power to impose the punishment aforesaid.

(3.) Consular officers shall take such precautionary measures as seem to them proper and expedient for the prevention of such offences.

155.—(1.) If a British subject—

(i.) Smuggles, or attempts to smuggle, out of the Ottoman dominions any goods on exportation whereof a duty is payable to the Ottoman or Egyptian Government;

(ii.) Imports or exports, or attempts to import or export, into or out of the Ottoman dominions any goods, intending and attempting to evade payment of duty payable thereon to the Ottoman or Egyptian Government;

(iii.) Imports or exports, or attempts to import or export, into or out of the Ottoman dominions any goods the importation or exportation whereof into or out of the Ottoman dominions is prohibited by law;

(iv.) Without a proper licence, sells, or attempts to sell, or offers for sale, in the Ottoman dominions, any goods whereof the Ottoman or Egyptian Government has by law a monopoly;

in each of the four cases aforesaid he shall be guilty of a grave offence against this Order.

(2.) Where a person is charged with such an offence as in this Article is mentioned, the Court may seize the goods in relation to which the alleged offence was committed, and may hold the same until after the hearing of the charge.

(3.) If a person so charged is convicted, then those goods, whether they have been so seized or not, shall be forfeited to Her Majesty the Queen; and the Court shall either deliver them to the proper Ottoman or Egyptian officer, for the use of the Ottoman or Egyptian Government, as the case may be, or shall dispose of them otherwise, as the Court thinks fit.

156.—(1.) Where by agreement among the Diplomatic or Consular Representatives in the Ottoman dominions of foreign States, or some of them, in conjunction with the Ottoman or Egyptian authorities, Sanitary, or Police, or Port, or Game, or other Regulations are established, and the same, as far as they affect British subjects, are approved by the Secretary of State, the Court may, subject and according to the provisions of this Order, entertain any complaint made against a British subject for a breach of those Regulations, and may enforce payment of any fine incurred by that subject or person in respect of that breach, in like manner, as nearly as may be, as if that breach were by this Order declared to be an offence against this Order.

(2.) In any such case the fine recovered shall, notwithstanding anything in this Order, be disposed of and applied in manner provided by those Regulations.

157. Every person subject to the criminal jurisdiction of the Court who prints, publishes, or offers for sale any printed or written newspaper or other publication containing matter calculated to excite tumult or disorder, or to excite enmity between Her Majesty's subjects and the Government of any part of the Ottoman dominions, or between that Government and its subjects, shall be guilty of an offence against this Order, and may, in addition to or in lieu of any other punishment, be ordered to give security for good behaviour; and in default thereof, or on a further conviction for the like offence, he may be ordered to be deported.

An offence against this Article shall not be tried except by the Supreme Court.

PART VII.—MISCELLANEOUS.

158.—(1.) If an officer of the Court employed to execute an order loses by neglect or omission the opportunity of executing it, then, on complaint of the person aggrieved, and proof of the fact alleged, the Court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof.

(2.) The order shall be enforced as an order directing payment of money.

159.—(1.) If a clerk or officer of the Court, acting under pretence of the process or authority of the Court, is charged with extortion, or with not paying over money duly levied, or with other misconduct, the Court, if it thinks fit, may inquire into the charge in a summary way, and may for

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that purpose summon and enforce the attendance of all necessary persons, as in an action, and may make such order for the repayment of any money extorted, or for the payment over of any money levied, and for the payment of such damages and costs, as the Court thinks fit.

(2.) The Court may also, if it thinks fit, on the same inquiry, impose on the clerk or officer such fine, not exceeding *5l.* for each offence, as the Court thinks fit.

(3.) A clerk or officer punished under this Article shall not be liable to an action in respect of the same matter; and any such action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks fit.

160.—(1.) If any person, subject to the criminal jurisdiction of a Court, does any of the following things, namely:—

(*a.*) Wilfully, by act or threat, obstructs an officer of, or person executing any process of the Court in the performance of his duty; or

(*b.*) Within or close to the room or place where the Court is sitting wilfully misbehaves in a violent, threatening, or disrespectful manner, to the disturbance of the Court, or to the intimidation of suitors or others resorting thereto; or

(*c.*) Wilfully insults any member of the Court, or any assessor or juror, or any person acting as a clerk or officer of the Court, during his sitting or attendance in Court, or in his going to or returning from Court; or

(*d.*) Does any act in relation to the Supreme Court or a Provincial Court, or a matter pending therein, which, if done in relation to the High Court in England, would be punishable as a contempt of that Court,—

He shall be guilty, in the case of the Supreme Court or a Provincial Court, of a grave offence, and in the case of a Local Court, of an offence, against this Order:

Provided that the Supreme Court or a Provincial Court, if it thinks fit, instead of directing proceedings as for an offence against this Order, may order the offender to be apprehended forthwith, with or without warrant, and on inquiry and consideration, and after the hearing of any defence which such person may offer, without further process or trial, may adjudge him to be punished with a fine not exceeding *10l.*, or with imprisonment not exceeding twenty-four hours, at the discretion of the Court.

(2.) A Minute shall be made and kept of every such case of punishment, recording the facts of the offence, and the extent of the punishment. In the case of a Provincial Court, a copy of the Minute shall be forthwith sent to the Supreme Court, and in the case of a Local Court, to the Provincial Court.

(3.) Nothing herein shall interfere with the power of the Court to remove or exclude persons who interrupt or obstruct the proceedings of the Court.

161. Nothing in this Order shall deprive the Court of the right to observe, and to enforce the observance of, or shall deprive any person of the benefit of, any reasonable custom existing in the Ottoman dominions, unless this Order contains some express and specific provision incompatible with the observance thereof.

162. Nothing in this Order shall prevent any Consular officer in the Ottoman dominions from doing anything which Her Majesty's Consuls in the dominions of any other State in amity with Her Majesty are, for the time being, by law, usage, or sufferance, entitled or enabled to do.

163. The Ambassador and the Judge of the Supreme Court shall have power to make and alter Regulations (to be called Queen's Regulations) for the following purposes, that is to say:—

(1.) For securing the observance of any Treaty for the time being in force relating to any place to which this Order applies, or of any native or local law or custom, whether relating to trade, commerce, revenue, or any other matter.

(2.) For the peace, order, and good government of British subjects within any such place in relation to matters not provided for by this Order.

(3.) For requiring Returns to be made of the nature, quantity, and value of articles exported from or imported into his district, or any part thereof, by or on account of any British subject who is subject to this Order, or in any British ship, and for prescribing the times and manner at or in which, and the persons by whom, such Returns are to be made.

(4.) For the governance, visitation, care, and superintendence of prisons.

Any Regulations made under this Article may provide for forfeiture of any goods, receptacles, or things in relation to which, or to the contents of which, any breach is committed of such Regulations, or of any Treaty or any native or local law or custom, the observance of which is provided for by such Regulations.

Any Regulation made under this Article shall, when allowed by the Secretary of State, and published as he directs, have effect as if contained in this Order.

164.—(1.) Her Majesty's Consuls in the Ottoman dominions may levy dues not exceeding the rate of *2d.* a-ton on every British merchant-ship (*a*) visiting or passing Constantinople, or visiting any other port in a Consular district, or (*b*) being at any other place within the Consular district of Constantinople, and having occasion to send any seamen to the British hospital at Constantinople.

The produce of the said dues shall be applied towards the establishment, maintenance, and support, in the Ottoman dominions, of British hospitals; and the dues shall be called hospital dues.

The Secretary of State may, by writing under his hand, issue such instructions as to him seem fit, for the following purposes, or any of them (that is to say):—

For fixing (within the limit of *2d.* a-ton) the rate per ton at which the hospital dues are to be levied at any port;

For exempting any ship in respect whereof, within any defined period, the hospital dues have once been paid, from any further payment thereof;

For regulating the application of the produce of the hospital dues;

For limiting the extent to which any Consul shall exercise jurisdiction over British subjects in the Ottoman dominions in any matter relating to the hospital dues.

(2.) A further fee of *10s.* shall be charged at Her Majesty's Consulate at Constantinople for each application for a Firman, or Firmans, for each British ship in order to pass the Straits.

(3.) Any master of a British ship who fails to pay the said dues or fee, or evades the payment thereof, shall be guilty of an offence against this Order, and the amount of such dues or fee, and of any fine imposed, may be levied by seizure and sale of the ship.

(4.) No dues under this Article shall be levied in Egypt unless the Secretary of State shall by order so direct.

165.—(1.) Every British subject resident shall, in January in every year, register himself at the Consulate of the Consular district within which he is resident; provided that—

(*a.*) The registration of a man shall comprise the registration of his wife, if living with him; and (*b*) the registration of the head of a family shall be deemed to comprise the registration of all females and minors being his relatives, in whatever degree, living under the same roof with him at the time of his registration.

(2.) The Consular officer may, without fee, register any British subjects being minors living in the houses of foreigners or Ottoman subjects.

(3.) Every British subject arriving at a place in the Ottoman dominions where there is a Consular office, unless borne on the muster-roll of a British ship there arriving, shall, on the expiration of one month after arrival, be deemed for the purposes of this Article to be resident, and shall register himself accordingly.

(4.) A person shall not be required to register himself oftener than once in a year, reckoned from the 1st January.

(5.) The Consular officer shall yearly give to each person registered by him a certificate of registration, signed by him and sealed with his Consular seal.

(6.) The name of a wife, if her registration is comprised in her husband's, shall, unless in any case the Consular officer sees good reason to the contrary, be indorsed on the husband's certificate.

(7.) The names and descriptions of females and minors whose registration is comprised in that of the head of the family shall, unless in any case the Consular officer sees good reason to the contrary, be indorsed on the certificate of the head of the family.

(8.) In the case of a British-protected person, the date of issue and the duration of the certificate shall be indorsed in Turkish or Arabic on the certificate.

(9.) Every person shall, on every registration of himself, pay a fee of *2s. 6d.*, or such other fee as the Secretary of State from time to time appoints.

(10.) The amount of the fee may be uniform for all persons, or may vary according to the position and circumstances of different classes, if the Secretary of State from time to time so directs, but may not in any case exceed *5s.*

(11.) Every person by this Order required to register himself or herself shall, unless excused by the Consular officer, attend personally for that purpose at the Consulate, on each occasion of registration.

(12.) If any person fails to comply with the provisions of this Order respecting registration, and does not excuse his or her failure to the satisfaction of the Consular officer, he or she shall be guilty of an offence against this Order, and any Court or authority may, if it thinks fit, decline to recognize him as a British subject.

166. Except as in this Order otherwise provided, all fees, dues, fines, and other receipts under this Order shall be carried to the public account, and shall be accounted for and paid as the Secretary of State, with the concurrence of the Treasury, directs.

167. Where, by virtue of this Order or otherwise, any Imperial Act, or any Law in force in a British Possession, Colony, or Settlement, is applicable in any place within the limits of this Order such Act or Law shall be deemed applicable so far only as the constitution and jurisdiction of the Courts acting under this Order and the local circumstances permit, and, for the purpose of facilitating the application of any such Act or Law, it may be construed with such alterations and adaptations not affecting the substance as may be necessary, and anything by such Act or Law required to be done by or to any Court, Judge, officer, or authority may be done by or to a Court, Judge, officer, or authority having the like or analogous functions, or by or to any officer designated by the Court for that purpose, and the seal of the Court may be substituted for any seal required by any such Act or Law; and in case any difficulty occurs in the application of any such Act or Law, it shall be lawful for the Secretary of State to direct by and to whom, and in what manner, anything to be done under such Act or Law is to be done, and such Act or Law shall, in its application to matters arising within the limits of this Order, be construed accordingly.

168. Not later than the 31st March in each year the Judge shall send to the Secretary of State a report on the operation of this Order up to the 31st January in that year, showing for the then last twelve months the number and nature of the proceedings, criminal and civil, taken in the Court under this Order, and the result thereof, and the number and amount of fees received, and containing an abstract of the registration list, and such other information, and being in such form, as the Secretary of State from time to time directs.

169.—(1.) A printed copy of this Order shall be always kept exhibited in a conspicuous place in each Consular office and in each Court-house.

(2.) Printed copies shall be sold at such reasonable price as the Supreme Court directs.

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(3.) Judicial notice shall be taken of this Order, and of the commencement thereof, and of the appointment of Consuls, and of the constitution and limits of the Courts and districts, and of Consular seals and signatures, and of any Rules made or in force under this Order, and no proof shall be required of any of such matters.

The provisions of "The Evidence Act, 1851" (14 & 15 Vict., cap. 99), secs. 7 and 11, relating to the proof of judicial and other documents, shall extend and be applied for all purposes as if the Courts, districts, and places to which this Order applies were in a British Colony.

170.—(1.) The Orders in Council mentioned in the Schedule to this Order are hereby repealed, but this repeal shall not—

(i.) Affect the past operation of those Orders, or either of them, or any appointment made, or any right, title, obligation, or liability accrued, or the validity or invalidity of anything done or suffered under any of those Orders, before the making of this Order;

(ii.) Interfere with the institution or prosecution of any proceeding or action, criminal or civil, in respect of any offence committed against, or forfeiture incurred or liability accrued under or in consequence of any provision of, any of those Orders, or any Regulation made thereunder;

(iii.) Take away or abridge any protection or benefit given or to be enjoyed in relation thereto.

(2.) Notwithstanding the repeal of the Orders aforesaid, or any other thing in this Order, every Regulation, appointment, and other thing in this Article mentioned shall continue and be as if this Order had not been made; but so that the same may be revoked, altered, or otherwise dealt with under this Order, as if it had been made or done under this Order.

(3.) Criminal or civil proceedings begun under any of the Orders in Council repealed by this Order, and pending at the time when this Order comes into operation, shall, from and after that time, be regulated by the provisions of this Order, as far as the nature and circumstances of each case admits.

(4.) Lists of jurors and assessors in force at the passing of this Order shall continue in force until revised and settled under the provisions of this Order.

171.—(1.) This Order shall take effect at the expiration of one month after it is first exhibited in the public office of the Supreme Court at Constantinople.

(2.) For that purpose the Judge of the Supreme Court shall forthwith, on the receipt by him from the Ambassador of a certified printed copy of this Order, cause the same to be affixed and exhibited conspicuously in that office.

(3.) He shall also keep the same so affixed and exhibited during one month from that first exhibition.

(4.) Notice of the time of that first exhibition shall, as soon as practicable, be published in the office of the Agency for Egypt and at each of the Provincial Consulates in such manner as the Supreme Court may direct.

(5.) A certified printed copy of this Order shall also be affixed and exhibited in the public offices of the Consular Courts at Alexandria and Cairo, at the same time (or as near as circumstances admit) at which it is first exhibited at Constantinople. Proof shall not in any proceeding or matter be required that the provisions of this Article have been complied with, nor shall any act or proceeding be invalidated by any failure to comply with any of such provisions.

(6.) The day on which this Order so takes effect is in this Order referred to as the commencement of this Order.

(7.) Where this Order confers power to make any appointment, Order, Rules, or Regulations, or to do any other thing for the purposes of the Order, that power may be exercised at any time after the passing of this Order, so, however, that any such appointment, Order, Rules, or Regulations shall not take effect before the commencement of this Order.

172. This Order may be cited as "The Ottoman Order in Council, 1899."

SCHEDULE.

Orders repealed.

Order made by Her Majesty in Council on the 22nd April, 1872, fixing the fee to be levied on application for a Firman for British ships passing the Straits.

"The Ottoman Order in Council, 1873."

Order made by Her Majesty in Council on the 7th July, 1874, amending Article 14 of "The Ottoman Order in Council, 1873."

Order made by Her Majesty in Council on the 5th February, 1876, suspending the operation of the Ottoman Order in Council as regards matters coming within the jurisdiction of certain Egyptian Courts.

"The Ottoman Order in Council, 1882."

"The Ottoman Order in Council, 1890."

Order made by Her Majesty in Council on the 23rd February, 1891, fixing a Table of Fees to be taken in Her Majesty's Consular Courts in the Ottoman dominions.

"The Ottoman Tribunals Order in Council, 1891."

"The Ottoman Dominions (Prisoners Removal) Order in Council, 1895."

"The Ottoman Dominions (Courts) Order in Council, 1895."

"The Ottoman Dominions (Supreme Court) Order in Council, 1896."

R. E. W.
R. B. F.

No. 51.

[July 6, 1899.]

*Foreign Office to Solicitor-General.**

Sir, *Foreign Office, July* 2, 1899.

Proposed Conversion of Turkish Loan of 1855.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the accompanying papers relative to a proposed arrangement for the conversion of the Guaranteed Turkish Loan of 1855, on which your opinion is requested.

Under the Convention signed between Great Britain, France, and Turkey on the 27th June, 1855, a loan of 5,000,000*l.* was raised by the Sublime Porte for the Russian war.

The Convention was as follows:—

"ARTICLE I.

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland undertakes to recommend to her Parliament to enable her to guarantee jointly with His Majesty the Emperor of the French, and severally, and His Majesty the Emperor of the French engages, subject to the ratification of the legislative body of France, to guarantee conjointly with Her Britannic Majesty the interest of a loan of 5,000,000*l.* to be raised by His Imperial Majesty the Sultan.

"ARTICLE II.

"The interest payable on the said loan of 5,000,000*l.* shall be at the rate of 4 per cent. per annum. There shall, moreover, be paid by the Sublime Porte, the further rate of 1 per cent. per annum on the whole capital of 5,000,000*l.*, by way of sinking fund.

"ARTICLE III.

"The interest and sinking fund of the said loan shall form a charge on the whole revenues of the Ottoman Empire, and specially on the annual amount of the tribute of Egypt, which remains over and above the part thereof appropriated to the first loan, and moreover on the customs of Smyrna and Syria.

"His Imperial Majesty the Sultan engages that he will cause to be remitted to the Bank of England, on or before the 25th June and 25th December in each year, the full amount of one-half year's interest and sinking fund on the whole amount of the said loan to be raised under the conjoint guarantee of Her Britannic Majesty and of His Imperial Majesty the Emperor of the French, or on so much thereof as may be raised, until the whole capital borrowed shall be repaid.

"ARTICLE IV.

"Their Majesties the Queen of the United Kingdom of Great Britain and Ireland and the Emperor of the French, being desirous to save the Sublime Porte the expenses of remittance, consent to undertake to transmit to the Ottoman Government the proceeds of the above-mentioned loan of 5,000,000*l.* to be raised under the conjoint guarantee of their Majesties. With this view it is agreed that the Contractors for the said loan shall pay the proceeds thereof into the Bank of England for the account of the Turkish Government, to be transmitted to the Sublime Porte by the Agency of the Governments of England and of France.

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* A private letter was written to the Solicitor-General stating that as the Attorney-General was absent at Paris in connection with the British Guiana Frontier Arbitration, and time was of importance, Lord Salisbury would be glad to have the Solictor-General's opinion alone.

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"ARTICLE V.

"The present Convention shall be ratified, and the ratifications shall be exchanged at Constantinople as soon as possible."

The ratifications of the Convention were duly exchanged at Constantinople on the 12th July, 1855.

The Act 18 & 19 Vict., cap. 99 was accordingly passed, authorizing Her Majesty "to guarantee jointly with the Emperor of the French, and severally, the interest on the loan to be raised by His Imperial Majesty the Sultan, not exceeding interest at the rate of 4*l.* per cent. per annum on a sum of 5,000,000*l.*, upon the terms and conditions set forth in the said Convention."

The loan was authorized by a Firman of the Sultan; and the General Bond of the loan, which constituted the security of the lender, and which with the Firman was deposited in the Bank of England in the name of the Sultan, was worded as follows:—

"We, Constantine Musurus, Envoy Extraordinary of His Imperial Majesty the Sultan, in virtue of the full powers conferred upon us by His Imperial Majesty's Firman, bearing date about the end of July, the original of which is deposited in the Bank of England, have contracted for a loan of 5,000,000*l.*, for the service of his said Imperial Majesty's Government on the terms and conditions hereinafter mentioned: which said loan, and the principal and interest and sinking fund, are charged, in pursuance of the above Imperial Firman, on the whole revenues of the Ottoman Empire, and specially on so much of the tribute payable to His Imperial Majesty by His Highness the Pasha of Egypt as shall remain over and above the part thereof appropriated to the loan of 3,000,000*l.*, raised for the service of the Ottoman Empire, in London and Paris, in the year 1854, and moreover on the customs of Smyrna and Syria.

"The conditions of the said loan are as follows:—

"1. Interest to be payable at the rate of 4 per cent. per annum on the said sum of 5,000,000*l.* on the 1st February and the 1st August in every year, in London at the Bank of England, the first payment to be made on the 1st February, 1856.

"2. A sum equal to 1 per cent. on said sum of 5,000,000*l.*, together with a sum equal to one year's interest on so much of the said loan as shall have been redeemed, shall be employed annually on the 1st August in each year, commencing on the 1st August, 1859, either in the purchase of certificates of the loan in the public market, or, at the option of the Imperial Ottoman Government, in paying off at par such certificates as shall be ascertained by lot, to be drawn in London in the presence of the Representative of His Imperial Majesty at London and the Chief Cashier and Chief Accountant of the Bank of England, at some time in the month of May in each year. The numbers of the certificates drawn shall be advertised in three of the chief journals published in London and Paris at least two months before the time fixed for redemption thereof; the principal of such certificates, with the interest due, shall be payable at the Bank of England in London on the 1st day of August next following such drawing. All certificates so drawn shall cease to bear interest from the time fixed for redemption thereof, and if not presented within twelve months thereafter, such certificates, with the outstanding interest thereon up to the said 1st August, will only be paid on the written order of His Imperial Majesty's Representative at London. The certificates redeemed, with all the coupons then attached thereto, shall, when paid off, be forthwith cancelled in the presence of His Imperial Majesty's Representative at London and of the Chief Cashier of the Bank of England.

"3. The Imperial Ottoman Government reserve to themselves the power of redeeming the whole loan at par on the expiration of twenty years from the time when the application of the sinking fund shall commence, or at any time thereafter on giving six months' notice by advertisement in the journals of London and Paris.

"4. Certificates shall be issued for the said loan reciting these presents, to which the signet of His Imperial Majesty's Representative in London shall be attached, countersigned by the principal Secretary of the Embassy, bearing coupons for half-yearly payments of interest thereon attached. In case any certificates shall remain undischarged after all the coupons attached thereto are exhausted, His Imperial Majesty's Government shall deposit with the Bank of England additional coupons through His Imperial Majesty's Representative at London, in order that such coupons may be delivered to the holders of such bonds, and so from time to time.

"Dated this 20th day of August, 1855.

(Signed) "C. MUSURUS."

The words of this General Bond were inserted in each certificate or bond.

It will be seen from the terms of the certificate or bond that so much of the loan as was outstanding on the 1st August, 1879 (*i.e.*, twenty years from the commencement of the application of the sinking fund on the 1st August, 1859), was then, or at any time thereafter, liable to be redeemed at par by the Imperial Ottoman Government on their giving six months' notice. In the absence of the exercise of that power of redemption, the whole loan would have been paid off by the action of the annual sinking fund by the 1st August, 1900.

For twenty years the Porte fulfilled its obligations, and the loan of 5,000,000*l.* was, by means of the sinking fund, applied in payment of drawn bonds, reduced by 1,184,800*l.* to 3,815,200*l.*

In 1875 the Porte made default in the payment of interest and sinking fund, and the British and French Governments were called upon under the guarantee to make good the deficiency in payment of interest. Eventually the following arrangement was made to meet this liability.

By the occupation of Cyprus, in pursuance of the Anglo-Turkish Convention of the 4th June, 1878, Her Majesty's Government acquired control over the revenues of that island subject to the condition of paying to the Porte the surplus of those revenues, which was fixed by the Annex to the Convention at 92,500*l.* a-year.

So much of this sum as is required, in addition to the assigned portion of the Egyptian Tribute (72,000*l.* a-year), has been applied to provide the interest on the outstanding portion of the loan.

Copies of the Convention and Annex are inclosed herewith (Paper A).

It is to be noted that the ratifications of this Convention were never exchanged. The Sultan attached to the ratification, signed by him, reservations and qualifications which Her Majesty's Government were unable to accept, and the ratification signed by the Queen was eventually returned to this country. The circumstances are detailed in the Memorandum inclosed (Paper B).

The Convention has, however, had full operation so far as the occupation of Cyprus is concerned, and has frequently been referred to by the Sultan as binding on both Governments.

The present method of dealing with the loan is as shown in the following Statement:—

	£
Interest at 4 per cent. on 3,815,200*l.*	152,608
Expenses of management	1,144
Total charge	153,752
To meet which there is available the assigned part of the Egyptian Tribute, viz.	72,000
leaving a sum of	81,752
to be met out of the Cyprus Tribute, viz.	92,500
Accordingly there has been an annual surplus on the Cyprus Tribute amounting to (about)	10,748

Practical difficulties stood in the way of annually applying the surplus tribute to the redemption of drawn bonds. Accordingly, the money has been annually retained by Her Majesty's Government and it has been invested in Consols; the retention of the money having been held to be justified by the fact that the annual sinking fund which the Imperial Ottoman Government was bound to provide is, equally with the interest, chargeable on the whole revenue of the Ottoman Empire, of which the Cyprus Tribute forms a part.

It should be noted, that though no certificates (or bonds) have been redeemed and cancelled since 1875, yet the certificates (or bonds) have been regularly drawn and the numbers thereof duly advertised, with the result that all the certificates (or bonds) have been drawn with the exception of a few, amounting to 8,900*l.*, which remain to be drawn next year.

It is proposed now (1) that the Porte should raise and issue a new loan to an amount not exceeding 4,254,000*l.*, bearing 2½ per cent. interest, the service of such loan (including interest and amortisation in 60 years) being provided for by a fixed annuity of 3·235 per cent., which should be charged on the Egyptian Tribute amounting to 72,000*l.* and on 65,500*l.* of the Cyprus Tribute, and the payment of which should be guaranteed by the British Parliament; and (2) that the new loan, together with the cash accumulated from the surplus Cyprus Tribute, should be applied to redemption of the outstanding portion of the old loan and to the expenses of such redemption; a sum of 600,000*l.* being retained by the Imperial Ottoman Government in consideration of their surrendering all claim during the currency of the loan to 27,000*l.* of the annual payment out of the revenues of Cyprus.

These arrangements were embodied in a Convention signed by Lord Salisbury and the Turkish Ambassador, in virtue of full powers from the two Sovereigns, on the 3rd August, 1898, copy of which is inclosed herewith (Paper C).

The Sultan is understood, however, to make difficulties about ratifying the Con-

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vention on the ground that it relates to financial matters which should, according to the custom now prevailing, be dealt with by Agreement between the two Governments, and not by a Convention between the Sovereigns. His Majesty also desired that an addition should be made to the Agreement, to the following effect:—

"Par suite de la conclusion du présent Acte, les clauses de la Convention de Chypre sont maintenues intactes, et les droits de souveraineté de Sa Majesté Impériale le Sultan sur l'île sont reconnus comme par le passé."

To meet the wishes of the Sultan, so far as practicable, an Agreement has been drafted, which is inclosed herewith (Paper D), and which, if accepted by the Turkish Government, would be signed by Lord Salisbury and the Turkish Ambassador under full powers, and on production of satisfactory evidence by the Ambassador that the terms were approved by the Sultan and his Ministers.

I am to request that you will favour Lord Salisbury with your opinion on the following points:—

1. Whether such an Agreement as is contemplated would be as binding on the respective Governments concerned as the Convention under which the Guaranteed Loan of 1855 was issued;

2. Whether the different procedure proposed to be followed on the present occasion would justify any future Sultan in pleading that the provisions of the Agreement, and especially Article V, are not binding on him;

3. Whether there is anything in the proposed arrangement and procedure to which the bondholders could properly take exception, or which could be pleaded by them in support of an objection to being paid off;

4. Whether the suspension of the operation of the sinking fund (since 1875) in any way affects the right of the Imperial Ottoman Government to pay off at their discretion, without special notice, the certificates or bonds already drawn, but not redeemed, viz., the whole of the outstanding loan, less 8,900*l.*, or 3,806,300*l.*; or

5. Whether the holders of the drawn bonds could legally or equitably claim to receive:—

(*a.*) The six months' notice required to be given in case the Imperial Ottoman Government should exercise their power of redeeming the whole loan during its currency; or

(*b.*) The notice of "at least two months" required to be given in the case of drawn certificates (or bonds) before the term fixed for their redemption in ordinary course.

I am also to request that Lord Salisbury may be favoured with any general observations which you may have to make on the subject.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) Turkey, No. 36 (1878) (Parliamentary No. 2054).
(B.) Memorandum by Sir P. Currie (Confidential 4235).
(C.) Convention (Great Britain and Turkey) .. .. .. August 3, 1898.
(D.) Draft Agreement.

Report.

1. Such an arrangement would be as binding on the respective Governments as the Convention.

2. No such plea could be raised. Satisfactory evidence will, of course, have been produced by the Ambassador that the terms are approved by the Sultan and his Ministers, and the Agreement will have been acted on by the Turkish Government. No future Sultan can dispute its validity.

3. No.

4 and 5. I think that the holders of the drawn bonds are entitled to six months' notice. The drawing was not acted upon, and at this distance of time I do not think that the holders of the drawn bonds can be paid off without notice.

(Signed) ROBERT B. FINLAY.

Royal Courts of Justice,
July 6, 1899.

UNITED STATES.

No. 52.

[January 4, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 15, 1898.

Cutting of Eastern Extension Telegraph Co.'s cable during war between Spain and United States.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith, for your consideration, the papers noted in the accompanying lists, which relate to the cutting, by the American naval authorities, during the recent hostilities between Spain and the United States, of the cables of the Eastern Extension Australasia and China Telegraph Company (Limited), and other matters arising thereout.

L.O.R. 1898 (Conf. 7199), p. 93.

The papers enumerated in list (A) are those which accompanied my letter of the 23rd July last, and on which you reported in your letter of the 9th August. A printed copy of your Report is annexed for convenience of reference.

The papers in list (B) show the subsequent communications which have passed between this Department, the Eastern Extension Company, and the United States' Representative at this Court.

As, in your Report of the 9th August, you advised that the matter should be brought *unofficially* before the United States' Government, an opportunity was taken of mentioning the circumstances to Mr. Henry White, the United States' Chargé d'Affaires at this Court, and a Memorandum of the facts of the case was handed to him. His reply will be found in his semi-official note of the 22nd August.

The official decision of the United States' Government will be found in the note from the Honourable John Hay to the Marquess of Tweeddale, inclosed in his Lordship's letter of the 24th ultimo. It will be seen that, without specifying any particular portion of the claim, the United States' Government maintain generally that they are not justly liable to any claim in the way of compensation or damages for any losses incurred by the Company through the interruption of the service between Manila and Hong Kong.

On the receipt of that reply, the Company submitted the case for the consideration of Sir Robert Reid and Mr. Henry Sutton, whose opinion, dated the 21st November, together with a further representation (based thereon) which the Company have addressed to the United States' Government, is also inclosed in Lord Tweeddale's above-mentioned letter.

It will be seen that this representation, while admitting that the Company have no legal claim for loss of traffic, puts forward a claim for 900*l.* for compensation for the cost of effecting repairs, particulars of which are given, and that the Marquess of Tweeddale requests Lord Salisbury to instruct Her Majesty's Ambassador at Washington to support it.

I am next to invite your consideration of that portion of Lord Tweeddale's letter to Mr. White of the 24th ultimo which relates to the rights acquired in the Philippine Islands by the Company by virtue of Concessions granted to them at various times by the Spanish Government.

A summary of these Concessions is inclosed in Lord Tweeddale's letter of the 1st instant, and copies of them accompany his Lordship's note of the 12th instant. I am also to direct your attention to the supplemental opinion of Sir Robert Reid and Mr. Sutton, also dated the 21st November, as to the obligations of the United States in regard to those pre-existing Concessions and to the facts disclosed in the Company's letter of the 1st instant.

It appears desirable here to mention that the actual terms of the Treaty lately concluded at Paris between the United States of America and Spain are not yet known to Her Majesty's Government, and it is therefore possibly premature to assume that the Philippine Islands are to be fully annexed to the territories of the United States.

It seems, however, safe to anticipate that failing annexation some sort of autonomous Government will be established in these islands under the protection and control of the United States, and in these circumstances the responsibilities, whatever these may be, of the United States, with regard to existing Concessions, would probably not differ materially from those of an annexing Power.

I am to request that you will take these papers into your consideration in connection with your Report of the 9th August last, and favour Lord Salisbury, at your earliest convenience, with your opinion on the following points:—

1. In view of considerations advanced in the opinion furnished to the Company by Sir Robert Reid and by Mr. Sutton, or on any other, and if so what, grounds, is it in your judgment proper or desirable that instructions should be given to Her Majesty's Ambassador at Washington to *officially* support the Company's claim for compensation in respect of the cost of effecting repairs to the cut cable?

2. Should you be of opinion that the course is undesirable, do you still consider that his Excellency should be instructed to support the claim *unofficially*, and, if so, on what special grounds?

3. Are the United States bound by international law or usage, on taking possession of or assuming some form of Protectorate over the Philippine Islands, to respect the Concession granted by Spain to the Eastern Extension Company both as to exclusive rights and as to subsidies?

4. Whether the United States' Government can lawfully avail themselves of the benefits of the cable communication without affirming the Concessions if they should not exercise the right of free Government telegrams or other Government rights reserved by the Concession.

5. Whether Her Majesty's Ambassador at Washington should make an *official* or unofficial representation to the United States' Government with regard to the matters referred to in the preceding paragraph in the sense of the opinion you may think well to express thereon, and to favour Lord Salisbury with any general observations which the consideration of these papers may suggest.

I have, &c.
(Signed) F. H. VILLIERS.

Lists of Papers.

(A.)	Law Officers' Report (Confidential 7199, p. 93)	August 9, 1898.
	Papers submitted to Law Officers as per printed list therein.	
(B.)	Mr. H. White	August 22, „
	Eastern Extension Company	November 24, „
	Ditto	December 1, „
	Ditto	December 12, „
	(And Inclosures.)	

Report.

1 and 2. There is no positive rule of international law governing the question which arises in this case.

The claim of the Company can be put forward only as a claim to compensation in respect of injury to their property by a belligerent under circumstances involving no blame on their part.

It would, in our opinion, be reasonable that a rule should be established that under such circumstances compensation for the actual cost of repairs should be made; and we think that the claim should be at present unofficially supported by Her Majesty's Ambassador at Washington.

In the despatches and memoranda of the United States' Government the claim for the actual cost of repairs is not very clearly separated from the claim now abandoned for loss of custom. It is possible that the United States' Government may recognize that, under the circumstances, it is not unreasonable they should pay the comparatively small sum asked in respect of repairs.

How far it may be expedient ultimately to press the claim is a matter for the consideration of the Company, in view of the much more important question as to the continued validity of their Concessions which is now open between them and the United States.

Whether the claim shall be officially pressed is a matter for later consideration; but our present opinion is that it is very desirable to establish, if possible, a precedent for compensation in such a case.

We doubt whether the distinction drawn by Sir Robert Reid and Mr. H. Sutton between the case of a submarine cable and other property of a neutral can be supported, and we should prefer to base the claim upon the injury done to the property of an innocent neutral by a belligerent for his own purposes, in analogy to the "droit d'angarie."

3. In our opinion, the United States are bound, on taking possession of the Philippine Islands or assuming effective control of them, whether under the form of a Protectorate or otherwise, to respect the Concessions granted by Spain to the Eastern Extension Company both as to exclusive rights and as to subsidy. The obligation is one of a local nature, although contracted by the Government of Spain. On the faith of it, the Company has expended a large sum of money on works for the benefit of the Philippines, and the obligations in respect of the Concessions seem to us to belong clearly to that class of local obligations which have always been held to pass with the territory.

4. The use by the United States' Government of the cable communication without exercising the right of free Government telegrams or other Government rights reserved by the Concession would not of itself, in our opinion, render the Concessions binding on the United States' Government. The fact that they are binding depends on the general principles of international law as to the effect of conquest, but if the United States' Government use the cables, this fact may fairly be referred to as an illustration of the local nature of the obligations, and as fortifying the claim that they should be treated as binding.

5. We can hardly suppose that the United States' Government propose to ignore the Concession of the Telegraph Company, but if it should appear that there is any danger of their not being recognized, we think that official representations may properly be made by Her Majesty's Ambassador to the United States' Government.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 4, 1899.

No. 53.

[March 2, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, February* 23, 1899.

Eastern Telegraph Co.'s claim for compensation for cutting of their cable during Spanish-American war.

I HAVE the honour, by direction of the Marquess of Salisbury, to inclose for your consideration, the papers noted in the accompanying list, which relate to claims for compensation arising out of the cutting by the American naval authorities, during the recent hostilities between Spain and the United States, of the cables of the Eastern Extension Australasia and China Telegraph Company (Limited).

L.O.R. 1898 (Conf. 7199), p. 93.

This matter has already formed the subject of your Reports of the 9th August, 1898, and of the 4th ultimo, printed copies of which are, herewith, inclosed for convenience of reference.

Upon receipt of your last-named Report, instructions in accordance therewith were addressed to Her Majesty's Ambassador at Washington (see draft of despatch No. 4, Treaty, Confidential, of the 21st ultimo).

In connection with those instructions, I am next to refer you to Sir Julian Pauncefote's telegram of the 7th instant, and to the telegraphic reply returned thereto, on the 9th inst.

As matters stand, therefore, at the present time, Her Majesty's Ambassador at Washington has made no representation to the United States' Government with regard to the claim for compensation for the actual cost of repairs necessitated by the cutting of the Company's cable, and his Excellency has been requested, by telegraph, to abstain from taking any action pending the receipt of further instructions.

I am now to invite your attention to the opinion of the United States' Attorney-General which accompanies Sir Julian Pauncefote's despatches No. 5, Treaty, of the 7th instant. From the terms of the Note in which the American Secretary of State communicates this opinion to Her Majesty's Ambassador, it is understood to be endorsed by the United States' Government. It will be seen that the opinion has been formed, not on any representation made by Her Majesty's Ambassador at Washington, but upon the direct representation made by the Company to the American Chargé d'Affaires at this Court. That Representation was based on the opinions of Sir Robert Reid and Mr. H. Sutton, copies of which accompanied it as shown by the inclosures in the Company's letter of the 24th November last.

I am to request that you will take these papers into your consideration, and favour Lord Salisbury with your opinion on the following points:—

1. Having regard to the opinion expressed by the United States' Attorney-General, should any supplementary instructions be sent to Sir Julian Pauncefote in addition to those already furnished to his Excellency?

2. If so, what further instructions would you advise, and what arguments could, in your opinion, most advantageously be added to rebut the views expressed by Mr. Griggs, so far as regards the sole question of compensation for the actual cost of repairs?

3. Should you consider that no further instructions are necessary, and that no rebutting arguments could usefully be advanced, the question arises whether Sir Julian Pauncefote should be directed to act on the instructions already sent to him, or to take no further steps in the matter?

In considering these points, I am to mention that the Company were informed that Her Majesty's Ambassador would be instructed to support their claim for repairs unofficially, and that no further communication has, for the present, been made to them.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Law Officers of the Crown (Confidential 7199, p. 93)		August 9, 1898.
Ditto ditto		January 4, 1899.
Mr. H. White		August 22, 1898.
Eastern Extension Company		November 24, „
To Sir J. Pauncefote	(No. 4. Treaty)	January 21, 1899.
Sir J. Pauncefote	(Telegraphic)	February 7, „
To Sir J. Pauncefote	(Telegraphic)	February 9, „
Sir J. Pauncefote	(No. 5. Treaty)	February 7, „
To Sir J. Pauncefote	(Telegraphic)	February 23, „

Report.

1. We think that Sir Julian Pauncefote may be told that he may continue to unofficially support the claim of the Telegraph Company, but that it cannot be pressed as a matter of right.

It would be desirable that the United States should concur with Her Majesty's Government in establishing a precedent for compensation in such cases, but there is no sufficient ground for advancing a claim as one of right according to International Law.

2. The opinion of Mr. Griggs is limited to the strictly legal aspect of the case, and we do not advise that any controversy should be raised upon this point.

3. We think that Sir Julian Pauncefote should proceed on the lines indicated in our answer to the first question.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 2, 1899.

No. 54.

[May 2, 1899.]

Foreign Office to Law Officers of the Crown.

Gentlemen, *Foreign Office, April 14, 1899.*

Rights of Eastern Telegraph Co. in Philippine Is. and of Cuba Submarine Telegraph Co. in Cuba.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit, for your consideration, a despatch from Her Majesty's Ambassador at Washington, inclosing a note addressed to his Excellency by the United States' Secretary of State, respecting—

(*a.*) The rights acquired by the Eastern Extension, Australasia, and China Telegraph Company (Limited), in the Philippine Islands, by virtue of Concessions granted to them at various times by the Spanish Government; and

(*b.*) The rights acquired in Cuba by the Cuba Submarine Telegraph Company by virtue of Concessions similarly granted to them.

With regard to (*a*), the question formed the subject of paragraphs 3, 4, and 5 of your Report of the 4th January last, a printed copy of which is inclosed for convenience of reference. The matter has not yet reached a final stage, and the Company have been requested to furnish copies of the whole of their various Concessions for the more complete information of the United States' Attorney-General. The correspondence inclosed will, however, explain what has passed upon the subject since the date of your Report above referred to.

With regard to the affairs of the Cuba Submarine Telegraph Company, I am to invite your attention to the correspondence inclosed, and more especially to the telegraphic instructions sent to Sir Julian Pauncefote on the 3rd February last, and to the note addressed by his Excellency to Mr. Hay, which forms the inclosure in his despatch No. 8, Treaty, of the 14th of that month.

I am to request that you will take these papers into your consideration, and, with reference to your Report of the 4th January last, that you will favour Lord Salisbury with such observations as you may think it desirable to offer as to the distinction drawn by the United States' Government between their respective international obligations in the Philippine Islands and in the Island of Cuba.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Eastern Extension Telegraph Company—		
Law Officers' Report (in print)		January 4, 1899.
Telegram to Sir J. Pauncefote		January 17, „
Sir J. Pauncefote	(No. 2. Treaty)	January 20, „
Cuba Telegraph Company—		
Cuba Telegraph Company		September 20, 1898.
To Sir J. Pauncefote	(No. 50. Commercial)	September 30, „
Cuba Telegraph Company		January 24, 1899.
Telegram to Sir J. Pauncefote		February 3, „
Sir J. Pauncefote	(No. 8. Treaty)	February 14, „
Common to both—		
Sir J. Pauncefote	(No. 14. Treaty)	March 28, 1899.

Report.

We are quite unable to regard the occupation of Cuba by the United States as in any way analogous to a military occupation during war. The occupation began upon the conclusion of the Treaty of Peace, by which it was provided that Spain relinquished all claim of sovereignty over Cuba, and that the United States, who were to occupy the island on its evacuation by Spain, were to assume all obligations that, under international law, might result from such occupation for the protection of life and property. Article VIII provided for the security of private property, Article IX for the security of individuals, Article X for the free exercise of religion, Article XI for

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the administration of justice, Article XII for pending judicial proceedings, Article XIII for rights in copyrights and patents, Article XIV for the establishment of Spanish Consular officers. All these provisions apply to Cuba, and while Article XVI states that the obligations of the United States with regard to Cuba are limited to the time of its occupancy, it further provides that it will, upon the termination of its occupancy, "advise" any Government established in the island to assume the same obligations. Such an occupation is not in the slightest degree analogous to a mere military occupation. It may or may not be temporary, but so long as it lasts it carries with it the obligation to respect such local obligations as the Concessions of the Telegraph Company.

It need not be contended that the United States assumed absolute responsibility for the permanent observance of these Concessions in Cuba, but they are bound to respect them during the occupation, and to "advise" any succeeding Government to do the like. This obligation appears to us to result from the character of the occupation itself, and from the terms of the Treaty.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 2, 1899.

No. 55.

[May 26, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 18, 1899.

Gentlemen,

Messrs. Warner and Co.'s claim on U. S. for losses through blockade of Manila.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list respecting a claim preferred by Messrs. Warner, Barnes, and Co., of Manila, against the United States' Government on account of the losses sustained by their firm owing to their having been prevented by the action of the United States' naval authorities from fulfilling their outstanding contracts for the shipment at that port of certain cargoes of hemp during the months of May to July 1898.

From the account received from Messrs. Bibby Brothers and Co. (Paper A), agents for Messrs. Warner, Barnes, and Co., it appears that the latter, at the time of the outbreak of hostilities between Spain and the United States, had several contracts outstanding for the shipment of Manila hemp, and had chartered, for the purpose of fulfilling those contracts, the British ships "Crown of Germany" and "Honolulu" and the German ship "Ebenezer" (all three sailing-vessels). This purpose, however, they were unable to carry into effect owing to the intervention of the United States' authorities, with the result that the firm suffered heavy losses.

The circumstances in which the intervention took place, and the particulars of Messrs. Warner, Barnes, and Co.'s claims, are described in a despatch and its inclosures (Paper B), which have been received from the Acting British Consul at Manila.

No official declaration of a blockade of Manila was, so far as is known at this Office, ever made; but from the facts which have from time to time been reported, and which are summarized in the inclosed Memorandum (Paper C), a blockade seems undoubtedly to have existed, although it may never have been formally proclaimed; and strong evidence that it was effective is afforded by the fact, that the ships chartered by Messrs. Warner, Barnes, and Co. were all either warned away or refused entry, while there is no evidence of ships getting through the blockading squadron.

The claim does not appear to Lord Salisbury to be one in which Her Majesty's Government can properly intervene; but before communicating with Messrs. Bibby Brothers and Co., his Lordship would be glad to be favoured with your opinion on the subject, and with any remarks on the case generally which may, in your judgment, be of assistance to him in arriving at a decision.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Messrs. Bibby Brothers and Co.		February 13, 1899.
(B.)	Acting Consul Ramsden	(No. 3)	"
(C.)	Memorandum		May 9, "

Report.

In our opinion, this is not a case in which Her Majesty's Government can properly intervene. There appears to be no doubt that a blockade, by the authority of the United States' Government, *de facto* existed. This is a complete justification for turning back any vessels attempting to enter.

The question of notice might be material if any attempt had been made to confiscate the vessels for breach of the blockade, but nothing of this kind occurred

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 26, 1899.

No. 56.

[October 21, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, October 13, 1899.

Gentlemen,

Proposed Bankruptcy arrangement with the U.S.

I HAVE the honour to transmit to you by direction of the Marquess of Salisbury the accompanying papers as noted in the annexed list relative to an arrangement which Her Majesty's Government propose to conclude with that of the United States providing for the equality of treatment of creditors in the United Kingdom and the United States.

The Association of Chambers of Commerce of the United Kingdom on the 4th May, 1898, addressed a Memorial to his Lordship pointing out that British subjects who were creditors of bankrupts domiciled in the United Kingdom suffered injustice owing to the fact that in certain foreign countries the title of a British trustee in bankruptcy to assets in such foreign country is not fully recognized. In this connection the cases of Germany and the United States were specially cited.

With regard to the latter country, a letter from a firm of lawyers at New York accompanied the Memorial, which defined the law regulating bankrupt estates in the State of New York in relation to the point raised by the Association of Chambers of Commerce.

A Declaration (Declaration No. 2) has been appended to the draft Commercial Treaty between the United Kingdom and Germany dealing with this subject, and it is desired that the arrangement contemplated with the United States should be drawn up in the same terms.

I am also to draw your attention to the two opinions given by the legal adviser of Her Majesty's Embassy at Washington with reference to the law, policy, and constitutional position of the United States in regard to the matter.

The Board of Trade consider that negotiations should now be opened with the United States' Government, but before instructing Her Majesty's Chargé d'Affaires to do so, Lord Salisbury would be glad to be favoured with any suggestions which you may have to offer on the terms of the arrangement which it is proposed to submit to the United States' Government as well as with any general observations which you may desire to add on the matter.

I have, &c.
(Signed) MARTIN GOSSELIN.

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List of Papers.

1. Association of Chambers of Commerce	.. .. ..	May	4, 1898.
2. Board of Trade	.. ..	June	2, ,,
3. Mr. Tower	.. .. .. (No. 95. Commercial)	May	21, 1899.
4. Ditto	.. .. .. (No. 204. Commercial)	August	5, ,,
5. Board of Trade	.. ..	September	9, ,,
6. Second Declaration appended to draft Belgian and German Commercial Treaties.			

Report.

The proposed arrangement must be confined to movable property. A foreign bankruptcy has not, by the law of England, any effect on real property in this country. Subject to this observation we think that the Declaration appended to the draft Treaty with Germany may be taken as the basis of that to be proposed to the United States.

The object is to bring the law of the United States into conformity with that of England on this point; not to enter into any engagement which would require legislation in England to give effect to it here. A Treaty with the United States would, of course, not be recognized in the English Courts as having the force of law. Mr. Carlisle says that a Treaty would, in the United States, be treated as overriding the law there, and on this view legislation in the various States would not be necessary to give effect to it.

We are, of course, unable to form any estimate of the probability of success in negotiating such an arrangement with the United States.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 21, 1899.

ZANZIBAR.

No. 57.

[February 22, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, February 11, 1899.

German jurisdiction over Zanzibaris.

I TRANSMIT, herewith, by direction of the Marquess of Salisbury, certain despatches, mentioned in the margin,* from Sir A. Hardinge, Her Majesty's Agent and Consul-General in Zanzibar and Commissioner in the East Africa Protectorate, relating to questions affecting the claim of the Imperial German Government to exercise jurisdiction in the dominions of the Sultan of Zanzibar over certain persons who are held by the latter to be subjects of Zanzibar.

The following is a concise statement of the points raised in each despatch:—

No. 19 deals with the case of a Zanzibar Arab who had always been considered a Zanzibar subject. After the rebellion he claimed and obtained German protection on the ground that he held property in the German East African territory, and was there when the German flag was hoisted.

An action was brought against him in the Sultan's Court for the recovery of a debt. Mr. Cracknall, sitting as Judge, decided that the Court had jurisdiction, and gave judgment. The Acting German Consul claimed to know the grounds Mr. Cracknall, as Judge, considers that he is not bound to give his reasons after judgment. The Acting German Consul is aggrieved, and Her Majesty's Government may probably receive representations from the Imperial German Government on the subject of the case through Her Majesty's Embassy at Berlin. The point of real importance in the case is how far Germany can exercise rights over "protected persons" as apart from "subjects." Sir Arthur Hardinge's observations are directed to prove that the former are not entitled to Treaty privileges. The Treaty between Germany and Zanzibar only speaks of "German subjects," but has a most-favoured-nation clause which might entitle Germany to claim only privileges in regard to jurisdiction which are enjoyed by France, whose claims in this respect are wide.

Sir Arthur argues that a native of German East Africa has not in German law all the rights of a German, and cannot therefore be claimed as such, and further, that even if he has such rights in German territory, this fact cannot affect the nationality in Zanzibar of a Zanzibar subject, who cannot in that country be divested of his nationality. Supposing, he says, a native of German East Africa had possessed property in, and had been present himself in, Witu when it was transferred by Germany to England, would the German Government admit that on returning to German territory he was not amenable to German jurisdiction?

No. 20 contains the reply of the Acting German Consul to this argument. He argues that the natives of German East Africa have always been held, in all international respects, to be real nationals of the German Empire, "Reichsangehörige," just as natives of British India are British subjects, although in internal matters they are treated differently from other British subjects who are not natives of India.

Sir Arthur replies that, if the German law does not recognize such persons as German nationals in the full sense of the term, Her Majesty's Government cannot be expected to go beyond the German law, and to admit them to the privileges reserved by Treaty to Germans alone. He also alludes to the position apparently assumed by the German authorities on the coast in regard to Vice-Consul Dundas (No. 318, the 12th October, 1898), viz., that German East Africa is not subject to the Treaties between Great Britain and Germany, but that a special arrangement is necessary to give the Vice-Consul powers over British vessels in the territorial waters of that Protectorate. The Germans refused most favoured treatment in German East Africa to British Indians, and treat them as African natives; and Sir Arthur argues, thereon that either the German mainland is German territory for the purposes of the British Treaties, or that its natives are not Germans for the purposes of the Zanzibar Treaties.

No. 21 deals with the case of a German clerk, in the employment of the Uganda Railway, who was fined in Mr. Craufurd's Court for possessing unlicensed fire-arms. He at first accepted jurisdiction, but, when sentenced, appealed to his Consul, who is believed to have referred to Berlin for instructions with reference to the matter.

Sir. A. Hardinge argues (1), that, so far as the Clerk is concerned, he cannot now be heard to contend that he is not amenable to a jurisdiction to which he originally attorned of his own free will, and (2), that the question of fire-arms being one of those dealt with by the Brussels Act, and that Act giving the territorial Power the right to punish infractions of it, and superseding any existing Treaties in matters to which it relates, the German Government has no *locus standi*. The German Consul contends that any enactments made by Her Majesty's Government under the Act require sanction by his Government.

Sir A. Hardinge proposes to contest this on the general ground given above.

A copy of Sir A. Hardinge's despatch No. 318 of the 12th October, 1898, which is indirectly alluded to in his Treaty of the 17th November, 1898, is inclosed for convenience of reference, together with a copy of a Minute by Mr. Davidson, Q.C., which deals with the legal aspects of the points raised in Nos. 19, 20, and 21, and a copy of the Brussels Act, the provisions of which are invoked by Sir A. Hardinge in support of his argument.

The jurisdictional claims advanced by the German authorities in Zanzibar raise contentious questions of considerable importance, and I am to request that you will take the various papers now submitted to you into your consideration, and will favour his Lordship with your opinion as to the course which should be pursued in regard to the points which they specially raise together with such other observations as will, in your judgment, be of assistance to Lord Salisbury in dealing with the general questions.

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* See List of Papers, p. 168.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Sir A. Hardinge	(Nos. 19, 20, and 21, Treaty.)	
Mr. Davidson		January 20, 1899.
Brussels Act (Treaty 889)..		July 2, 1890.
Sir A. Hardinge	(No. 318)	October 12, 1898.

Report.

Abubakr-bin-Abdulla must, in our opinion, be treated in Zanzibar as a subject of that State. Even if he has acquired the right, according to German law, to be treated as a German subject, nothing has occurred to absolve him from his allegiance to the Sultan of Zanzibar. The German Government cannot by its mere act transfer the allegiance of Zanzibaris to the German Government, although it can, if it pleases, confer upon them the privilege of being treated as German subjects in German possessions.

We have not before us the materials for determining whether the inhabitants of the German Protectorate are German subjects or not. This depends on considerations of German law, on which we should desire further information before deciding on the validity of the contention of the German Consul that these persons are German subjects.

The Treaty with Germany mentions only subjects, but the most-favoured-nation clause entitles Germany to the same treatment as France. So far as the text of both the German and French Treaties is concerned, we think that the privileges afforded by these Treaties are confined to German and French subjects and to persons in their employment. If, however, there has been a continuous usage under which persons not properly speaking "Frenchmen" have been treated as Frenchmen for the purposes of the Treaty as having certificates of protection from the French authorities, it might be difficult to confine the rights of France, and consequently those of Germany, to what the terms of the Treaty—strictly read—import.

In the absence of any such well-defined usage, we think that the rights of both France and Germany are confined to the case of those who are properly speaking their subjects, or those who are in the employ of their subjects.

2. In the case of Reich, we think that his submission to the jurisdiction prevents the German Government from being entitled to insist that he was improperly convicted. The right of trial by his own Consular Court is one that may be waived by the defendant. We further think that inasmuch as the offence for which Reich was tried was for having fire-arms in his possession contrary to the provisions of the Brussels Conference and of the laws made in pursuance of those provisions, he was amenable to the jurisdiction of the Court which tried him.

It seems quite clear that in practice the provisions of the Brussels Conference in regard to fire-arms would become a dead letter unless all persons who offend against them—of whatever nationality—are amenable to the Courts of the State within whose territory the offence has been committed. It is obvious that it is by that State that the prohibition against importation must be enforced, and this applies also to the enforcement of penalties for unlawful possession.

We therefore think that by implication the Brussels Conference superseded the right of exterrioriality in the case of offences against its provisions in respect of fire-arms, and that Reich was properly tried.

We have not sufficient materials before us to enable us to decide the question raised in the concluding passages of Sir A. Hardinge's despatch on this case as to whether Germany has surrendered her exterritorial rights generally in this portion of Africa.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 22, 1899.

No. 58.

[February 22, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, February 13, 1899.

Appeal against Judgment of Zanzibar Court in case of Charlesworth and others *v.* the Secretary of State.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the accompanying papers, which relate to the question of lodging an appeal on behalf of the Secretary of State for Foreign Affairs against the recent Judgment of Her Majesty's Court for Zanzibar (sitting as the Court of Appeal from the Court for East Africa), in the case of Charlesworth and others *v.* the Secretary of State for Foreign Affairs.

The circumstances in which your advice is now sought are briefly as follows:—

After Her Majesty's Government had declined to build a railway from Mombasa in the East Africa Protectorate to a point on Lake Victoria in the Uganda Protectorate, engineers and other persons were sent out to begin the work with as little delay as possible. The situation of the terminal station in the Island of Mombasa, and the direction of the line in its vicinity were quickly settled. It then became necessary to acquire the land required for the station and the line. Mombasa Island is within the dominions of the Sultan of Zanzibar, and it did not appear that any well-defined legal machinery existed in the Sultanate with regard to the acquisition of land for public or Government purposes. Certain persons were, by the action of the Protectorate Administration, formed into a Committee to inquire into the value of the land required.

The Committee did not bid fair to make any rapid progress, and, as the matter was urgent, the Indian Land Acquisition Act of 1894 (Document A) was applied under the powers given by "The Zanzibar Order in Council, 1884" (Document B).

Certain of the land-owners, among whom were Messrs. Charlesworth, Pilling, and Co., were dissatisfied both with the value assigned to the land required for the railway, and also with the mode in which the proceedings had been conducted under the Act, and earlier, under the Committee.

Messrs. Charlesworth and Co. ultimately commenced an action against the Secretary of State for Foreign Affairs in the Consular Court competent to hear the matter.

The Judgment of this Court will be found in Sir A. Hardinge's despatch No. 173 of the 7th August, 1897 (Document D).

Messrs. Charlesworth and Co. appealed against this Judgment, and the appeal was heard by Her Majesty's Court for Zanzibar, sitting as the Court of Appeal for cases heard in first instance in the East Africa Protectorate.

The text of the Judgment of the Zanzibar Court will be found in Sir A. Hardinge's despatch No. 382 of the 11th December, 1898 (Document E).

It must be added, with a view to giving the necessary explanations as to the several Orders in Council under which the successive stages of the case have been conducted, that, when the action was commenced, the mainland dominions of the Sultan of Zanzibar, of which as has been said above, Mombasa Island is a part, although administered by officers acting under the orders of Her Majesty's Government, was, as regards the British extra-territorial Courts, considered as a part of the Protectorate of Zanzibar; the Court in which the action was commenced was therefore held under the provisions of "The Zanzibar Order in Council, 1884" (Document B).

Under that Order, appeals from the Consular Court at Mombasa lay to the High Court at Bombay; but, before the appeal could be heard by that latter Court, "The East Africa Order in Council, 1897" (Document C), had come into operation, and the Court at Bombay considered that it had no longer jurisdiction in the matter.

The appeal was therefore heard by Her Majesty's Court for Zanzibar, under the East Africa Order in Council of 1897.

Lord Salisbury consulted the Lords Commissioners of Her Majesty's Treasury as to whether an appeal should be lodged against the Judgment of the Court at Zanzibar and the letter to the Treasury, and the reply received from that Department are inclosed (Documents F and G).

In accordance with the suggestion made by the Lords of the Treasury, Lord

Salisbury directs me to inquire whether, in your opinion, having regard to all the circumstances of the case, an appeal, on behalf of the Secretary of State to the Judicial Committee of the Privy Council is necessary or desirable.

His Lordship would also be glad to be favoured with any observations which the perusal of the papers may suggest to you, and which would be of use to his Lordship or to the Lords of the Treasury in connection with the case.

Finally, I have the honour to call your especial attention to the last paragraph of the letter from the Treasury, where it is suggested that, should you wish for the assistance of an expert in Indian law in advising on the case, the Attorney-General will no doubt nominate a qualified person for the purpose.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Indian Lands Acquisition Act, 1894.		
(B.)	Zanzibar Order in Council, 1884 (Confinential 5029*).		
(C.)	East Africa Order in Council, 1897 (Confidential 6933*).		
(D.)	Sir A. Hardinge	(No. 173)	August 7, 1897.
(E.)	Ditto	(No. 382)	December 11, 1898.
(F.)	To Treasury		January 30, 1899.
(G.)	Treasury		February 3, ,,

Report.

We do not advise any appeal against the conclusion to which both Courts came, that the Award of the Collector cannot stand.

We advise an appeal against the decision of the Zanzibar Court, on appeal that the claimants were entitled to the value of the buildings. This decision rests on the assumption that the English law applies, which we think incorrect, and we are not satisfied that, even according to English law, the claimants would have been entitled, under the circumstances of this case, to have been awarded the value of the buildings.

We are hardly, at present, in a position to advise whether the amount given for the land (apart from buildings) should also be the subject of appeal. It is certainly very large as compared with what was given in the Court below, but the principle of assessing the value, as on the date of the Declaration of the 2nd November, appears to us to be correct.

We think this point should be considered, in consultation with an expert in Indian law, and need not be finally decided until all the documents have been remitted.

In the meantime, the necessary steps to appeal should be taken.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 22, 1899.

No. 59.

[May 16, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 3, 1899.

Mr. Rule's application for concession of all pearl fisheries on Zanzibar coasts.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the accompanying paper, marked (A), containing the bases of an application by Mr. Rule, a British subject, to the Government of the Sultan of Zanzibar for a concession of all the pearl or other shell fisheries round the coasts of His Highness' territories.

A letter from Mr. Rule, containing a chart of the coasts in question, is also inclosed, marked (B), and a paper, marked (C), containing Memoranda drawn up in this Office on the points raised by Mr. Rule's application.

The question is whether the grant of a monopoly such as that desired by Mr. Rule would constitute a breach either of the Treaty between Great Britain and Zanzibar of the 30th April, 1886, Paper (D), or of the Act of Berlin, Paper (E), both of which instruments forbid the grant of commercial monopolies.

In this connection, I am to refer you to the Report of the Law Officers of the Crown of the 27th September, 1890, Paper (F), which dealt with a somewhat similar case which arose in regard to the grant by the Liberian Government of a monopoly of the rubber trade in Liberia.

L.O.R. 1890 (Conf. 6113), p. 48.

I am to request that you will take the papers now submitted to you into your consideration, and favour Lord Salisbury with your opinion as to whether Mr. Rule's application can properly receive the support of Her Majesty's Government, or whether its grant by the Sultan of Zanzibar would constitute a breach of the engagements either of His Highness or of Her Majesty under the Anglo-Zanzibar Treaty of 1886 or the Act of Berlin, or both.

Lord Salisbury would be glad to be favoured at the same time with any observations of a general nature which you may have to offer on the papers herewith.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Mr. Rule (Inclosure)	March 16, 1899.
(B.)	Ditto	March 23, ,,
(C.)	Memoranda and Minutes.	
(D.)	Treaty, Great Britain and Zanzibar (Treaty 782) ..	April 30, 1886.
(E.)	Berlin Act (Treaty 757)	February 26, 1885.
(F.)	Law Officers (Confidential 6113, p. 48)	September 27, 1890.

Report.

We do not think the present case is governed by the Report of the Law Officers of the 27th September, 1890. That Report related to the Anglo-Liberian Treaty of the 21st November, 1848, which, by Article II, stipulated that British subjects should be allowed to buy and sell without being restrained by any monopoly, contract, or exclusive privilege of sale or purchase. The Law Officers reported that a grant of the sole right of collecting india-rubber from the Government lands and forests was not an infringement of this Article, although a grant of the sole right of exporting all india-rubber grown in Liberia was an infringement.

In the present case, by Article V of the Berlin Act, there is not to be granted "a monopoly or favour of any kind in matters of trade."

This would not prevent a lease of any definite bank or banks for the purposes of pearl fishery, but what Mr. Rule applies for is, in substance, the right to exclude all others from pearl fishing within the waters under the control of the Zanzibar Government while he is making the explorations necessary to ascertain the banks on which the industry may be properly carried on.

This appears to us to be a monopoly in the matter of trade within the meaning of the Berlin Act. It is true that it does not directly refer to an exclusive privilege of buying and selling, but it relates to the right to procure and prepare for trade a certain article of commerce.

We, therefore, think that the proposed concession would be contrary to the terms of the Berlin Act, and we recommend that it should not be granted on the basis at present suggested.

The attitude taken up by Her Majesty's Government with regard to the pearl fisheries at Samoa supplies an additional reason for this course.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 16, 1899.

1899

No. 60.

[September 7, 1899.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 11, 1899.

Gentlemen,

French Protection in Zanzibar.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the paper noted in the margin which relates to the serious inconvenience occasioned to the Administration of the Sultanate of Zanzibar by the grant of foreign protection to natives.*

The International Agreements which govern such matters are, in the first place, the Treaty between France and Muscat of the 17th November, 1844, which regulates the relations of France to Zanzibar, and, in the second, the other Treaties to the benefit of which France is entitled under the operation of the most-favoured-nation clause in her own Treaty.

The Treaty between France and Muscat contains the following Articles:—

"ARTICLE III.

"Les Français auront la faculté d'acheter, de vendre, ou de prendre à bail des terres, maisons, magasins, dans les États de Son Altesse le Sultan de Mascate. Nul ne pourra, sous aucun prétexte, pénétrer dans les maisons, magasins, et autres propriétés, possédés ou occupés par des Français ou par des personnes au service des Français, ni les visiter sans le consentement de l'occupant, à moins que ce ne soit avec l'intervention du Consul de France.

"Les Français ne pourront, sous aucun prétexte, être retenus contre leur volonté dans les États du Sultan de Mascate.

"ARTICLE IV.

"Les sujets de Son Altesse le Sultan de Mascate qui seraient au service des Français jouiront de la même protection que les Français eux-mêmes; mais si les sujets de Son Altesse sont convaincus de quelque crime ou infraction punissable par la loi, ils seront congédiés par les Français au service desquels ils se trouvent, et livrés aux autorités locales."

It would thus appear that the only native persons who can, in virtue of the provisions of the Treaty regulating the relations between France and Zanzibar, claim French protection or fly the French flag on their dhows are—

1. Natives of French Protectorates, who were there resident, or at least, were not resident in Zanzibar, when the said Protectorates were established, and
2. The *bonâ fide* servants of French citizens and protégés; the local authority to be judge of what constitutes *bonâ fide* service.

The Treaty would seem to exclude, therefore, from French protection all persons not born in French possessions or dependencies, though they may have acquired land there and have been inscribed on the French Consular Register at Zanzibar or Muscat.

The Officers of the Administration of the Sultanate would consequently have a right to decline to recognize exterritorial privileges to native vessels flying the French flag until satisfied that the owner is a *bonâ fide* citizen or protégé of France. It would not be necessary, in order to act on this principle, to board or search the vessel under the French flag; but in any case in which the Administration had reason to believe that the flag was being improperly hoisted, the master, when he came on shore, would be called upon to produce his papers and prove that he was a French protégé in the sense above indicated. If he refused to produce his papers he would be arrested.

In such matters it would be proper for the officers of the Administration to be guided by the principles of the Ottoman Nationality Law, which has been accepted in Turkey by the foreign Powers, and may, therefore, be assumed to contain nothing contrary to the due exercise of the privileges of exterritoriality. Under that law a native of the Ottoman Empire is presumed to be an Ottoman subject until he has proved that he is not one according to the law in question, the *onus probandi* lying, not on the territorial authority, but on the person claiming the privilege of exemption from its jurisdiction.

It will be observed in reference to the French Treaty with Muscat (and, indeed, with reference to the Zanzibar Treaties generally), that it speaks only of French citizens or persons in the service of French citizens; the Administration of the Sultanate may therefore, it is presumed refuse, as the Porte has always done, to recognize Tunisians and natives of Comoro as entitled to the benefits of the Treaty. All the more might those benefits be refused to persons who are not even natives of French Protectorates, notwithstanding that they may at one time or other have been improperly allowed the status of French protégés.

An instruction to this effect was sent to Her Majesty's Agent and Consul-General in December last.

In view, however, of the fact that a large proportion of the cases which have been brought to Lord Salisbury's attention have concerned the French Consulate at Zanzibar, his Lordship is disposed to think that it will be advisable to inform the French Government of the nature of the instructions to Sir Arthur Hardinge and of the circumstances which led to their issue, and he has accordingly caused the inclosed draft to Her Majesty's Ambassador at Paris to be prepared.

I am to request that you will take it into your consideration and that you will favour Lord Salisbury with your opinion thereon and with any general observations which you may have to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

As altered in red ink* and initialled by us, we approve of the draft. We suggest these alterations because we think that the mere test of birth in a French Protectorate, or a territory which has afterwards become such, cannot be insisted on; a native not born there might become a *bonâ fide* subject of such Protectorate.

But for this purpose the possession of property there and the issue of a Consular certificate are clearly insufficient.

Moreover, no subject of Zanzibar can be withdrawn from the jurisdiction of the Zanzibar Courts except with the consent of the authorities of Zanzibar.

The alterations which we suggest are intended to embody these principles.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 7, 1899.

Annex.

Draft of Despatch to Mr. Herbert.

(No. . Africa.)

Sir,
Foreign Office, September , 1899.

BEFORE the Sultanate of Zanzibar came under the Protectorate of Her Majesty in 1890 the protection by foreign Powers of individuals living in His Highness' dominions was exercised without reference to any very strict code of rules. To this state of things must no doubt be attributed the relatively large number of cases in which, since the establishment of the British Protectorate, particular persons have received or have claimed the protection of European Powers in circumstances which did not appear to Her Majesty's Government to warrant the withdrawal of such persons from the Sultan's jurisdiction. Many of these cases have formed the subject of correspondence between Her Majesty's Government and foreign Governments and between their Representatives in Zanzibar. Some cases have been settled by compromise and not always in accordance with the strict interpretation of the rules which should have governed them; others are still pending or have settled themselves by efflux of time.

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* Draft despatch to Sir E. Monson.

* Printed in erased type and in italics.

It is necessary, however, that the protection of individuals by foreign Powers should be strictly limited to those cases where it can be undoubtedly justified by the Treaties existing between Zanzibar and the foreign Powers concerned.

Her Majesty's Government, after giving careful consideration of the question, have instructed Her Majesty's Agent and Consul-General at Zanzibar as to the rules and principles which must in future guide the Sultan's Government in deciding whether, in any given case, the right of foreign protection is properly exercised. So many of the cases forming the subject of correspondence have concerned the French Consulate, that I think it right to inform the French Government of the circumstances which have led to the above-mentioned instructions being sent to Zanzibar and of the nature of the instructions themselves.

As regards France the attention of Her Majesty's Agent and Consul-General has, in the first place, been drawn to the serious inconvenience occasioned to the Sultan's Administration by the grant of French protection to natives who do not appear to be entitled to it, either by the French Treaty with Muscat of the 17th November, 1844, or by the other Treaties with Zanzibar, to the benefit of which France is entitled under the operation of the most-favoured-nation clause in her own Treaty.

The Treaty between France and Muscat contains the following Articles:—

"ARTICLE III.

"Les Français auront la faculté d'acheter, de vendre, ou de prendre à bail, des terres maisons, magasins, dans les États de Son Altesse le Sultan de Mascate. Nul ne pourra sous aucun prétexte, pénétrer dans les maisons, magasins, et autres propriétés, possédés ou occupés par des Français ou par des personnes au service des Français, ni les visiter sans le consentement de l'occupant, à moins que ce ne soit avec l'intervention du Consul de France.

"Les Français ne pourront, sous aucun prétexte, être retenus contre leur volonté dans les États du Sultan de Mascate.

"ARTICLE IV.

"Les sujets de Son Altesse le Sultan de Mascate qui seraient au service des Français jouiront de la même protection que les Français eux-mêmes; mais si les sujets de Son Altesse sont convaincus de quelque crime ou infraction punissable par la loi, ils seront congédiés par les Français au service desquels ils se trouvent, et livrés aux autorités locales."

~~It thus appears that the only native persons who can, in virtue of the provisions of the Treaty regulating the relations between France and Zanzibar, claim French protection or fly the French flag on their dhows are~~ :—

~~1. Natives of French Protectorates, therein resident, or, at least, not resident in Zanzibar, when the said Protectorates were established~~ ; ~~and~~

~~2. The bonâ fide servants of French citizens and protégés~~ ("~~au service des Français~~").

~~The Treaty excludes therefore from French protection all persons not born in French possessions or dependencies, though they may have acquired land there, and have been inscribed on the French Consular register at Zanzibar or Muscat.~~

The Treaty in its terms applies only to Frenchmen ("Français"), and their servants.

By usage the benefit of its provisions has been extended to natives of French Protectorates.

But it is to be observed that subjects of Zanzibar cannot be withdrawn from the jurisdiction of the Sultan's Courts without his consent, and the mere recognition by the French authorities that such persons are subjects of French Protectorates is for this purpose quite inoperative.

Moreover, such persons, in order to be entitled to the benefit of the Treaty, must be in fact bonâ fide *subjects of French Protectorates, and the circumstance that they cannot be regarded as sufficient for this purpose.* The officers of the Administration of the Sultanate have therefore a right to decline to recognize exterritorial privileges to native vessels flying the French flag until satisfied that the owner is a *bonâ fide* citizen or protégé of France ("Français").

In such matters it would be proper for the officers of the Administration to be guided by ~~the~~ principles *similar to those* of the Ottoman Nationality Law which has been accepted in Turkey by the foreign Powers, and may, therefore, be assumed to contain nothing contrary to the due exercise of the privileges of exterritoriality. ~~Under that Law a native of the Ottoman Empire is presumed to be an Ottoman subject until he has proved that he is not one according to the Law in question, t~~*The onus probandi* ~~lying~~ *lies* not on the territorial authority, but on the person claiming the privilege of exemption from its jurisdiction, *and any person claiming exemption must establish his right to such exemption by sufficient evidence.*

~~It will be observed in reference to the French Treaty with Muscat~~ (~~and, indeed, with reference to the Zanzibar Treaties generally~~) ~~that it speaks only of French citizens~~ ("~~Français~~") ~~or persons in the service of French citizens~~ ("~~au service des Français~~")~~, the Administration of the Sultanate may therefore refuse, as the Porte has always done, to recognize Tunisians and natives of Comoro as entitled to the benefits of the Treaty. All the more may those~~ *The* benefits *of the Zanzibar Treaties cannot be extended* ~~be refused~~ to persons who are not ~~even~~ *bonâ fide* natives of French Protectorates, notwithstanding that they may at one time or other have been allowed the status of French protégés without a sufficiently careful consideration of their right to that status.

I have to request you to communicate a copy of this despatch to the French Minister for Foreign Affairs.

R. E. W.
R. B. F.

No. 61.

[September 18, 1899.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 26, 1899.

Sentence on W. Reich at Mombasa.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you a translation of a note from the German Ambassador at this Court, in which he asks, on behalf of his Government, that the sentence pronounced on the German subject W. Reich, in 1898, by the Sub-Commissioner's Court at Mombasa, should be quashed.

The case of Reich is one of those on which you reported on the 22nd February last, and Lord Salisbury proposes to reply to Count Hatzfeldt as set forth in the inclosed draft, which is founded on the views then expressed by you as to the Brussels Act overriding the right of exterritoriality in the case of offences against its provisions in respect of fire-arms in the zone to which it applies.

Before sending the note, however, his Lordship would be glad to know whether it correctly expresses your views, and, if not, he would request that you would make such alterations in the draft as you may think advisable.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Count Hatzfeldt	August 8, 1899.
To Count Hatzfeldt	

Report.

As altered by us in red ink* we approve of the draft despatch, herewith, initialled by us.

The question of waiver of the Treaty right to be tried in the German Court does not appear to us to depend on English or German municipal law, and, for this reason, we have altered the paragraph relating to this matter.

RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
September 18, 1899.

Annex.

Draft of Note to Count Hatzfeldt.

Your Excellency, *Foreign Office, September* , 1899.

I HAVE carefully considered the note which your Excellency did me the honour to address to me on the 8th ultimo, relating to the case of Wilhelm Reich, and stating the grounds on which the Imperial German Government request that the judgment pronounced against him by the Sub-Commissioner's Court at Mombasa may be quashed.

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* Erased type in print.

1899

Your Excelleny argues that according to the statement made by Reich to the Acting German Consul at Zanzibar, he had not, as was asserted by Sir A. Hardinge, submitted to the jurisdiction of the Court which tried him; but that even if he had done so the point is of no importance, as a German has no right to recognize as competent in criminal matters a Court which in itself is not competent. I am not aware on what principle of ~~German~~ law this argument is founded, ~~but there is nothing in British law which would support it,~~ and Her Majesty's Government must, as at present advised, reserve their opinion in regard to it.

The main contention of your Excellency's note is, however, that as the seizure of arms in consequence of which Reich was sentenced took place in the territory of the Sultan of Zanzibar, the case comes under the Articles of the Treaty between Germany and Zanzibar, which provide that the dwelling of a German in Zanzibar territory shall not be forcibly entered without the consent of the German Consul at Zanzibar, and that Germans shall be tried in the German Consular Court.

Your Excellency further argues that this Treaty right is not overridden, as claimed by Sir A. Hardinge, by the provisions of the Brussels Act relating to the method of dealing with fire-arms imported into the zone of prohibition established by the Act.

There is no doubt as to Kilindini, where the seizure was effected, being within the mainland dominions of the Sultan of Zanzibar, and therefore, generally speaking, within the application of the Treaties between His Highness and foreign Powers. Her Majesty's Government have some reason to complain that the German Government still refuse to recognize the jurisdiction of the British Tribunals which have been established in East Africa since 1897, and that the request for such recognition which was made in Sir F. Lascelles' note to the German Minister for Foreign Affairs of the 2nd February last is still unanswered. They admit, however, that in ordinary questions of jurisdiction the Treaty between Zanzibar and Germany still holds good. But they cannot agree with the view put forward in your Excellency's note that the General Act of the Brussels Conference does not override that Treaty in matters relating to the application of the fire-arms provisions of the Act. Article XCVI of that Act runs as follows:—

"The present General Act repeals all contrary stipulations of Conventions previously concluded between the Signatory Powers." Article X says that "the Governments shall take all measures they may deem necessary to insure as complete a fulfilment as possible of the provisions respecting the importation, sale, and transport of fire-arms and ammunition," laid down in the Act, and it is quite clear that in practice the provisions of the Act in regard to fire-arms would become a dead letter unless all persons who offend against them, of whatever nationality, are amenable to the Courts of the State within whose territory the offence has been committed. It is obvious that it is by that State that the prohibition against importation must be enforced, and this applies also to the enforcement of penalties for unlawful possession. Her Majesty's Government hold, therefore, that the General Act of the Brussels Conference superseded the right of exterritoriality in the case of offences against its provisions in respect of fire-arms, and that Reich was properly tried, and I regret to be unable to accede to your Excellency's request for the quashing of his conviction.

R. E. W.
R. B. F.

No. 62.

[October 13, 1899.]

Foreign Office to Law Officers of the Crown.

Gentlemen, *Foreign Office, September* 20, 1899.

Claim of Abu-bekr-bin-Abdullah to exemption from Zanzibar jurisdiction.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, which relate to the claim of Abu-bekr-bin-Abdullah to exemption from the jurisdiction of the Sultan of Zanzibar.

This case formed the subject of the first part of your Report of the 22nd February last, which will be found among the inclosed papers (Document E).

On receipt of that Report, instructions in accordance with its terms were addressed to Her Majesty's Commissioner and Consul-General at Zanzibar (Document F). A note has now been received from the German Ambassador at this Court (Document G), supporting Abu-bekr-bin-Abdullah's claim, on the ground that when Chole was transferred to Germany he had his residence and his domicil in that island.

I also have the honour to inclose your Report of the 7th instant (Document I) on French protection at Zanzibar, as it appears to his Lordship that that Report and the draft to Sir E. Monson, as you have amended it, contain statements of principle which should be made use of in replying to Count Hatzfeldt's present note.

The question of domicil was not specially brought to your notice when the papers in Abu-bekr-bin-Abdullah's case were referred to you on the previous occasion, and it is possible that you may be of opinion that the domicil of Abu-bekr-bin-Abdullah at the time of the transfer of the southern portion of the Sultan's mainland dominions to Germany may be the proper criterion of his nationality and allegiance after the transfer. The place of his birth cannot, in the present case, be taken as an element in the case, as he was born at Mozambique, outside the Sultan's dominions; but the domicil of his parents at the time of his birth, or the place of their birth, might conceivably be important; the papers contain no information on this point. Should you be of opinion that the question of nationality and allegiance is determined in this case by domicil, I am to suggest that it may be proper to limit the substantial part of the reply to Count Hatzfeldt to the last two paragraphs of the inclosed draft.

It is thought that the question of Abu-bekr-bin-Abdullah's residence at the time of the transfer of German East Africa is unimportant as regards his nationality or allegiance.

The Agreement for the cession of German East Africa by Zanzibar contained no provision settling what persons should cease to be subjects of His Highness.

I have, therefore, the honour, by direction of the Secretary of State, to request you to take the inclosed papers into your consideration, and to favour his Lordship with your opinion—

1. As to whether the proposed draft meets with your concurrence, and, if not, as to what alterations should be made in it; and

2. As to whether, if the draft meets generally with your concurrence, it can be strengthened by an indication of the grounds on which the Sultan's right to jurisdiction over Abu-bekr is founded.

Finally, I have the honour to ask you to favour his Lordship with any general observations which may be of use in dealing with the case.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

(A.)	Sir A. Hardinge	(No. 19. Treaty)	November	9, 1898.
(B.)	Ditto	(No. 20. Treaty)	November	17, „
(C.)	Mr. Davidson		January	20, 1899.
(D.)	Sir A. Hardinge	(No. 318)	October	12, 1898.
	(The above papers were sent in the reference of February 1, 1899.)			
(E.)	Law Officers (with reference of February 1, 1899)		February	22. 1899.
(F.)	To Sir A. Hardinge	(No. 102)	March	24, „
(G.)	Count Hatzfeldt		August	22, „
(H.)	To Law Officers		August	11. „
(I.)	Law Officers (together with the amended draft contained in it)		September	7, „

Report.

We think that the draft despatch as altered and initialled by us may properly be sent.

There is a great absence of authority on the question what inhabitants of a ceded territory pass to the allegiance of the Power to whom the cession is made. The subject is discussed by Hall (I. L., 4th edition, p. 593), and by Calvo (5th edition, Article 638 *et seq.*). We are disposed to think that domicil in the case of subjects of the ceding Power would be a factor of great importance, but it seems unnecessary to express any view in the despatch on this point.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
October 13, 1899.

1899

Annex.

Draft of Letter from the Marquess of Salisbury to Count Hatzfeldt.

Your Excellency, *Foreign Office, October* , 1899.

HER Majesty's Government have had under their consideration the question of the right of Abu-bekr-bin-Abdullah to claim, when in the Zanzibar dominions, the benefits in regard to extraterritorialty conferred by the Treaty between the German Empire and Zanzibar. The circumstances of the case, as reported to Her Majesty's Government from Zanzibar, appear to be as follows:—

Abu-bekr-bin-Abdullah was born at Mozambique, but has lived the greater part of his life in Zanzibar; he has, however, from time to time, both before and after the cession of the German coast, visited Chole, where one of his two wives resides, the other living at Zanzibar. It was during one of these visits to Chole in 1891 that the German flag was formally hoisted there in place of that of the Sultan. His family came originally from Hadramaut, and has for several generations owned land both at Zanzibar and at Chole; he had always been considered a subject of the Sultan.

Your Excellency's note states that the German Treaty with Zanzibar applies to German East Africa, and that Abu-bekr-bin-Abdullah was at the time of the cession of that territory a resident at Chole, and had his actual domicil in that island. Your Excellency requests, therefore, that Abu-bekr-bin-Abdullah and all other subjects of the Sultan who, at the time of the transfer to Germany of the southern portion of the Zanzibar mainland territories, had their actual residence and domicil in those territories, shall be considered as having ceased to be subjects of the Sultan, even though they had at the same time a residence in those territories which remained under His Highness' sovereignty.

~~The circumstances stated by your Excellency may entitle Abu-bin-bekr to the right, according to German law, to be treated as a German subject~~; ~~but the Imperial German Government cannot by their mere act transfer the allegiance of Zanzibaris to the German Government, although it can confer upon them the privileges of being treated as German subjects in German possessions.~~

Her Majesty's Government are not aware of any facts which support the view that Abu-bekr-bin-Abdullah had his domicil in Chole.

Zanzibar appears to have been his principal place of residence, and so far as Her Majesty's Government are aware, there is no ground for supposing that he was domiciled elsewhere.

There is nothing to show that Abu-bekr was so identified with Chole that his allegiance was transferred by the cession from the Sultan to the German Government, and until this is established he must be regarded in Zanzibar as a subject of the Sultan.

The fact that he happened to be in Chole when the German flag was hoisted cannot be regarded as in any way conclusive, and it may be quite immaterial.

Even assuming that he is recognized by German law as a German subject, such recognition is quite inoperative to divest him of his allegiance to the Sultan of Zanzibar.

Under these circumstances, it does not appear to Her Majesty's Government to be necessary to discuss the question whether, as contended by your Excellency, domicile in a ceded territory would constitute such an identification as would effect a transfer of allegiance on cession of the territory.

So far as Her Majesty's Government can learn from the despatches received on this case from Zanzibar, and so far as they can learn from your Excellency's note, nothing has occurred to absolve Abu-bekr-bin-Abdullah from his allegiance to the Sultan, or to exempt him from His Highness' jurisdiction when in Zanzibar territory.

It appears to Her Majesty's Government that the mere recognition by the German authorities that a person is under German protection cannot be considered sufficient to establish the point in a Court of Justice. In such matters it would be proper for the officers of the Sultan's Administration to be guided by principles similar to those which have been accepted in Turkey by the foreign Powers, and which may therefore be assumed to contain nothing contrary to the due exercise of the privileges of extra-territorialty. The *onus probandi* lies, not on the territorial authority, but on the person making the claim. Any person claiming the privilege of exemption from its jurisdiction must establish his right to such exemption by sufficient evidence.

It ~~appears~~ *would seem* that Abu-bekr-bin-Abdullah neglected to produce such evidence, or was unable to do so.

R. E. W.
R. B. F.

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1900

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CONFIDENTIAL.

(7516.)

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BY THE

LAW OFFICERS OF THE CROWN, &c.

1900.

1900

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CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.: 1900.

ABYSSINIA.

No. 1.

[August 31, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, August 15, 1900.

Nature of Railway Concession to M. Ilg.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list relative to an Agreement signed on the 9th March, 1897, by which the Emperor Menelek of Abyssinia gave permission to M. Ilg, a Swiss engineer, who is His Majesty's Principal Adviser, to form a Company for the construction of a railway from Jibuti, a port on the Gulf of Aden in French Somaliland, to Harrar in Abyssinian territory, and thence to Antoto and the White Nile.

The position of these places will be seen from the accompanying map of Africa (Paper A).

The French text of the Agreement by which the Concession is granted is inclosed in despatch No. 498 of the 22nd July, 1897, from Sir E. Monson, Her Majesty's Ambassador at Paris (Paper B).

M. Ilg made over the Concession to a French Company, which is now engaged in constructing the railway.

It is feared that the railway, when completed, will have a very injurious effect on the British Somaliland Protectorate which adjoins French Somaliland, as the trade between the ports of the British Protectorate and Abyssinia is likely to be diverted to Jibuti. It has been suggested that, in the interest of the trade of the British Protectorate, it would be advisable to construct a railway from the British port of Berbera to Harrar, and the question has arisen whether the terms of the Concession granted to M. Ilg would prevent King Menelek from sanctioning the construction of such a line.

Article 3 of the French text contains the following stipulation:—

"En conséquence, il est convenu qu'aucune autre Compagnie de Chemin de Fer ne sera autorisée à construire de lignes concurrentes partant soit des bords de l'Océan Indien, soit des bords de la Mer Rouge jusqu'en Éthiopie, soit de l'Éthiopie jusqu'au Nil Blanc."

According to this version of the Agreement the Emperor Menelek would appear to have bound himself not to grant Concessions for any competing lines from the shores of the Indian Ocean or of the Red Sea into Abyssinia or from Abyssinia to the White Nile.

It will be seen, however, from the accompanying despatches from Captain Harrington, Her Majesty's Agent in Abyssinia, No. 40, of the 30th May, and No. 48, of the 25th June of this year (Papers D and E), that the Emperor Menelek himself does not take this view of the obligation contracted by him

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His Majesty contends that the word in the original Amharic text of the Concession, which is represented in the French translation by the word "concurrentes," has been wrongly translated, and that the correct English translation is "near," and he denies that the Agreement was intended to confer, or did, as a matter of fact, confer, a monopoly of the construction of railways in Abyssinia.

A literal English translation of the Amharic text is inclosed in Captain Harrington's despatch No. 40 (Paper D).

I am to request that you will be so good as to take the papers transmitted herewith into your consideration, and furnish Lord Salisbury with your opinion as to whether the Agreement of the 9th March, 1897, conferred on the Company to be formed under it a monopoly of railway construction in Abyssinia.

His Lordship would also be glad to be favoured with any general observations which you may have to make on the question of the interpretation and bearing of the Agreement.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Bartholomew's Map of Africa.			
(B.)	Sir E. Monson	(No. 498)	July	22, 1897.
(C.)	Ditto	(No. 500)	July	23, ,,
(D.)	Captain Harrington	(No. 40)	May	30, 1900.
(E.)	Ditto	(No. 48)	June	25, ,,
(F.)	Treaty between Great Britain and Ethiopia		May	14, 1897.

Report.

We are of opinion that the effect of the Concession granted to M. Ilg is to debar the Emperor from granting any Concession for the construction of a railway in Abyssinia which would be a competing line with that authorized by M. Ilg's Concession. The question whether any proposed railway would so compete would be a question of fact, but it would appear clear that any line running from the coast of British Somaliland to Harrar would be both "competing" and "near."

(Signed) R. B. FINLAY.
E. CARSON.

Royal Courts of Justice,
August 31, 1900.

AFRICA.

No. 2.

[*Received* January 4, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 28, 1899.

Cyanide of Potassium as contraband of war.

I HAVE the honour, by direction of the Marquess of Salisbury, to consult you in regard to the possible treatment of cyanide of potassium as contraband of war in the peculiar circumstances now existing in connection with the hostilities with the South African Republic.

Cyanide of potassium is not included in the list of articles contraband of war, which is given in section 62 of the "Manual of Naval Prize Law," which was prepared by Professor T. E. Holland, and issued by authority of the Lords Commissioners of the Admiralty in 1888, and of which it is understood that you have a copy. So far as is known in this Department, cyanide of potassium is not used either directly or indirectly in the manufacture of explosives. It is largely used, however, under recently patented processes, in the extraction of gold from the matrix. The Government of the South African Republic have taken over the working of the gold mines in its territory, and require cyanide of potassium for extracting gold, which will, presumably, be utilized, when obtained, for the purpose of purchasing warlike stores.

I am, therefore, to request that you will favour Lord Salisbury with your opinion whether, in these very peculiar and special circumstances, cyanide of potassium can properly be treated as contraband of war.

His Lordship will be glad at the same time to be favoured with any general observations which you may have to offer on the subject.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

In our opinion, the point raised is one of great difficulty, and we think it extremely doubtful whether a Prize Court would hold cyanide of potassium to be contraband of war. Subject, however, to the conditions subsequently stated, we think that, in the very special circumstances of this case, it may be so treated. Money intended for the purposes of war may be treated as contraband. The cyanide is used to produce gold for the purposes of the war, and is imported by the Government of the enemy for use in this way. It is stated that the gold so produced will be utilized for the purpose of purchasing warlike stores. On principle it seems to us, under these circumstances, that the cyanide may be put in the same category as money.

We may add that, in the case of cyanide, or other substances *ancipitis usûs*, Her Majesty's Government, instead of forfeiting them, should offer to take them over at a fair price, as is often done.

We should point out that it would, of course, be necessary to establish by reasonable inference that the particular consignment of cyanide is imported with the view to the gold obtained by it being used for warlike purposes; it is not enough that it is capable of being so used.

We think that with reference to this and other articles *ancipitis usûs* which it is proposed to treat as contraband, a Proclamation would be desirable in which all articles of contraband, absolutely or conditionally, should be specified, and a statement made of the fact that those of the latter class will be regarded as contraband only if intended to be used for warlike purposes, and will be subject to pre-emption.

It is only in very strong cases, if at all, that confiscation of the vessel should be pressed for, in the case of these latter articles.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January , 1900.

No. 3.

[January 4, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 23, 1899.

Claims for losses through mutiny of Soudanese in Uganda.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list, which relate to the claims made by private individuals or Societies for compensation for losses which they suffered owing to the mutiny in 1897–98 of the Soudanese soldiers in the pay of the Uganda Protectorate, and owing to the military and other operations undertaken by Her Majesty's Government to suppress that mutiny.

An account of the mutiny and of its suppression will be found in the

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accompanying Report on the subject, which has been laid before Parliament, and which appears to show that all possible steps were taken to suppress the mutiny as quickly as the peculiar circumstances of Uganda allowed, and that no evidence of wanton or avoidable destruction of property by troops or other persons who were under the control of Her Majesty's Government could be produced.

Among the papers will be found a collection of Law Officers' Reports (Document E), dealing with the question of the liability of Governments to compensate individuals in respect of losses incurred during foreign invasion, civil war, insurrection, riot and mutiny.

You will also find a Memorandum (Document F) which is intended rather to serve as an index to these Reports than to give an absolutely accurate précis in each case of the principles of law on which they are severally founded. The Memorandum also contains a short reference to certain recent and instructive precedents not dealt with in the Reports.

Many of the cases treated in the inclosed collection of Reports and Memorandum are not exactly similar to that now referred to you; but Lord Salisbury thinks it better not to restrict the information placed before you to the few exact precedents which might be found, but to give details with regard to cognate cases, so as to furnish a comprehensive view of the whole subject. Such a course appears to be especially useful with regard to the case now under review, since it is one to which precisely apposite precedents cannot readily be quoted, but which, nevertheless, appears to hinge on the cardinal principle that responsibility cannot properly attach to a Government in respect of acts which it was powerless to prevent or control by the exercise of reasonable and ordinary care.

I have the honour to request you to take the inclosed papers into your consideration, and to favour Lord Salisbury with your opinion as to whether any, and if so what, amount of compensation is due by Her Majesty's Government in respect of all or any, and if so which, of the claims severally set out—

1. In Mr. Berkeley's despatch of the 27th July last;
2. In his letter of the following day; and
3. In the letters of the 20th October and the 8th instant from the Church Missionary Society.

I am at the same time to request you to favour his Lordship with any observations which you may wish to make on the papers generally.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Mr. Berkeley	July 27, 1899.
(B.)	Ditto	July 28, „
(C.)	Church Missionary Society	October 20, „
(D.)	Ditto	November 8, „
(E.)	Law Officers' Reports.	
(F.)	Memorandum.	
(G.)	Report on Uganda Mutiny.	

Report.

No claim is recognized by public law for damage done by mutineers or insurgents if the Government or its Representatives have not been to blame in conducing to the damage by negligence or misconduct on the part of Government officials or servants.

Messrs. Smith, Mackenzie, and Co.'s claims for property carried off or destroyed by the mutineers are therefore not recognizable from a legal point of view.

As regards the services of any employés taken over by the Government during the mutiny, Messrs. Smith, Mackenzie, and Co., are entitled to be paid the fair value of such services, just as in the case of property taken or used by the Government. Of course, if remuneration has been paid to the employés themselves, it is not payable over again to Messrs. Smith, Mackenzie, and Co.

If it could be established that any loss of profits was directly due to the withdrawal of the employés commandeered by Government, we think this would form a fair head of claim. But a claim of this kind must be entertained with caution: the facts want careful scrutiny by the light of local experience, and in view of possible interruption to business by the mutiny itself apart from the withdrawal of employés. Subject to these observations, we do not think that claim No. 7 is legally objectionable in principle.

2. Mr. Gemmill's claim is not legally sustainable, as it appears to be wholly for damage done by the mutineers; and
3. The same observation applies to the claim of the Missionary Society.
4. We have not attempted to fix the amounts to be paid; this can only be done by some person who can investigate the matter on the spot, or at any rate with local knowledge.

We have dealt with these claims only from the point of view of public law. If any undertaking has been given to be answerable for all losses caused by the mutiny the cases assume quite a different aspect, and, subject to their verification in point of fact, all the claims should be settled.

We have not considered any reasons of policy which may render it expedient to meet such claims apart from legal considerations, but in the event of such a course being adopted, care should be taken in making any payments to avoid any admission of liability, and to prevent the cases being subsequently quoted as precedents.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 4, 1900.

No. 4.

[January 8, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, January 6, 1900.

Arrest of German Mail-steamer "Bundesrath" by H.M.S. "Magicienne."

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list relating to the case of the German mail-steamer "Bundesrath," which has been arrested by Her Majesty's ship "Magicienne," and taken into Durban for adjudication by the Prize Court on the ground that she was carrying contraband of war destined for the use of the enemy.

You will see from the papers that Her Majesty's Government are not in possession of the full details of the case, and that a complete search of the vessel not having yet taken place, there is at present little positive evidence before them as to the nature of the contraband of war which is alleged to have been on board.

I have the honour to request you to favour his Lordship with your advice as to the answer which should be returned to the note of the 4th instant from the German Ambassador at this Court, in which it is maintained that proceedings before a Prize Court are only justified in cases in which the presence of contraband of war is proved, and that, whatever may be on board the "Bundesrath," there can be no contraband of war, as there cannot be contraband of war in trade between neutral ports.

I am also to ask for any general observations which you may be able to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Law Officers	October 23, 1899.
Telegram from the Commander-in-chief at Cape Town	December 29, „
„ from the Governor of Natal	December 29, „
„ from the Commander-in-chief at Cape Town	December 31, „
Extract from the "Times." Letter from "S"	January 1, 1900.
Letter from Professor T. E. Holland	January 3, „
„ „ "Daily News." Views expressed by Professor Perel	January 4, „
Note from Count Hatzfeldt	January 4, „

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Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 6, 1900.

With reference to my letter of the 6th instant respecting the case of the German mail-steamer "Bundesrath," arrested on suspicion of carrying munitions of war, I have the honour, by direction of the Marquess of Salisbury, to transmit to you, for consideration with the papers already before you, the additional papers sent herewith respecting the case of the "Doelwijk."*

This case, which was decided by the Court at Rome, turned on the question whether munitions of war found on a vessel sailing between two neutral ports could be treated as contraband of war.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

As regards the "Bundesrath," we adhere to the view indicated in our answer to B (5) in our Report of the 26th October, 1899, viz., that contraband of war on board of a neutral vessel, which contraband was at the time of seizure consigned or intended to be delivered to an agent of the enemy at a neutral port, or was, in fact, destined for the enemy's country, is liable to seizure.

We do not consider that the passage cited from the Manual of Prize Law correctly states the law as applicable to such a case. It contains a direction which was in practice adequate with reference to such wars as have been waged by this country in the past, but is not correct if applied to the case which has now arisen of a war with a State the only access to which is through a neutral port, connected with it by a short line of railway.

The words "the destination of the vessel is conclusive as to the destination of the goods on board," quoted by Count Hatzfeldt in his letter of the 4th January, do not, in our opinion, correctly express the law.

No doubt where there is no evidence of another destination, and no suspicion as to the fact that the goods are going to a neutral consignee, the destination of the vessel is conclusive.

We think the law is correctly stated in paragraph 813 of Professor Bluntschli's "Codification of International Law" (second edition), and that the true question is one of fact, viz., whose at the time of seizure is the contraband, or what at the time of seizure is its true and *bonâ fide* destination.

If *bonâ fide* consigned to a neutral person at the neutral port the contraband cannot ordinarily be seized, even though it can be afterwards sold to the enemy, though even with regard to such cases questions of difficulty might arise which we do not desire to prejudge.

If at the time of seizure it is the property of, or destined for, the enemy or his agent, it is liable to seizure. This view is maintained and explained at length in Calvo's International Law, 1896 edition, vol. iv, sections 2761-2769, pp. 42-48, and in Wheaton-Dana's edition of 1866, sections 505 to 508 and notes.

The cases of the "Vrouw Houwina" in 1855 (Calvo, section 2767), where this view of the law was taken by the French Courts, and the case of the "Doelwijk" in 1896, where a similar decision was given by the Italian Courts, show the distinction between the two classes of cases.

We would particularly call attention to the passage in the Judgment of the Italian Court (at pp. 6353-54 of the "Gazzetta Ufficiale") which is based not merely on the Italian Code, but on general international law, and is in terms applicable to the present case. We believe that the same doctrine has been laid down by high authorities in Germany, but we have not yet had the opportunity of verifying this. Moreover, Her Majesty's Government declined to interfere, and, so far as we can gather, did not dissent from the view taken by the American Courts in the case of the "Springbok," and the Law Officers have consistently advised in this sense. (The "Springbok," 19th February, 1864; 16th May, 1864; 29th July, 1867; 21st July, 1868; 7th December, 1868; and 15th February, 1869; and the "Peterhoff," 12th April, 1864.)

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* Sir Clare Ford, No. 251, December 9; and ditto, No. 267, December 30, 1896.

This question of "neutral port" can hardly ever be raised with reference to cases in which at the time of seizure the contraband of war was the property of the enemy by virtue of consignment to him. In such cases contraband of war must be liable to seizure. Before the Declaration of Paris all enemy's goods were liable to seizure, though under the neutral flag. That Declaration gives exemption to goods not being contraband of war. Those which are contraband of war remain as before. Where the goods being of the nature of contraband are consigned to him or his agent, they are enemy's property, contraband of war on their way to the enemy, and must be subject to seizure.

If at the time of seizure the alleged contraband of war was neutral property, the question of "neutral port" becomes material only if it is the true and ultimate destination of the cargo as well as the ship.

We think a reply should be framed in answer to Count Hatzfeldt's letter of the 4th instant, pointing out the distinction above referred to, and stating that the "Bundesrath" was properly visited and taken into Durban on the ground that she is alleged to have been carrying contraband of war which was at the time of seizure destined for the enemy.

Care must be taken as to the language of this reply, because there is a passage in Earl Russell's despatch of the 23rd January, 1862, in connection with the case of the mail-ship "Trent" (see p. 221, Bernard, Neutrality, &c.), which states the proposition somewhat too broadly.

A reply to the effect above indicated should at once be sent to the Governor of Natal. Instructions should also be sent to press on the proceedings in the Prize Court, and to examine the ship's officers in accordance with the usual practice, and we think that the Governor of Natal should be informed fully by cable of the effect of this Report.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 8, 1900.

No. 5.

[January 8, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 6, 1900.

Detention of German Mail-steamer "General" at Aden.

WITH reference to my other letter of this day's date respecting the case of the German mail-steamer "Bundesrath," I am directed by the Marquess of Salisbury to transmit to you a note from the German Ambassador at this Court,* asking for the immediate release of the "General," a steamer of the same line of German mail-steamers as the "Bundesrath," and asking that explicit instructions may be issued to the Commanders of British ships in African waters to respect the Rules of international law, and to place no further impediments in the way of the trade of neutrals.

The only information as yet received by Her Majesty's Government respecting the case of the "General" is that she was detained at Aden on strong suspicion (of what offence is not stated), and is being searched (by whose orders is not at present known).

I have the honour to request you to favour his Lordship with your advice as to the answer which should be returned to this note, and also with any general observations which you may be able to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

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* Count Hatzfeldt, January 5, 1900.

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Report.

If the facts respecting the mail-steamer "General" are as stated in Count Hatzfeldt's letter of the 5th January, the action of the officials at Aden cannot possibly be supported.

The duty, and the only right of a belligerent visiting and searching a vessel which is suspected of carrying contraband, is to take her in for adjudication to a Prize Court.

The captors have no right to unload the cargo themselves; any further examination or interference with the cargo must be by order of the Court. This is expressly provided by section 16 of "The Naval Prize Act, 1864." We must point out that in the case of mail-steamers no action beyond visit and search of the usual character should be taken unless there is strong ground for believing that there is contraband of war on board, and if the ship's papers, manifest, and invoices of cargo are in order, and the search discloses no contraband, and there has been no conduct on the part of those on board the ship to justify detention, the vessel should not be detained.

The greatest caution should be exercised in stopping and taking in mail-steamers owing to the serious public interests involved, and the risk of heavy claims should the capture turn out to be without justification. (See Earl Russell's despatch in the Trent case of the 23rd January, 1862, cited Bernard, neutrality, &c., p. 221.)

Immediate inquiry should be made into the facts respecting the "General," and if they are as stated in Count Hatzfeldt's despatch the vessel should be immediately released, and an apology tendered, and compensation paid.

The telegram to the Admiralty of the 5th January, and the letter from the Admiralty of the 6th January, afford no ground for modifying these conclusions, but confirm them.

We would suggest that the instructions to search with "the utmost rigour," conveyed by telegram No. 60, are liable to be misunderstood.

British cruisers should be instructed to conduct the visit and search in the usual way, and with courtesy and forbearance, especially in the case of mail-steamers. It might facilitate an effective search if the cruisers immediately engaged on this work had the assistance on board of experienced custom-house searchers.

The vessel can be detained only if the search discloses adequate grounds of suspicion. She must then at once be brought before a Prize Court, which alone can authorize the removal of any part of the cargo.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 8, 1900.

Annex 1.

Admiralty to Foreign Office.

(Confidential.)

Admiralty, January 6, 1900.

Sir,

MY Lords Commissioners of the Admiralty having had under their consideration your letter of this day's date, requesting that certain particulars may be furnished in regard to the detention at Aden of the steam-ship "General," belonging to the German East African Company, on suspicion of conveying contraband of war to South Africa, desire me to transmit herewith, for the information of the Secretary of State, a copy of a telegram which has just been received from the Senior Naval Officer at Aden, from which it will be apparent that the ship was detained by the Captain of the "Marathon" on arrival at that port, that she was searched by the naval authorities, no contraband being found on board; and that from the fact of her cargo being in process of restowal, with the object of enabling her to resume her voyage as quickly as possible, it is evident that no proceedings had been commenced against her in the Prize Court.

With regard to the question as to the warrant or order under which the search was made, my Lords are not aware that any warrant is required in such cases.

The Captain of the "Marathon" no doubt conceived himself to be acting within his rights, as laid down in the chapter in the "Manual of Prize Law" on search and detention, and by the instructions issued to him by the Commander-in-chief on the East Indies Station in Admiralty telegram No. 60, copy inclosed, to search vessels with the utmost rigour.

I am, &c.
(*Pro* Secretary),
(Signed) C. I. THOMAS.

Annex 2.

Telegram from Aden, dated January 6, 1900.

BOARDED and detained steamer "General" on arrival. Commenced search for contraband next morning, and been informed by Resident various suspicious articles on board for Delagoa Bay. Arab stoker on board reported boxes of ammunition stowed in main-hold. Buried under reserve coal found several larger cases rifles, ammunition on board for Mauser, Männlicher and sporting rifles consigned to Mombasa. All on manifest and I believe *bonâ fide* as consigned. Wagon axles and chemicals are other suspected articles on manifest. Cargo food Delagoa Bay being at bottom have cleared away just sufficient cargo to satisfy myself. Heavy machinery and boilers are stowed away on top of coal. Have examined it by digging hole. Found nothing, am re-stowing cargo, shall get ship away as soon as possible. "Marathon."

Annex 3.

Telegram No. 60 *from Admiralty to Commander-in-chief on the East Indies Station, dated December* 23, 1899.

WITH reference to Admiralty telegram No. 58 the search for contraband of war in British and neutral vessels bound for South African ports is to be prosecuted with the utmost rigour in British territorial waters and on the high seas, and vessels found with contraband on board are to be taken into Aden for adjudication before the Prize Courts.

No. 6.

[January 15, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 8, 1900.

Gentlemen,

Detention of railway material consigned to the South African Republic.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers, noted on the accompanying list, which relate to consignments of railway material landed at East London and originally destined for the Netherlands South African and for the Ermelo Lines, both of which are in the South African Republic.

It is believed that the Ermelo Line is in process of construction. The Netherlands Railway runs from Komatipoort, the junction with the line from Delagoa Bay to Pretoria and Johannesburg.

The circumstances in which your advice is sought are briefly as follows:—

Soon after hostilities had been begun against Her Majesty by the South African Republic and the Orange Free State, the authorities of the Cape Colony detained goods found within their jurisdiction and destined for private persons, or corporations, in the enemy's territory.

A note of the 6th November last (Document A), from Baron van Goltstein, the Netherlands Minister at this Court, called attention to the material belonging to the Netherlands South African and to the Ermelo Railway Companies which was to be carried by the British ship "Zulu" from Amsterdam to Delagoa Bay. He understood that British ships had been prohibited from landing goods for South Africa anywhere except at British ports; but as French and German vessels were free to land their cargoes anywhere, he trusted that the "Zulu" would be allowed to land the railway material at Delagoa Bay, as originally intended.

Lord Salisbury's reply (9th November, Document B), to this communication was to the effect that intercourse between Her Majesty's dominions and the enemy's territory is unlawful during the war.

Baron van Goltstein then pointed out (11th November, Document C), that there was no question of intercourse with the enemy's territory and that the Netherlands Company was ready to consign its material to the British Consul at Lourenço Marques to be held by him for such period as Her Britannic Majesty's Government should object to it being sent on to the Transvaal.

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This arrangement was accepted by Her Majesty's Government, under certain additional conditions, by note of the 25th November last (Document D): the same note stated that the arrangement might also be extended to the material of the Ermelo Company, if that Company so wished.

The necessary instructions were at once telegraphed to the High Commissioner and to Her Majesty's Consul at Lourenço Marques, but only as far so regarded the property of the Netherlands Company.

Baron van Goltstein's note of the 2nd December (Document E) stated that the Ermelo Company likewise accepted the arrangement.

Her Majesty's Government shortly afterwards learnt (telegram in Colonial Office the 4th December, Document F) that the Netherlands Railway had been taken over by the Government of the South African Republic, as far back as the 29th September; the line was, therefore, practically a Government line at the time the original application was made to Her Majesty's Government by Baron van Goltstein's note of the 6th November (Document A).

Baron van Goltstein was then informed (note to him of the 13th December, Document G) that the taking over of the Netherlands Railway by the enemy Government materially affected the position of the question.

There had, meanwhile, been delay in informing the authorities in the Cape Colony that the arrangement set out in the note of the 25th November to Baron van Goltstein (Document D) applied also to the material shipped for the Ermelo Company; when, therefore, the "Zulu" put into East London the authorities treated the Ermelo Company's material as they were then treating private property destined for the enemy's territory, when found in British ships in British waters, *i.e.*, they ordered it to be taken out of the ship and detained.

The material for the Netherlands Line and that for the Ermelo Railway were stowed with a view of being landed together at Lourenço Marques; it was therefore impossible to remove the Ermelo material and leave that for the Netherlands Line; and the "Agents" preferred that the consignments for the Netherlands Railway should also be landed at East London. (See communication of the 13th December from Colonial Office, Document H.)

It may here be noted that the owner of the "Zulu" stated verbally at this Department that it was the ship's agent who consented to both consignments being landed, and that he did so to prevent the detention of the ship.

In these circumstances it was proposed to Baron van Goltstein (note of the 14th December, Document I) that the goods, as they must in any case be detained either at Lourenço Marques or at East London, should remain at the latter port unless the owners were disposed to sell them to Her Majesty's Government.

It may here be stated that there are several horse boxes and a locomotive among the material belonging to the Netherlands Company, and that the authorities of the Cape Colony would be glad to obtain this rolling stock (Colonial Office, the 4th December, Document F).

Baron van Goltstein has now stated, by his note of the 26th ultimo (Document J), that the Netherlands Company wishes its material to be sent forward to Delagoa Bay, and that, as regards that material, the arrangement set forth in the note of the 25th November (Document D) is therefore still in force.

Baron van Goltstein's note states that the railway has not been "ceded" to the Government of the Transvaal; the latter has availed itself of an Article in the Company's Concession to seize ("pour s'emparer de"), during the war, the right of working the line.

The French translation of the Article referred to uses the words, "the Government can . . . . . . dispose of the railway" ("peut . . . . . . disposer du chemin de fer"). The original Dutch has the same meaning, that, namely, of "disposing of" the working of the line.

I have the honour, by direction of the Secretary of State, to request you to take the accompanying papers into your consideration, and to favour his Lordship with your opinion as to—

(1.) Whether, having regard to all the circumstances of the case, Her Majesty's Government are under an obligation to carry out, as regards the material originally destined for the Netherlands Line, the arrangement set forth in the note of the 25th November to Baron van Goltstein (Document D), and to allow the goods to go forward to Lourenço Marques under the condition therein stated.

(2.) What course they can properly adopt in the matter if they are not under the obligation mentioned in (1).

Lord Salisbury will be glad at the same time to be favoured with any observations which you may be good enough to offer on the case generally.

I have, &c.

(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Baron van Goltstein	November 6, 1899.
(B.)	To ditto	November 9, „
(C.)	Baron van Goltstein..	November 11, „
(D.)	To ditto	November 25, „
(E.)	Baron van Goltstein..	December 2, „
(F.)	Colonial Office	December 4, „
(G.)	To Baron van Goltstein	December 13, „
(H.)	Communicated by Colonial Office	December 13, „
(I)	To Baron van Goltstein	December 14, „
(J.)	Baron van Goltstein	December 26, „

Report.

In our opinion Her Majesty's Government *are* under an obligation as regards the material originally destined for the Netherlands Line, to carry out the arrangement set forth in the note of the 25th November to Baron van Goltstein, and to allow the goods to go forward to Lourenço Marques under the conditions there stated.

After it was known that control of the Netherlands South African Railway Company had been assumed by the Transvaal Government, Her Majesty's Government, by the despatch of the 13th December, 1899, confirmed that arrangement as regards the goods now in question, while stating that they could not continue it as regards other goods. Her Majesty's Government are therefore, in our opinion, bound to carry out the arrangement.

Care will, of course, be taken to insure that the goods in fact remain at Delagoa Bay under the control of the British Consul, as it would appear that if they pass into the hands of the Netherlands Company there is every probability that they will be used for the purpose of facilitating military operations.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 15, 1900.

No. 7.

[January 16, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 13, 1900.

Gentlemen,

Arrest of Pastor Harms in Natal.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the inclosed papers which relate to the arrest by the Provost Marshal at Frere, in the Colony of Natal, of Pastor Harms, the Director of the Deutscher Evangelische Mission, and his subsequent detention.

The case was originally brought to his Lordship's notice on the 1st instant by a communication from the German Embassy (Paper A), from which it appeared that Pastor Harms had been arrested and subsequently imprisoned at Estcourt on suspicion of having held communication with the Boer forces on the Mooi River. The German Ambassador requested that in the event of nothing really incriminating being proved against him, he should be at once released.

Inquiries were made into the case through the Colonial Office (Papers B and C), and it was ascertained (Inclosure in Paper C) from a Report from Sir Redvers Buller, that there was definite evidence that armed Boers had stayed with Pastor Harms at the Mission House, where it was said he had made them welcome. In any case it was certain that they had not treated him as an enemy. Sir Redvers Buller added that

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Pastor Harms resided on the flank of the British position, and that it was absolutely necessary to remove from such a place, and to detain, any one who was not known to side with this country.

I am to request you to take these papers into your consideration, and to favour Lord Salisbury with your opinion as to whether Sir Redvers Buller's action in the matter was justifiable by the usages of war, in view of the fact that Pastor Harms was in suspiciously friendly relations with the enemy in the region within which the British forces were, and are still, operating.

It is thought that it will be preferable, should the facts in your opinion admit of that course, to found the justification for Sir Redvers Buller's action on the general rights possessed under the usages of war, by a Commander in the field, within the theatre of hostilities, than to defend such action by special reference to the Proclamation of martial law, which extends over the whole of Natal, both within and without the actual strategic region.

On this point, however, as well as on the papers generally, his Lordship will be glad to be furnished with any observations which you may be good enough to offer for his assistance.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) German Embassy	January 1, 1900.
(B.) Colonial Office	January 3, „
(C.) Colonial Office	January 9, „

Report.

We are of opinion that the action of General Sir Redvers Buller was perfectly justifiable. It appears that M. Harms, whom we presume to be a German subject, was resident in Natal.

There is evidence that he communicated, and was on friendly terms with armed Boers. Further, the place where he was residing was in such a position that it was essential that only those friendly to, and in communication with, the British forces should be in occupation of it.

In our opinion these circumstances justify Sir Redvers Buller as General in Command of the military operations, in temporarily detaining M. Harms and removing him from the place in question.

He must, of course, be treated with every consideration, and not detained longer than the necessities of the military operations require.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 16, 1900.

No. 8.

[January 16, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 12, 1900.

Detention of German mail-steamer "General" at Aden.

WITH reference to your letter of the 8th instant relative to the detention of the German mail-steamer "General" at Aden, I have the honour to transmit to you, by direction of the Marquess of Salisbury, copies of telegrams which have been received from the Resident at Aden and the Senior Naval Officer there, reporting what has occurred, and of a Memorandum received from the Admiralty giving a narrative of the case, together with the draft of a despatch which Lord Salisbury proposes to address to Her Majesty's Ambassador at Berlin in reply to the note of the German Ambassador at this Court on the subject.

Copies of that note, of your letter above referred to, and of some other papers connected with the case are also inclosed.

I am to request that you will inform Lord Salisbury whether the terms of the despatch are, in your opinion, right and proper, or whether you have any alterations or additions to suggest.

His Lordship will also be glad to be furnished with any general observations which you may have to offer on the question.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

In our opinion, the terms of the draft despatch to Her Majesty's Ambassador at Berlin, as altered and initialled by us, are, in the circumstances, right and proper.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 16, 1900.

Annex.

Draft of Despatch from the Marquess of Salisbury to Sir F. Lascelles.

Sir, *Foreign Office, January* , 1900.

I TRANSMIT to your Excellency herewith translation of a note which I received on the 5th instant from the German Ambassador at this Court, stating that, according to a communication received by his Government, the mail-steamer "General," of the German East African line, had been stopped at Aden, occupied by force by British troops, and ordered to land her cargo. Count Hatzfeldt proceeds to request that orders may be given for the immediate release of the steamer and her cargo, for that portion of her cargo which had already been landed being replaced on board, and for the vessel being permitted to continue her voyage to the places mentioned in her itinerary. His Excellency further requests that explicit instructions be sent to the Commanders of British ships in African waters to respect the rules of international law, and to place no further impediments in the way of trade between neutrals.

I received with some surprise a communication from the Representative of a Power with whom Her Majesty's Government believe themselves to be on the most friendly terms, worded in so abrupt a manner and couched in language which imputed to Her Majesty's Naval Commanders that they had shown a disrespect to international law, and placed unnecessary impediments in the way of neutral commerce. There is no foundation for these imputations. I at once requested the Lords Commissioners of the Admiralty and the Secretary of State for India to make inquiries whether the facts were as reported to the German Government.

From reports which have reached Her Majesty's Government by telegraph, the following appear to be the facts of the case:—

Before the arrival of the vessel at Aden it was already known that she had on board among her passengers thirty-one men of German and Flemish nationality who had all the appearance of being on their way to the South African Republics for the purposes of military service there. On her arrival, information reached the British Resident that there were various suspicious articles on board destined for Delagoa Bay, and a ~~stoker~~ *person on board the vessel who was likely to be well informed*, stated that boxes of ammunition were buried under the reserve store of coal. The Senior Naval Officer at Aden thereupon boarded her on the ground of strong suspicion of her carrying contraband of war destined for the enemy, and commenced to search her.

The Lords Commissioners of the Admiralty, on being informed of the detention of the vessel, telegraphed to the Senior Naval Officer that such detention on suspicion only was undesirable if the vessel carried mails, unless contraband of war were found on board. The Senior Naval Officer was at the same time called upon to carry out the *necessary* search ~~if persisted in~~ as quickly as possible, and there can be no doubt that in this respect he did his utmost to avoid any unnecessary delay, the crew of Her Majesty's ship "Marathon," assisted by 100 coolies, having worked day and night.

The vessel having arrived on the 4th January, he reported on the 6th that the search had been completed. The cargo was restored with the greatest possible rapidity, and the vessel sailed on the morning of the 10th instant. The Senior Naval Officer reported that he had found on board several large cases of rifle ammunition for Mauser, Männlicher, and sporting rifles consigned to Mombasa; these were entered on the manifest, and he believed them to be destined *bonâ fide* as consigned. He had found also on board consignments of axle trees for waggons and chloride of

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lime for Delagoa Bay, both of which appeared on the manifest. The captain of the vessel gave an undertaking that these should be handed over to Her Majesty's Consul at Delagoa Bay. At the bottom of the hold was a cargo of food for Delagoa Bay. Heavy machinery and boilers appear to have been stowed on the top of the store of coals, in which it was reported that ammunition was concealed. The search for the ~~supposed~~ cases, therefore, must have been conducted under great difficulties. ~~The Senior Naval Officer confined himself to digging a hole in the coal, and finding nothing discontinued the search.~~ There seems reason to believe that among the passengers on board going to the Transvaal were a number of trained artillerymen, ~~but it would have been impossible to obtain evidence of their being in the service of the Transvaal without searching their personal baggage, a measure from which the Senior Naval Officer refrained,~~ *but there was no sufficient evidence as to their destination to justify further action on the part of the officers conducting the search.* Until they receive the detailed reports which will reach them by mail, Her Majesty's Government cannot decide whether ~~and in what respects~~ the British naval officers in any respect ~~may have~~ exceeded the right of search accorded by international practice to belligerents. They recognize, however, that in the case of steamers carrying mails that right should be exercised with all possible consideration, and only resorted to when the circumstances are clearly such as to justify the gravest suspicion.

They regret the inconvenience which has been caused on the occasion, ~~and if on receipt of the detailed reports it should appear that reparation is due to the Company for the delay of the vessel, or for damage to the cargo, they will be ready to consider any claims which may be brought before them on this account~~.

Your Excellency will read this despatch to the German Minister for Foreign Affairs, and leave him a copy of it.

R. E. W.
R. B. F.

No. 9.

[January 18, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, January 13, 1900.

Detention of German subject, Schmidt, at Durban.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers marked in the accompanying list, which relate to the detention of a German subject named Schmidt by the British authorities at Durban.

The German Embassy in London first drew attention to the case on the 9th December, 1899 (Paper A), and inquiry having been made in the matter at the Colonial Office (Paper B), it was ascertained (Paper C) that Schmidt was in the employ of Messrs. Welchen and Ackermann, of Lourenço Marques, who are stated by Her Majesty's Consul there to be agents of the South African Republic, and that, as he had been at Durban for some days, and was, therefore, in a position to carry back full details of all he had heard and seen, it was considered unadvisable to allow him to return to Lourenço Marques.

The German Embassy were verbally informed to this effect on the 18th December, 1899.

The German Ambassador has now, however, again called attention to the case (Paper D). His Excellency points out that the British authorities have neither proved nor attempted to prove that Schmidt has in any way assisted the enemy, and that the German Government, accordingly, request that he may be released at once, more especially as there seems to be no immediate prospect of the circumstances which led to his detention ceasing to exist. Count Hatzfeldt also specifically reserves the right to act hereafter as he may think proper in the matter of claiming compensation.

A further letter (Paper E) has also been received on the subject from the Colonial Office, but its inclosures do not appear to add anything material to the facts of the case.

I am to request you to be good enough to take these papers into your consideration, and to favour Lord Salisbury with your opinion as to how far the military authorities are justified in refusing to allow a foreign subject to leave a place which was already under martial law at the time of his arrival, doing so, not because anything has been proved against him, but because he is known to be connected with an agent of the enemy, and would on his return home be in a position to give information to his employers as to the movements of British troops, &c.

Your opinion is further sought on the point whether, supposing such detention to be justifiable, it may also be indefinitely prolonged until such time as the British military authorities on the spot may consider it no longer necessary, or until the Proclamation enforcing martial law is revoked.

It is presumed that in the event of its being decided that Mr. Schmidt's detention has not been justifiable, he would be entitled to reasonable compensation.

It may, perhaps, be well to add that there is no colonial ordinance in force in Natal, defining in any way the scope of martial law in its special application to that Colony, but copies of correspondence in connection with the Proclamation are annexed for your information (Paper F).

It is presumed, therefore, that in this case the "martial law" (so-called) which is brought into force by the Proclamation is in fact military law, and the customs of war so far as these are known and recognized in English jurisprudence.

I am, however, to request you to favour Lord Salisbury with any observations which you may have to make on these points and on the papers generally.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	German Embassy	December 9, 1899.
(B.)	To the Colonial Office	" 11, "
(C.)	Colonial Office	" 14, "
(D.)	Count Hatzfeldt	January 8, 1900.
(E.)	Colonial Office	" 8, "
(F.)	Colonial Office (2)	" 8, "

Report.

The facts before us do not enable us to express any opinion as to whether the detention of Mr. Schmidt was justifiable beyond saying this, that the responsibility of, and the reasons for, such action lie with the persons in whose hands the administration of martial law rests. If they were of opinion that the safety of the Colony, or the necessities of the military situation, rendered it essential that there should be no communication to agents of the Transvaal Government at Lourenço Marques of the condition of affairs at Durban, their action was right and should be confirmed, but we need scarcely add that the serious step of arresting and detaining a neutral subject of a friendly neutral Power, should only be taken under circumstances of urgent necessity, and should not be continued for a moment longer than is absolutely necessary.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 18, 1900.

No. 10.

[January 23, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, January 22, 1900.

Measures of Transvaal Government as to gold mines in its territories.

I HAVE the honour by direction of the Marquess of Salisbury to transmit to you the accompanying letters from the Colonial Office,* relating to the action to be taken by Her Majesty's Government in view of the measures recently adopted by the Transvaal Government with regard to the gold mines situated within their territories.

You will see that these measures practically amount, according to the High Commissioner, to confiscation by instalments, and that it is feared that the properties in question, when they have, in default of payment of the new taxes, been seized by the

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* Colonial Office, January 10; ditto, January 15, 1900.

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Government of the South African Republic, will be bought by speculators whose titles may, at the close of the war, prove a source of great embarrassment to Her Majesty's Government.

In these circumstances it has become necessary to consider the advisability of issuing a notice to the effect that Her Majesty's Government will not take cognizance of any dealings in mining properties by the Government of the Republic in connection with the new taxes, and will refuse to admit the validity of any titles acquired by third parties as the result of sales by that Government of such properties during the continuance of the war.

I am to request you to inform Lord Salisbury whether, in your opinion, such a notice as that indicated is desirable, and if so, in what terms it should be drawn up.

In the event of your recommending its issue, I am to request that in the settlement of its terms you will pay special attention to the necessity of avoiding as far as possible the use of language which might be construed as amounting to a definite pledge that Her Majesty's Government will reimburse the mining companies for their losses owing to confiscation.

I am further to request that you will favour his Lordship with your opinion as to whether the notice should be limited to the case of mining properties only, and generally with any observations and suggestions which you think may be useful in dealing with the subject.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

If it is the intention of Her Majesty's Government not to recognize any forfeitures or transfers of property by the Boer Government since the war (which is a matter of policy) we think it highly desirable that a notice to this effect should be issued in order to put possible purchasers on their guard, and prevent claims for compensation by such purchasers in the event of their titles being invalidated.

Any such notice, however, may lead to claims by the present owners if Her Majesty's Government conclude peace on terms which recognize these forfeitures or transfers as still existing.

It occurs to us that among the advantages of issuing such a notice would be the fact that it would tend to reduce the amount of war tax paid, and to conciliate foreign mine-owners and their Governments. As regards the payment by British subjects to the Boer Government of royalties or rents, of mines and other property reserved under contracts made prior to the commencement of the war, as a matter of strict law such payments would now be illegal; but as the refusal to pay the rents and royalties originally contracted might give the Boer Government a legal ground for taking possession of the property, we think that payments of the rents or royalties originally reserved should be permitted under licence by Her Majesty's Government.

We have prepared a notice of which a copy is annexed hereto and initialled by us.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 23, 1900.

Annex.

NOTICE is hereby given that the Government of Her Majesty will not recognize as valid or effectual any forfeiture of any property situated in the territories of the South African Republic or Orange Free State, or any charges, fines, or incumbrances of whatsoever description declared levied or charged upon any such property, or any conveyance, transfer, or transmission of any such property, which forfeiture, charge, fine, encumbrance, conveyance, transfer, or transmission has been or shall be declared, charged, levied, created, made, or carried into effect by the Governments of the South African Republic or of the Orange Free State subsequently to the 10th day of October, 1899.

(Initialled) R. E. W.
R. B. F

No. 10A. [Colonial Office.]

[January 25, 1900.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, January 25, 1900.

Sir,

Suspected persons on "Bundesrath" and "Herzog."

WE were honoured with your commands signified in Mr. Lucas's letter of the 23rd instant, stating that, with reference to the recent seizures of certain German vessels in South African waters, he was directed by you to request us to favour you with our opinion upon the following questions:—

That on board the German mail-steamers "Bundesrath" and "Herzog," which were recently seized on suspicion of carrying contraband of war, there were persons who were suspected of being in the service of the South African Republic either as intending combatants, or as conveying secret information. That in the case of the "Bundesrath" on which there was a small party of persons falling within the former description, the vessel was brought into the Prize Court at Durban, but as no contraband of war was discovered on board of her after a prolonged search, she was released, and compensation for her detention was to be paid by Her Majesty's Government.

That the "Herzog" carried several passengers (Dutchmen and Germans) connected with the Red Cross Society as well as an expedition organized by an Antwerp Committee, which was not officially recognized by that Society. That secret information was received by Her Majesty's Government that one nurse on board had documents of a startling character concealed upon her person, and that some of the members of the so-called ambulance parties were in reality French and German gunners.

That inasmuch, however, as no contraband of war was found upon the "Herzog" she was not taken into the Prize Court, and instructions were given by the Admiralty for her immediate release, and none of the passengers were searched.

That you would be glad to be informed whether in the event of a neutral vessel being seized and brought into a Prize Court on suspicion of having contraband of war on board of her, carrying persons who were reasonably suspected of being actively or prospectively in the service of the enemy, such persons could properly be detained by the military authorities either as prisoners of war or under the provisions of martial law (if martial law had been proclaimed in the district in which they were found), irrespective of the question whether the vessel was or was not carrying contraband of war.

We have taken the matter into our consideration, and in obedience to your commands have the honour to

Report—

That we are of opinion that such persons cannot properly be detained under the circumstances mentioned.

In order to justify such detention we think that their carriage ought to be one of the charges against the ship, as a vessel is liable, under circumstances which it is not for present purposes necessary to discuss in detail, for carrying persons in the service of the enemy.

If it is ascertained after the vessel has been brought in as prize that she has on board persons in the service of the enemy, a supplemental charge can be preferred against the ship in the Prize Court before she is released. If this be done, such persons can be detained pending inquiry as to their real status. The propriety of preferring such a charge must depend on the circumstances of each particular case. But we cannot advise the detention of such persons if the charge against the vessel of carrying contraband, either goods or persons, has broken down or is not pressed.

The persons in the case put to us have been brought within the power of the belligerent only by bringing the vessel into port upon another charge which is not established, and under these circumstances we do not think they can be properly detained as prisoners of war, any more than they could have been properly taken out of the vessel in mid-ocean.

We would point out that the difficulty would be raised not so much by the persons

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themselves as by the neutral nation on board of whose ship they were being carried, and it is for this reason that we think that where it is proposed to take action on the ground that the carrying the persons on board was unlawful, proceedings should be taken in the Prize Court.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

[Colonial Office.] No. 10^{B}.

[February 1, 1900.]

Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, February* 1, 1900.

Shares held by Government of South African Republic in Pretoria-Pietersburg Railway Company.

WE were honoured with your commands signified in Mr. Bertram Cox's letter of the 31st ultimo, stating that with reference to our Report of the 24th ultimo on the subject of the shares in the Pretoria-Pietersburg Railway Company held by the Government of the South African Republic, he was directed by you to inform us that it was considered desirable to prevent the sale or transfer of these shares by the Government of the South African Republic, and that he was to inclose the form of a letter which it was proposed to address to the Secretary of the Railway Company in accordance with the opinion expressed by us in the Report above referred to.

That Mr. Bertram Cox was to request us to Report—

1. Whether the terms of the draft letter were fit and proper for the purpose; and if not, what alterations or additions should be inserted.

2. By whom should the letter be signed. It was presumed that the letter should be sent by the Home Office.

3. In the event of the Company refusing to comply with the request contained in the letter, what steps should be taken to compel the Company to carry out the requirements of Her Majesty's Government.

In obedience to your commands we have the honour to

Report—

1. That we have settled and approved the form of letter to the Railway Company.

2. The letter should be signed by a Secretary of State, and as the Company is in England and the register here, either by the Home Secretary or the Prime Minister.

3. In the event of the Company refusing to give the undertaking, an *ex officio* information should be filed on behalf of the Crown, and an application made to restrain the Company from parting or dealing with the shares.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Annex.

Sir,

IT has been brought to the notice of Her Majesty's Government that the Government of the South African Republic are the registered proprietors in this country of 299,000*l.* shares in the Pretoria-Pietersburg Railway Company. I have therefore to give you notice that Her Majesty's Government claim these shares as being the property of an enemy Government, and to request you to give me the undertaking of the Company that they will not, without the sanction of Her Majesty's Government, permit such shares to be transferred or in any way dealt with.

I am to request you, at the earliest possible moment, to furnish me with the above undertaking.

The Secretary,
Pretoria-Pietersburg Railway Company.

No. 10^{C}. **[Colonial Office.]**

[February 5, 1900.]

The Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, February* 5, 1900.

Position of Orange Free State and South African Republic in relation to England.

WE were honoured with your commands signified in Mr. C. P. Lucas's letter of the 27th ultimo, stating that he was directed by you to request that we would advise him on certain questions as to the position occupied by the Orange Free State and the South African Republic, respectively, in relation to this country, on which a clear understanding would require to be arrived at in the event of their being either conquered by, or surrendered unconditionally to, the Queen's forces, and thereafter being effectively held and occupied.

That it would be convenient to recapitulate briefly the successive stages in the political history of those territories.

The Orange Free State.

That the Queen's sovereignty was declared over the territories north of the Orange River by Proclamation dated the 3rd February, 1848. That in that Proclamation it was declared, with regard to the Queen's subjects, that they should "be governed by the Laws, Ordinances, &c., of the Colony of the Cape of Good Hope;" and that, as an assurance to the natives that they would be protected, it was proclaimed that the native Chiefs were "under the sovereignty of Her Majesty as the *paramount and exclusive authority* in all international disputes as to territory, or *in any cause whatever tending to interrupt the general peace and harmony of South Africa*." That that claim to paramountcy had never been modified or abandoned either by any subsequent instrument or in practice. That by Letters Patent dated the 22nd March, 1851, the territories were constituted a distinct and separate Government, to be administered by the Governor of the Cape of Good Hope.

That by a Proclamation dated the 30th January, 1854, the Queen "abandoned for herself, her heirs and successors, all dominion and sovereignty over the said Orange River territory, and ordered her officers and Ministers, military and civil, to be with all convenient speed withdrawn from the said territory."

That that Proclamation was followed by the Convention of Bloemfontein, dated the 23rd February, 1854, which, *inter alia*, "finally freed the inhabitants of the Orange River territory from their allegiance to the British Crown," declaring them "to all intents and purposes a free and independent people, and their Government to be treated and considered thenceforth a free and independent Government."

That the status of the Orange Free State as thus established had continued unaltered up to the present time. That it had concluded Treaties with foreign Powers on an equal footing and without any interference or intervention on the part of the British Government.

The South African Republic.

That by the Sand River Convention of 1852 "the emigrant farmers beyond the Vaal River," who had originally quitted the Cape Colony in 1835, and though not relieved of their allegiance as British subjects, were admitted to be living beyond the Queen's dominions, were "guaranteed in the fullest manner, on behalf of the British Government, the right to manage their own affairs and to govern themselves without any interference on the part of Her Majesty the Queen's Government; and that no encroachments shall be made by the said Government on the territory beyond to the north of the Vaal River."

That the emigrant farmers not long after this styled themselves "The Dutch African Republic," and in the year 1858 altered that designation to "The South African Republic." That as such Republic they acted and were recognized by foreign Powers as an independent State, making Treaties with Portugal and Belgium on a sovereign footing. That that continued to be the position of the South African Republic until 1877, when, being insolvent and threatened with destruction by native

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tribes, and it being understood that the inhabitants were ready to come under British rule, it was, by the Proclamation of Sir T. Shepstone, dated the 12th April, 1877, declared to be British territory, and brought under the Government of the Crown as a dependency acquired by cession. That in December 1880 the Boers rebelled. That peace was made in 1881, and that in October of that year the Convention of Pretoria was signed.

That the principal operative portion of that instrument, which had been incorrectly styled its preamble (being, in fact, the permanent and only grant of the limited independence conceded by the Queen) "guaranteed, on behalf of Her Majesty that complete self-government, subject to the suzerainty of Her Majesty, her heirs and successors, will be accorded to the inhabitants of the Transvaal territory on the terms and conditions, and subject to the reservations and limitations" which were appended in a number of Articles.

That on the 27th February, 1884, after a Conference with delegates from the Transvaal, a new Convention, known as the Convention of London, containing fresh Articles in substitution for the Articles of the Convention of Pretoria, was granted by the Queen. That in this Convention the chief operative portion of the former Convention, granting self-government subject to the suzerainty, was neither re-enacted nor cancelled, the Articles only being revised. That it was not re-enacted because it was a permanent instrument—the "Charter" of the liberties of the South African Republic; that it was not cancelled because without it the Transvaal would be a Crown Colony as it was before the Convention of 1881 was granted. That, therefore, in transmitting to Sir H. Robinson (on the 14th March, 1884), the correspondence relating to the Convention of London, the Earl of Derby had spoken of the South African Republic as being "a country having self-government as conceded under the Convention of Pretoria;" and it was accordingly contended that both the self-government and the suzerainty existed together up to the commencement of the present hostilities. That this position was maintained in the despatch addressed by you to the High Commissioner for South Africa on the 16th October, 1897, which was approved by us in our Report dated the 30th September, 1897.

That we were requested to advise—

A

1. Whether, in view of the fact that though the Orange Free State was up to the commencement of the present war an independent State, its independence having been granted by the British Crown, the action of the Government of the Orange Free State in taking part with the South African Republic in commencing the present war had had the effect of putting an end to the instrument constituting that independence, leaving it only under the paramount authority of the Crown?

Y [P- above]

2 Whether the South African Republic, which up to the date of the commencement of the present hostilities was a State enjoying the right of internal self-government subject to the Queen's suzerainty had, by its action in declaring war against Her Majesty's Government, put an end to the Conventions of 1881 and 1884, and, if so, what was its actual political status?

3. Whether the Queen's claim to be paramount in any cause whatever tending to interrupt the general peace and harmony of South Africa was still in full force, or had been either wholly or in part invalidated either by any of the acts or instruments to which ~~our~~ attention had been directed or otherwise? [Lim]

[to S of S for Colonies]

That, in the second place, ~~you~~ would be obliged by our informing you what would be the position of the Orange Free State and the South African Republic respectively when after conquest, or unconditional capitulation, their territories were occupied by the Queen's forces. That, having regard to the history of the previous and present relations to the Crown, would those two States, which had now combined together to levy war upon the Queen, stand on the same footing in regard to the treatment to be accorded to them in order to re-establish within them the Queen's sovereignty and Government? and would one or two Proclamations of the Queen's sovereignty be required, followed by an Order or Orders in Council giving powers of legislation and administration?

That Mr. Lucas was further to request information as to the nationality of the burghers or citizens of these two territories after their conquest and the Proclamation of the Queen's sovereignty. Would they and their children, as well as any foreigners resident in them who did not claim to be nationals of some civilized foreign Power, become *ipso facto* British subjects?

That, as bearing upon the questions raised in his letter, or some of them, Mr. Lucas was to inclose, for our consideration, copies of two notes by the Lord Chancellor, the Earl of Selborne, dated the 6th May, 1881, and the 18th July, 1881, and also copies of Opinions of the Law Officers dated the 12th May, 1877; 25th September, 1877; 3rd July, 1894; and 30th September, 1897. [See foot-note.]

That you would be further obliged by any observations which it might occur to us to make on the constitutional situation generally arising out of the state of war.

We have taken the questions submitted to us into our consideration, and, in obedience to your commands, have the honour to

Report—

B

1. That, in our opinion, the action of the Orange Free State in taking part in the present war has *not, ipso facto*, had the effect of putting an end to the instrument constituting its independence. The arrangement made by that instrument set up a state of things intended to be permanent by an act done once for all. Instruments of this kind are not, *ipso facto*, abrogated by war. The only way in which the independence of the Orange Free State can be put an end to is by conquest.

2. The same considerations, in our opinion, apply to the case of the South African Republic. The South African Republic enjoyed the right of self-government, subject to the conditions contained first in the Convention of 1881, and afterwards in the Convention of 1884. An arrangement of this kind cannot be regarded as belonging to that class of Treaties which are abrogated by the mere fact of war. The existence of suzerainty would not, in our opinion, make any difference in this respect, except in so far as the conduct of the South African Republic in declaring war against the Suzerain State might be regarded as an additional reason for annexation in the event of conquest.

[P- above]

3. The Queen's claim to be paramount, in the sense in which the term is used in the Proclamation of 1848, was, we think, put an end to by the Proclamation of the 30th January, 1854~~, so far as the Orange Free State is concerned.~~ FS

As regards the South African Republic, the paramountcy of Her Majesty depends on the terms of the Conventions of 1881 and 1884.

[P- above]

In dealing with the question of paramountcy, we have treated the subject from the legal point of view, without entering into the general political question of the right of the predominant Power to interfere in any matter affecting the general peace and harmony of South Africa.

4. The two Republics will, after conquest or unconditional capitulation, stand on the same footing with regard to the proceedings necessary to be taken to re-establish within them the Queen's sovereignty and government. If it is determined to annex them to the British dominions, this may be effected by one or by two Proclamations as may be deemed most convenient from the administrative point of view.

After conquest and the Proclamation of the Queen's sovereignty, the burghers or citizens of these two territories, as well as any foreigners resident in them who

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NOTE.—The Reports referred to above are printed in the Foreign Office collection of Law Officers' Reports under "Africa," and relate to the following topics:—

Law Officers to Colonial Office ..	May 12, 1877 ..	Status of, and mode of, legislating for the Transvaal.
" " ..	September 25, " ..	Establishment of Courts of Law in the Transvaal. Opinion of Judge Kotze
Lord Chancellor to Colonial Office ..	May 6, 1881 ..	Power of Crown to grant Transvaal a Constitution.
" " ..	July 18, " ..	Definition of British subjects under Transvaal Convention.
Law Officers to Colonial Office ..	July 3, 1894 ..	Commandeering for military service in the South African Republic.
" " ..	September 30, 1897 ..	Right of South African Republic to conclude Treaties without consent of the Queen.

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do not claim to be nationals of some civilized foreign Power, and their children, will become British subjects. This is one of the effects of acquisition of territory by conquest.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

[Colonial Office.] *No. 10D.*

[February 6, 1900.]

Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, February* 6, 1900.

Treatment of African-born inhabitants of Natal and Cape serving with Boers when captured by British.

WE were honoured with your commands signified in Mr. H. Bertram Cox's letter of the 5th instant, stating that he was directed by you to transmit to us a copy of a telegram received by the Secretary of State for Foreign Affairs from the Presidents of the South African Republic and Orange Free State, claiming that African-born inhabitants of the Colonies of Natal and the Cape of Good Hope who had joined the Boer forces should, when captured by the British authorities, be treated as prisoners of war, and should not be tried for high treason. That it might be intended to maintain that under the Proclamations issued on behalf of the Orange Free State and South African Republic, which would be found at pp. 218 and 241 of Blue Book (C. 43—1900), the inhabitants of districts invaded by the Boer forces who had joined them had become citizens of the Republics; but that the words of the telegram appeared wide enough to cover Africander Colonists from portions of the Colonies not occupied by the Boers.

That on receipt of that telegram from the Secretary of State for Foreign Affairs you communicated with Sir A. Milner. That a copy of the telegram sent to Sir A. Milner and of his reply were inclosed.

That with reference to the concluding paragraph of the latter telegram, Mr. Cox was to explain that, on the 29th September, by a Resolution of the Volksraad having the effect of law within the South African Republic, all strangers serving with the Boer army were given the franchise and became burghers of the South African Republic. That reference might be made in that connection to p. 87 of the Blue Book above mentioned. That it might, of course, be assumed that no proceedings for high treason would be taken against any persons who were not by British law subjects of Her Majesty.

That in view of the threat of the Governments of the South African Republic and Orange Free State to resort to reprisals upon the British prisoners at Pretoria if their demand was not complied with, and of the danger of such rebels being acquitted by the Civil Courts contrary to the justice of the case, it had been suggested that in future cases the Colonial Dutch prisoners should not at once be brought to trial, but should be detained in custody and not tried until the termination of the war. That it had also been suggested that such persons might be deported to St. Helena for safe custody in preference to retaining them in Cape Colony.

That it must, however, be pointed out that martial law had not been proclaimed throughout Cape Colony, but only in certain of the border districts, and also that up to the present time the prisoners who had been treated as rebels had not, in most cases, been dealt with under martial law, but had been handed over to the civil authorities for trial under the ordinary law of the Colony.

That doubt was entertained whether, in the absence of statutory provision to that effect, such prisoners could be lawfully detained in Cape Colony in a district to which martial law had not been applied, and whether such prisoners would not, if detained in or passing through such districts, be able to obtain a writ of *habeas corpus*, and obtain their discharge if, in fact, they were being detained not as prisoners of war but on a civil charge, and had not been brought to trial within the time, if any, prescribed by the law of the Colony.

That doubt was further entertained whether, in the absence of a law of the Cape Colony passed for the purpose, such prisoners could be deported from South Africa or detained in St. Helena without a law authorizing their detention passed by the Island

Legislature. That such a law could be passed in St. Helena without difficulty, but that it would be difficult to obtain legislation, if required, in Cape Colony, and that the proclamation of martial law throughout Cape Colony might lead to the resignation of the Cape Ministry, which it was desired to avoid.

That Mr. Bertram Cox was to request us to take the above matters into our consideration, and to advise you—

1. Whether where a British subject had been taken in arms against Her Majesty such person could be detained in a district of the Cape Colony where martial law had not been proclaimed and not brought to trial for high treason.

(*a.*) Where such person had; and

(*b.*) Where such person had not been handed over to the civil authorities for trial.

2. Whether in either of the cases mentioned in the last question such person could obtain his release by writ of *habeas corpus* if so detained?

3. Whether such person could, in the absence of statutory provision to that effect, be deported (say) to St. Helena in either of the cases mentioned in the first question?

4. Whether there was any legal objection in either of the above cases, having regard to the circumstances of the case, to a prolonged detention of such person before bringing them to trial?

5. Whether there was any objection, on grounds of international law or the usages of civilized warfare, to detaining rebels as prisoners of war so long as the war lasts, and after its termination bringing them to trial for high treason in the Civil Courts?

6. Generally.

We have taken the papers into our consideration, and, in obedience to your commands, have the honour to

Report—

1. That where a British subject has been taken in arms against Her Majesty, and has been handed over to the civil authorities for trial, he cannot, in our opinion, be properly detained except under the order of the civil authorities before whom his case is pending. The Executive, by handing him over to the civil authorities for trial, elected not to treat him as a prisoner of war, but to have him prosecuted as a traitor, and that election cannot, in our judgment, be properly recalled.

In cases where such person has not been handed over to the civil authorities for trial, he may be properly detained as a prisoner of war in any place where other prisoners of war may properly be detained, irrespective of the question whether it is in a district where martial law has, or has not, been proclaimed. It is true that such person has been guilty of the crime of high treason, but he has no right to insist on being brought to trial for treason. His detention merely as a prisoner of war is an indulgence of which he cannot complain.

2. If, after such person has been handed over to the civil authorities for trial, he were taken out of their hands to be detained as a prisoner of war, we think that a serious question would arise as to the legality of his detention, and that this might be raised by application for a writ of *habeas corpus*. It might be contended that when he was handed over to the civil authorities he was discharged from custody as a prisoner of war, and that he could not properly be retaken as a prisoner of war on the abandonment of the proceedings before the civil authorities.

No such question could be successfully raised with reference to the detention as prisoners of war of such persons in cases where they have not been handed over to the civil authorities for trial.

3. Such persons, if detained as prisoners of war, should be treated in the same way as the other prisoners of war. We are not aware of any difficulty which stands in the way of the removal of prisoners of war to St. Helena for detention, unless there be something special in the law of the Cape or of St. Helena on this point, which we do not think likely. No special statutory provision appears to us to be necessary, but before any action of this kind is taken, we think that local advice should be obtained from the Attorney-General at the Cape and at St. Helena. The general principle is that the Crown may detain prisoners of war where it thinks fit. Any difficulties that might arise would be of procedure only.

4. We think that there are grave objections to a prolonged detention of such persons before bringing them to trial. A prisoner of war might be brought to trial for treason after any lapse of time upon the discovery of the fact that he is a British subject. But if it is from the first known that he is a British subject, and with that

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knowledge the Crown detains him as a prisoner of war, we think that this must in fairness be taken to be an election not to treat such person as a traitor. The greater the prolongation of the detention the stronger would be the presumption against the propriety of subsequent proceedings for treason.

5. The answer to this question is governed by the same considerations as those to which we have adverted in our answer to question 4. We think that when the fact that the person is a British subject comes to the knowledge of the authorities they ought to decide whether they will treat him as a prisoner of war or as a rebel, and act accordingly. To detain him as a prisoner of war while the war lasts, and then to bring him to trial for high treason, would be to punish the man twice for the same offence. We may add, however, that we think that probably there would be great difficulty in obtaining a conviction under circumstances of so much hardship.

6. We have nothing to add by way of general advice.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

No. 11.

[February 23, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, February* 19, 1900.

Detention of "Beatrice" carrying flour to South African Republic.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you papers as marked in the accompanying list respecting the case of the "Beatrice."

The "Beatrice" is a British vessel which was engaged on a voyage from New York to South African ports terminating at Lourenço Marques.

On coming within British territorial waters at East London it was discovered that she contained large quantities of goods, principally flour, destined for the South African Republic, and these the local Customs authorities required should be landed, on the ground, doubtless, that the "Beatrice," being a British ship, was, by carrying goods destined for the enemy's territory, illegally engaging in trade with the enemy.

As the cargo was stored in such a manner as to make it impossible to land the goods destined for the South African Republic, without also discharging goods intended for Portuguese East Africa, the master and agents preferred to land the whole of the cargo at East London, where it has been stored by the Customs. The removal of large quantities of the goods so landed has, however, from time to time, been permitted for the purposes of consumption locally and in Portuguese East Africa.

The vessel sailed for Calcutta in ballast on the 11th December.

A note to the above effect (Paper A) was sent on the 26th ultimo to the United States' Ambassador at this Court, who had already made representations on the subject.

On the 29th ultimo his Excellency, under the impression that the flour destined for the South African Republic was being detained at East London, replied (Paper B) pointing out that it appeared to him that the action of the British authorities in the matter was in contravention of the views of Her Majesty's Government on the question of food-stuffs, as communicated to him on the 10th ultimo (Paper C), and implied an embargo on the sale and delivery of non-contraband goods in the ordinary course of trade with the people of the Republics of South Africa.

On the 2nd instant Lord Salisbury addressed a note to Mr. Choate (Paper D) explaining that the flour destined for the South African Republic was not detained as contraband of war, but that it had been put ashore because the "Beatrice" being a British vessel could not lawfully carry goods destined for the enemy even when they were not contraband, the flour in question was still at East London because no British ship could lawfully carry it on to its destination, and there were no foreign vessels available for the purpose.

Lord Salisbury added that he did not doubt that the flour or any other merchandize not contraband of war from the "Beatrice" would be handed over to any person who should apply for it, and should be able to show that he was entitled to receive it.

To this note Mr. Choate replied on the 6th instant (Paper E). He urges that the obligation of restitution of the cargoes in question to their owners being conceded, the permission extended to those owners to come and take them cannot be considered as a discharge of that obligation. He goes on to say that the American owners will claim damages for their losses in the matter, and will be supported in so doing by the United States' Government; and he finally inquires whether something cannot be done to minimize these damages by taking steps to have the goods carried on to their destination, or by their immediate purchase by Her Majesty's Government in pursuance of an offer made by the latter to that effect and accepted by him. (Paper F.)

To this communication Lord Salisbury proposes to reply that Her Majesty's Government are prepared to buy the flour at the price it would have fetched at Lourenço Marques on the day on which it would have arrived, had the voyage of the carrying ship not been interrupted; but that this offer can only extend to such flour as is owned by United States' citizens (or other neutrals), and that the transaction cannot be carried out until there is evidence of such ownership, and until it is known to whom the payment should be made.

His Excellency would also be told that, as stated in the note to him of the 9th instant (Paper G), Her Majesty's Government are ready to accept the intermediation of the United States' Consul under the conditions therein stated.

With regard to Mr. Choate's observations as to the damages due to the owners of the cargo, on account of the failure of the ship to deliver it at the port mentioned in the freight contract, Lord Salisbury proposes to inform his Excellency that any claim for damages (assuming such claim to be sustainable at law, a matter which will apparently depend on the terms of the contract of carriage) should properly be brought by the owners of the goods against those who entered into or became responsible for the execution of a contract for delivery which they failed to perform.

I am to request you to take the papers into your consideration and to favour Lord Salisbury with your opinion as to whether such a reply to Mr. Choate as that indicated above would, in the circumstances, be right and proper, and generally with any observations on the case which you may think fit to offer.

A Memorandum (Paper H) of the facts connected with the earlier stages of the case is also inclosed for your information.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) To Mr. Choate	January 26, 1900.
(B.) Mr. Choate	January 29, ,,
(C.) To ditto	January 10, ,,
(D.) Ditto	February 2, ,,
(E.) Mr. Choate	February 6, ,,
(F.) Ditto	January 13, ,,
(G.) To Mr. Choate	February 9, ,,
(H.) Memorandum	January 21, ,,

Report.

We think an answer should be sent to Mr. Choate in the terms suggested in Mr. Bertie's letter of the 19th February.

A sentence might be added at the end stating that Her Majesty's Government cannot recognize any liability in damages to the owners of the flour, as its detention has been due entirely to the circumstance that the vessel was unable to complete its voyage owing to the fact that it was illegal by the law of the flag.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 23, 1900.

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Annex.

Draft of Letter from the Marquess of Salisbury to Mr. Choate.

Foreign Office, March , 1900.

Your Excellency,

I HAVE had under my consideration your note of the 6th instant respecting the case of the "Beatrice," and I have the honour to inform you that Her Majesty's Government are prepared to buy such flour, being owned by United States' citizens, as was taken out of that vessel, paying for it the price it would have fetched at Lourenço Marques on the day on which it would have arrived there had the voyage of the ship conveying it not been interrupted.

In carrying out this purchase, Her Majesty's Government, as already stated in my note of the 9th instant, are prepared to accept the intermediation of the United States' Consul under the conditions therein stated, but the transaction cannot be completed until clear evidence that the goods concerned are owned by United States' citizens is forthcoming, and until it is known to whom the purchase-money in respect of them should be paid.

With regard to your Excellency's observations as to the damages due to the owners of the cargo on account of the failure of the ship to deliver it at the port mentioned in the freight contract, it would appear that any claim for damages (assuming such claim to be sustainable at law, a matter which will apparently depend on the terms of the contract of carriage) should properly be brought by the owners of the goods against those who entered into or became responsible for the execution of a contract for delivery which they failed to perform. *Her Majesty's Government are unable to admit that they are in any way liable in damages to the owners of the flour, as its detention has been due entirely to the circumstance that the vessel was unable to complete its voyage owing to the fact that such voyage was illegal by the law of the flag under which the vessel was sailing.*

I have, &c.

No. 12.

[February 24, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 15, 1900.

Gentlemen,

Duties of South African Banking Companies during the war.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list respecting the duties and obligations of the South African Banking Companies during the present war.

You will see from the despatch No. 17 of the 10th ultimo from the High Commissioner for South Africa (Inclosure 3 in Colonial Office of the 6th February) the terms which, with a view to regulating these duties and obligations, Sir A. Milner proposed on the 10th ultimo to the Managers of the Cape Town branches of the Standard Bank of South Africa, the Bank of Africa, and the African Banking Corporation, and to which it appears from his telegram No. 24 of the 15th January (Inclosure 3 in Colonial Office of the 20th January) that these gentlemen have already assented.

I have to request you to take these terms into your consideration, and to favour Lord Salisbury with your views as to whether they are in the circumstances right and proper, or whether they should be modified or varied, and, if so, in what direction and to what extent.

Sir A. Milner has indeed already suggested the advisability of adding a further clause (Inclosure 3 in Colonial Office of the 20th January), prohibiting the payment of such of the notes of the banks concerned as are issued in the Transvaal, and I am to inquire whether you are of opinion that this additional condition should be insisted on; and in this event what steps you would recommend should be taken with a view to providing as far as possible against ultimate loss falling on British subjects and other *bonâ fide* holders for value without notice, who may have received such notes innocently in payment for goods supplied before the outbreak of war or in the ordinary course of trade.

Lord Salisbury would, at the same time, be glad to learn whether you would consider it advisable to ask the London banks to co-operate in the above measures, and if so in what manner you would suggest they should be approached on the subject.

I am also to transmit to you a copy of a letter from the Standard Bank of South Africa respecting their position in the present crisis, and I am to inquire what reply

should, in your opinion, be made to it; and what general principles, if any, you consider should be acted on by the South African banks.

I am in conclusion to draw your attention, as a matter connected with the general question of the relations of these banks with the enemy Republics, to Sir A. Milner's telegram No. 23 of the 15th ultimo (Inclosure 2 in Colonial Office of the 20th January last), in which he refers to some negotiations between the Bank of Africa at Delagoa Bay and a representative of Messrs. Warburg and Co., of London, for the purchase of bills for 5,000*l.* against shipments of wool, the produce of the enemy's territory; and I am to ask in what terms you would suggest that Messrs. Warburg and Co. should be warned against the unlawfulness of such trading with the enemy as would apparently be involved were the agreement of their agent at Delagoa Bay with the local branch of the Bank of Africa to be carried into effect.

I am to request you to take the accompanying papers into your consideration, and to favour Lord Salisbury with your opinion on the various points to which your attention has been invited, and generally with any observations which you may have to offer on the subject under discussion.

I have, &c.

(Signed) FRANCIS BERTIE.

List of Papers.

Colonial Office	January 15, 1900.
Ditto	January 20, ,,
Ditto	February 6, ,,
Standard Bank of South Africa	February 9, ,,

Report.

The Regulations issued by Sir A. Milner to the banks in South Africa, on the 15th January, 1900, have not in point of law any binding effect. They only amount to an intimation of the view taken by the High Commissioner as to the effect on the business of the banks of the law as to trading with the enemy.

We do not think it is practicable to carry out the first five of these Regulations. They would involve vexatious interference with banking business, and any attempt to enforce them would certainly break down. The 6th Regulation is thoroughly reasonable, and, as long as the banks conform to this Regulation, we do not think they should be pressed to observe the others.

We do not think that any further clause should be added prohibiting the payment of notes on banks issued in the Transvaal.

We do not consider it advisable to ask the London banks to co-operate in the above measures, except in general terms, and in the spirit of the letter from the Standard Bank, dated the 9th instant. The terms of this letter appear to us very reasonable, and as long as the banks act in the spirit of this letter we think that no attempt should be made to interfere with their business.

The attention of all banks should be called to the necessity of their making full inquiries into each case, so as to avoid entertaining any transaction likely to result in aid or assistance to the Queen's enemies.

Messrs. Warburg and Co., who are, as we understand, traders in London, should be warned that if they take part in any export of wool from the Transvaal or Orange Free State, or are concerned in any financial operation to facilitate such export, they will incur liability under the law against trading with the Queen's enemies.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 24, 1900.

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[Colonial Office.] *No. 12A.*

[February 24, 1900.]

Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, February 24, 1900.

Sir,

Alleged trading with the enemy by Mr. F. W. Murray.

WE were honoured with your commands, signified in Mr. Bertram Cox's letter of the 19th instant, stating that he was directed by you to transmit to us a despatch* from the High Commissioner for South Africa regarding an alleged case of trading with the South African Republic by Mr. F. W. Murray.

That a copy of the High Commissioner's Proclamation forbidding trading with the enemy would be found at p. 40 of the Blue Book inclosed.†

That the Attorney-General of Cape Colony was of opinion that Mr. Murray, in instructing a broker at Durban to ship 5,000 packets of sugar to one Michaelson in Pretoria, was not trading with the enemy, nor attempting to trade, and he proceeded to express the opinion that whether trading with the enemy was criminal depended on the nature of the trade. That, although he did not discuss this point exhaustively, Mr. Cox was to observe that he seemed to imply that the sending of some goods to the enemy's country, not being goods which assist the enemy in military operations, such as arms, was no offence.

That you presumed that in this country to supply goods of any description to a country with which the Queen was at war would be adhering to the Queen's enemies within the meaning of the Act 25 Edward III, st. 5, cap. 2, but that the Act was not in force in the Cape. That it was believed that there was no definite statutory law in the Cape containing any definition of treason which would be applicable to this case, the only offence declared to be high treason being, it was believed, that of delivering guns and gunpowder, as provided in section 22 of the Ordinance No. 2 of 1853, and the offence must therefore be punishable, if at all, by the Roman Dutch common law. That an account of treason under this law would be found in Van Leeuwen's "Commentaries on Roman Dutch Law," translated by Chief Justice Kotze, vol. ii, Book IV, chapter 33, p. 256, and in Van der Linden's "Institutes of Holland," Book II, chapter iv, sec. 11, p. 202.

That Mr. Cox was to request us to take these matters into our consideration, and to advise you—

1. Whether, in the circumstances set forth, Mr. Murray was guilty of any offence—
   (*a*.) By English law.
   (*b*.) By Cape law.
2. Whether the opinion of Mr. Solomon was correct in point of law, and, if not, in what respect it is erroneous.
3. Generally.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

That, in our opinion, Mr. Murray would be guilty of a misdemeanour by English law. Mere trading with the enemy does not amount to high treason within the Statute of Edward III. To constitute the offence of high treason there must be a case of adhering to the Queen's enemies in the sense of supporting them in hostilities against the Queen. Trade in innocent articles with a private individual of the enemy State is not high treason.

But trade of any kind with a person in the enemy State is a misdemeanour at common law (2 Roll. Abr., 173), viz., under head "Prerogative le Roy." (L.) Guerre 3, per Lord Mansfield, Gist *v.* Mason, 1 T. R., 89, per Lord Stowell in The Hoop, 1 C. Rob., 216–17; Hinkle *v.* L. Exch. Afr. Co., as cited by Sir John Nicholl, *arguendo*, 8 T. R., p. 556; Potts *v.* Bell, 8 T. R., 543.

An attempt to commit a misdemeanour is in itself a misdemeanour by the law of England, and it appears to us to be clear that by sending the instructions in question Mr. Murray attempted to trade with the enemy. The matter did not rest merely in intention. The instructions were an act done which, if not intercepted, would have directly led to the commission of the offence.

We are not in a position to advise whether Mr. Murray was guilty of any offence by Cape law. The authorities referred to in Mr. Bertram Cox's letter of the 19th February are too vague and general to throw any light on this question. It may be that trading with the enemy amounts to *crimen læsæ majestatis*, and we should observe that Mr. Solomon does not appear to rest his opinion on any distinction between the law of England and the law of the Cape upon this point.

Mr. Solomon's opinion seems to us to be erroneous on two points:—

1. If his statement that the question whether trading with the enemy is criminal depends on the nature of the trade is to be taken as having reference to the law of England, as is apparently the case, we are unable to agree with him for the reasons given above.

2. We do not understand his statement that there was not an attempt in law to trade, but only, at most, instructions given by Murray to Cowie to trade. These instructions seem to us to constitute an attempt to trade with the enemy, as we have above explained. They were obviously instructions to Cowie to ship on account of Murray. But even if it were possible to regard them as mere advice by Murray to Cowie, we think that by English law they would render Murray liable to an indictment for endeavouring to procure the commission of a misdemeanour. It does not seem probable that there is any difference between the law of England and the law of the Cape on the question of what constitutes an attempt, but we must, of course, point out that the question whether Mr. Murray has or has not committed a criminal offence must be determined by the law of the Cape.

We have &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

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* High Commissioner, No. 44, January 24, 1900.

† "Further Correspondence respecting the Affairs of South Africa, 1899-90 [Cd. 43]."

Annex 1.

Report of Attorney-General of Cape Colony.

THERE is no evidence before me on which I could prosecute Mr. Murray. All the information I have is that he sent a telegram to Cowie, a broker at Durban, instructing him to ship 5,000 packets of sugar to one Michaelson in Pretoria. It does not appear that this telegram was acted upon by Cowie. I presume it was intercepted, and never reached him. There was no trading with the enemy, or an attempt in law to trade, but only, at most, instructions given by Murray to Cowie to trade.

If Cowie had acted on the telegram, and shipped the 5,000 packets of sugar, they might have been captured on the ground that trading by British subjects with the enemy is prohibited, and all property of such subjects engaged in such trade may be confiscated.

Whether trading with the enemy is *criminal* depends, I think, on the nature of the trade. The mere breach of the Proclamation prohibiting trading does not necessarily amount to a crime. The Proclamation does not make law. If the trade consisted in sending something to the enemy which would assist them in their military operations against the Queen, such as arms and ammunition or general contraband, I should not hesitate to say that such trading amounted to high treason. It is not, however, necessary to discuss this point further, because, as a fact, there was no trading, but only instructions to trade, not acted upon, which would certainly not be criminal. The authorities in Natal should have allowed the telegram to reach Cowie, and then have closely watched him.

(Signed) RICHARD SOLOMON.

Attorney-General's Office, Cape Town,
January 20, 1900.

Annex 2.

Further Report of Attorney-General of Cape Colony.

I HAVE carefully read the opinion of the Law Officers of the Crown on the above subject. I adhere to my opinion that the particular trading in question is not a criminal offence by the law of this Colony. The nature of the trade must determine whether trading with the enemy is a criminal offence. According to the Roman-Dutch law in force in this Colony, it would be a crime to send goods into the enemy's country which would assist the enemy in prosecuting the war; but sending sugar, which is not a necessary of life even, but a luxury, to a merchant carrying on business in the Transvaal, while there is war between that country and England, would not be a

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criminal offence. In no case could such a transaction be said to affect or endanger the safety of the State, and it could therefore be neither *crimen perduellionis* nor *crimen læsæ majestatis*. There is no such thing as a *misdemeanour*, either by the Statute or common law of this Colony.

By the law of this Colony, an attempt to commit a crime is itself a crime. On further consideration, I am inclined to think that the sending of the telegram by Murray to the broker in Natal was an attempt to trade with the enemy; but as the trade itself in the particular class of goods the broker was instructed to forward to the Transvaal would not be a crime according to the laws of this Colony, so neither would the attempt to engage in such trade be a crime.

(Signed) RICHARD SOLOMON.

Attorney-General's Office, Cape Town,
April 19, 1900.

[**Colonial Office.**]

No. 12^B.

[February 26, 1900.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, February 26, 1900.

Sir,

As to confiscation of properties by Boer Governments for non-payment of taxes, &c.

WE were honoured with your commands, signified in Mr. H. Bertram Cox's letter of the 20th instant, stating that he was directed by you to inform us that, in connection with the Notice issued on the 26th January by the High Commissioner for South Africa regarding the forfeiture of properties by the Governments of the South African Republic and Orange Free State, certain further questions had arisen on which you would be glad to have our advice.

That Mr. Cox was to inclose a copy of a telegram from the Governor of Natal (together with copies of the earlier telegrams noted in the margin*), from which we should see that the censors in that Colony had asked for instructions with regard to passing letters ordering or authorizing payments to the Government of the South African Republic, and that the Governor feared that he would be open to a claim for compensation if he instructed the censors to refuse to pass the letters.

That you were inclined to approve Sir W. Hely-Hutchinson's proposed reply, but that Mr. Cox was to observe that, although in the case of the City and Suburban and other mines, efforts had been made to pay the licence moneys due, it was probable that in many cases, the High Commissioner's Notice being general in terms and making no exceptions, it was believed that the Notice was intended to prevent payment of, and to give protection against the consequences of failing to pay, any sort of licence or due to the Government of the Republic.

That that, however, went beyond what was advised by us in our opinion given on the 18th January, and beyond the intentions of Her Majesty's Government, as shown in your telegram of the 27th January (No. 2), and that considering the number of interests involved it was a question whether a further Notice should not be issued to clear up all doubt, or whether it would be sufficient without public Notice to intimate to those asking for advice that payment of licences, rents or royalties under contracts made prior to the commencement of the war were permitted —the procedure recommended by us in our Report supplemental to that of the 18th January.

That Mr. Cox was also to transmit to us the Papers noted in the margin,† with regard to the imposition of "War Tax" by the Government of the South African Republic.

That that tax was, of course, an entirely different one from the tax referred to in our Reports quoted above.

That it was presumably imposed under Law 24 of 1896, although the amount of the tax, and the date at which notice appeared to have been given, did not entirely comply with the requirements of the law.

That it would be within our recollection that during the past year a correspondence took place between Her Majesty's Government and the Government of the South African Republic regarding the imposition of War Tax under that law in respect of the Magato campaign.

That Her Majesty's Government were at first advised that the action of the South African Republic constituted a breach of the London Convention and that the Companies concerned, though advised to pay, were told to do so under protest, and that their claims for a refusal would be supported diplomatically by Her Majesty's Government, but that in our Report of the 13th October we stated that we considered that the view of the South African Republic that there was no breach of the Convention must be accepted.

That no action was taken on our Report in consequence of the outbreak of the war.

That you apprehended that the question of the liability of British subjects to pay the "War Tax" in respect of the present war, or of the issue of a supplementary Notice declining to recognize confiscation for non-payment of that tax, such as was suggested by the Henderson Consolidated Corporation (Limited), might be considered independently of the controversy with regard to the "War Tax" imposed in respect of the Magato campaign, but that it would be necessary in drafting any such notice as was proposed, to bear in mind that confiscations of property for "War Tax" might be due to failure to comply with the law on either of those two entirely different occasions.

That Mr. Cox was to point out that the letter of the Henderson Corporation, much of whose property was situated in Swaziland, appeared to assume that the High Commissioner's Notice of the 26th January would apply to that country.

That Mr. Cox was to observe that Swaziland, though administered by the Government of the South African Republic under the Swaziland Convention of 1894, had never been incorporated in that Republic, and that, although the claims of British property-holders in Swaziland to protection were similar to those in the Transvaal, the Notice did not appear to cover Swaziland.

That he was to add that Law No. 11 of 1896, referred to by Mr. Whitty, was the law providing for the collection of direct taxes, and gave the Government in case of non-payment a lien first on the crops and then on the land.

That Mr. Cox was also to inclose a despatch from the Governor of Natal forwarding a letter from Mr. W. A. Knight, who, having become a burgher of the South African Republic, inquired whether he could be "forced to take up arms against his country (*i.e.*, this country), at the peril of losing his property." That other papers relating to similar cases were also inclosed.*

That Mr. Cox was to observe that burghers of British origin, such as Mr. Knight, were undoubtedly bound by the Commando Law to take up arms against the Queen, but that to compel them to do so was a harsh measure, which, as Mr. Knight, observed, had not been pursued with regard to the Dutch burgher forces at the Cape.

That the High Commissioner's Notice appeared to cover the case of the confiscation of the land of a burgher such as Mr. Knight, who refused to fight, and that it appeared, on general principles, to be desirable to detach waverers from the armies of the Republics in that way.

That Mr. Cox was to request us to take the papers into our consideration, and inform you—

1. Whether we considered that a Supplementary Notice to that of the 26th January, should be issued, and, if so, whether it should refer to the payment of ordinary rents and licences, the payment of "War Tax" and confiscation of land for failure to pay "War Tax," and the confiscation of land of burghers who refused to fight against the Queen, or any of such matters; or whether we consider that the existing Notice was sufficient, and whether it covered all or any of those cases, and, if so, in what terms the inclosed inquiries should be answered?

2. That Mr. Cox was to request that if we considered a further Notice was necessary, we would draft the Notice required. That it was desired that such a Notice might either explicitly or implicitly make clear that no liability for giving compensation was thereby admitted by Her Majesty's Government.

3. That finally, Mr. Cox was to inquire whether the confiscation of the movable property of British subjects in the South African Republic or Orange Free State was covered by the Notice issued by the High Commissioner on the 26th January,

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* Governor of Natal, February 4 (3); Secretary of State to High Commissioner, January 23 (4); High Commissioner, January 25 (48); Secretary of State, January 27 (2).

† Mr. R. J. Whitty, February 6; Henderson Consolidated Corporation, February 6, 1900; High Commissioner (Telegraphic), February 10 (93).

* Mr. F. H. Sydney, January 25, 1900; Governor of Natal, January 18 (case of M. Rous); Governor of Natal, January 19 (case of Mr. Barrett).

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and, if so, whether the answers which had hitherto been given by Her Majesty's Government in regard to inquiries as to compensation were appropriate, and should still be given.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

1. That in our opinion the existing Notice is sufficient. It covers all the cases mentioned whether the confiscation be for the non-payment of ordinary rents or licences, or for failure to pay the "War Tax," or for refusal to fight against the Queen.

Though Swaziland is not mentioned in the Notice we presume that Her Majesty's Government intend to include it under the general designation of the territories of the South African Republic. It certainly ought to be included, but, at present, no further notice to this effect seems to be necessary.

We think that the Henderson Corporation should be informed that it is not intended to issue any further Proclamation or Notice at present, and that while the "War Tax" must not be paid, Her Majesty's Government raise no objection to the payment of the ordinary rents or licences reserved under the contracts by which the land was taken before the war.

As the letter of the Henderson Corporation states that the Notice appears to cover property of all descriptions, it will be well to state incidentally in reply that it relates to immovable property only.

Mr. Whitty should, we think, be referred to the terms of the Notice of the 26th January, 1900, and informed that the "War Tax" must not be paid, but that there is no objection to the payment of ordinary rents and licences.

Those who have written to inquire whether they will be indemnified in respect of the consequences of their refusal to serve against the Queen should be informed that the Notice of the 26th January applies to the case of forfeiture or confiscation of immovable property for refusal to serve.

2. Does not arise.

3. The Notice of the 26th January has no application to movable property. It applies only to property situate in the territories of the South African Republic or Orange Free State, and the terms of the Notice show that it is not intended to apply to movables. The answers that have been given with regard to inquiries for compensation appear to us to be right. We think that in future the opportunity might be taken for stating that the Notice applies only to immovable property.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

No. 13.

[February 27, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 15, 1900.

Gentlemen,

Responsibility of Uganda Administration for losses of Protectroate officers through robbery of their goods in transit.

I HAVE the honour, by direction of the Marquess of Salisbury, to lay the following circumstances before you in connection with losses recently sustained by officers and non-commissioned officers in Uganda through robberies which have taken place from loads of goods going up to them from the coast.

Both classes of officers are entitled by the Regulations to receive a certain number of porter loads a-year free of transport charges, so that in effect their salaries may be considered to be higher than the nominal figures at which they are put by the value of the transport charges of the loads in question.

In these circumstances it seems open to contention that the Administration has promised the free carriage of these goods as part of the contract of service entered into between it and its employés, and that it may therefore have rendered itself responsible for the safe delivery of the goods.

Any general liability of the Administration in the matter (assuming that such liability exists) might no doubt be limited by previous agreement with the employés; but this has not been done so far, and can hardly now be done with regard to those at present employed under agreements in which no such limitation was originally inserted.

I am to request you to favour Lord Salisbury with your opinion as to whether the above view of the responsibility of the Uganda Protectorate Administration is correct and generally with any observations which you have to make on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

We understand the question put to us to relate, not to loads carried in the Government caravans, but to loads carried by carriers in the ordinary way in respect of which the officer has a claim against the Government to be repaid the cost of transport.

With regard to these loads we are of opinion upon the materials now before us that the Government are in no way responsible for loss. The officer or his agent has selected the carrier and made his own arrangement for the transport. All that the Government has done is to undertake to repay the cost of the transport of four loads per quarter as part of his salary.

Of course, if the Government had undertaken that they would insure for the officer the safe receipt of sixteen loads in each year, or had undertaken to find the carriage for him of that number of loads, different considerations would arise. If the whole contract between the Government and the officer on this point is correctly stated in the despatch and the further Memorandum there is no liability on the part of the Government for loss.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 27, 1900.

No. 13A. [Colonial Office.]

[March 16, 1900.]

Colonial Office to the Law Officers of the Crown.

Downing Street, March 14, 1900

Gentlemen,

Proclamations relating to confiscations of property or mining rights by South African Republic and Orange Free State.

I AM directed by Mr. Secretary Chamberlain to request your consideration of certain questions which have arisen with regard to lands, railways, mines, and other property owned by the Governments of the South African Republic and the Orange Free State, within the territories of the Republics, and of certain further questions which are likely to arise in the event of the destruction by order of the said Governments, or by the citizens of the Republics, of property in mines, buildings, mining machinery, and the like owned by the Governments of the Republics or by private individuals or Companies within the territories of such Republics.

2. It is apprehended that, in view of the possible inclusion of the territories of the South African Republic and Orange Free State within Her Majesty's dominions at the conclusion of the war, the Governments of the Republics may make extensive alienations of property owned by them in land, railways, or mines, in order to prevent such property falling into the hands of Her Majesty at the conclusion of the war, and to cause difficulties between Her Majesty's Government and the subjects of foreign Powers to whom such property may have been made over.

3. It has accordingly been suggested that a Proclamation should at once be issued of a similar nature to that issued by the High Commissioner for South Africa on the 26th January last (a copy of which is inclosed, marked (A)), warning all whom it may concern that such alienations of property will not be recognized by Her Majesty's Government.

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4. A draft of such a Proclamation, which has been prepared in this Department, is transmitted herewith, and marked (B).

5. Her Majesty's Government have, further, some grounds for anticipating that, should Her Majesty's forces advance into the territories of the South African Republic, the Government of the Republic may order or permit, or the burghers of the Republic may, without such order or permission, destroy valuable property of Her Majesty's subjects or of the subjects of neutral Powers in the shape of mines, mining machinery and plant, buildings, and the like, or the property of the Government of the South African Republic of a like nature. It is desired to prevent, if possible, the occurrence of such wanton destruction of property, and I am to inclose the draft of a Proclamation (marked (C)) which it is proposed to issue, with a view to warning all whom it may concern, that persons ordering or committing such acts of destruction will be held liable by Her Majesty's Government in property and person for their conduct.

6. I am to request you to take these matters into your consideration, and to advise Mr. Chamberlain:—

1. Whether there is any objection, on grounds of international law or otherwise, to the issue by Her Majesty's Government—

(*a*.) Of a Proclamation declaring that Her Majesty's Government will not recognize alienations of their property by the Governments of the South African Republic or Orange Free State;

(*b*.) Of a Proclamation warning persons against wanton destruction of property within the Republics.

2. If not, whether the draft Proclamations transmitted herewith are fit and proper for the purposes for which they are intended, or in what respects they should be amended.

3. Generally.

I am to request that Mr. Chamberlain may be favoured with your Report at the earliest possible moment.

I have, &c.
(Signed) H. BERTRAM COX.

Report.

We see no objection to either of the proposed Proclamations.

The liability under the second will be according to law—martial law if the act is done while the district is under martial law—or the ordinary law of the country.

As altered and initialled by us, we approve of the draft Proclamations.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 16, 1900.

Proclamation (*A*).

SOUTH AFRICA.

Notice issued at Cape Town on January 26, 1900, *by the High Commissioner for South Africa.*

Notice is hereby given that the Government of Her Majesty will not recognize as valid or effectual any forfeiture of any property situated in the territories of the South African Republic or Orange Free State, or any charges, fines, or encumbrances of whatsoever description declared, levied, or charged upon any such property, or any conveyance, transfer, or transmission of any such property, which forfeiture, charge, fine, encumbrance, conveyance, transfer, or transmission has been or shall be declared, charged, levied, created, made, or carried into effect by the Governments of the South African Republic or of the Orange Free State subsequently to the 10th day of October, 1899.

Draft Proclamation (*B*).

Notice is hereby given that the Government of Her Majesty will not recognize as valid or effectual any alienations of property, whether of lands, railways, mines, or mining rights, within the territories of the South African Republic or Orange Free State, or any interest therein of whatsoever nature, or any charges or encumbrances of whatsoever description declared upon any such property or interest as aforesaid effected, declared, charged, or made by the Governments of the South African Republic or Orange Free State subsequently to the date of this Proclamation, nor any Concessions granted by either of the said Governments subsequent to such date.

(Initialled) R. E. W.
R. B. F.

Draft Proclamation (*C*).

Notice is hereby given that all persons who, within the territories of the South African Republic or Orange Free State, shall be guilty of the wanton destruction or damage, or of counselling, aiding, or assisting in the wanton destruction or damage of public or private property, such destruction or damage not being justified by military necessity, or by the usages and customs of civilized warfare, will be held responsible in their persons and property for all such wanton destruction and damage.

(Initialled) R. E. W
R. B. F

No. 14.

[March 19, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 15, 1900.

Gentlemen,

Attempted commandeering of staff of Robinson South African Banking Company.

I HAVE the honour, by direction of the Marquess of Salisbury, to inform you that he learns from the Robinson South African Banking Company that the Government of the South African Republic have endeavoured to force the manager and staff of their branch bank at Johannesburg—all of whom are represented as being British subjects—to "go on commando," and that, on their refusal to take up arms against their Sovereign, preparations have been made for expelling them from the territories of the Republic.

The question is thus raised how far one belligerent State is justified during war in ejecting from its territories the non-combatant subjects of the other belligerent State.

The modern practice seems to tend towards the establishment of a usage whereby enemy non-combatant subjects are permitted to remain in the enemy country during good behaviour.

This usage cannot, however, be said to be either authoritative or of universal acceptance, and Lord Salisbury would therefore be glad if you would take the question raised by the Robinson South African Banking Company into your consideration and favour him with your opinion as to whether any, and, if so, what, action should be taken in the matter by Her Majesty's Government; and with any observations of a general nature which you may have to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

It cannot be said that the expulsion of enemy non-combatant subjects is a violation of international law, but it is a harsh measure, and in the absence of some good reason for it, is not in accordance with modern practice.

It is, however, most unusual and improper to require such persons to bear arms against their own Sovereign. The true rule on this subject is laid down in

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section 391 of Bluntschli's "Droit International" (5th edition 1891) and the accompanying note.

We think that the expulsion of British subjects because of their refusal to bear arms against their own country affords fair ground for remonstrance. Such a remonstrance may be useful by way of calling attention to the very oppressive conduct of the Transvaal Government in this matter.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 19, 1900.

Annex.

M. BLUNTSCHLI : "*Le Droit International Codifié.*" *3rd Edition*, 1881, *p.* 236.

§ 391. Les étrangers ne peuvent être astreints au service militaire. Il pourra être fait exception à cette règle si cela est nécessaire pour défendre une localité contre des brigands ou des sauvages.

[1. Le service militaire est de son essence une obligation civique et politique ; on ne peut donc le séparer de la qualité de citoyen de l'État. Or, comme on n'accorde pas dans la règle des droits politiques aux étrangers, il ne peut non plus leur être imposé des charges civiques. Si on les contraignait à servir sous les drapeaux d'un État étranger, ils pourraient se voir forcés de verser leur sang pour une cause qui leur est indifférente, ou pour des intérêts opposés à ceux de leur patrie. Les étrangers établis dans le pays ne peuvent être appelés au service que s'il s'agit d'augmenter les forces d'une localité pour lutter contre des peuplades incivilisées ou contre des brigands ; ils ne peuvent plus l'être s'il s'agit d'une guerre politique.

2. Des sujets Anglais ayant été contraints, pendant la guerre civile Américaine, d'entrer dans la milice de l'État de Wisconsin, en raison du fait qu'ils y avaient exercé le droit de vote, l'Angleterre réclama, parce qu'ils n'étaient nullement devenus pour cela citoyens Américains, et qu'en leur qualité d'étrangers ils n'étaient point astreints au service militaire. Dépêche de Lord Lyons du 29 Novembre, 1862 (Statsarchiv d'Aegidi et Klauhold, 1941). Le bien fondé de la réclamation fut reconnu en principe.

3. Pendant le siège de Paris, l'armement de toute la population masculine, et les menaces dont certains habitants des quartiers excentriques de la capitale firent usage envers les étrangers, pour les contraindre à entrer dans la garde nationale, ont donné également lieu à des réclamations auprès du Gouvernement du 4 Septembre.]

No. 15.

[March 23, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 9, 1900.

Gentlemen,

Responsibility of Protectorate Administrations for safe custody in transit of loads for Uganda officers.

I AM directed by the Marquess of Salisbury to acknowledge receipt of your Report of the 27th ultimo, on the subject of the extent of the responsibility devolving upon the Administrations of the East Africa or Uganda Protectorates for the safe custody in transit of the loads of which free transport is allowed to officers of the Uganda Protectorate. His Lordship regrets that in the reference on which your Report was founded the exact position of the transport service to Uganda was not made more clear, and I am now to offer the following explanations in regard to it.

There are two stages in the transport of goods from the coast at Mombasa to Uganda :—

1. By rail, to railhead.
2. By carts, porters, and, on the Lake, by sailing-boats or canoes.

The railway is a Government undertaking which charges rates on all freight, whether Government or not, which passes over its rails.

There is a system of transport from railhead which is kept up by Government for Government purposes out of the funds of the Uganda Administration. All charges connected with it are met out of those funds, and no goods are carried by it for persons unconnected with the Administration. In order to save European officers of the Protectorate the heavy cost of transport on a certain quantity of European necessaries of life, without which their health, and therefore public efficiency, would suffer, the Administration allows them free transport of a fixed number of loads. These loads average between 50 and 60 lbs. weight of goods, and the allowance was made in loads because, at the time, the only means by which goods were conveyed to Uganda was by loads on the heads of porters. So far, therefore, as goods conveyed by the railway or by the Government transport service are concerned, they are from the date of their being placed on the railway only handled by persons in Government employment. There is not actual contract for delivery, and the Administration is ignorant of the contents of the loads which it carries for its officials ; the delivery may take place close to railhead or it may be necessary for the loads to be carried to the most distant part of the Protectorate where porters are still the only means of transport.

There are, in addition to the Government transports, private carriers, but Lord Salisbury does not understand that they are now under consideration, and he thinks that the point on which your opinion is requested may be confined to the liability of the Administration for the contents of loads carried by the Government transport.

I am to request that you will take the matter into your further consideration by the light of these more detailed explanations, and that you will be good enough to inform Lord Salisbury whether they modify, and if so to what extent, the opinion with which you favoured his Lordship on the 27th ultimo.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

Upon the materials now before us, our previous Report which was based upon the despatch of the 15th February and the supplementary Memorandum is no longer applicable.

It appears to us that the Government is liable for any loss of the property comprised in the loads in question unless it can be shown that the loss was not due to any negligence on the part of the Government employees, but was due to some cause which could not be obviated by those whom the Government employed to carry these loads either on the railway or from the railhead to the interior.

On such a contract as the Government has entered into with its officials, the Government is bound to see that due care is taken of the property, and the loss—if unexplained—would be evidence of negligence on the part of those to whom the Government has intrusted the care of it.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 23, 1900.

No. 16.

[April 3, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 27, 1900.

Gentlemen,

Payment of fees on patents in Orange Free State.

I HAVE the honour, by direction of the Marquess of Salisbury, to bring before you the following circumstances.

On the 7th instant Messrs. Stanley and Popplewell, a firm of chartered Patent Agents, wrote to say that some of their English clients were owners of patents in the Orange Free State, granted under the Ordinance No. 10 of 1888 ; and that as one of those patents would become void in May next, unless a renewal fee were paid to the Treasurer-General of that State, they were anxious to learn whether such a payment in the present condition of affairs in the Free State might safely be made, and whether, if made, it would be effectual in securing a continuance of the patent rights.

Lord Salisbury thereupon drew the attention of Mr. Secretary Chamberlain to

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the case, and stated that, with his concurrence, his Lordship proposed to inform Messrs. Stanley and Popplewell that there was no objection to such a fee as they mentioned being paid, but that it was impossible to advise them as to the effect of the payment.

Mr. Chamberlain pointed out in reply that, in consequence of the occupation of Bloemfontein and of the flight of the officers of the Republican Government, doubts naturally arose as to the question with whom the Government of the Free State now rests, and as to whether the fees in question should be paid to the British authorities in possession.

The matter is complicated by the fact that there is no trustworthy information to hand as to the exact state of things which now exists at Bloemfontein.

President Steyn has fled from the capital and ordinary seat of Government, and has been described by the Field Marshal Commanding-in-chief Her Majesty's forces in South Africa as the "late President," but so far as is known he has not by any formal act abdicated his functions. He probably left Bloemfontein because he wished to avoid being captured or surrendering himself on the occupation of that town, but presumably he still claims to be President of the Orange Free State.

It is to be remembered, further, that the British forces are in effective occupation of only a portion of that State; and presumably the *de jure* Government are within their rights in removing the seat of the Government to some place other than Bloemfontein.

I am to request you to take the above facts into your consideration and to favour Lord Salisbury with any observations you may have to offer on the effect which they have had on those who, as in the case of Messrs. Stanley and Popplewell's clients, have relations with the Government of the Orange Free State; and generally on the rights and duties of Her Majesty's military forces in regard to the civil administration of the occupied territory.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

The Orange Free State cannot be considered as a conquered country. Military occupation is in its nature merely provisional, and it is only a portion of the Orange Free State which is even under military occupation by the British forces. Her Majesty's Government have not finally assumed the administration of the Free State, and if persons in the position of Messrs. Stanley and Popplewell's clients were directed to pay fees to the Commander of the British forces, or to the British Government, this would be a step inconsistent with the essentially provisional nature of military occupation, and would involve an obligation to indemnify such persons in eventualities which though not probable are possible. We think that the attitude which has been already adopted should be adhered to, and that no directions should be given with reference to the payment of such fees.

Military occupation involves the displacement of the ordinary Government of the country, only so far as this is necessary for military purposes, to which everything else must be subordinated. The subject is well treated by Rivier, "Principes du Droit des Gens," vol. ii, p. 299 *et seq.;* and, speaking generally, the Articles contained in Section III adopted at the Hague Conference fairly express the state of things which results from military occupation. It is merely a step in the prosecution of the war, and does not amount to a displacement of the existing Government, except so far as is necessary for the purposes of the war.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 3, 1900.

No. 17.

[April 7, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 3, 1900.

Gentlemen,

Bridler and Co.'s claim for detention of goods conveyed in British vessels and destined for enemy's territory.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the correspondence, as marked in the accompanying list, respecting a claim for compensation which has been put forward by the Swiss Minister at this Court on behalf of the Swiss firm of Messrs. Bridler and Co., of Lourenço Marques, in respect of certain goods, estimated to be worth 920*l*. 8s., which were being conveyed to them by British ships, and which were landed at various British ports in South Africa on suspicion of their being destined for the enemy's territory.

The particulars of the different cargoes in regard to the detention which Messrs. Bridler ask for compensation are, according to that firm's statement of the case, as follows:—

1. The "Dunolly Castle." This vessel was obliged by the Customs authorities to unload 71 tons of sugar at East London.

2. The "Gaika." Twenty-five cases of condensed milk are said to have been seized on board this vessel, but no particulars are furnished as to whether this happened at Durban or at East London, or by whose order they were so seized.

3. The "Tintagel Castle" was obliged by the Customs authorities to unload twelve cases of biscuits and one case of cigars at Durban.

4. From the "Umtali" thirty cases of condensed milk were unloaded and seized at Durban, but by whom they were unloaded does not appear.

5. From the "Inyati" were taken out at Durban, but by whom is not mentioned, twenty cases of barley, two cases of soap, five cases of preserved fish, five cases of macaroni, twenty cases of starch, five cases of tapioca, five cases of sago, twenty cases of Sunlight soap, one case of gelatine, five cases of marmalade.

6. From the "Clan Graham" seventy-five cases of whisky were seized by the Customs authorities at East London, acting under the orders of the Commanding Officer of Her Majesty's ship "Barrosa."

On the 13th February a letter (Paper E) was received from the Colonial Office on the subject, from which it appeared that, so far at least as the Natal authorities were concerned, their action in the matter had been due to their having been informed by the High Commissioner that Messrs. Bridler and Co. were considered by Her Majesty's Consul at Lourenço Marques to be agents for the Transvaal.

On the 27th February a further letter was received from the Colonial Office (Paper F), to the effect that the goods *ex* the steam-ship "Dunolly Castle" had been landed at East London by the agents of the vessel of their own motion. As for the whisky *ex* the "Clan Graham," the Customs had insisted on its being landed at the above-mentioned port, because most of it was destined for the South African Republic, and there was no proof that any was intended for Portuguese consumption. Further particulars as to the consignment from the two vessels will be found in the Colonial Office letter of the 16th March (Paper I).

On the 10th March (Paper G) M. Bourcart was informed that, in the opinion of the Natal authorities, there had been reason for concluding that the ultimate destination of Messrs. Bridler's goods was the Transvaal, and that this being so, they could not lawfully be carried by British ships, which were prohibited from carrying goods destined for the enemy's territory. As M. Bourcart had strongly insisted on the fact that all the vessels had sailed before the outbreak of war, and especially before the issue of the Queen's Proclamation of the 27th December, 1899, it was pointed out to him that this document was merely declaratory of the prohibition of trade with the enemy, and did not itself impose such prohibition.

Lord Salisbury went on to say that as M. Bourcart was enabled, under the instructions which he had received, to communicate the declaration of Mr. F. Bridler that the goods were in fact destined for consumption in Portuguese East Africa, Her Majesty's Government felt that they could rely on that declaration as being supported and confirmed by the Swiss Government. Instructions would accordingly be given to the Colonial authorities at Natal to allow the goods to be carried forward to Lourenço Marques by British ship.

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His Lordship added that the goods in question had all along been at the disposal of the owner, and that the only disability attaching to them was that they could not, on the ground which had now been removed by M. Bourcart's assurance, be carried by a British ship.

A copy of this note was sent to the Colonial Office on the same day (Paper H), with a view to the necessary instructions being given to the authorities in Natal.

A letter on the subject (Paper J) has now been received from that Department, covering a copy of a telegram from Her Majesty's Consul at Lourenço Marques, to the effect that Mr. Bridler cannot give any guarantee that the goods in question will not go to the Transvaal Republic. This statement may be compared with the language used in M. Bourcart's note of the 24th January, in which he alludes to the goods as being "destinées, selon les affirmations de Mr. Bridler, à être vendues sur place, et non pas à être importées au Transvaal," and further on as having been "réservées selon la déclaration du réclamant à la consommation locale dans le territoire neutre," and with that which he employs in his note of the 31st January, in which he speaks of Mr. Bridler as a person "qui faisait simplement venir dans un port neutre des marchandises destinées à la consommation locale."

M. Bourcart has now pointed out that no reply has been given to the request contained in his note of the 24th January that compensation should be granted to Messrs. Bridler and Co., and he presses for an answer on the point.

I have the honour to request you to favour Lord Salisbury with your views as to the answer which should be returned to M. Bourcart's request that Mr Bridler may receive compensation, together with any general observations on the case which you may desire to offer.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) M. Bourcart	January 24. 1900.
(B.) Ditto	January 31, „
(C.) To ditto	February 3, „
(D.) To Colonial Office	February 3, „
(E.) Colonial Office	February 9, „
(F.) Ditto	February 26, „
(G.) To M. Bourcart	March 10, „
(H.) To Colonial Office	March 10, „
(I.) Colonial Office	March 16, „
(J.) Ditto	March 20, „

Report.

In our opinion the claim for damages should not be entertained.

It should be pointed out that, in view of the attitude of Messrs. Bridler, it is more than doubtful whether the goods were really destined for consumption at Lourenço Marques, as was assumed when it was decided that their transit might be permitted, and that, in any case, damages cannot be claimed for the detention, as there was abundant ground for suspicion that the destination of the goods was such that they could not be lawfully carried by a British vessel according to the law of the flag.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 7, 1900.

No. 18.

[May 4, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 24, 1900.

Gentlemen,

"Mashona;" arrest of, on suspicion of trading with the enemy.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers as marked in the margin respecting the case of the "Mashona," a British steam-ship which was seized in Algoa Bay on the 8th December, 1899, by Her Majesty's ship "Partridge," on suspicion of trading with the enemy, and subsequently brought in for adjudication by the Prize Court at Cape Town.

On the 15th ultimo the High Commissioner for South Africa telegraphed (Paper A) to the effect that judgment in the case had been delivered on the 13th March, and that in accordance with its terms the ship had been released. He added, however, that the Attorney-General of the Colony was of the opinion, which he shared, that the judgment was erroneous, and that he had accordingly given notice of appeal, which could be prosecuted or not as Her Majesty's Government might see fit when the text of the judgment itself reached this country, and so allowed of a definite opinion being formed in the matter.

That judgment has now been received (Paper B), and I am accordingly to request you to take it into your consideration, and to favour Lord Salisbury with your opinion as to whether the appeal already lodged against it should or should not be prosecuted; as well as with any general observations which you may have to offer on the case.

A copy of the interim judgment is also inclosed (Paper E) as well as some remarks on the general aspects of the matter by the Admiral in command on the Cape of Good Hope Station (Papers C and D).

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) Colonial Office	March 17, 1900.
(B.) Ditto	April 9, „
(C.) Admiralty	„ 9, „
(D.) Ditto	„ 11, „
(E.) Colonial Office	„ 5, „
(F.) Admiralty (with inclosure)	„ 24, „

Report.

In our opinion the appeal ought not to be prosecuted. There is no doubt as to the law applicable to the case. If the intention is to trade with the enemy only after obtaining a licence from the British Government no offence is committed. The "Mercurius," Edwards 53.

On the other hand the offence may be committed if the intention was to trade with the enemy without a licence under the erroneous belief that no licence was required in respect of the particular goods. "The Hoop," 1 C.R. 196.

In the present case it was alleged on behalf of the ship-owner that the intention was before carrying the cargo to Delagoa Bay to give bond to the satisfaction of the Commissioners of Customs that the goods should be held at the disposal of the British authorities. It must, we think, be taken that the Commissioners of Customs in allowing goods to proceed after such bonds had been given, were acting within the authority of the British Government.

The difference between the majority of the Court and the dissenting Judge, Lawrence, J., was merely on a question of fact.

We think that the view of the majority of the Court is the more reasonable. As it was known that such bonds were being exacted, we think that it ought in fairness to be taken, in the circumstances of this case, that the ship-owner brought the goods to Algoa Bay with the intention of giving such a bond, and we do not think it probable

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that the decision which has been arrived at on this point in his favour by the majority of the Court would be reversed on appeal.

The arguments presented in the Memorandum prepared by the Naval Commander-in-chief, which we have carefully considered, do not appear to us to be sufficient to enable us to adopt the view which he puts forward.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
May 4, 1900.

[Colonial Office.] *No. 184.*

[May 17, 1900.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, May 17, 1900.

Sir,

Orange Free State: Mode of annexing. Effect on laws and status of citizens.

WE were honoured with your commands signified in Mr. H. Bertram Cox' letter of the 12th instant, stating that he was directed by you to request our consideration of certain questions relating to the annexation of the Orange Free State, which it was the intention of Her Majesty's Government to proclaim at an early date.

That Mr. Cox was to transmit to us copies of recent telegrams* which had passed between the Colonial Office and the High Commissioner for South Africa, from which it would be seen that Lord Roberts desired that the announcement should be made as soon as Kroonstadt had been occupied by Her Majesty's forces, and that as that was expected to take place in a few days, the matter was somewhat urgent.

That the questions which we were requested to consider fell into two classes: class (A) relating to the manner in which the annexation should be effected; and class (B) the form of Constitution which should be established in the annexed territories.

That it was presumed that upon the formal annexation of the Orange Free State, inasmuch as that country would have been acquired by conquest:—

1. The Laws of the Orange Free State would remain in force unless and until altered by legislation.
2. Such legislation might be effected by order of Her Majesty's Council.
3. The inhabitants of the Orange Free State would become British subjects.
4. Her Majesty had power by Letters Patent to establish a Governor and to empower such Governor to enact laws and to appoint judicial and other officers.

That, with respect to class (A), Mr. Cox was to transmit to us a copy of the correspondence presented to Parliament in 1877 (C. 1776),† from which it would be seen that the annexation of the Transvaal in April of that year was effected (after the grant of a Commission under the Royal Sign Manual and Signet to Sir Theophilus Shepstone to inquire into disturbances which had taken place in that country, and, in certain events, to proclaim that that country should be annexed to, and form part of, Her Majesty's dominions) by a Proclamation of Sir Theophilus Shepstone, based on the authority of that Commission, formally declaring the territory known as the South African Republic to be British territory. That it was, of course, possible to issue such a Commission to Lord Roberts in this country and to convey to him, by telegraph, the announcement that he was empowered thereby to issue a Proclamation of annexation, the terms of which could be at the same time signified to him.

That, on the other hand, it might be preferable to formally annex the Orange Free State by Proclamation, Letters Patent, or Order in Council issued in this country, and to direct Lord Roberts to notify publicly the terms of such annexation in the Orange Free State, and that one of the questions to which our attention was directed was which of the above courses was to be preferred from a legal point of view.

* Telegrams (2), May 5; ditto, May 7; ditto, May 8; ditto, May 10, 1900.

† Parliamentary Paper (C. 1776), 1877. Lord Chancellor's Reports, May 6; ditto, July 18, 1881. Law Officers' Reports, May 12; ditto, September 25, 1877; ditto (2), July 3, 1894; ditto, September 30, 1897; ditto, February 5, 1900.

That Mr. Cox was to transmit to us the draft of a Commission empowering Lord Roberts to annex the Orange Free State,* and of an Order in Council† which, should we think it desirable, could be converted into a Proclamation or into Letters Patent, should that form of procedure seem to us preferable.

That Mr. Cox was also to transmit to us the drafts of a Proclamation‡ to be issued in the Orange Free State simultaneously with the Proclamation or announcement of annexation, in order to notify to the inhabitants that the protection of Her Majesty would be extended to such as peaceably returned to their homes and refrained from acts of violence or hostility.

That Mr. Cox was further, with regard to the questions under class (B) above referred to, to transmit to us drafts of—

(*a.*) Letters Patent § establishing the form of Government which it was proposed to set up temporarily in the annexed territory;
(*b.*) Instructions‖ to the Governor to be appointed;
(*c.*) Draft of a Commission¶ appointing a Governor.

That Mr. Cox was to request us to take the matters into our consideration, and to advise you—

1. Whether upon annexation the laws of the Orange Free State would remain in force unless and until altered by legislation?

2. Whether such legislation could be effected by Order of Her Majesty in Council?

3. Whether the inhabitants of the Orange Free State would become British subjects upon annexation, and, if so, whether such transfer by nationality would apply equally to inhabitants who were and who were not within the Orange Free State at the date of annexation?

4. Whether Her Majesty had power by Letters Patent to establish a Governor and to empower such Governor to enact laws and to appoint judicial and other officers?

5. Whether the annexation should be affected by Proclamation made by Lord Roberts in the Orange Free State, and, if so, whether it was necessary that a formal Commission under Royal Sign Manual and Signet should be issued empowering and directing him to do so, or whether such instructions from Her Majesty could be communicated through a Secretary of State?

6. Whether it was preferable that annexation should be effected by:—

(*a.*) Proclamation; or
(*b.*) Order in Council; or
(*c.*) By Letters Patent in this country, and the fact of the issue of such Proclamation, Order in Council, or Letters Patent should be notified by Lord Roberts in the Orange Free State?

7. Whether the several drafts submitted were fit and proper for the purpose intended in each case, and, if not, in what respects they should be amended?

We have taken the papers into our consideration, and, in obedience to your commands, have the honour to

Report—

(1) and (2). That we answer questions one and two in the affirmative.

(3.) The inhabitants of the Orange Free State *will* become British subjects upon annexation.

It has, however, been usual in recent times to allow those who do not desire to become subjects of the conqueror to leave the conquered territory within a reasonable time, and we think this course would properly be followed in the present case. No such persons should, however, be allowed to remove to the Transvaal while the war continues.

The transfer of nationality ought not to be imposed on inhabitants who are not within the State, unless they return to it afterwards.

(4.) Yes.

* Draft Commission empowering Lord Roberts to annex Orange Free State.

† Draft Order in Council providing for annexation.

‡ Draft Proclamation (see Annex).

§ Draft Letters Patent.

‖ Draft Instructions

¶ Draft Commission to Governor.

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(5) and (6). We think, on the whole, that the annexation should, when the country has been conquered, be made by Order in Council, which should be proclaimed here and in the Orange River State.

Lord Roberts may be directed by cable to make such Proclamation, the terms of the Order in Council being cabled to him.

(7.) The drafts, as altered and initialled by us, appear to us to be fit and proper for the purpose intended in each case.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

Annex.

Proclamation.

(Published by Her Majesty's Commissioner in South Africa, May 30, 1900.)

WHEREAS certain territories in South Africa, heretofore known as the Orange Free State, have been conquered by Her Majesty's forces, and it has seemed expedient to Her Majesty that the said territories should be annexed to, and should henceforth form part of, Her Majesty's dominions, and that I should provisionally, and until Her Majesty's pleasure is more fully known, be appointed Administrator of the said territories, with power to take all such measures and to make and enforce such laws as I may deem necessary for the peace, order, and good government of the said territories:

Now therefore I, Frederick Sleigh, Baron Roberts of Candahar, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal Commanding-in-chief the British forces in South Africa, by Her Majesty's command, and in virtue of the power and authority conferred upon me in that behalf by Her Majesty's Royal Commission, dated the 21st day of May, 1900, and in accordance with Her Majesty's instructions thereby and otherwise signified to me, do proclaim and make known that from and after the publication hereof the territories known as the Orange Free State are annexed to, and form part of, Her Majesty's dominions, and that provisionally, and until Her Majesty's pleasure is fully declared, the said territories will be administered by me with such powers as aforesaid.

Her Majesty is pleased to direct that the new territories shall henceforth be known as the Orange River Colony.

GOD SAVE THE QUEEN!

Given under my hand and seal at the head-quarters of the army in South Africa, Camp south of the Vaal River, in the said territories, this 24th day of May, in the year of our Lord 1900.

(Signed) ROBERTS, *Field-Marshal,*
Commander-in-chief, Her Majesty's Forces in South Africa.

No. 19.

[May 31, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 18, 1900.

Gentlemen,

Detention of cod-fish *ex* "Clan Sinclair" as being for enemy.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list relating to a claim made by Messrs. Taylor and Co. of Liverpool for 225*l*., on account of a consignment of cod-fish shipped by them in the "Clan Sinclair" to Lourenço Marques, and detained by the Customs officials at East London in the erroneous belief that it was destined for the enemy's territory.

I have also the honour to inclose a letter which has been received from the Colonial Office dealing with a somewhat similar case, viz., the claim of the Portuguese Consul at Durban for freight paid by him on certain goods consigned to Delagoa Bay, which were landed in Natal under the mistaken belief that they were destined for the enemy, and could not, therefore, be lawfully carried by a British ship.

The reply returned to the Colonial Office is also forwarded herewith.

I am also to inclose for reference a Report which was furnished on the 7th April last to the Secretary of State by your immediate predecessors in office, with reference to Messrs. Bridler and Co.'s shipments, and in which the late and the present Attorneys-General expressed the opinion that damages for landing of goods from British ships could not be entertained when there was ground for suspicion that the destination of the goods was such that they could not be lawfully carried by a British vessel.

I have the honour to request that you will take these papers into your consideration and favour his Lordship with your opinion as to the answer which should be returned to the application made by Messrs. Taylor and Co., and, generally, with any observations which you may desire to make on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

1. Colonial Office	May 5, 1900.
2. Ditto	April 4, "
3. To Colonial Office	May 11, "
4 Law Officers' Report on the Bridler Case the 7th April, and the papers referred to them in that case.	

Report.

We are of opinion that Messrs. Taylor and Co. ought to be paid compensation for the loss suffered by the detention of the cod-fish shipped by them in the "Clan Sinclair."

We see no reasonable grounds in this case for having detained the goods. In our opinion the fact that the bills of lading were "to order" did not by itself, in this case, constitute any sufficient ground for detention.

We think, in the answer to Messrs. Taylor, whilst agreeing to pay compensation, Her Majesty's Government should not admit any legal liability, and should only express their willingness to pay compensation under the special circumstances of this case.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
May 31, 1900.

No. 19A. [Colonial Office.]

[June 2, 1900.]

Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, June 2, 1900.

Sir,

Contracts with enemy persons on outbreak of war.

WE were honoured with your commands signified in Mr. H. Bertram Cox's letter of the 28th ultimo, stating that he was directed by you to transmit to us a despatch from the High Commissioner for South Africa, inclosing a Memorandum from Mr. Mackie Niven and Mr. Naph Cohen, in which they pointed out that the High Commissioner's notice of the 25th January, which was issued on the advice of the Law Officers, and which was quoted by them, did not protect persons owing rents and other stipulated payments under private contracts to persons in the Transvaal or Orange Free State, which rents, &c., they might fail to pay; and they suggested the issue of a further Proclamation for the purpose of giving such protection.

That you, in reply to that despatch, stated—on the advice of the Law Officers informally given—that you did not consider that any fresh Proclamation such as was suggested was necessary, but that it would be seen from the inclosed copy of a telegram from the High Commissioner of the 19th May, that in consequence of representations from owners of options, the periods of which had expired during the war, and of lessees, &c., who had been unable to make payments, Sir A. Milner (who had not received your

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despatch) suggested the issue of a Proclamation providing for delay in the performance of such private contracts.

That Mr. Cox was also to inclose prints noted in the accompanying list, being letters from various persons who had written to the Colonial Office raising questions of a similar kind to those dealt with in Messrs. Niven and Cohen's Memorandum, together with copies of the replies returned thereto.

That Mr. Cox was to request us to take the papers into our consideration and to report—

1. Whether, in our opinion, all contracts entered into before the commencement of the war between persons in Her Majesty's dominions and persons in the enemy's States, or, if not all contracts, then what contract or classes of contract were suspended during the existence of a state of war?

2. Whether any Proclamation should be issued to protect the rights of such persons, or whether they should be left to establish any, and, if so, what branches of these rights in the local Courts after the restoration of peace?

3. What answer should be returned to Messrs. Henderson's letter of the 23rd May?

We have taken the papers into our consideration,* and, in obedience to your commands, have the honour to

Report—

1. That in our opinion it may be stated, as a general rule, that all contracts existing at the commencement of the war between persons in Her Majesty's dominions and enemies in the enemies' States are, according to their nature, suspended or extinguished by the breaking out of war.

Questions of very great difficulty may arise as to whether particular contracts are merely suspended as in a case of debt resulting from a contract otherwise executed or extinguished, on the ground that performance has been rendered illegal by the outbreak of war (see Esposito *v.* Bowden, 7 E. and B. 763). In our opinion no general rule can be safely laid down in advance beyond the principle indicated in the preceding sentence.

2. In our opinion no such Proclamation is expedient. So far as the parties may not be able to enforce their contracts in the local Courts after the restoration of peace, it may be necessary to legislate in the Orange River and Transvaal territories to prevent injustice from the fact that performance has been prevented by the war, but the terms of such legislation will require very careful consideration, and we think it very inexpedient to attempt by Proclamation to define beforehand the scope of any such proposed legislation.

3. In our opinion Messrs. Henderson should be informed that the Government have the whole matter under their consideration; that it is one which will have to be dealt with on the restoration of peace; that it is impossible at present to give any undertaking as to what conclusions may be come to in individual cases, and that the subject is not one which can be dealt with by Proclamation.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

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* *List of Papers.*

Klisbrinberg Estates Company		October 27, 1899.
Colonial Office reply		October 31, „
Messrs. Phelps and Co		January 31, 1900.
Colonial Office reply		February 7, „
Messrs. Phelps and Co.		February 7, „
Colonial Office reply		February 21, „
Messrs. Monro and Co.		February 21, „
Colonial Office reply		March 10, „
From High Commissioner..	(No. 210.)	April 11, „
To ditto		May 18, „
From ditto	(Telegraphic. No. 311.)	May 19, „

No. 19B. [Colonial Office.]

[July 17, 1900.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, July 17, 1900.

Sir,

WE were honoured with your commands signified in Mr. Bertram Cox' letter of the 10th instant, stating that he was directed by you to transmit to us two despatches from the Governor of Natal, with their inclosures,* having reference to two cases before the Supreme Court of Natal, one arising out of the opening of letters by the Military Censor under authority of martial law, which was proclaimed by the Governor on the 23rd October in a Proclamation† (a copy of which accompanied Mr. Bertram Cox' letter), and the other having reference to the power of the Civil Courts of the Colony to review the proceedings of courts-martial. Interference of Civil Courts with Courts-martial.

That Mr. Bertram Cox was also to transmit two despatches from the Governor of the Cape with inclosures,‡ from which it would be seen that in the Supreme Court of the Cape Colony two of the Judges had expressed the view that, at all events during the existence of martial law, the regularity of the proceedings of courts-martial cannot be inquired into.

That the Judge of the Supreme Court of Natal, however, had expressed an opinion to the effect that, notwithstanding the existence of martial law, a subject of Her Majesty had the right at any time to appeal to the Civil Courts on the ground that martial law was being enforced "recklessly, needlessly, cruelly, or immoderately," and might enforce a demand to restrain such exercise by appeal to the Civil Tribunals; and further, that persons acting under martial law might be called upon by the Civil Courts to justify by proof of necessity any act done in the administration of martial law.

That it appeared to you that if this view of the law was correct, great difficulty might be experienced in the proper administration of martial law unless the extreme step were taken of forcibly suspending the sittings of the Civil Courts.

That Mr. Bertram Cox was to request us to take these papers into our consideration, and to advise you—

1. Whether the opinion expressed by the Supreme Court of Natal was correct in law, or if not, in what respects it was erroneous.

2. If the opinion was correct, what steps could be taken to insure that the powers which the military authorities deemed necessary for the proper administration of martial law should not be interfered with by the Civil Courts.

3. Had the Supreme Court of Natal the right to review a decision of a Court constituted during a state of siege (as at Ladysmith) at a time when it was unable to exercise its jurisdiction.

4. Should an appeal be entered against the decision of the Supreme Court of Natal.

5. Generally.

In obedience to your commands, we have the honour to

Report—

1. That, in our opinion, the Judgment of the Supreme Court of Natal is substantially correct. We do not understand that the Supreme Court claims the right to entertain appeals from the sentences passed under martial law, but only to inquire, on an application in the nature of *habeas corpus*, whether circumstances exist justifying the use of force in the interests of the public safety, and whether the force used is in excess of what is reasonably necessary.

The proclamation of martial law cannot prevent the lawfully-constituted Tribunals of a country exercising their jurisdiction to inquire to this extent into the interference with the liberty of persons who are subject to their jurisdiction. The exercise of any such jurisdiction could only be prevented by force, as by suspen-

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* No. 111, April 6; No. 182, June 6, 1900.

† Proclamation, October 23, 1899.

‡ No. 413, June 13; No. 439, June 20, 1900.

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sion of such Tribunals. Any such application would be barred by an Act of Indemnity legalizing all that had been done in the enforcement of martial law.

2. The interference of the Civil Tribunals can only be prevented—

(1.) By passing such an Act confirming the action of the courts-martial.

(2.) By refusing to comply with the Orders or Judgments of the Civil Tribunals so far as they interfere with the sentences passed by courts-martial.

The latter course should be adopted only when it is imperatively necessary for the public safety, as in a district when war is still raging.

3. See the answer to question 1.

4. We do not think any appeal advisable.

5. We think that an Act of Indemnity and Confirmation should be passed as soon as possible by the Colonial Legislature.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

No. 20.

[August 8, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 26, 1900.

Gentlemen,

As to introduction of Indian Christian Marriage Act into British East Africa Protectorate.

I AM directed by the Marquess of Salisbury to transmit to you the accompanying extract (Paper A) from a despatch from Sir A. Hardinge, Her Majesty's Agent and Consul-General at Zanzibar, in which he states that it would in his opinion be advisable, in view of the growing foreign population of the British East Africa Protectorate, that the Indian Christian Marriage Act (Act 15 of 1872), should be introduced into the Protectorate in pursuance of the powers conferred upon the Secretary of State by Article 3 of "The Africa Order in Council, 1892." Copies of the Indian Act, and of the Africa Order in Council, as well as of "The Foreign Marriage Act, 1892," and the Orders in Council of 1892 and 1895, which now govern the question of marriage in the Proctectorate, are also transmitted (Papers B, C, D, E, and F).

A similar suggestion was made by Sir A. Hardinge in 1898, as will be seen from the accompanying extract from a despatch received from him (Paper G). After full consideration, and for the reasons set forth in the extract from a despatch sent to Sir A. Hardinge in reply (Paper H), it was decided not to take any steps in the direction indicated; and if the present proposal were agreed to, it would be a reversal of the decision then arrived at.

Lord Salisbury is advised, however, that there is no question as to the actual power, under the terms of the Order in Council, to apply the Indian Christian Marriage Act in the manner proposed; and should you concur in this view, the matter will resolve itself into one of suitability and expediency only.

In view, therefore, of the advantages which, in Sir A. Hardinge's opinion, would flow from the introduction of the Act into the Protectorate, I am to request you to favour his Lordship with your opinion as to whether those advantages outweigh the objections pointed out on the former occasion, and (2), if so, whether you can suggest any means by which those objections might be either wholly or in part overcome.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Sir A. Hardinge (Extract)	..(No. 213).	
(B.)	Indian Act.		
(C.)	Africa Order in Council.		
(D.)	Foreign Marriage Act, 1892.		
(E.)	Order in Council, 1892.		
(F.)	" " 1895.		
(G.)	Sir A. Hardinge (Extract)	..(No. 10, Consular)	August 16, 1898.
(H.)	To Sir A. Hardinge (Extract) ..	..(No. 1, ")	January 10, 1899.

Report.

In our opinion, under "The Africa Order in Council, 1892," there is power to apply the provisions of the Indian Christian Marriage Act to the Protectorate. Such application would not require the repeal of "The Foreign Marriage Act, 1892," nor do we think the introduction of the law of divorce a necessary consequence. It would, however, be very anomalous and inconvenient that there should exist side by side the Foreign Marriage Act and the proposed legislation, as the former presupposes a foreign country, and the latter a country under the dominion of the Crown. And it is difficult to see on what principle, if we provide by territorial legislation for marriage, we should not provide for divorce or judicial separation.

In truth the question is part of a larger one, viz., whether Her Majesty's Government is prepared to assume the sovereignty of this territory. If it is still to be regarded as a country in which the Foreign Marriage Act is in force, we think the balance of convenience is against the proposed legislation. So far as British subjects are concerned, there is no hardship at present. The Governments of the countries to which foreign residents belong may make provision for their marriages, and, on the whole, we think that legislation of the kind proposed should be deferred until Her Majesty's Government is prepared to assume in name the sovereignty which it enjoys in substance.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 8, 1900.

No. 21.

[October 31, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, October* 22, 1900.

National status of citizens of late South African Republic.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit herewith, for your consideration, the papers noted in the accompanying list, relative to the present national status of persons who were citizens of the late South African Republic and Orange Free State; and the effect thereon of the recent Proclamations whereby the territories of these two Republics have been incorporated in Her Majesty's dominions.

This question has already, to a great extent, been dealt with in the Law Officers' Report to the Secretary of State for the Colonies of the 17th May last, a copy of which has been placed at the disposal of this Department, and is inclosed for convenience of reference.

I am, however, to invite your attention to the accompanying despatch from Her Majesty's Ambassador at Berlin. It appears from this despatch that a certain M. Abraham Michalski, who became a naturalized citizen of the Orange Free State, and who has also divested himself of his Prussian nationality of origin, now claims the status of a British subject by virtue of the annexation of that Republic by Great Britain, and requests to be furnished with a passport to facilitate his return to the Orange River Colony.

Lord Salisbury, as at present advised, is disposed to think that, in this regard, no distinction can properly be drawn between persons who were natural-born or full citizens of these Republics, and persons who became naturalized therein; and that, subject to the usual practice observed with regard to persons of double nationality when in their country of origin, the same principles should be followed in the case of the latter, as in that of the former. In connection with the consideration of this point, a copy is inclosed of the Laws of the two late Republics.

If this view should be, in your opinion, well founded, it would seem to follow, from the terms of the third paragraph of the Law Officers' Report of the 17th May, that M. Michalski cannot be regarded as a British subject, and, as such, entitled to a British passport, until he shall have actually returned to the Orange River Colony, although the effect of that decision would, for the time being, be to leave him without

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any national status, since the State to which he previously owed allegiance has now ceased to exist.

As it is not improbable that questions involving similar considerations may arise elsewhere, I am to request that you will take these papers into your consideration, and that you will favour Lord Salisbury with your opinion—

1. Whether any distinction of kind or degree is to be drawn between the case of a natural-born or full citizen, and that of a naturalized citizen of the Orange Free State, or of the Transvaal, as to the change in his national status effected by the annexation of those two Republics—and if so, to what extent.

2. As to the reply which should be returned by Her Majesty's Diplomatic or Consular Representatives abroad to inquiries of a nature similar to that addressed by M. Michalski to Her Majesty's Consul-General at Berlin.

His Lordship will be glad at the same time to be favoured with any observations of a general nature which you may desire to offer on the papers.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

Sir F. Lascelles .. .. (No. 37. Treaty) (And Minutes thereon.)	October 7, 1900.
Law Officers' Report to Colonial Office	May 17, ,,
Proclamation of Field-Marshal Lord Roberts	May 24, ,
Ditto	September 1, ,
Political Laws of South African Republic and Orange Free State.	

Report.

In our opinion no distinction should be drawn between the case of a natural-born and that of a naturalized citizen. The third paragraph of our Report of the 17th May, 1900, does not refer to the case of a naturalized citizen of the late Republics voluntarily claiming the status of a British subject in a British possession by reason of the annexation.

2. Her Majesty's Diplomatic and Consular Representatives abroad should be informed that naturalized citizens of the late Republics voluntarily claiming the status of British subjects in the late Republics are entitled to be treated as such.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 31, 1900.

[Colonial Office.]

No. 21^{A}.

[November 9, 1900.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, November 9, 1900.

Marriages in the Transvaal during the present war.

Sir,

WE were honoured with your commands signified in Mr. Bertram Cox's letter of the 30th ultimo, stating that he was directed by you to transmit, for our consideration, the following papers having relation to certain marriages celebrated in the Transvaal during the present war:—

(i.) A despatch from the High Commissioner, South Africa, No. 480, dated the 4th July, 1900, together with Inclosures Nos. 1 and 2.

(ii.) Copy of letter from the Colonial Office to the Foreign Office of the 14th August, 1900.

(iii.) The reply of the Foreign Office, dated the 23rd August, 1900.

(iv.) Copy of Secretary of State's despatch to High Commissioner, South Africa, dated 30th August, 1900.

(v.) A despatch from the High Commissioner, South Africa, No. 735, dated the 3rd October, 1900, together with original Inclosures Nos. 1, 2, 3, and 4.

(vi.) Copy of "The Foreign Marriage Act, 1892" (55 and 56 Vict., cap. 23).

That Mr. Bertram Cox was to ask us to be good enough to take these matters into our consideration, and to advise you:—

1. Whether a Military Governor in the Transvaal had power to appoint Marriage Officers to celebrate marriages.

2. Whether the "Marriage Commissioners" appointed by notice in the "Government Gazettes" at Pretoria and Johannesburg respectively, "for the purpose of carrying out the provisions of the Marriage Ordinance of the South African Republic (No. 3 of 1871)," were, under the circumstances appearing in these papers, competent to (*a*) celebrate marriages under that Ordinance without any religious ceremony, as if they were "Landdrosts;" (*b*) to make the preliminary inquiries imposed by that Ordinance on the Commissioners (Huwelyke Commissaris) with the view of a subsequent celebration by a minister (leeraar) appointed by the Government of the South African Republic.

3. Whether marriages which might have been celebrated by such "Marriage Commissioners" might, if not otherwise valid, be covered by the provisions of section 22 of "The Foreign Marriage Act, 1892."

4. Whether it was desirable to validate (*a*) by Order in Council, or (*b*) by legislative enactment in the Transvaal, all marriages celebrated by "Marriage Commissioners" during the military occupation in South Africa.

In obedience to your commands we have taken the matter into our consideration, and have the honour to

Report—

1 and 2. That we have not before us any information as to the special powers (if any) contained in the Orders appointing Military Governors in Pretoria and Johannesburg. We assume, however, that the Military Governors would have power either in express terms or *virtute officii* to make all such appointments as were necessary for effectively carrying on the functions of Government during the period of the military occupation.

We think, therefore, that the Military Governors had power to appoint the Marriage Commissioners to carry out the duties imposed on the Landdrost, under the Marriage Ordinance of the South African Republic, and that marriages solemnized or licensed, as the case may be, by them in conformity with the Marriage Ordinance are valid.

We do not feel able to agree with the view of Mr. Wessels, that the appointment of the Marriage Commissioner did not carry with it the right to celebrate marriages as the Landdrost might have done. We think it devolved upon him all the duties of the Landdrost under the Marriage Ordinance of the South African Republic.

3. We think that section 22 of "The Foreign Marriage Act, 1892," might be relied on in support of the marriages referred to, but this might involve troublesome questions of fact.

4. It is most important that all marriages celebrated by the "Marriage Commissioners" during the military occupation should be declared valid by legislative enactment in the Transvaal, to prevent any possibility of questions being raised. The points raised are certainly very arguable.

(Signed) ROBERT B. FINLAY.
EDWARD CARSON.

No. 22.

[November 30, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 28, 1900.

Annexation of Boer Republics: As to notifying to Powers.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the accompanying copies of Proclamations issued by the Field-Marshal Commanding-in-chief in South Africa, annexing the Orange Free State and the South African Republic respectively to Her Majesty's dominions, and to inform you that

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the time has now arrived when it has become desirable to decide whether a formal notification should be made by Her Majesty's Government to foreign Powers of the annexations thus locally proclaimed.

There are may instances, such as the cession of Alsace-Lorraine by France to Germany, and, even more recently, that of Porto Rico and the Philippines by Spain to the United States, in which a portion of one State has at the conclusion of warlike operations been ceded by that State to another by Treaty; but whether these cessions have been communicated or not to the Powers appears for the present purpose to be a matter of indifference, as they would hardly seem to furnish precedents for dealing with such a case as that now under consideration, in which one State has been absorbed by another, and has ceased to have any further existence of its own.

Such cases as this have within recent years been comparatively rare, and would seem to be limited to the following instances:—

1. The absorption of the various smaller Italian States by Sardinia in 1859–61; but these "annexations" were in the nature of "unions," rather than of conquests, as they were in every case accompanied by popular risings and were ratified by popular votes.
2. The absorption of Hanover by Prussia in 1866.
3. The annexation of Fiji by this country in 1874.
4. The annexation of Burmah by this country in 1886.
5. The annexation of Madagascar by France in 1896.

Memoranda on each of these cases are inclosed. You will see that in three instances, viz., those of the absorption of Hanover by Prussia and of the annexations of Fiji and Burmah by this country, no formal notification of the fact was ever made to foreign Powers. In the case of the absorption of the various Italian States by Sardinia, such communications as were made by the Sardinian Government relative to the annexations were in fact in the nature of incidents in a general correspondence rather than of special independent announcements that a foreign State had been annexed; while in only one of the instances mentioned above, viz., that of the annexation of Madagascar by France, was any formal announcement of the event made to foreign Powers.

The announcement to other Powers of an annexation does not appear therefore, generally speaking, to be essential to the existence of annexation as a fact.

It seems to be merely a convenient mode of fixing other Powers with knowledge of a fact through a channel of communication which they cannot disregard without discourtesy.

But annexation, as a fact, would appear to depend no more on its formal announcement through a particular channel to the Powers than it can be effected as a fact by announcement alone.

The objection to making an announcement to foreign Powers is that some Power might dispute the validity of the annexation, on the ground that the conquest was not complete and amounted only to a military, and perhaps partial, occupation, which had, in any case, not yet lasted long enough to give such a guarantee of permanence as to warrant annexation.

On the other hand, the absence of an announcement may be made a ground for assuming the Republics to be still in existence and acting on that assumption.

It remains to be considered whether there are any special circumstances in connection with the case of absorption now under consideration, which militate especially either in favour of that absorption being formally notified to the Powers or against such a course.

In the first place, it may be remarked that no notification to other Powers was ever made by Her Majesty's Government of—

The formation of the Orange Free State in 1854;

Of the formation of the South African Republic (or Transvaal) in 1852; or

Of the annexation of the Transvaal in 1877.

The Convention of 1881 with the Transvaal granting self-government under British suzerainty was, however, communicated to the Powers. The Circular to Her Majesty's Representatives abroad transmitting a copy of the Convention with instructions as to the communication to be made to the Governments to which they were accredited is inclosed.

The Convention of 1884 with the Transvaal amending that of 1881 is also inclosed.

Further, it is to be observed that Her Majesty's Government notified to foreign Powers the existence of a state of war between Great Britain and the South African Republics, and it might therefore be thought that, sooner or later, the cessation of that state of war, which must either result from a Treaty of Peace or from the extinction of one of the belligerents, should equally be notified. The original notification was, however, made six weeks after the outbreak of hostilities, and as an act of courtesy only in consequence of the French Government appearing disposed, in the absence of any such notification, not to recognize the maritime belligerent rights of this country. The converse position is hardly possible.

A third point for special consideration is the effect which the issue, or non-issue, of such a notification as that under discussion would have on the appointment of foreign Consuls within the conquered territories.

No mention of this particular question is to be found in the Memoranda sent herewith, except in one solitary instance connected with Fiji, when the German Ambassador is reported to have inquired whether Her Majesty's Government intended to notify the fact of the annexation of the islands, "as his Government wished to apply for exequaturs for their Consuls." But it is hardly likely that any practical difficulty would arise on this head, since, in the event of any foreign Powers desiring to have Consuls in the territories of the ex-Republics, they would naturally have to apply for the necessary exequaturs to Her Majesty's Government, who will be in *de facto* possession of the country.

The last point that calls for special examination is that of the relations of the two ex-Republics with the International Bureau of the Postal, or other International, Union.

The correspondence that has passed on this subject with the Post Office is inclosed, for your information, and you will see from the letter of the 14th instant from that Department that the Bureau have been informed of the proper style to be used for the future in describing the territories formerly known as the Orange Free State and the South African Republic, but that they demur to any alteration of the names at present standing in the official document on which the question has arisen until the names shall have been modified in the principal Convention of Washington.

In these circumstances, the Postmaster-General inquires whether the Secretary of State is prepared to notify diplomatically the adhesion of the two new Colonies to the principal Convention.

It has been suggested to him, in reply, that he should inform the Bureau at Berne that as the proposed modification in the names of the territories concerned cannot be made in their publications until the old designations have been similarly changed in the Convention, it will be more convenient, in order not to delay the Bureau's publications, to leave the names as they are for the present; and it has been added, for the Postmaster-General's own information, that the question whether any diplomatic notifications shall be made regarding the altered national status of the territories in question is under consideration.

In the event of your reporting that it is desirable from the point of view of international law that the fact of the annexation of the Orange Free State and the South African Republic should be notified to the Powers, the difficulty which has been raised by the Bureau at Berne will, *ipso facto*, disappear; but should you, on the other hand, report that no such notification is necessary, I am to request you to furnish Lord Lansdowne with your views as to how the difficulty in question may best be surmounted, whether by refraining for the present from seeking for the admission of the new territories into the Postal Union or otherwise.

Lord Lansdowne wishes you, in considering the question of an announcement, to give special attention to the extent to which the question is affected, as regards the Transvaal, by the previous existence of British suzerainty over that territory.

I have the honour to request you to take the above observations into your consideration, and to favour his Lordship with your opinion as to whether (1) it is necessary that a formal notification should be made by Her Majesty's Government to foreign Powers of the annexations of the Orange Free State and of the South African Colony; and (2) in the event of your considering that such notification is not necessary, whether, having regard to precedents and to international usage, it would be desirable that such a notification should be made, together with any general remarks you may have to offer on the papers now submitted to you.

I have, &c.
(Signed) FRANCIS BERTIE.

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List of Papers.

(A.)	Orange River Colony Proclamation	
(B.)	Transvaal ditto	
(C.)	Memorandum (1)	
(D.)	Ditto (2)	
(E.)	Ditto (3)	
(F.)	Ditto (4)	
(G.)	Ditto (5)	
(H.)	Circular	July 13, 1900.
(I.)	Post Office	July 17, ,,
(J.)	To ditto	September 12, ,,
(K.)	Post Office	October 8, ,,
(L.)	To ditto	November 14, ,,
(M.)	Post Office	May 29, ,,
(N.)	Colonial Office	June 4, ,,
(O.)	To ditto	September 15, ,,
(P.)	To ditto	October 11, ,,
(Q.)	Colonial Office	October 17, ,,
(R.)	To ditto	
(S.)	Memorandum	

Report.

1. In our opinion, it is not necessary that a formal notification should be made to foreign Powers of the annexation of the Orange Free State and of the South African Republic.

No rule of international law has been evolved rendering such notification essential to the validity of annexation.

2. We think that at the present time it is not desirable that any such notification should be made. The war has not in fact terminated, and any such notification under the existing conditions might have the effect of eliciting from some of the European Powers protests based on the allegation that the conquest is not yet complete. Moreover, such a notification would be inconsistent with any claim by Her Majesty's Government to enforce as against neutrals the rights of a belligerent.

When the war has been brought to an end, it may be convenient to notify this fact to the Powers to whom the existence of a state of war was notified, and this notification may be accompanied by a statement of the fact that these territories have been incorporated into Her Majesty's dominions. But the time has not yet arrived when such a step can with propriety be taken.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 30, 1900.

[Colonial Office.] *No. 22A.*

[November 30, 1900.]

Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, November 30, 1900.

Sir,

Debts, &c., of late Boer Republics. Responsibility of Her Majesty's Government.

WE were honoured with your commands, signified in Mr. Bertram Cox's letter of the 31st ultimo, stating that he was directed by you to request our consideration of certain questions which had arisen in consequence of the annexation to Her Majesty's dominions of the South African Republic and Orange Free State.

That Mr. Bertram Cox was to transmit to us a copy of an opinion given by Mr. Wessels, the legal adviser to Lord Roberts, on the position of Her Majesty's Government with respect to obligations incurred by the late South African Republic.

That it would be observed that Mr. Wessels, after a careful examination of the authorities on the subject, had come to the conclusion that Her Majesty's Government was justified in holding that all concessions granted by the annexed States had lapsed, and that the concessionnaires had no legal claim which they could enforce

against Her Majesty's Government; that Her Majesty's Government were free to determine what obligations they would take upon themselves; that they were not compelled as of right to acknowledge the obligations of the annexed States, though as a matter of policy they might promise to fulfil such obligations as they might think fit. That he was further of opinion that a complete refusal to be bound by the obligations of the annexed States was the stronger and more correct position to assume. That in this connection Mr. Bertram Cox was to draw our attention to a Notice, No. 9, 1900, issued by the High Commissioner on the 8th September, 1900, a copy of which was inclosed, and to the case of Cook *v.* Sprigg (reported in L.R. 1899, A.C., at p. 572) referred to by Mr. Wessels.

That Mr. Bertram Cox was to inclose a letter from the Foreign Office, dated the 2nd October, 1900, covering a copy of a despatch received from Her Majesty's Consul-General at Frankfort, on the subject of the treatment by Germany of the existing claims against the French Government upon the annexation of Alsace-Lorraine. That Mr. Bertram Cox was also to inclose a copy of a letter from Dr. Schneider, legal adviser to Her Majesty's Embassy in Berlin, of the 17th September, and a Report contained therein upon the same subject. That a translation of a communication received from the Italian Foreign Office in regard to the liabilities which accrued to the Italian Government owing to the incorporation of other States, and of the manner in which they were treated, was also transmitted with Mr. Bertram Cox's letter, together with a Memorandum prepared in the Foreign Office on the 15th September, on the general question of the liability of States in regard to territories acquired by conquest. That a despatch from Her Majesty's Ambassador at Washington, with inclosures, regarding the treatment by the United States of claims against the Spanish Government in the late Spanish Colonies was also inclosed. That Mr Bertram Cox was also to draw our attention to Book VIII "De la Conquête" of Calvo's "Droit International."

Memo., A. H. Oakes.

Lord Pauncefote, Oct. 1, 1900.

That it appeared to you that the precedents referred to in the inclosed Memoranda could hardly be regarded as completely authoritative, inasmuch as in the case of Alsace-Lorraine the obligations which the German Government assumed were dependent upon the Treaty of Peace concluded with France, a portion of whose territory was being incorporated in the German Empire, whereas in the present case no Treaty had been made, and the entire State had, in the case of the South African Republic and of the Orange Free State, been incorporated in Her Majesty's dominions.

That the precedent would, however, be of value as an indication of the attitude which in modern times a conquering State had adopted towards the obligations of a conquered State, the territory of which was being taken over by the conqueror.

That the only modern instance of the complete absorption of the territory of a defeated belligerent, as to which you had been able to obtain detailed information, was that of the annexation of Upper Burmah in 1886. That Mr. Bertram Cox was to transmit for our consideration certain papers furnished to the Colonial Office by the India Office on the 13th September, which showed the course adopted by the Indian Government in respect of claims and obligations arising out of such annexation. That it would be observed that the Indian Government declined to admit any claims unless based on service actually performed for the annexed State, or on account of goods supplied or money advanced for State purposes, and left it to claimants to show, if they could, that any wider interpretation had been placed on the general doctrine that a Government taking territory by conquest inherited the liability of its predecessors.

That the Indian Government excluded from consideration claims (*a*) for indemnity for loss of State employment, or for failure on the part of the Government to accept delivery of goods ordered, or to complete contracts; (*b*) for compensation for injuries sustained by military operations or on account of war; and (*c*) for payment on account either for work done for the late King or Queen of Upper Burmah or for goods supplied to, or ordered by, them. That further, while sanctioning payment of wages claimed by foreigners in certain cases, the Indian Government declined to satisfy claims by Burmese subjects for services rendered or goods supplied. That you had some doubt whether this precedent could be held to be of binding authority in the present case. That Upper Burmah was an uncivilized country, and it was possible that in dealing with such a State rules more favourable to the succeeding Government could be applied than in a case where two civilized States have been incorporated with Her Majesty's dominions.

That the most important question which had up to the present time arisen in respect to the annexation of the South African Republic and Orange Free State, was

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the question whether Her Majesty's Government was bound to take over liabilities in respect of the public debts of the annexed States. That Mr. Bertram Cox was to inclose a Memorandum which had been prepared from such information as the Colonial Office possessed, which would show the nature of the liabilities of the Orange Free State in respect of its public debt, and of the South African Republic in respect to the 5 per Cent. Loan. That Mr. Bertram Cox was further to draw our attention to the Judgment of Malins, V.C., in the case of Doss *v.* Secretary of State for India in Council (reported in L.R., 19 Equity, at p. 530), in which it was stated that every State which took possession of the territories of another, took the annexed territories liable to the debts and loans which existed on its revenues. That assuming, therefore, that Her Majesty's Government were bound to take over, and did take over, the public debts of the extinct Republics, the further question arose as to whether Her Majesty's Government were in this case bound to carry out to the letter all the obligations of the late Republics, or whether they might modify those obligations, and decline to be bound by every term of the contracts entered into by the late Republics. That in view, for instance, of the increased security given for the payment of these loans by the substitution of the British Government, as a debtor for the extinct Government in each case, it would, it was submitted, not be inequitable to reduce the rate of interest, and that you desire to know whether it would be legally competent for Her Majesty's Government, while acknowledging their liability to take over these loans, to give notice that they would be converted at an early date, and subsequently to carry out such conversion on terms based on its own credit.

Spicer and Sons, May 25.
To Spicer and Sons, June 2.
High Commissioner, August 29.

That Mr. Bertram Cox was further to inclose copies of correspondence between Messrs. Spicer and Sons and the Colonial Office, and between the High Commissioner for South Africa and the Colonial Office, with reference to a contract entered into by Messrs. Spicer and Sons with the Government of the South African Republic for the supply of postage stamp paper to that Government, as an instance of particular claims which would no doubt be presented against Her Majesty's Government at no distant date.

That, in conclusion, Mr Bertram Cox was to observe that even on the assumption that Her Majesty's Government, as the successors of the South African Republic, inherited generally the obligations as well as the rights of the late Republic, the further question arose whether their liability could be held to extend to any obligation arising between the outbreak of war and annexation. That it was possible to argue that the outbreak of war created a situation during the continuance of which no obligations could, in the nature of things, arise which would legally pass from the enemy Government to Her Majesty's Government at the conclusion of hostilities. That in this connection Mr. Bertram Cox was to draw our attention to the High Commissioner's Notices of the 26th January and 19th March, issued with the approval of the Law Officers, which expressly repudiated responsibility for certain classes of obligation, and that he was to add that it would seem in any case impossible to hold Her Majesty's Government responsible for certain liabilities, *e.g.*, the liability to pay for warlike stores ordered and supplied during the war for the purpose of destroying Her Majesty's forces. That it was not, however, equally clear that Her Majesty's Government could be held to be free from liability to pay the interest on the ordinary public debt, or on the bonds of a Company with the Government guarantee accruing during the war and left unpaid by the late Republic. That in this connection Mr. Bertram Cox was to observe that, as would be seen from the inclosed telegram from the High Commissioner, Lord Roberts was collecting certain taxes which were in arrear, and it would, no doubt, be argued on behalf of the bondholders, that by claiming payment of arrears of taxes, which fell due during the war, the new Government of the Transvaal must be held liable to accept fully and completely the obligations of the late Government.

That Mr. Bertram Cox was to request us to take the papers into our consideration, and to advise you—

1. Were Her Majesty's Government legally bound to take over all the obligations incurred by the Governments of the South African Republic and Orange Free State—

(*a.*) Before the commencement of the war;

(*b.*) During the war by the Governments of the South African Republic and Orange Free State?

2. If not, what was the nature of the obligations which Her Majesty's Government were bound to take over, and what obligations was it entitled to repudiate, and on what grounds?

3. Were Her Majesty's Government bound to take over the obligations of the South African Republic and the Orange Free State in respect of the public debts of those States, and, if so—

(*a.*) Must Her Majesty's Government be bound by all the existing conditions of such debts, or might they take over those debts on such terms as they thought proper.

(*b.*) Were Her Majesty's Government bound to pay any instalments of principal or interest on such debts which fell due during the war, and previous to the dates of annexation, but which had not been paid by the Governments of such States?

4. What answer should be returned to Messrs. Spicer and Sons.

5. Generally.

We have taken the matter into our consideration, and in obedience to your commands have the honour to

Report—

1 and 2. That we are of opinion that a Government annexing territory after conquest so annexes it subject, speaking generally, to such legal obligations as have been incurred by the previously existing Government before the outbreak of war, and not from their nature conditional on the continued existence of the territory as an independent State. We do not think that for this purpose any distinction can be drawn between the case of annexation after conquest but without Treaty, and that of a Treaty extorted by conquest, and providing for cession. We do not agree with the view expressed by Mr. Wessels that it would be open to Her Majesty's Government, acting upon any recognized principles of international law, to repudiate responsibility for all the obligations incurred by the Governments of the South African Republic and the Orange Free State, so far as they can be fulfilled out of revenues to be derived from the property annexed.

[legal adviser to Commander in Chief in South Africa]

We must, however, point out that the duty to observe such contracts cannot be enforced by a Municipal Court: it rests merely on the recognition of international law of what is equitable upon the acqusition of the property of the conquered State.

We think that obligations incurred during the war, or in contemplation of the war, stand upon a different footing, and we do not know of any principle of international law which would oblige Her Majesty's Government to recognize such obligations.

As to the class of "obligations" known as concessions we have already advised, and pointed out certain general considerations and limitations.

3. Her Majesty's Government, as successor to the Governments of the South African Republic and the Orange Free State, are bound to take over the public debts of these States as a charge thereon, but not, of course, as debts payable otherwise than from revenue derived from the conquered States respectively.

(*a.*) The conditions attaching to such debts will still continue, but it will be open to Her Majesty's Government to alter such conditions in any respect that may be more equitable, having regard to the altered condition of affairs.

(*b.*) Her Majesty's Government are bound to pay any instalments of principal and interest which may be due in so far as they have revenue from the conquered territory available for that purpose.

4. The contract of Messrs. Spicer and Son with the Transvaal Government has not been executed by delivery. It seems to belong to the class of contracts which, in their very nature, are conditional upon the continued existence of the Transvaal Government as the South African Republic, and being executory only not capable in strictness of being regarded as binding on the conqueror. But if Her Majesty's Government can utilize the paper they might buy it from Messrs. Spicer as a fair concession to them. This course would avoid the creation of what might prove an awkward precedent if the right to damages for non-acceptance were recognized.

5. Nothing further occurs to us to add.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

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CHINA.

No. 23.

[January 1, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, December 23, 1899.

Gentlemen,

China and Corea (Supreme Court) O. in C.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, which relate to a proposed Order in Council amending the present style and title of Her Majesty's Supreme Court for China and Japan.

It was suggested that since Her Majesty's extra-territorial jurisdiction in Japan has come to an end, the word "Japan" should be omitted from the title of the Supreme Court, and that the word "Corea" should be substituted, having regard to the fact that, under Article 4 (3) of "The China, Japan, and Corea Order in Council, 1884," the jurisdiction at that time exercisable by the Supreme Court in relation to Japan was made, and now is, exercisable in relation to Corea.

Lord Salisbury is of opinion that it is desirable that a short Order in Council should be passed, providing that the expression "Japan" is to be for the future "read out" of the existing Orders for China, Japan, and Corea, wherever it is mentioned. The draft of an Order in Council for this purpose has accordingly been prepared by Mr. Gray, and I am to request that you will take it into your consideration, and favour Lord Salisbury with your opinion whether its terms are right and proper for submission to the Queen in Council for Her Majesty's approval.

You will observe that a suggestion was made by the Judge of the Supreme Court that the style and device of the Court seal should be altered by order of the Secretary of State. Mr. Gray has pointed out, however, that, under Article 7 of the Order in Council of 1865, the Secretary of State is not authorized to direct what the style of the Court is to be, the device only being left to his discretionary direction. It is therefore proposed to defer any alteration in the Court seal until the draft Order is passed.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Sir N. Hannen	(Telegraphic)	October	4, 1899.
(B.) Mr. Bourne	.. (No. 25)	September	11, „
(C.) To Sir N. Hannen	(Telegraphic)	October	6, „
(D.) Sir N. Hannen	(No. 29)	„	5, „
(E.) Draft Order in Council.			

Report.

The terms of the draft Order in Council, as initialled by us, are, in our opinion, right and proper for submission to the Queen in Council for Her Majesty's approval.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
January 1, 1900.

Annex.

CHINA AND COREA.

"The China and Corea (Supreme Court) Order in Council, 1899."

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has power and jurisdiction in China and Corea;

And whereas by the "China and Japan Order in Council, 1865," a Court was established styled Her Britannic Majesty's Supreme Court for China and Japan;

And whereas by the "China, Japan, and Corea Orders in Council, 1884 and 1886," it was provided that all powers and jurisdiction of the said Supreme Court should be exercisable in relation to Corea;

And whereas by virtue of an Order in Council made on the 7th day of October, 1899, the Orders in Council regulating Her Majesty's Consular jurisdiction in the Empire of Japan have, save as provided in the said Order, ceased to be in force and operation within that Empire;

And whereas in view of the recited extension of jurisdiction as respects Corea, and lesser of jurisdiction as respects Japan, it is expedient that the style of the said Supreme Court should be altered, and also that the provisions of the "The China and Japan Order in Council, 1865," and of the Orders amending or extending that Order, should be repealed so far as they relate to Japan:

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered as follows:—

1. The Court established by Article 7 of the "China and Japan Order in Council, 1865," shall be styled "Her Britannic Majesty's Supreme Court for China and Corea," and all references in that Order, or in the Orders amending or extending that Order to the Supreme Court for China and Japan, or to the Supreme Court, shall, in so far as the said Orders relate or are applied to China or Corea, be read as references to the Supreme Court for China and Corea.

2. All provisions relating to the exercise of Her Majesty's power and jurisdiction in Japan, contained in "The China and Japan Order in Council, 1865," or any Order amending or extending that Order, are hereby repealed, subject to the provisions of the said recited Order in Council of the 7th October, 1899: provided that where any of those provisions are by the same or any subsequent Order extended or applied to China or Corea, this Article shall not affect such extension and application.

3. This Order may be cited as "The China and Corea (Supreme Court) Order in Council, 1899."

R. E. W.
R. B. F.

No. 24.

[April 10, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 3, 1900.

Gentlemen,

Sinking of "Kow-shing:" as to referring to arbitration of American Ambassador.

WITH reference to your Reports of the 17th June, 1896, and the 7th November, 1898, I have the honour to inform you, by direction of the Marquess of Salisbury, that an Agreement has been arrived at between Her Majesty's Government and the Government of China that the question of the liability of the latter, as charterers of the British steamer "Kow-shing," to make compensation for the loss occasioned to her owners in consequence of the sinking of that vessel by the Japanese cruiser "Naniwa" on the 25th July, 1894, shall be referred to the arbitration of the American Ambassador at this Court.

I am to transmit to you a note from the Chinese Minister,* forwarding a draft Protocol for carrying out this Agreement, as well as a copy of the reply which Lord Salisbury has returned to Lofêngluh's communication.†

Lord Salisbury considered it advisable to point out at once to the Chinese Minister that, for the reasons given, the first question in Article I, viz., whether the destruction of the "Kow-shing" was justifiable and in accordance with the law of nations, is not one which Her Majesty's Government could consent to submit to the Arbitrator.

It appears further to his Lordship that the words "wilfully destroyed" in the preamble, which would certainly give offence to Japan, should be struck out. They might perhaps be replaced by the words "fired on and sunk."

Another point which occurs to Lord Salisbury is whether the period of one month which it is proposed by Article II to allow for the preparation of the British Case is sufficient for the purpose.

His Lordship is, subject to any observations which you may be good enough to offer for his consideration on this point, disposed to think that the attitude to be taken up by Her Majesty's Government in the matter should be similar to that which they adopted in the Delagoa Bay Arbitration, in the "Costa Rica Packet" case, and in other cases of claims for compensation made by private parties, viz., that their duty is confined to selecting and arranging a proper Arbitral Tribunal on behalf of the

* Lofêngluh, March 21, 1900.

† To Lofêngluh, April 3, 1900.

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British subjects aggrieved, and to presenting on their behalf their case to the Arbitrator; and that the British claimants should be allowed to state their case in their own way, subject, of course, to their pleadings being expressed in suitable language, and confined to matters within the terms of the Protocol of submission and relevant to the question submitted.

I am to request that you will take the draft Protocol into your consideration, and that you will favour his Lordship, at your earliest convenience, with your opinion on the points above alluded to, and also with your suggestions as to any further alterations in, or additions to, the terms of the submission to arbitration which you may consider necessary or advisable.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

As altered and initialled by us we approve the draft Protocol. We have inserted a provision giving the Arbitrator power over costs.

We are clearly of opinion that the better course would be to permit the owners of the "Kow-shing" to prepare their own pleadings, and instruct their own Counsel. We think, however, their pleadings should be submitted to Her Majesty's Government for approval before delivery. The draft of the Protocol should be submitted to the claimants before it is returned to the Chinese Minister.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 10, 1900.

Annex.

Draft Protocol.

WHEREAS the steam-ship "Kow-shing," the property of the Indo-China Steam Navigation Company, was, while under charter to the Chinese Government, ~~wilfully destroyed,~~ *and carrying Chinese officers and troops*, on the 25th July, 1894, *fired on and sunk* by the cruiser "Naniwa," a ship of war belonging to the Japanese Government; *and whereas it is alleged by the British Government that the conduct of the Chinese officers and troops on board the "Kow-shing" led to the destruction thereof, and that the Chinese Government are responsible for the same*; and whereas the British Government and the Chinese Government have been unable to agree as to the liability for the damage caused by the loss of the said vessel, the two Governments do hereby agree to submit the matter to the arbitration of his Excellency the Honourable Joseph H. Choate, the Ambassador of the United States of America to the Court of St. James', and the said Governments do further agree that the questions to be submitted to the Arbitrator, and the mode of procedure in submitting their respective cases for his award, shall be as follows:—

Article 1. The subjects to be submitted to the Arbitrator shall be:

~~1. Whether the destruction of the "Kow-shing," a British ship, by the "Naniwa" was justifiable and in accordance with the law of nations.~~

~~2. As between the owners and the charterers of the vessel, which of them, if either, ought to bear the loss.~~

Whether the Chinese Government are responsible for the loss of the "Kow-shing," and are liable to pay compensation to such owners, and to the persons on board who were injured in person or property, and to the representatives of such persons as perished.

Should it become necessary to assess the amount of the loss caused to the owners by reason of the destruction of the said vessel, the Arbitrator shall either himself assess the amount of such loss, or cause the same to be ascertained for his information in such manner as to him shall seem proper.

Art. 2. Within ~~a~~ *two* months from the signing of the present Protocol the British Government shall ~~present to the~~ *on behalf of the owners of the "Kow-shing" and other claimants, present to the* Arbitrator a statement of claim setting forth the facts on which the said claim is based, together with documents pertaining thereto, and shall at the same time present to the Chinese Minister in London a copy of such statement of claim and documents.

Art. 3. Within ~~a~~ *two* months from the reception of the statement of claim and documents enumerated in the preceding Article, the Chinese Minister in London shall, on behalf of the Chinese Government, present to the Arbitrator a statement of defence to the claim, accompanied by documents in reply, and shall at the same time deliver to Her Majesty's Principal Secretary of State for Foreign Affairs a copy of the said statement and documents *for communication to the owners and other claimants.*

To this *Defence* a reply will be permitted, and to that ~~again~~ *reply* a Rejoinder will be allowed, provided that in each case not more than ~~fourteen days~~ *one month* shall have elapsed since the communication to the Arbitrator and the opposing party of the statement or pleading to which it is a reply; but after the exchange of the reply and rejoinder, no written communication shall be made on either side to the Arbitrator, unless the Arbitrator shall have asked by letter for further particulars. In that event, the other party will be entitled to a copy of the answer, and such time to reply to it as the Arbitrator, in the exercise of his discretion, may be pleased to allow.

Art. 4. The Arbitrator shall hear Counsel on both sides under such conditions and at such times as he may think proper to appoint, and he shall have the power in his discretion to extend the times specified in Articles 2, 3, and ~~5~~ *6* hereof, and to make such other order, or orders, on either party as, in his opinion, may conduce to the full and fair decision of this claim.

Art. 5. All questions of procedure, including the conduct of the oral arguments and the production of documents, shall be determined by the Arbitrator, and the costs shall be borne as the Arbitrator shall direct.

Art. ~~5.~~ *6.* The Arbitrator shall, within thirty days after the delivery of the Rejoinder, proceed to examine and decide the questions hereby submitted to him, and shall give his Award as soon as possible after the conclusion of the proceedings, and shall communicate it to the Chinese Minister in London and to Her Majesty's Principal Secretary of State for Foreign Affairs simultaneously.

Art. ~~6.~~ *7.* The two Governments undertake to accept the Award, without reserve, and to give effect to it without delay.

Art. ~~7.~~ *8.* If, from any unforeseen cause, the Arbitrator should permanently have to desist from his functions as Arbitrator, the two Governments agree to choose another as soon as possible to decide the matter in conformity with the procedure laid down in the present Protocol.

Done at London, this day of , in the year 1900.

R. E. W.
R. B. F.

No. 25.

[August 4, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 2, 1900

Prohibition of export of arms to China: draft Proclamation.

I HAVE the honour to inform you, by direction of the Marquess of Salisbury, that in view of the necessity which has arisen, in consequence of the present position of affairs in China, to prohibit the export of materials of war to that country, Her Majesty's Government have introduced into Parliament a Bill (of which a copy is inclosed) to amend the law relating to the exportation of arms, ammunition, and military and naval stores.* It is expected that the measure will receive the Queen's assent by next Monday, the 6th instant.

Under its provisions Her Majesty will be enabled to prohibit, by Proclamation, the export of war materials and stores to any country or place therein named, whenever Her Majesty shall judge such prohibition to be expedient in order to prevent such materials being used against Her Majesty's subjects or forces, or against any forces engaged, or which may be engaged in military or naval operations, in co-operation with Her Majesty's forces.

The draft of a Proclamation prohibiting such exportation to China is transmitted herewith.†

I have the honour to request that you will take this draft into your consideration, and favour his Lordship with your opinion on its terms by Saturday, the 4th instant, at the latest, in order to admit of its communication to the Lords Commissioners of the Treasury, for submission to the Council Office before the 8th instant.

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* Bill to amend Law respecting Export of Arms.

† Draft Proclamation.

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His Lordship would be much obliged if you would be good enough to offer any general observation or suggestions which you may think useful.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

We approve the draft Proclamation as altered in red ink, and initialled by us herewith.

We have confined the prohibition to arms and ammunition, as we understood it is not proposed to make the prohibition extend to military and naval stores, which would include coal, or to materials.

We have struck out the words "except with the sanction of Her Majesty's Government," the Statute does not authorize such a dispensing power, and its exercise would be attended with a good deal of difficulty. Of course the prohibition does not bind the Crown, and arms and ammunition may therefore be sent out as before for Her Majesty's forces.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 4, 1900.

Annex.

By the Queen.

A Proclamation.

VICTORIA R.

WHEREAS by "The Exportation of Arms Act, 1900," section 1, *it is enacted that it shall be lawful for Her Majesty by Proclamation to prohibit the exportation of all and any of the following articles, namely, arms, ammunition, military and naval stores, and any article which Her Majesty shall judge capable of being converted into or made useful in increasing the quantity of arms, ammunition, or military or naval stores to any country or place therein named whenever Her Majesty shall judge such prohibition to be expedient in order to prevent such arms, ammunition, military and naval stores being used against Her Majesty's subjects or forces or against any forces engaged, or which may be engaged, in military or naval operations in co-operation with Her Majesty's forces; and* ~~the exportation of arms, ammunition, and military and naval stores may by Proclamation be prohibited to be exported to any country named therein~~ ; ~~and~~ whereas we, ~~by and with the advice of our Privy Council, deem it expedient and necessary to prohibit such exportation to China, we~~ by and with the advice *of our Privy Council,* ~~aforesaid,~~ *judge it expedient to prohibit the exportation to China of arms and ammunition in order to prevent their being used, as in the said Act stated: Now we, by and with the advice aforesaid, do hereby prohibit the exportation to China of arms and ammunition from and after the date hereof.* ~~do hereby order and direct that from and after the date hereof arms, ammunition, and military and naval stores shall be, and the same are hereby, prohibited to be exported to China from the United Kingdom, except with the sanction of Her Majesty's Government.~~

(Initialled) R. B. F.
E. C.

S.

No. 26.

[August 28, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 13, 1900.

Gentlemen,

Arbitration relating to the "Kowshing." Proposal to include Japan in.

WITH reference to your Report of the 10th April last, I have the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list relative to the proposed arbitration on the case of the "Kowshing."

In accordance with the suggestion made in your Report, the draft Protocol, as

amended by you, was submitted to the claimants, who replied that they had no remarks to make on it (Papers G and H).

Further correspondence (Papers D, E, and I), has taken place with the Chinese Minister in regard to the objections of Her Majesty's Government to the first question in Article I of the draft Protocol submitted in his note of the 21st March, viz.. whether the destruction of the "Kowshing" was justifiable and in accordance with the law of nations.

On the 15th June Sir Chihchen Lofêngluh addressed a note to Lord Salisbury (Paper I) suggesting that, in order to meet the objections of Her Majesty's Government, the Japanese Government should be made a party to the arbitration.

A draft of the reply which Lord Salisbury proposes to return to Sir Chihchen Lofêngluh's note is also inclosed (Paper J), and I am to request that you will be so good as to inform his Lordship whether you concur in its terms.

Lord Salisbury would also be glad to be favoured with any general observations which you may have to make on this case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Lofêngluh	March 21, 1900.
(B.)	To Lofêngluh	April 3, „
(C)	Law Officers	April 10, „
(D.)	Lofêngluh	April 12, „
(E.)	To Lofêngluh	April 24, „
(F.)	Indo-China Steam Navigation Company	May 19, „
(G.)	To Indo-China Steam Navigation Company	May 31, „
(H.)	Indo-China Steam Navigation Company	June 8, „
(I.)	Lofêngluh	June 15, „
(J.)	Draft note to Lofêngluh.	

Report.

That the terms of the draft letter to the Chinese Minister, as altered and initialled by us, appear to us to be proper and suitable.

The despatch of the Chinese Minister of the 15th June appears to us to be merely dilatory.

We have no other observations of a general nature to make.

(Signed) ROBERT B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 28, 1900.

Annex.

Draft of Letter from the Marquess of Salisbury to Sir Chihchen Lofêngluh.

Foreign Office, August , 1900.

Sir,

I HAD the honour to receive your note of the 15th June relative to the case of the "Kowshing," and I have given it careful consideration.

You suggest that, in order to meet the objections of Her Majesty's Government to the submission to the Arbitrator of the question whether the destruction of the "Kowshing" by the Japanese man-of-war "Naniwa" was justifiable and in accordance with the law of nations, the Japanese Government should be made a party to the arbitration.

Her Majesty's Government are not prepared to maintain that the action of the "Naniwa" was unjustifiable according to international law, and they could not, therefore, properly invite the Japanese Government to become a party to the arbitration.

~~They would have no objection to that Government being joined as a party if, either at the request of the Chinese Government, or otherwise, they expressed themselves desirous of being, or willing to be, so joined. In the circumstances, however, it appears to Her Majesty's Government certain that the Japanese Government, if invited to become a party to the arbitration, would decline.~~

~~Her Majesty's Government adhere to their opinion that, if Japan is not represented before~~

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~~and does not recognize, the Tribunal, it would be irregular to submit to it questions involving the liability of that country.~~

~~It would, moreover, be futile to do so, since the judgment of the Tribunal would not be binding on the Japanese Government.~~

The question for the determination of the Arbitrator is as to the liability of the Chinese Government to pay compensation.

In the opinion of Her Majesty's Government it is unnecessary, and would be improper, to make the Japanese Government parties to an arbitration in which no claim is made except against the Chinese Government.

I referred to the Law Officers of the Crown the draft Protocol inclosed in your note of the 21st March, and I now transmit to you a copy with certain alterations made in consultation with them.

In Article I the question objected to by Her Majesty's Government has been replaced by the following words:—

"Whether the Chinese Government are responsible for the loss of the 'Kowshing,' and are liable to pay compensation to such owners, and to the persons on board who were injured in person or property, and to the representatives of such persons as perished."

The period of one month, dating from the signature of the Protocol, allowed by Article II for the presentation of the statement of claim, would appear to be too short a time to allow for the preparation of the case by the owners, and it is proposed to increase it to two months. Corresponding extensions have also been made in the time allowed in Article III for the presentation of the Statement of Defence, Reply, and Rejoinder.

A provision has also been inserted to the effect that all questions of procedure, including the conduct of the oral arguments and the production of documents, shall be determined by the Arbitrator, and that the costs shall be borne as the Arbitrator shall direct.

I shall be glad to be informed of the date on which you will be ready to sign the Protocol as altered.

(Initialled) R. B. F.
E. C.

No. 27.

[September 13, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, September* 5, 1900.

Instructions to Consuls, &c., relating to export of arms to China.

WITH reference to your Report of the 4th instant (Paper A on the accompanying list), I have the honour to transmit herewith the draft of a telegram (Paper B), which the Marquess of Salisbury proposes to send to Her Majesty's Consular officers in China, informing them of the Proclamation issued on the 7th instant, which is inclosed (Paper C), prohibiting the exportation from the United Kingdom of arms and ammunition to China, and instructing them to do their utmost to prevent such materials from falling into the hands of the Chinese.

His Lordship has been in communication with the Lords Commissioners of the Admiralty as to the instructions which should be sent to Her Majesty's naval officers on the China Station, and a letter from the Admiralty is transmitted herewith (Paper D), inclosing the draft of a telegram which their Lordships propose sending to the Commander-in-chief on the China station.

You will perceive that, in their Lordships' view, the action of Her Majesty's naval officers should be limited to giving every assistance in their power to Her Majesty's Consuls to enable them to act effectively; but I am to inquire, whether, in view of Her Majesty's Government possessing exterritorial jurisdiction in China, it would not be legal for Her Majesty's ships to stop and search in the territorial waters of China such British merchant-vessels as may be suspected of having violated the terms of Her Majesty's Proclamation, and to confiscate any arms and ammunition which they may be carrying to China which are not destined for Her Majesty's naval or military forces, or, under permit, for the forces acting in alliance with Her Majesty's forces.

During the recent war between China and Japan, it was assumed in this reference to the Law Officers of the 17th August, 1894 (Paper E), that neither Japan nor China could, on its own initiative, constitute a Prize Court competent to deal with British vessels, as owing to the exterritorial jurisdiction possessed by Great Britain in those countries, neither of the belligerents had power to deal judicially with the persons or property of British subjects, who were under the jurisdiction of Her Majesty's Consular Courts.

The Law Officers in their reply (Paper F) did not dispute this statement.

Such jurisdiction has, indeed, been acknowledged in more than one case. It was recognized by the Japanese Government in 1893, when Her Majesty's Consular Courts had similar powers to those possessed by Her Majesty's Consular Courts in China, in the case of the collision between the Peninsular and Oriental steamer "Ravenna" and the Japanese war vessel "Chishima" in Japanese waters, the Japanese Government bringing an action against the Peninsular and Oriental Company in the British Consular Court, as reported in the inclosed despatch from Her Majesty's Chargé d'Affaires at Tôkiô (Paper G).

Moreover, the exercise of control by British ships of war over British merchant-vessels in Chinese territorial waters is secured to Great Britain by Treaty—Articles LIV and XVII of the Treaties with China of the 26th June, 1858, and of the 1st March, 1894 (Papers H and I), securing her most-favoured-nation treatment.

She can, therefore, claim the right granted to the United States by China under Article XXVI of the Treaty of the 3rd July, 1844 (Paper K), which stipulates that "merchant-vessels of the United States lying in the waters of the five ports of China open to foreign commerce will be under the jurisdiction of their own Government, who with the master and owners thereof will manage the same without control on the part of China."

I have the honour to inquire whether the proposed instructions to Her Majesty's Consular and Naval officers are right and proper, or whether the instruction to the latter might not be of a more precise nature.

I am at the same time to request that Lord Salisbury may be favoured with any general observations which you may have to offer on the subject.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Law Officers' Report		August 4.
(B.)	Draft Telegram to Consuls in China.		
(C.)	Proclamation.		
(D.)	Admiralty		August 14.
(E.)	To Law Officers		August 17, 1894.
(F.)	Law Officers		August 22, „
(G.)	Mr. de Bunsen	(No. 79)	July 4, 1893,
(H.)	Treaty		June 26, 1858.
(I.)	Treaty		March 1, 1894.
(K.)	Treaty, United States and China		July 3, 1844.

Report.

In our opinion, the proposed instructions to Her Majesty's Consular and naval officers, as drafted and initialled by us, are right and proper.

We think that no more precise instructions than those contained in the draft instructions are advisable.

R. B. F.
E. C.

Royal Courts of Justice,
September 13, 1900.

Annex 1.

Draft of Telegram to Acting Consul-General Warren.

PROCLAMATION issued on 7th ultimo prohibiting exportation of arms and ammunition to China from the United Kingdom.

Do your utmost to prevent such materials from falling into Chinese hands, and instruct other Consular officers to same effect.

Naval officers are being instructed to afford Consular officers every assistance in their power to enable them to act effectively, bearing in mind that there are no belligerent rights of search and detention.

R. B. F.
E. C.

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Annex 2.

Draft of Telegram to Vice-Admiral Sir E. Seymour.

PROCLAMATION issued on 7th instant prohibiting exportation of arms and ammunition to China from the United Kingdom.

Consular authorities in China have been instructed by Foreign Office to do their utmost to prevent such materials arriving in British ships from falling into Chinese hands, dealing with vessels which have sailed from the United Kingdom before the date of Proclamation by arrangement with masters or owners, and with others under the Proclamation.

You are to afford the Consuls every assistance in your power to enable them to act effectively, bearing in mind that there are no belligerent rights of search and detention in existence at the present moment.

R. B. F.
E. C.

DENMARK.

[Board of Trade.] *No. 27A.*

[December 31, 1900.]

Opinion of the Law Officers of the Crown and Mr. H. Sutton.

Draft Convention relating to Fisheries about the Faröe Islands and Iceland

1. THE following are the observations which occur to us on the draft Convention:—

Article II. With respect to the 2nd paragraph of this Article, we do not advise the insertion of any provision in the draft, applying the principle of this paragraph, to the seas round the British Islands not dealt with by the North Sea Convention. We are of opinion that the recognition of such a principle, having regard to the conformation of the west coast, is not expedient.

The Article speaks, amongst other things, of "banks." This expression is adopted from the North Sea Convention. It cannot in this connection apply to the so-called "fishing banks," over which the sea continuously flows. We understand that the "Banc des Féroë" is a fishing bank of this kind, and that M. de Bille's remarks as to including it within the limits of the Convention merely refer to the desirability of applying the Regulations of the Convention to this part of the ocean.

Article IV. We have not the materials before us for settling what the geographical limits should be, but we would suggest that the southern limit should, from the coast of Norway to a point somewhere to the west of the Shetland Isles, be the 61st degree of latitude, the inclusion of the Faröe bank being provided for by carrying the boundary-line due south from the point which may be selected to the west of the Shetland Isles as far as the 60th degree of latitude, and then along that degree westward as far as may be desired. The boundaries may be drawn on a chart, to be annexed to this Convention, as was done in the case of the French Convention of 1867. (See Article II thereof.)

The adoption of the 61st degree of latitude as the southern limit until a point west of the Shetland Isles is reached will prevent this Convention and the North Sea Convention overlapping, for the northern limit of the latter Convention is the 61st degree of latitude.

Article VIII. There are several verbal inaccuracies in this Article.

It may be desirable that the dimensions of the letters and numbers on the funnels should be given. (See M. de Bille's remarks upon this Article, p. 2.)

Article XXXV. As an Order in Council will in England be sufficient, this Article should run "any measures which may be necessary for," &c.

In Article XXXIX, line 4. For the word "introduced" the word "passed" should be substituted. We suggest that the words "subject to further correspondence between the Governments of the High Contracting Parties" should be omitted and that the Article should proceed "come into operation from and after a day to be fixed upon by the two High Contracting Parties after it shall have been notified by the Danish Government that measures have been passed," &c.

As regards the termination of the Convention, we presume that it is not desired to adopt the principle of Article XL of the Convention of 1867. If the principle of Article XXXIX is adhered to, the last three lines should be altered to the effect that the Convention shall continue in force until the expiration of two years from notice by either party for its termination. Two years' notice seems somewhat long, but that appears to be due to the fact that the Althing only meets every two years. (See M. de Bille's comment.)

It is a matter for consideration whether the Contracting Parties should not have power by mutual consent to modify the Convention in matters not inconsistent with its principles, as in Article XL of the Convention between England and France, dated 1867, so as to avoid as to such matters the necessity of a fresh Treaty being made.

2. As regards the undertaking referred to in the Foreign Office letter of the 26th November, 1900, it is not at present clear whether the Danish Government includes Norway and Sweden among the Powers to be deemed for this purpose interested in the North Sea fisheries.

For the present purpose we think it may be assumed that the Danish Government has in view only the Powers which are parties to the North Sea Convention. We also assume that the undertaking is intended to apply only to the North Sea, but this also is not quite clear. The substance of the undertaking between the two countries should be:—

That Denmark, in consideration of this Convention, engages, if and as soon as any two or more of the Powers, other than England and Denmark, signatories of the North Sea Convention, shall be willing to agree with this country for the exclusion of their trawl fishermen from any non-territorial waters (? in the North Sea) from which British trawl fishermen are excluded by, or by virtue of, any Statute of the United Kingdom of Great Britain and Ireland, or any bye-laws legally made, forthwith to enter into a like agreement with England for the exclusion of Danish trawl fishermen.

3. We are of opinion that legislation is not necessary to give effect to the suggested Convention, and that an Order in Council is all that is required.

(Signed) R. B. FINLAY.
EDWARD CARSON.
HENRY SUTTON.

Royal Courts of Justice,
December 31, 1900.

Annex.

Draft Convention between His Majesty the King of Denmark and His Majesty the King of the United Kingdom of Great Britain and Ireland, for regulating the Fisheries of their respective Subjects outside Territorial Waters in the Ocean surrounding the Faröe Islands and Iceland.

HIS Majesty the King of Denmark and His Majesty the King of the United Kingdom of Great Britain and Ireland, being desirous of regulating the fisheries of their respective subjects outside Danish territorial waters in the ocean surrounding the Faröe Islands and Iceland, have resolved to conclude for this purpose a Convention, and have named their Plenipotentiaries as follows:—

His Majesty the King of Denmark,

His Majesty the King of the United Kingdom of Great Britain and Ireland,

Who, after having communicated the one to the other their full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The provisions of the present Convention, the object of which is to regulate the police of the fisheries in the ocean surrounding the Faröe Islands and Iceland outside the territorial waters of these islands shall apply to the subjects of the High Contracting Parties.

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ARTICLE II.

The subjects of His Majesty the King of Denmark shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of the said islands, as well as of the dependent islets, rocks, and banks.

As regards bays, the distance of 3 miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed 10 miles.

The present Article shall not prejudice the freedom of navigation or anchorage in territorial waters accorded to fishing boats, provided they conform to the ~~special~~ *ordinary* Danish Police Regulations ruling this matter, amongst others the one stipulating that trawling-vessels, while sojourning in territorial waters, shall have their trawling gear stowed away ~~inside~~ *in-board.*

ARTICLE III.

The miles mentioned in the preceding Article are geographical miles, whereof 60 make a degree of latitude.

ARTICLE IV.

The geographical limits for the application of the present Convention shall be fixed as follows:—

On the south by a line commencing from where the meridian of North Unst Lighthouse (Shetland Islands) meets the parallel of 61st degree of north latitude to a point where the 9th meridian of west longitude meets the parallel of 60° north latitude, and from thence westward along that parallel to the meridian of 27° west longitude.

On the west by the meridian of 27° west longitude.

On the north by the parallel of 67° 30′ of north latitude.

On the east by the meridian of the North Unst Lighthouse.

The aforesaid limits are shown on the Chart appended to the present Convention.

ARTICLE V.

The fishing-boats of the High Contracting Parties shall be registered in accordance with the administrative Regulations in force in their respective countries.

For each port there shall be a consecutive series of numbers, preceded by one or two initial letters, which shall be specified by the superior competent authority.

Each Government shall draw up a list showing these initial letters.

This list, together with all modifications which may subsequently be made in it, shall be notified to the other Government.

ARTICLE VI.

Fishing-boats shall bear the initial letter or letters of the port to which they belong, and the registry number in the series of numbers for that port.

ARTICLE VII.

The name of each fishing-boat, and that of the port to which she belongs, shall be painted in white oil colour on a black ground on the stern of the boat, in letters which shall be at least 8 centim. in height and 12 millim. in breadth.

ARTICLE VIII.

The letter, or letters and numbers, which shall have been assigned to a vessel on its registration shall be painted in white oil colour on a black ground, and so as to be clearly visible on each bow of the vessel 8 or 10 centim. below the gunwale, provided the space admit it. The letters and numbers of vessels of 15 tons burden (gross tonnage) and upwards shall be 45 centim. in height and 6 centim. in breadth.

For boats of less than 15 tons burden (gross tonnage), the ~~height~~ *dimensions* shall, if possible, be 25 centim. in height and 4 centim. in breadth.

The same letters and numbers shall also be painted in oil colour on each side of the mainsail of the boat, immediately above the close reef, and in such a manner as to be plainly visible; they shall be painted on white sails in black, on black sails in white, and on sails of an intermediate shade in black or in white, as may ~~decide~~ *be decided by* the authority superintending the marking, in accordance with Article V of the present Convention.

Steam fishing-vessels shall, ~~moreover~~, *in addition,* bear the above marks on the funnel in a plainly visible manner. *These marks shall be of the same dimensions as those on the bow.*

The letter, or letters and numbers, on the sails shall be one-third larger in every way than those placed on the bows of the boat.

ARTICLE IX.

Fishing-boats may not have, either on their outside, on their sails, or on their funnels, any names, letters, or numbers other than those prescribed by Articles VI, VII, and VIII of the present Convention.

ARTICLE X.

The names, letters, and numbers placed on the boats and on their sails and funnels shall not be effaced, altered, made illegible, covered, or concealed in any manner whatsoever.

ARTICLE XI.

All the small boats, buoys, principal floats, trawls, grapnels, anchors, and generally all fishing implements, shall be marked with the letter, or letters and numbers, of the boats to which they belong.

These letters and numbers shall be large enough to be easily distinguished. The owners of the nets or other fishing implements may further distinguish them by any private marks they think proper.

ARTICLE XII.

The master of each boat must have with him an official document, issued by the proper authority in his own country, for the purpose of enabling him to establish the nationality of the boat.

This document must always give the letter or letters and number of the boat, as well as her description and the name or names of the owner or the name of the firm or Association to which she belongs.

ARTICLE XIII.

The nationality of a boat must not be concealed in any manner whatsoever.

ARTICLE XIV.

No fishing-boat shall anchor, between sunset and sunrise, on grounds where drift-net fishing is actually going on.

This prohibition shall not, however, apply to anchorings which may take place in consequence of accidents or of any other compulsory circumstances.

ARTICLE XV.

Boats arriving on the fishing grounds shall not either place themselves or shoot their nets in such a way as to injure each other, or as to interfere with fishermen who have already commenced their operations.

ARTICLE XVI.

Whenever, with a view of drift-net fishing, decked boats and undecked boats commence shooting their nets at the same time, the undecked boats shall shoot their nets to windward of the decked boats.

The decked boats, on their part, shall shoot their nets to leeward of the undecked boats.

As a rule, if decked boats shoot their nets to windward of undecked boats which have begun fishing, or if undecked boats shoot their nets to leeward of decked boats which have begun fishing, the responsibility as regards any damages to nets which may result shall rest with the boats which last began fishing, unless they can prove that they were under stress of compulsory circumstances, or that the damage was not caused by their fault.

ARTICLE XVII.

No net or any other fishing engine shall be set or anchored on grounds where drift-net fishing is actually going on.

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ARTICLE XVIII.

No fisherman shall make fast or hold on his boat to the nets, buoys, floats, or any other part of the fishing tackle of another fisherman.

ARTICLE XIX.

When trawl fishermen are in sight of net, ~~of long line,~~ or of ~~seine~~ *long line* fishermen, they shall take all necessary steps in order to avoid doing injury to the latter. Where damage is caused the responsibility shall be on the trawlers, unless they can prove that they were under stress of compulsory circumstances, or that the loss sustained did not result from their fault.

ARTICLE XX.

When nets belonging to different fishermen get foul of each other, they shall not be cut without the consent of both parties.

All responsibility shall cease if the impossibility of disengaging the nets by any other means is proved.

ARTICLE XXI.

When a boat fishing with long lines entangles her lines in those of another boat, the person who hauls up the lines shall not cut them except under stress of compulsory circumstances, in which case any line which may be cut shall be immediately joined together again.

ARTICLE XXII.

Except in cases of salvage and the cases to which the two preceding Articles relate, no fisherman shall, under any pretext whatever, cut, hook, or lift up nets, lines, or other gear not belonging to him.

When a fisherman fouls, or otherwise interferes with the fishing gear of another fisherman, he shall take all necessary measures for reducing to a minimum the injuries which may result to the gear or to the boat of the other fisherman.

ARTICLE XXIII.

The use of any instrument or engine which serves only to cut or destroy nets is forbidden.

The presence of any such engine on board a boat is also forbidden.

The High Contracting Parties engage to take the necessary measures for preventing the embarkation of such engines on board fishing-boats.

ARTICLE XXIV.

Fishing-boats shall conform to the general rules respecting lights and sound signals, as well as those concerning steering and navigation, which have been, or may be, adopted in respect of these boats by mutual arrangement between the High Contracting Parties with the view of preventing collisions at sea.

ARTICLE XXV.

All fishing-boats, all their small boats, all rigging, gear, or other appurtenances of fishing-boats, all nets, lines, buoys, floats, or other fishing implements whatsoever found or picked up at sea, ~~whatever~~ *whether* marked or unmarked, shall as soon as possible be delivered to the competent authority of the first port to which the salving boat returns or puts in.

Such authority shall inform the Consul or Consular Agent of the country to which the boat of the salvor belongs, and of the nation of the owners of the articles found. They (the same authority) shall restore the articles to the owners thereof or to their representatives as soon as such articles are claimed, and the interests of the salvors have been properly guaranteed.

The administrative or judicial authorities, according as the laws of the respective countries may provide, shall fix the amount which the owner shall pay to the salvors. It is, however, agreed that this provision shall not in any way prejudice such Conventions respecting this matter as are already in force, and that the High Contracting Parties reserve the right of regulating, by special arrangements between themselves, the amount of salvage at a fixed rate per net salved.

Fishing implements of any kind found unmarked shall be treated as wreck.

ARTICLE XXVI.

The superintendence of the fisheries shall be exercised by vessels belonging to the national navies of the High Contracting Parties. In the case of Denmark, such vessels may be vessels belonging to the State, commanded by Captains who hold commissions.

ARTICLE XXVII.

The execution of the Regulations respecting the document establishing nationality, the marking and numbering of boats, &c., and of fishing implements, as well as the presence on board of instruments which are forbidden (Articles VI, VII, VIII, IX, X, XII, XIII, and XXIII, paragraph 2), is placed under the exclusive superintendence of the cruisers of the nation of each fishing-boat. Nevertheless, the Commanders of cruisers shall acquaint each other with any infractions of the above-~~named~~ *mentioned* Regulations committed by the fishermen of the other nation.

ARTICLE XXVIII.

The cruisers of the High Contracting Parties shall be competent to authenticate all infractions of the Regulations prescribed by the present Convention other than those referred to in Article XXVII, and all offences relating to fishing operations, whichever may be the nation to which the fishermen guilty of such infractions may belong.

ARTICLE XXIX.

When the Commanders of cruisers have reason to believe that an infraction of the provisions of the present Convention has been committed, they may require the master of the boat inculpated to exhibit the official document establishing her nationality. The fact of such document having been exhibited shall then be indorsed upon it immediately. The Commanders of cruisers shall not pursue further their visit or search on board a fishing-boat which is not of their own nationality unless it should be necessary for the purpose of obtaining proof of an offence or of a contravention of Regulations respecting the police of the fisheries.

ARTICLE XXX.

The Commanders of the cruisers of the High Contracting Parties shall exercise their judgment as to the gravity of facts brought to their knowledge, and of which they are empowered to take cognizance, and shall verify the damage, from whatever cause arising, which may be sustained by fishing-boats of the nationalities of the High Contracting Parties.

They shall draw up, if there is occasion for it, a formal statement of the verification of the facts as elicited both from the declaration of the parties interested and from the testimony of those present.

The Commander of the cruiser may, if the case appears to him sufficiently serious to justify the step, take the offending boat into a port of the nation to which the fisherman belongs.

He may even take on board the cruiser a part of the crew of the fishing-boat, in order to hand them over to the authorities of her nation.

ARTICLE XXXI.

The formal statement referred to in the preceding Article shall be drawn up in the language of the Commander of the cruiser, and according to the forms in use in his country. The accused and the witnesses shall be entitled to add, or to have added, to such statement in their own language any observations or evidence which they may think suitable. Such declarations must be duly signed.

ARTICLE XXXII.

Resistance to the direction of Commanders of cruisers charged with the police of the fisheries, or of those who act under their orders, shall, without taking into account the nationality of the cruiser, be considered as resistance to the authority of the nation of the fishing-boat.

ARTICLE XXXIII.

When the act alleged is not of a serious character, but has, nevertheless, caused damage to any fisherman, the Commanders of cruisers shall be at liberty, should the parties concerned agree

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to it, to arbitrate at sea between them, and to fix the compensation to be paid. Where one of the parties is not in a position to settle the matter at once, the Commanders shall cause the parties concerned to sign in duplicate a formal document specifying the compensation to be paid.

One copy of this document shall remain on board the cruiser, and the other shall be handed to the master of the boat to which the compensation is due, in order that he may, if necessary, be able to make use of it before the Courts of the country to which the debtor belongs.

Where, on the contrary, the parties do not consent to arbitration, the Commanders shall act in accordance with the provisions of Article XXX.

ARTICLE XXXIV.

The prosecution for offences against, or contraventions of, the present Convention shall be instituted by or in the name of the State.

ARTICLE XXXV.

The High Contracting Parties engage to propose to their respective Legislatures ~~the necessary~~ *any* measures *which may be necessary* for insuring the execution of the present Convention, and particularly for the punishment by either fine or imprisonment, or by both, of persons who may contravene the provisions of Articles VI to XXIII inclusive.

ARTICLE XXXVI.

In all cases of assault committed, or of wilful damage or loss inflicted, by fishermen of one of the contracting countries upon fishermen of another nationality, the Courts of the country to which the boats of the offenders belong shall be empowered to try them.

The same rule shall apply with regard to offences against, and contraventions of, the present Convention.

ARTICLE XXXVII.

The proceedings and trial in cases of infraction of the provisions of the present Convention shall take place as summarily as the Laws and Regulations in force will permit.

ARTICLE XXXVIII.

The present Convention shall be ratified. The ratifications shall be exchanged in London as soon as possible.

ARTICLE XXXIX.

The present Convention shall ~~subject to further correspondence between the Governments of the High Contracting Parties, be brought into force as soon as possible after it having~~ *come into operation from and after a day to be fixed upon by the two High Contracting Parties after it shall have* been notified by the Danish Government that measures have been ~~introduced~~ *passed* in respect of the Faröe Islands and Iceland by which freedom of navigation and anchorage within the territorial waters of the said islands is accorded to British fishermen (*vide* Article II, paragraph 3). The Convention shall continue in ~~operation for two years from the day on which one of the High Contracting Parties shall have given notice to the other of its intention to terminate its operations,~~ *force until the expiration of two years from notice by either party for its termination.*

The High Contracting Parties, however, reserve to themselves the power to make, by mutual consent, any modification in the Convention which experience shall have shown to be desirable, provided it is not inconsistent with the principles upon which the Convention is based.

ADDITIONAL ARTICLE.

Any other Government, the subjects of which carry on fishery in the ocean surrounding the Faröe Islands and Iceland may adhere to the present Convention.

The adhesion shall be notified to one of the Governments at Copenhagen or at London respectively. Such notification shall be communicated to the other Signatory Power.

In witness whereof the Plenipotentiaries have signed the present Convention, and have affixed thereto their seals.

Done at in two copies

FRANCE.

No. 28.

[March 9, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, February 28, 1900.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, with regard to the international status of a line of mail-packets owned by a French Company and subsidized by the French Government.

Status of Messageries Maritimes' mail-packets.

In his despatch No. 19, Africa, of the 21st ultimo (Paper A) Her Majesty's Ambassador at Paris draws attention to the fact that the French Government consider that, in virtue of the subsidy they receive and the mails they carry, such vessels are to be considered as national ships, or at least must be so when they belong to the Messageries Maritimes, the vessels of which line are stated to be besides commanded by ex-naval officers. who are also, for the most part, in the naval reserve.

An account of the various instances in which questions have arisen between this country and France as to the status of the Messageries Maritimes steamers will be found in the Papers marked (B) and (C). They may be summarized as follows.

In 1868 a riot took place on board the Messageries steamer "Tigre" while at Hong Kong, and the French Consul there claimed jurisdiction over all persons implicated.

The Law Officers, on being consulted in the matter, reported, in the first instance, that if the "Tigre" was employed in the carriage of baggage *only*, she did not come within the scope of the Convention of 1856 (Convention between England and France relative to communication by post—24th September, 1856—see Paper D). They subsequently, however, expressed the opinion that as she carried baggage and mails she *did* come within that Convention, and that the attempted arrest of a person on board by the Hong Kong police was illegal.

In 1872 a collision took place off Hong Kong between the French Messageries Maritimes steamer "Ava" and a British vessel, in consequence of which the "Ava," although bearing the mails, was detained for twelve hours by warrant of the Vice-Admiralty Court of the Colony, but subsequently released by order of the Court.

The Law Officers, to whom the question was referred, reported that, in their opinion, French vessels which were national or the property of the French Government, and vessels which were chartered or subsidized by the French Government, and employed for the conveyance of correspondence between French and British ports, were within the Vth Article of the Postal Convention (of 1856), and might not on any account be diverted from their especial duty, or be liable to seizure, detention, embargo, or "arrêt de Prince."

In 1874 the French Government complained that one of the vessels of the Messageries Maritimes, the "Anadyr," had been boarded by the police at Hong Kong with a view to the arrest of one of the crew who was reported to have maltreated a passenger.

Instructions were thereupon given to the police as to the privileges and rights of the vessels belonging to the Messageries Maritimes Company, in order that there might not be any grounds for a repetition of the complaints which had been made.

The Governor of Hong Kong was also informed by the Colonial Office that there was no reason to doubt that the French Consul, if applied to, would in general give facilities for the service or execution of process, civil and criminal, on board those vessels, but that without his sanction no such proceedings should be attempted.

In 1876, the police authorities at Hong Kong applied to the French Consul there for permission to search the mail-steamer "Sindh" for a person accused of embezzlement, who was supposed to have taken refuge on board, but the request was refused. The French Consul subsequently reported that he had himself searched the vessel, but without success.

A further case occurred in 1876 and again at Hong Kong, in which the privileges

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of the Messageries boats came in question, the body of a Chinese servant belonging to the "Tanais" having been found floating in the harbour.

On this occasion the Attorney-General for Hong Kong complained that while the Messageries boats received the privileges of men-of-war, they did not accept the responsibilities attaching to such a status. Representations were made on the subject at Paris, but nothing further was done in the matter.

In 1880 one of the Messageries steamers, the "Anadyr," was found to be in the Hong Kong waters with a quantity of opium on board, in contravention of the local law. The French Consul declined to give facilities for the execution of the search warrant which the opium farmer had obtained. The Governor in the end instructed the police not to execute the warrant, and the ship was allowed to leave in due course.

In 1881 an Englishman at Galle, on being sued by his servant, took refuge on board the Messageries steamer "Meinam," and the commanding officer of that vessel declined to permit his arrest. Representations were made at Paris, but without effect.

Such are some of the principal instances within recent years in which the French Government have successfully maintained the right of the Messageries steamers to the privileges of national vessels, but it is to be observed that in each of the above-mentioned cases they have always based the claims of their vessels to the privileges in question on the terms of the Convention of 1856, while Her Majesty's Government on their side have, in every instance, admitted their claims on the same grounds.

It would seem that the French Government, never having raised the point that a Messageries boat is, by its nature, a national vessel, could hardly do so now after having allowed so many opportunities to slip of advancing such an argument.

They would appear, moreover, to have furnished still further arguments against themselves in the matter by having agreed to the two successive Postal Conventions between Great Britain and France, which were signed, the one in 1856 and the other in 1890 (Paper E).

Article V of the Convention of 1856 runs as follows:—

"When the packets employed by the British Post Office or by the French Post Office in execution of Articles I and II of the present Convention are national vessels, the property of Government, or vessels chartered or subsidized by Government, they shall be considered and treated as vessels of war, in the ports of the two countries at which they regularly or accidentally touch, and be there entitled to the same honours and privileges.

"These packets shall be exempted in the said ports, as well upon their entrance as upon their departure, from all tonnage, navigation, and port dues; excepting, however, the vessels freighted or subsidized by Government, which must pay such dues in those ports where they are levied on behalf of Corporations, private Companies, or individuals.

"They shall not on any account be diverted from their especial duty, or be liable to seizure, detention, embargo, or 'arrêt de Prince.'"

It is hardly to be supposed that, had the French Government at the time of the conclusion of this Convention considered that vessels chartered or subsidized by them for carrying mails were in their nature national ships, they would have been at pains to negotiate a Convention providing that such vessels should in specified respects only be treated as vessels of war.

There is nothing whatever in the Convention to show that it is declaratory only.

Even stronger evidence in the same direction is afforded by Article V of the Postal Convention of 1890 (Paper E), the first paragraph of which is similar to that above quoted, except that all reference to vessels employed in the carriage of mails being considered and treated as vessels of war is omitted, while the two last paragraphs run as follows:—

"The present Article shall not apply to packets intrusted with a mail service and belonging to Companies subsidized by either State, until a bond has been entered into, once for all, by the said Companies to satisfy, after due hearing and definitive decision, the legal consequences of any liability incurred either by the captains of their packets or by the Companies themselves.

"The aforesaid bond must be guaranteed by a security within the jurisdiction of the Tribunals of the country in which the bond may have been entered into."

It is impossible to suppose that any country would have consented to the application to vessels really national of an Article so derogatory to their status as such.

The Convention is not worded as though it were in derogation of the substantive and original status of subsidized mail-ships; on the contrary, it reads as though it conferred a privilege, which privilege is not to enure until security has been given against abuse of the privilege.

The above-mentioned facts would seem to militate strongly against vessels employed in carrying mails having the status of national vessels, even when the conditions of their service appear to attach them, as in the case of the boats of the Messageries Maritimes, more clearly than in most cases to the Government of the country to which they belong.

On the other hand, it must not be forgotten that the Court of Appeal has laid it down in the case of the "Parlement Belge" (Paper F, p. 3) that an unarmed packet belonging to the Sovereign of a foreign State, in the hands of officers commissioned by him and employed in carrying mails, is not liable to be seized in a suit *in rem* to recover redress for a collision; and that this immunity is not lost by reason of the packet also carrying merchandize and passengers for hire.

This decision reversed a previous judgment by Sir Robert Phillimore in the same case (Paper G).

It is to be noted, however, that in the above case the vessel was actually the property of the Head of the State, whereas the Messageries Maritimes boats belong to a private Corporation.

At the same time, in face of the decision of the High Court in the case of the "Parlement Belge," it might be difficult to go behind the declaration of the Government of a Sovereign State that a certain ship which was officered by persons holding commissions in the navy of such State and flying the public national flag was owned by the Government,* and was a part of the public naval force.

At any rate, whatever may be eventually decided in regard to the status of the Messageries Maritimes vessels, it is obvious that they must accept the disadvantages of that status no less than the advantages. They cannot assume first a national and then a private character as may be at the moment most convenient. For instance, as at the time of French belligerency during the Franco-Chinese war they had not to suffer in neutral ports the disadvantages of belligerent ships (Papers H and I), so also in times of French neutrality they must suffer the disadvantages which attach to all ships other than public ships.

A ship which is entitled to the privileges of a national ship must also incur the obligations incident to its national status—one of the principal of which is that it must be used for public purposes only—a condition which a subsidized mail-steamer carrying goods and passengers for hire cannot possibly fulfil.

I am to request you to take the above facts into your consideration, and to favour Lord Salisbury with your opinion as to the attitude which should be adopted by Her Majesty's Government in the event of the French Government formally claiming that subsidized mail-steamers, or at any rate the boats of the Messageries Maritimes, should be considered as national vessels; and generally with any observations which you may have to offer on the subject.

I annex a collection of extracts from various works on international law (Paper J), from which you will be able to see the opinions held in regard to the general question of the status of mail-ships by various writers of repute.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Sir E. Monson	(No. 19 Africa.)	January	21, 1900.
(B.)	Mail-packet Memorandum		January	8, 1879.
(C.)	" "		November	15, 1882.
(D.)	Postal Convention with France, 1856.			
(E.)	" " " 1890.			
(F.)	M. Reilly	(Confidential 4507.)	July	5, 1881.
(G.)	"Parlement Belge" case (pp. 24–29 of B).			
(H.)	Law Officers		January	29, 1885.
(I.)	" "		April	16, 1885.
(J.)	Status of mail-ships (Confidential 7252).			

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* The flag flown by French men-of-war and merchant-vessels is the same.

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Report.

In our opinion Her Majesty's Government should not admit any claim by the French Government that subsidized mail-steamers or the boats of the Messageries Maritimes should be considered as national vessels.

Such mail-steamers, if they fulfil the conditions of the Convention, are entitled to the privileges conferred by that Convention on vessels carrying mails. The fact that they are subsidized by the State, and commanded by ex-naval officers belonging to the marine reserve, does not constitute them national vessels. For this purpose it is necessary that they should be the property of the State, or chartered by the State, and employed for public purposes.

These vessels belong to private Companies and not to the French Government, and they are employed for ordinary commercial purposes, such as the carrying of cargo. They, therefore, do not fulfil the conditions which, in the opinion of the Court of Appeal in the case of the "Parlement Belge," entitled a foreign vessel to exemption from civil process in this country. Any exemption of this sort, if enjoyed at all, must be enjoyed under the Postal Convention. Nor are they, in our opinion, exempt from search on the high seas, or in the territorial waters of a belligerent, or from seizure, if they contain contraband. The fact that the Companies which own them are in receipt of a subsidy from the State does not prevent their remaining private vessels.

The definition of national vessels has never been extended by any writer of authority so as to include any other than vessels employed by the State for public purposes. The subject is well discussed in "Ortolan's Diplomatie de la Mer," vol. i, pp. 181–186.

The above conclusions are strongly supported by the fact that the French Government have hitherto always based their claims to immunity on the terms of the Postal Conventions.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 9, 1900.

GENERAL.

No. 29.

[February 24, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, February* 14, 1900.

Belligerent right to search neutral merchant-vessels under convoy.

I HAVE the honour, by direction of the Marquess of Salisbury, to inform you that his attention has recently been drawn to the fact that Professor T. E. Holland, in his edition of 1888 of "A Manual of Naval Prize Law" (section 148), lays it down that "any resistance made by a neutral convoying ship to the lawful visit and search of a vessel under her escort will justify the detention both of the convoying ship and of all vessels convoyed by her."

This paragraph, in a text-book which is stated on the title-page to be issued by the authority of the Lords Commissioners of the Admiralty, and which is, indeed, supplied by them to the Commanders of Her Majesty's ships of war, is likely to lead them to believe that, in case of resistance to search, they will be entitled to detain a neutral convoying man-of-war and the ships convoyed; and, in these circumstances, it appears to Lord Salisbury to be highly desirable that the whole question should be examined, with a view, not only of ascertaining how far such action on the part of a naval officer would be justifiable by international law, but of enabling general instructions on the subject to be formulated for the guidance of Her Majesty's navy.

The question which is to be examined in this view is the general one: whether neutral convoy does or does not secure immunity from search to neutral merchant-vessels?

If the answer be in the affirmative, it will then have to be decided what course the Commander of a British cruiser is to adopt when he finds a neutral ship being convoyed by a neutral man-of-war. With regard to this particular point, I am to call your attention to the remarks made on it by M. Bluntschli in his "Droit International Codifié," which will be found quoted on p. 8 of the collection of papers sent herewith.

If, on the other hand, the answer to the above question is in the negative, and it is decided that neutral convoy does *not* secure immunity from search to neutral merchant-vessels, then it will have to be decided what the Commander of a British cruiser should do on meeting a neutral merchant-ship so convoyed which he desires to search.

(*a*.) Is he to send a boat in charge of one of his officers to the merchant-ship to conduct a search in the usual manner?

(*b*.) If access to a ship lying under the protection of a neutral man-of-war is refused, should a simple protest be lodged or should the Commanding Officer of the cruiser insist on the right of search if sufficiently powerful to do so?

(*c*.) If access to a ship in the circumstances specified in (*b*) is refused on the ground that such a ship enjoys immunity from search as being under convoy, should such refusal be treated as a suspicious circumstance?

From the collection of papers which accompanies this letter, and which contains the opinions of various of the better known writers on international law, who have dealt with this particular subject, it will be seen that, while continental jurists are, generally speaking, in favour of extending the privileges of a ship under convoy as far as possible, British and North American writers are inclined to take the view that a ship under convoy may be searched as well as another.

To take the former group of writers first.

Heffter, for instance ("Le Droit International de l'Europe." 4e édition Française. Augmentée et annotée par F. Heinrich Geffken, 1883, pp. 412–14) declares that it is "un principe irrévocablement établi que les navires de commerce neutres régulièrement visités avant leur départ et convoyés par des bâtiments de guerre pourvus des papiers de bord nécessaires, ne doivent pas être soumis à la visite des croiseurs belligérants."

He admits, however, that this privilege is strictly confined to the vessels which form part of the convoy:

"Au surplus, il va sans dire que les navires seuls faisant partie du convoi sont exempts de la visite, et non pas ceux qui sont venus s'y joindre volontairement. Ne jouiront pas non plus de cette exemption les navires qui ont quitté le convoi en route ou qui en ont été séparés; ces navires peuvent être arrêtés en pleine mer comme suspects et visités par les croiseurs belligérants. Enfin ces derniers peuvent procéder à la vérification de l'état d'un convoi, pour s'assurer si, par hasard ou volontairement, des navires étrangers ne se trouvent pas en faire partie."

Ortolan ("Diplomatie de la Mer." 2nd edition, vol. ii, pp. 226–45) has the following observations on the subject:—

"Nous nous rangeons donc fermement, sans aucune hésitation, du côté de ceux qui soutiennent que, indépendamment même de tout Traité, les navires de guerre des Puissances belligérantes n'ont, pas plus que les corsaires de ces mêmes Puissances, aucun droit de visite sur des bâtiments neutres convoyés."

But he admits that the Captain of the belligerent cruiser is not bound to rest satisfied with the simple word of the Commandant of the convoying man of-war that there is no contraband of war on board the ships under his charge; and he remarks:—

"Cependant, il faut reconnaître avec M. de Rayneval, qu'il est des cas où le belligérant peut insister auprès du Commandant du convoi pour qu'une vérification soit faite par ce dernier lui-même. Il peut arriver, par exemple, qu'à la faveur de la nuit, d'une brume, ou d'un gros temps qui ont rompu l'ordre de marche d'une flotte marchande nombreuse, des navires étrangers à cette flotte se soient glissés au milieu d'elle en empruntant son pavillon, malgré la surveillance des convoyeurs. Si ces indices certains de l'existence d'un pareil fait sont fournis au Commandant du convoi, il est du devoir de ce Commandant de procéder par lui-même ou par ses officiers à une visite à bord des bâtiments suspects.

"Nous croyons même qu'il peut, dans ce cas, sans compromettre la dignité

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de son Gouvernement, admettre comme simple témoin de la visite un officier du navire belligérant."

Calvo ("Le Droit International Théorique et Pratique." 4th edition, 1888, Tome V, pp. 225–42) remarks that "l'inviolabilité absolue des navires marchands convoyés est devenue un précepte, une loi indiscutable pour toutes les Puissances Maritimes, à la seule exception de l'Angleterre, qui n'a pas encore consenti à l'inscrire dans son droit conventionnel. Il est généralement admis que le navire belligérant, que rencontrent des navires marchands convoyés, doit s'en rapporter à la déclaration du Commandant du convoi quand celui-ci atteste que les bâtiments placés sous sa protection sont de sa nation et ne portent point de la contrebande à l'ennemi."

Bluntschli ("Le Droit International Codifié." Translated from the German by M. C. Lardy. 3rd edition, 1881, pp. 478–80), considers that "lorsque l'État neutre fait accompagner par des navires de guerre les navires de commerce neutres, et donne aux belligérants l'assurance que le convoi ne transporte aucune marchandise de contrebande, il ne doit pas être procédé à la visite."

It is, however, he considers, impossible to ask a belligerent Power to give up all right to make any actual examination of a suspected vessel merely on the assurance of a neutral State, and he makes similar reservations with Heffter as to the composition of the convoy.

To turn to British and North American writers, Hall ("A Treatise on International Law." 4th edition, 1895, pp. 747–57) after giving an historic résumé of the various negotiations which have at different times taken place on the subject between this country and others—throughout which Great Britain maintained her traditional view in favour of exercising the right of search, whether a vessel is under convoy or not—concludes thus:—

"Continental jurists are almost unanimous in maintaining the exemption from visit of convoyed ships, not only as a principle to be advocated, but as an established rule of law. That it has any pretension to be so is evidently inadmissible; the assertion of it, and the practice, which have been described, are insufficient both in kind and degree to impose a duty on dissenting States; and it cannot even be granted that the doctrine possesses a reasonable theoretic basis."

This assertion he supports by various cogent arguments.

Sir Travers Twiss ("Rights and Duties of Nations in Time of War," 1863, p. 185) declares that "it is not competent for a neutral merchant to exempt his vessel from the belligerent right of search by placing it under the convoy of a neutral or enemy man-of-war," and supports his dictum by quoting Mr. Chancellor Kent, to the effect that "the very fact of sailing under the protection of a belligerent or neutral convoy is a violation of neutrality."

It may here be remarked that Sir W. Scott, in delivering the Judgment of the High Court of Admiralty in what Wheaton calls the "memorable case" of the "Maria," laid it down:—

"1. That the right of visiting and searching merchant-ships on the high seas, whatever be the ships, the cargoes, the destinations, is an incontestable right of the lawfully-commissioned cruisers of a belligerent nation; and

"2. That the authority of the neutral Sovereign being forcibly interposed cannot legally vary the rights of a lawfully-commissioned belligerent cruiser."

He added that: "The only security known to the law of nations upon this subject, independently of all special covenant, is the right of personal visitation and search, to be exercised by those who have the interest in making it."

With regard to the United States, it is to be observed that that Government has, according to Calvo, frequently admitted by Treaty* that the assurance of the officer in command of a convoy is enough to screen from all search the merchant-vessels in his charge, but United States' writers and Judges have constantly maintained an opposite opinion; and Dana even declares that the Government has never by any national act attempted to deny the right (of searching vessels under convoy) as matter of international law. He further asserts that the right to exclude all search by national protection never did form a part of the law of nations, and certainly does not do so now.

Dana also combats the view that the belligerent in exercising the right of search must take the word of the Commander of the convoying vessel as a substitute for actual search, and observes that all British and American publicists have declined to admit that such a claim forms part of the law of nations; and, with Hall, he argues forcibly against it.

I am to request you to take the above extracts and the inclosed collection of papers into your consideration, and to favour Lord Salisbury with your opinion on the advisability of revising that portion of Professor T. E. Holland's "Manual of Prize Law" which deals with the subject of convoy, and, if so, in what sense; and generally with any observations which you may have to offer on the subject under discussion.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

We have examined the authorities referred to in Mr. Bertie's letter of the 14th instant and in the accompanying collection of papers.

There is no doubt that the directions in the "Manual of Naval Prize Law" correctly represent the English and American view of international law on this subject. According to that view, the right to seize the vessels convoyed, in case of resistance, is beyond controversy, and, according to Lord Stowell's dictum in "The Maria" (1 C. Rob. 376), the convoying man-of-war may, under such circumstances, also be seized.

The French writers on international law—and we may add to those cited, Pillet ("Lois Actuelles de la Guerre," 314) and Despagnet ("Droit International Public," 2nd edition, 718)—take generally the view that the assurance of the officer of the convoying man-of-war should be accepted. Dupuis, however, after reviewing the English and continental doctrines, admits to some extent the reasonableness of the English view, and suggests a solution on the lines of the Treaty between England and Russia of the 17th June, 1801 (Dupuis: "Droit de la Guerre Maritime d'après les Doctrines Anglaises Contemporaines," p. 315, § 247).

The German writers are less decided upon the point. G. F. de Martens merely mentions it as controverted ("Précis du Droit des Gens," §§ 321–26 A). Rivier ("Principes du Droit des Gens, II," p. 423, § 218) merely says that the word of the Commanding Officer of the convoying vessel is generally accepted. Perels ("Droit Maritime," translated by Arendt, p. 325, § 56) states the French view, but adds that it has never been universally admitted. Geffcken, in the "Handbuch des Völkerrechts," edited by Holtzendorff, vol. iv, p 625, points out that the entire immunity of the convoy cannot be maintained, as the Commanding Officer may have been misled as to the nature of the cargo, and as their are different views as to what constitutes contraband, and adopts the view that the compromise embodied in the English Treaty of the 17th June, 1801, with Russia is a fair one. The reasons given by Geffcken against entire immunity are the same as those stated by Bluntschli in his note to § 825 of his "Droit International Codifié."

Bello adopts Lord Stowell's view as stated in "The Maria" ("Derecho Internacional," Madrid, edition 1883, with notes by Silva, pp. 258–61).

The arguments against the entire immunity of convoyed vessels from search on the mere assurance of the officer in charge of the convoy appear to us to be overwhelming. There is, however, on the other hand, a great probability of friction with neutral Powers if this view should be fully enforced in practice. The compromise which was embodied in Articles IV and V of the Treaty between England and Russia of the 17th June, 1801, appears to be a very reasonable one. This, however, is a matter which would have to be arranged by Treaty if it is considered that the practice of convoy is still sufficiently in vogue to render such a settlement desirable.

In the meantime, we cannot recommend any modification of the directions contained in the "Manual of Naval Prize Law," as they correctly express the view of international law which has always been maintained in this country, except in the case of relaxation by special Treaty.

We think, however, that British Commanders should be directed, as a matter of courtesy, in the first instance, to apply to the officer of the convoying vessel, in order that he or his representative may be present at the search.

Whether a protest should be lodged merely, or the right of search insisted on, must depend on the circumstances of the case. The latter course may mean war with a neutral Power, but there is no doubt that, according to the English view of inter-

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* Treaties with Sweden, 1783; France, 1800; Colombia, 1824; Brazil, 1828; Mexico, 1831; Chile, 1832; Venezuela, 1836; and Peru and Bolivia, 1836.

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national law, the cruiser would be justified in insisting on the right of search, and seizing the ships if resistance should be offered.

We think that it will be probably better that special instructions should be issued at the commencement of each war to Her Majesty's cruisers as to the line of conduct which they should adopt in the case of convoys. It is a question of policy whether, and how far, the strict rights, which this country regards itself as possessing, should be enforced, and the answer to this question may depend on the views and the dispositions of the neutral Powers with whose vessels Her Majesty's cruisers may have to deal. We think, however, that a sentence might be added to Article 148 of the "Manual" cautioning Commanders of cruisers, as a matter of comity, not to seize the convoying man-of-war unless under very special circumstances (see per Lord Stowell in "The Maria," 1 C. Rob. 376).

(Signed) RICHARD E. WEBSTER
ROBERT B. FINLAY.

Royal Courts of Justice,
February 24, 1900.

No. 30.

[March 26, 1900.]

Foreign Office to the Law Officers of the Crown.

Carriage of Enemy Military Persons by Neutral Vessels.

Foreign Office, March 16, 1900.

Gentlemen,

I HAVE the honour to inform you, by direction of the Marquess of Salisbury, that his attention has been drawn to the terms in which the question of the carriage of Enemy Military Persons by the vessels of a neutral State is treated in "A Manual of Naval Prize Law," by Professor T. E. Holland—a work which, as you are aware, was issued by authority of the Lords Commissioners of the Admiralty, and supplied by them for the use of officers of Her Majesty's navy in time of war.

The Manual lays down (section 88) that "a Commander should detain any Neutral Vessel which is being actually used as a transport for the carriage of soldiers or sailors by the Enemy;" (section 89) that "the vessel should be detained, although she may have on board only a small number of Enemy Officers, or even of Civil Officials, sent out on the public service of the Enemy and at the public expense;" (section 91) that "It will be no excuse for carrying Enemy Military Persons that the Master is ignorant of their character;" and (section 95) that "The Penalty for carrying Enemy Military Persons is the confiscation of the Vessel and of such part of the Cargo as belongs to her Owner."

It will be convenient to consider what other writers on International Law have said on the subjects thus dealt with by Professor Holland.

Heffter, for instance ("Le Droit International de l'Europe;" 4ᵉ édition Française; augmentée et annotée par F. Heinrich Geffcken, 1883, pp. 395–97) observes that "there can be no doubt that the voluntary transport by a neutral 'de soldats, matelots, ou autres hommes destinés au service militaire d'un belligérant' authorizes the seizure and confiscation of the carrying vessel and its cargo as far as that cargo is connected with the hostile object of the voyage."

Ortolan (as quoted by Calvo) expresses the opinion that "a neutral vessel which carries 'des gens de guerre' for a belligerent State loses its character of neutrality, and may be treated just like a belligerent."

Calvo ("Le Droit International Théorique et Pratique;" 4th edition, 1888; vol. v, pp. 74–78) also considers that the carrying vessel may be seized and confiscated, and the men on board made prisoners.

Wheaton ("Elements of International Law;" edited, with Notes, by R. H. Dana; 8th edition, 1866, pp. 630–59) lays it down that "a neutral vessel which is used as a transport for the enemy's forces is subject to confiscation if captured by the opposite belligerent." He also expressly adds: "nor is it material in the judgment of the Prize Court whether the master be ignorant of the character of the service on which he is engaged."

In his notes to the above work, Dana quotes several cases bearing on this point, and says that the following doctrines may be deduced from them:—

"1. If a vessel is in the actual service of the enemy as a transport, she is to be condemned.

"2. If a vessel is not in the enemy's service, still, if the master knowingly takes for the enemy's Government, or its Agents, persons or papers of such a character and destination that the transporting of them under the neutral flag is an actual belligerent service to the State, it is an unneutral act, which forfeits the vessel. If he avers ignorance of the character of the persons or papers, all the circumstances are to be considered, for the purpose of determining not only the truth of his averment, but whether his ignorance, though real, is excusable. He is bound to a high degree of diligence in such cases, and, if the circumstances fairly put him on inquiry, which he does not properly pursue, he will not be excused.

Bluntschli ("Le Droit International Codifié;" 3rd edition; Paris, 1881, p. 474) is of opinion that neither the troops nor the officers of a belligerent may be carried by a neutral, and that this applies to small numbers as well as to large, and to volunteers no less than to regular soldiers. But he says nothing about the confiscation of the vessel as a penalty for carrying such persons, and only admits that the enemy military persons may themselves be taken prisoners.

Hall ("Treatise on International Law;" 4th edition, 1895, pp. 701, 702) is the writer who, perhaps, speaks most strongly of all in favour of the right of the belligerent, maintaining that "in the transport of persons in the service of a belligerent, the essence of the offence consists in the intent to help him; if, therefore, this intent can in any way be proved, it is not only immaterial whether the service rendered is important or slight, but it is not even necessary that it shall have an immediate local relation to warlike operations. It is possible for a neutral carrier to become affected by responsibility for a transport effected to a neutral port, and it may perhaps be enough to establish liability that the persons so conveyed shall be in civil employment."

Subsequently, however (p. 708), in the same Chapter ("Analogues of Contraband") the following passage occurs in connection with the case of the mail-steamer "Trent":—

"It is to be regretted that Lord Russell did not address himself to the refutation of the doctrine that persons can be contraband of war. For the reasons mentioned above, however, there need be no hesitation in rejecting it. In the words of Mr. Bernard, 'it is incorrect to speak of the conveyance of persons in the military or civil employment of a belligerent as if it were the same thing as the conveyance of contraband of war, or as if the same rules were applicable to it. It is a different thing, and the rules applicable to it are different.' If a vessel is so hired by a belligerent that he has entire control over it to the extent of his special needs, the ship itself is confiscable as having acquired an enemy character, and the persons on board become prisoners of war. If, on the other hand, belligerent persons, whatever their quality, go on board a neutral vessel as simple passengers to the place whither she is in any case bound, the ship remains neutral, and covers the persons on board with the protection of her neutral character."

The following questions appear to arise from a study of the foregoing extracts:—

1. Are persons in the civil employment of the enemy included among those the carriage of whom renders a neutral vessel liable to seizure?

No doubt, in the case of the "Orozembo" (6, Chr. Robinson's Reports, p. 430), which was decided in 1807, Sir W. Scott inclined to the opinion that the same penalties attached to the carriage of civil servants of the belligerent State.

Dana, however, observes, with reference to this judgment: "But it is plain, he confines this dictum to the case before him; that is, the case of a vessel let out to a belligerent Government to carry whatever persons it may designate. Even as a dictum it does not touch the case of a neutral vessel not let out as a transport and merely having civil officers of a belligerent Government on board, without other circumstances tending to show the vessel herself to be in the enemy's service."

It is to be noted, in support of this view, that in most of the Treaties concluded on this subject the words are "military persons in actual service," or persons "actuellement au service des dits ennemis et se transportant pour être employés comme militaires dans leurs flottes ou dans leurs armées."

Moreover, even Hall goes no further in the passage just quoted than to observe that "it may, perhaps, be enough to establish liability that the persons so employed shall be in civil employment."

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2. Does the number of persons, military or otherwise, carried on board the vessel, make any difference in the guilt of the carrying vessel?

The general opinion would appear to be that it does not, the question being rather one of fact.

3. Does the fact that the vessel has been made to carry the persons in question, either by force or fraud, make any difference in her guilt?

English and American writers for the most part incline to the view that it does not, while foreigners lay stress on the necessity of the transport being of a voluntary character.

It is to be observed, however, that as a line of steamers has agencies in every large town, unless military persons come in such numbers as to betray themselves, the master of a modern liner has no means of finding out the character and the intentions of his passengers.

4. May military persons in actual service be taken from neutral vessels without judicial proceedings being instituted against these vessels?

Dana (notes to edition of Wheaton, already quoted) observes that there are strong arguments in favour of such a course, but that it is "out of harmony with the practice of modern times in cognate cases. The proper rule would seem to be that, if there is no probable cause for thinking the vessel in fault for carrying them, and as no prize proceedings can be had against the persons, the persons should not be taken out of the vessel. But if the case warranted proceedings against the vessel on grounds of probable cause to believe her in fault, she should be brought in for proceedings, and the persons held as prisoners of war, on the responsibility of the State to the neutral flag, until the case is determined.

"Still, it must be admitted that the subject is an embarrassing one, whether the right to take such persons be generally conceded, or be coupled with prize proceedings against the vessel, and seems to present a case for some special proceedings of a peculiar character, arranged by Convention on national guarantees."

And Hautefeuille, in his pamphlet on "Questions of Maritime International Law," seems "to admit that, by force of the old international law, modified by Treaties, a belligerent can take from a neutral vessel 'military persons . . . . actually in the service of the enemy,' without making the vessel a prize, but no other persons."

Such a course, indeed, presents considerable advantages on the ground of policy as contrasted with that of taking the vessel into a Prize Court and seeking to have her condemned. No doubt many writers uphold the theory that, in the event of the captured vessel being proved guilty, her condemnation is a just consequence of guilt; but this theory was enunciated at a time when the value and size of trading vessels could in nowise be compared to the value and size of the trading vessels of the present day, and the confiscation of one of the large ocean-going steamers now employed, in consequence of the presence on board of perhaps half-a-dozen enemy military persons, might seem a punishment out of all proportion to the offence committed, and might not be acquiesced in by the neutral Power to whom she belonged.

5. Is the situation of either the port of departure or the port of destination to be taken into consideration?

Hautefeuille also declares that in no case can military persons be contraband of war "if a neutral vessel is sailing between neutral ports."

Dana (notes to edition of Wheaton, already quoted), on the other hand, lays it down that "If the character of the service be admitted to be unneutral, it is of course immaterial how far the neutral takes the troops on their way, and whether both or either of the termini of his trip are in belligerent territory."

6. To render a vessel liable to confiscation, or to justify the removal from on board of persons carried by her, must such persons be in the actual military employ of the belligerent State, or will it suffice that they should be merely volunteers on their way to join his forces?

Bluntschli, in a passage already quoted, maintains that a neutral is forbidden to carry volunteers no less than regular soldiers; but Perels ("Manuel de Droit Maritime International;" French edition, 1884, pp. 286, 287) observes that "Il ne s'agit pas des individus qui se proposent seulement de s'engager dans la flotte ou dans l'armée ennemie, mais de gens qui en font réellement partie; donc, des soldats ou des marins au sens propre du mot, recrues déjà enrôlées et hommes astreints au service militaire."

7. If a ship has been detained on other grounds than those of carrying enemy military persons—for instance, on account of a suspected cargo which subsequently proves to be innocent—may the fact of there being distinctly enemy military persons on board be taken into consideration in the assessment of compensation or otherwise?

I have to request you to take the above observations and questions into your consideration, and to favour Lord Salisbury with your opinion thereon, as well as with any general observations which you may have to offer on the subject under discussion.

A collection of extracts from various writers on international law, which bear on the subject under discussion, is appended for convenience of reference.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

1. In our opinion, persons in the civil employment of the enemy are not included among those the character of whom renders a neutral vessel liable to seizure, unless they are in some way connected with the prosecution of the war. The test is whether the military operations of the enemy are being assisted. A person in the civil employment of the enemy may be so associated with the conduct of the war as to render his carriage an unneutral act. Whether he is so associated is a question of fact which must be decided according to the circumstances in each case, and it is impossible to lay down any general rule. Ordinarily speaking it is the carriage of military persons which is obnoxious.

Of course, if the vessel itself has been taken into the enemy's service it may be liable to seizure upon this ground, even though the purpose was the carriage of merely civil functionaries.

2. The number of persons carried on board the vessel does not *per se* make any difference in the guilt of the carrying vessel, but it may be a most important element in determining whether the vessel should or should not be forfeited. The carriage of say 1,000 men in the military service of the enemy would raise an almost irresistible presumption that those responsible for the conduct of the ship knew what they were doing. On the other hand, one General may be of more importance to the enemy than 10,000 or 20,000 men. But, of course, it is quite possible in the case of one individual that the ship-owner and his agents were ignorant of the errand for which he had taken his passage.

3. If a vessel has been taken into the service of the enemy, it seems to us that Lord Stowell's doctrine, that she has been so taken by force or fraud makes no difference, is sound. She is an enemy vessel and, as such, subject to seizure. But, if the facts stop short of showing that the vessel was in the enemy's service, we think that the fact that the shipowner and his agents were ignorant of the character of the persons they were carrying has a most material bearing on the question whether the ship should be forfeited.

The owners of a mail steam-ship are in no way to blame if a person in the military service of the enemy has, without their knowledge, taken a ticket as an ordinary passenger, and we think it impossible to maintain the view that such a circumstance would render the vessel liable to be condemned.

4. We are of opinion that military persons in actual service *cannot*, in the present state of international law, be taken out of neutral vessels without the institution of proceedings against these vessels. It would be extremely reasonable that such a practice should be established, but if this is to be done it must be effected by Convention.

5. The situation of both the port of departure and the port of destination may be important upon this question. The real point to be determined, is whether the destination of the persons in the service of she enemy is such as to enable them to render service in the course of the military operations. If their destination is hostile, it is immaterial that their port of departure was neutral. If their port of destination is that ordinarily employed to obtain access to the belligerent forces of the enemy it is, in our opinion, immaterial that it is a neutral port.

In the case of an inland State which has access to the sea only by a particular port, we think that military persons on their way to that port may be treated for this purpose as having a hostile destination, even though that port be neutral. The question, however, is one of degree, and to justify seizure such a neutral port must, in our opinion, be proximately connected with the belligerent—for instance, we do not

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think that if Russia were at war with the United States a packet-boat running between Dover and Ostend could be properly stopped on the ground that she had on board some Russian officers who intended to proceed from Ostend to Russia by rail. As the question is one of degree no attempt should be made to lay down a rigid rule, but the matter should be dealt with by special instructions having regard to the circumstances of each particular war.

6. We think it is not necessary that such persons should be in the actual military employment of the belligerent State, but that it is sufficient that they should be on their way to join its forces, if it may reasonably be expected that their services will be accepted on arrival. No sound distinction can be drawn between the case of persons actually enrolled as recruits and the case of persons on their way to join the enemy, knowing that they will be accepted as recruits as soon as they arrive.

7. In answer to this question we beg to refer to our Report of the 25th January last. In order to be taken into account the carriage of such persons must be made a head of charge against the vessel in Prize Court proceedings.

8. By way of general observation, we have only to add the following:—There is great difficulty in laying down positively the rule of international law upon the subject now under discussion, owing to the fact that the circumstances of the carriage of passengers at sea are now quite different from what they were when the principles of international law upon this subject are supposed to have been established. During the great war with France when soldiers or officers were to be conveyed by sea it was generally necessary to engage a vessel specially to perform the service. At the present day the seas are covered by fleets of liners carrying on an enormous passenger traffic, and, even in the most recent Treaties, the vast difference which this change must make in the practical application of the rules of international law is hardly adequately recognized.

In some works of authority, for instance in Dr. Geffcken's contribution to Holtzendorff's Collection, it is laid down that the carriage of military persons as ordinary passengers is in no way obnoxious to the rules of international law upon this head; and Hall would appear to share the same view. This view appears to us to be unsound in principle. It cannot be that impunity is extended to the carriage of military persons for the enemy merely on the ground that they are conveyed as ordinary passengers, though this may form an important element in determining whether the penalty of confiscation is to be visited on the vessel. On the other hand, it must be recognized that great inconvenience will be occasioned if a liner is to be brought into port merely because, among her passengers, there are one or two persons in the military employment of the enemy, and this inconvenience is intensified in the case of mail steam-ships, the claim of which to favourable treatment was emphatically asserted by this country in one passage of the despatch sent by Earl Russell in the case of the "Trent." Unless some agreement be arrived at by Convention, the point is one on which no rigid rule ought to be laid down. A good deal must be left to special instructions in the case of each war, and to the exercise of tact and forbearance by the visiting officers.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
March 26, 1900.

No. 31.

[August 15, 1900.]

Foreign Office to the Law Officers of the Crown.

Control by neutral State of telegraph cables in time of war, &c.

Gentlemen, *Foreign Office, July* 31, 1900.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith, for your consideration, a copy of a case which has been drawn up for your opinion by the Solicitor to the Post Office, in consultation with the Legal Adviser of this Office and with the Legal Assistant Under-Secretary of State for the Colonies, acting on behalf of their respective Departments, relative to the control to be exercised

by a neutral State, in time of war, over telegraph cables, and with regard to other kindred matters.

I am to request that you will, in due course, favour Lord Salisbury with your opinion on the various points raised in the printed case inclosed, viz.:—

1. Whether it is expedient to introduce into landing licences, or other instruments regulating the relations of the Government to private Telegraph Companies, any clause having reference to the establishment of a censorship over the messages transmitted, with a view especially to the maintenance of neutrality, or whether the imposition of any censorship which may be desired should be left to the operation of a comprehensive emergency clause providing for censorship as well as compulsory possession.

2. Whether, in the event of a war in which this country is neutral, direction should be given to the telegraphists of the State, and to the private Telegraph Companies, with a view to the exercise of a censorship, or whether any improper use of telegraphs should be left to prevention, in the rare cases in which it may arise, by other means.

3. Whether, having regard to the practice of the Spanish-American war, it is desirable in any future case to make any attempt to prevent the use of neutral telegraphs—

(*a.*) By belligerent cruisers as distinguished from despatch-boats;

(*b.*) By belligerent cruisers for the dispatch of messages in cypher or of other messages, the object of which is to influence warlike operations, as distinguished from other messages, and particularly from messages giving a narrative of past operations *bonâ fide* intended for general publication as news.

4. With reference to the power of a belligerent to protect himself by cutting a cable, whether this power is limited to a cable—

(*a.*) Connecting two stations of a belligerent, or the station of a neutral Power with the station of a belligerent;

Or extends to a cable connecting stations—

(*b.*) Of two neutral Powers; or

(*c.*) Situate on different territories of the same neutral Power;

And whether, in every case, or what cases, the right of cutting may be exercised in the waters of a belligerent only, or also on the high seas; and

5. Generally.

I have, &c.
(Signed) F. H. VILLIERS.

Report.

1. In our opinion it would not be expedient in granting licences for the Government to reserve powers of censorship or taking possession for the purpose of enforcing neutrality. Such a reservation would be open to the construction that the use of a cable in neutral territory by a belligerent was a breach of neutrality, and if such a power were reserved it might create difficulties in the event of it not being thought advisable or necessary to exercise it.

2. We are of opinion that no such direction should be given. Any improper use of telegraphs should be dealt with when the case arises.

We would point out that in the war between Spain and America no difficulty seems to have arisen in taking this course, as advised by the Law Officers in May 1898.

3. We do not think that anything that occurred in the Spanish-American war renders necessary a modification of the opinion of the Law Officers in May 1898, in which the subject is dealt with. (See also No. 32 as to definition of "Despatch-boat.")

4.—(*a.*) We are of opinion that a belligerent can protect himself by cutting a cable connecting two stations of a belligerent, or the station of a neutral Power with the station of a belligerent, either in the waters of a belligerent or in the high seas, but cannot cut a cable in waters within the territorial jurisdiction of a neutral.

(*b*) and (*c.*) We are of opinion that in these cases a belligerent should not ordinarily cut a cable at all. We cannot, however, lay down as an inflexible rule that the right to cut such a cable on the high seas cannot be exercised; it might

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conceivably form an essential link of communication, the interruption of which might be essential.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 15, 1900.

Annex.

INTERNATIONAL TELEGRAPHS IN TIME OF WAR.

Case for the Opinion of the Law Officers.

(Confidential.)

THE Law Officers were consulted in May 1898, during the Spanish-American war, on several questions relating to the use by or for the purposes of belligerents of telegraph cables worked from or passing over the territories of neutral States. The advice then given (see Report to Foreign Office of the 7th May, 1898), was based upon the principle that—

"There is no general obligation by international law on the part of a neutral Government to prevent the transmission by its subjects, or from its territories, of the messages of belligerents by telegraphic lines or cables. Such messages may be carried, subject to the risk that the other belligerent may protect himself by cutting the cable on the high seas or in the enemy's territorial waters."

The statement of this principle was, however, qualified and illustrated by expressions of opinion with reference to particular cases. Thus, it was said that—

"In the case of a belligerent cruiser putting into one of the ports of a neutral Power, there is an exception to the general rule. It is a term of her admission that she shall not use the neutral port in furtherance of hostile operations. We therefore think that the neutral Government should prevent so far as practicable, and authorized by municipal law, the use even of a telegraph worked by a Commercial Company for the transmission from a neutral port, by or on behalf of such a cruiser, of messages in cypher, or of other messages the object of which is to direct or influence warlike operations.

"But we do not think that a neutral Government is bound, even in this case, to object to the transmission of messages which have no relation to the proceedings of the belligerents, or of messages not in cypher the object of which is to give a narrative of past operations *bonâ fide* intended for general publication as news."

The Law Officers also expressed the opinion that the exception relative to the use of a cable in a neutral port by a belligerent cruiser did not extend to a mere despatch-boat in the service of a belligerent.

As to the means of giving effect to the principles laid down, the Law Officers advised that—

"The Commander of the cruiser should be informed that it is a condition of being permitted to use the port that he should abstain from transmitting or procuring the transmission of any telegrams relating to the conduct of warlike operations. The Company should also be informed of the views of the Government, and would probably itself establish a censorship in accordance with those views of the telegrams tendered for transmission.

"There is, however, no general power on the part of Her Majesty's Government to control private Telegraph Companies. The power is to require belligerent vessels not to use them."

Upon receipt of this advice, and on an inquiry from the Post Office, the Foreign Office informed the Post Office (by letter of the 21st May, 1898) that in the opinion of Lord Salisbury—

"It was unnecessary to issue any instructions with regard to the control of telegrams of belligerents to the officers of the Post Office engaged in the collection, transmission, or delivery of inland or foreign telegrams in the United Kingdom, or to communicate on the subject with any of the Cable Companies transacting foreign business in this country."

Meanwhile, on the 17th May, the Colonial Office issued a Circular to the Governors of Colonies communicating rules (founded on the Law Officers' advice) to be observed during the war with respect to the use of telegraph cables. These rules stated that—

"The fact of a state of war existing between the United States and Spain is not of itself sufficient to justify the establishment of a censorship, so as to prevent the transmission of messages of belligerents; nor does it justify a Colonial Governor in taking possession of the lines of a Cable Company, or assuming control of the transmission of messages by such a Company. Should, however, special circumstances occur, which, in his opinion, render control expedient, it is desirable that he should telegraph to the Secretary of State for instructions.

"A belligerent man-of-war should be prevented from using the telegraph for the purpose of sending, whether in cypher or otherwise, messages of which the object is to direct or influence warlike operations.

"A belligerent man-of-war may, however, use the telegraph for messages which do not relate to the proceedings of the belligerents or for messages which are not in cypher narrating past operations, and *bonâ fide* intended for general publication as news.

"The officers in command of belligerent men-of-war should be informed that it is a condition of their being permitted to use a colonial port that they shall abstain from transmitting or procuring the transmission of any telegrams which concern the conduct of warlike operations. This condition should also be communicated to the Telegraph Companies.

"Vessels which merely carry despatches may be permitted to telegraph, and should not, except under special circumstances, be subjected to the same conditions as belligerent men-of-war with respect to not using the cable. If any special circumstances arise, a telegram should be sent to the Secretary of State asking for instructions. Consular officers have a right to free communication with their Governments, whether in clear or in cypher; but if there should be reasonable grounds for believing that such an officer is abusing this right, and is sending messages which relate to the conduct of warlike operations on behalf of a belligerent man-of-war, the facts of the case should be immediately reported to the Secretary of State by telegraph."

Before these instructions had been received, the attitude to be adopted towards a belligerent cruiser seeking to use a cable at a British port had become a practical question. On the 2nd May a Spanish man-of-war put into Bridgetown, in Barbados. The Governor thereupon, after an exchange of telegrams with the Colonial Office, put in force a provision (section 15) of the West India and Panamá Telegraph Company's Act (No. 27 of 1890), and established a censorship, through the Company's clerk in charge, over the telegrams tendered for transmission by the Company's cable. During the existence of the censorship a telegram in cypher was handed in from the United States' Consul to the State Department at Washington. The telegram was handed to the Governor, and subsequently interpreted. Finding that it contained information of the arrival of a Spanish troop-ship, the Governor declined to allow it to be sent. During the same day the Spanish Consul stated that he was desirous of sending two telegrams, one to the Minister in Madrid, and one to friends of the Commander of the Spanish war-ship. Upon being informed, however, that they must be submitted for the perusal of the Governor, the Consul abandoned his intention.

In consequence of this occurrence, the Law Officers, at the request of the Colonial Office, applied the principle laid down in their opinion of the 7th May to the case in question, and advised—

"(*a.*) That the Governor ought not to have instituted a censorship merely because a belligerent man-of-war put into the port.

"(*b.*) That the Governor had no other power (*i.e.*, other than the power conferred by the local statutory provision under which he established the censorship) to control the cable. He had power to make it a term of the admission of the Spanish vessel (to the port) that the cable should not be used for warlike purposes, and could enforce the performance of this condition by preventing, if necessary, access to the telegraph office by the Captain or his subordinates."

It thus appears clear that the Law Officers in 1898 took the view that Her Majesty's Government had no power, save in pursuance of some express provision of a Statute or other instrument binding the Company, to control private Telegraph Companies in the use which they might choose to allow of their cables or lines. This conclusion makes it of some importance to consider what are the special provisions for control now existing, and whether further provision in that behalf should be made.

The Telegraph Act of 1863 contains a provision, in relation to Companies to which the Act applied, to the following effect:—

"52. Where, in the opinion of one of Her Majesty's Principal Secretaries of State, an emergency has arisen in which it is expedient for the public service that Her Majesty's Government should have control over the transmission of messages by the Company's telegraphs, the Secretary of State, by warrant under his hand, may direct and cause the Company's works, or any part thereof to be taken possession of in the name and on behalf of Her Majesty, and to be used for Her Majesty's service, and subject thereto for such ordinary service as may seem fit; or may direct and authorize such persons as he thinks fit to assume the control of the transmission of messages by the Company's telegraphs, either wholly or partly, and in such manner as he directs. Any such warrant shall not have effect for a longer time than one week from the issuing thereof; but the Secretary of State may issue successive warrants from week to week as long as in his opinion such emergency continues. The Commissioners of Her Majesty's Treasury shall pay to the Company, as compensation for any loss of profit sustained by the Company by reason of the exercise by the Secretary of State of any of the powers of the present section, out of money to be provided by Parliament for the purpose, such sum as may be settled between the Secretary of State and the Company by agreement, or in case of difference by arbitration, such arbitration to be conducted in manner provided in the last foregoing section, the Secretary of State being only substituted for the Board of Trade."

The Telegraph Act of 1863 applied only to Companies authorized previously or subsequently to 1863, by special Act of Parliament, to construct and maintain telegraphs.

But by "The Telegraph Act Amendment Act, 1866," the provision just quoted was applied to "all incorporated Companies, existing or future, constituted with the object of carrying on the business of constructing, maintaining, or working telegraphs, and to the works of those Companies."

A clause relating to the possession of cables in an emergency has also been inserted in many landing licences granted by the Board of Trade, in Colonial licences and Statutes, and in contracts by which the Treasury have subsidized Cable Companies. Specimens of these provisions are annexed to this case. It will be seen that they differ considerably in wording, and that while most forms of the clause seem to deal with censorship only as an incident of the possession of the cables, one or two—such as the provision in the Act of 1863 and that in "The Indian Telegraph Act, 1885"—contemplate a censorship as an alternative to taking possession.

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In all instances the clause relates to cases of emergency, and this expression has generally been interpreted to relate to a war or some civic commotion directly affecting the United Kingdom or some other part of the Empire. Probably, however, as we shall have occasion to remark at a later point in the case, it is not necessary to place so restricted an interpretation on the expression.

In connection with a recent application of the Eastern Telegraph Company to lay two new cables from Porthcurno, in Cornwall, to Gibraltar, the question arose whether, by express provision the Company should be required to institute a censorship in accordance with the directions of the Government to facilitate the discharge by this country of its obligations as a neutral in time of war, and the following clause was prepared by the Solicitor to the Post Office for consideration:—

"In case of war, the Company shall conform to such directions as may be given from time to time by the duly accredited Representative of Her Majesty's Government at any port or place in Her Majesty's dominions where the Company transacts business, with reference to the reception, transmission, or delivery of messages of a belligerent."

The clause was drawn merely to indicate the principle to be asserted, and requires revision in detail.

As the policy of inserting such a clause seemed to require some consideration, the Company were in the result allowed to take their licence without the clause, on an undertaking to agree to its subsequent insertion, if desired by Her Majesty's Government.

As international law is founded on the practise of civilized nations, the acts of the several parties during the recent Spanish-American war, and the drift of opinion which they seem to show on the question of the duties of neutrals towards belligerents, with respect to cables on neutral territory, will probably be thought to be relevant to the consideration of this question.

In the first place, then, the use of cables passing from the seat of war in the West Indies over British territory to Spain took place continuously, without remonstrance of any kind, diplomatic or otherwise, on the part of the United States.

Thus, on the 29th April, it was reported from Kingston in Jamaica that—

"The cable with Santiago de Cuba is working unceasingly, and long Spanish cypher messages are being sent and received."

(See "Standard" of May 2, 1898.)

Daily communications took place during the early part of May between Marshal Blanco, commanding in Cuba, and the Spanish Government, such communications passing viâ Jamaica and Bermuda; also between Marshal Blanco and General Macras, the Governor of Porto Rico, such communications necessarily passing viâ Jamaica.

On the 14th May (see "Standard" of that day) General Macras was enabled to announce, through this channel, the bombardment of San Juan by the Americans. Admiral Cervera, again, when he reached Santiago de Cuba, was enabled to keep in touch, viâ Jamaica and Bermuda, with the authorities in Madrid. Such communications were uninterrupted until the Santiago terminus of the cable to Jamaica fell into the hands of the Americans.

So, in the East, up to the day (2nd May) when Admiral Dewey cut the cable between Manila and Hong Kong, the messages of the Spanish Admiral and General at Manila were transmitted from that place viâ Hong Kong (*i.e.*, over British territory) to Madrid, without remonstrance or question on the part of the United States. The same messages also passed at one point over Egyptian territory.

The action of Admiral Dewey in cutting the cable over which these messages were sent exactly confirms the opinion expressed by the Law Officers. The United States by refraining from diplomatic remonstrance, and by adopting the alternative of cutting the cable, indicated that in the opinion of the Government of that country there was no obligation on Great Britain "to prevent the transmission by its subjects or from its territories of the messages of belligerents," but that "such messages might be carried subject to the risk that the other belligerent might protect himself by cutting the cable."

We have dealt so far with messages passing between two points on the territory of one of the belligerents, and merely transmitted in their course over the territories of a neutral.

But the practice of the belligerents went further.

Jamaica was constantly used by the United States' cruisers as a point for handing in despatches. The following are reports in the press proving such use:—

"*Washington, May* 29.

"The Navy Department has received a despatch from Commodore Schley, brought by the 'Harvard' to Kingston, Jamaica, and thence cabled here (Washington) to the effect that he was still blockading Santiago, but whether Admiral Cervera was there or not was not definitely known."

("Daily Mail," May 30.)

"*Washington, May* 30.

"All doubts as to Admiral Cervera's whereabouts have been dispelled by a despatch from Commodore Schley, which was cabled from Kingston, Jamaica. Mr. Long cabled to Commodore Schley:—

"'Under no circumstances permit the Spanish to escape. Capture or destroy.'"

("Daily Mail," May 31.)

"A telegram from Kingston, Jamaica, says that there has been a rapid exchange of despatches between Commodore Schley and the Washington Government during the past thirty-six hours, and that an important movement on the part of the American squadron is expected shortly."

("Standard," June 1.)

The Island of St. Thomas was similarly used. For example, Admiral Sampson telegraphed on the 12th May to the Navy Department, Washington—

"A portion of squadron under my command reached San Juan this morning at daybreak. No armed vessels were found in the port."

("Times," May 12, 1898.)

On the 17th May it is reported from Washington that—

"A despatch from St. Thomas states that the 'Yale' had begun coaling, but was stopped suddenly by order from the authorities. On Monday evening she cleared the port and headed westward."

("Standard," May 18, 1898.)

Similarly, telegrams were sent by United States' officials at Curaçao and Hayti to the authorities at New York, either giving information as to the enemy's movements or asking for orders as to the operations of the war. In particular, Admiral Sampson is said to have sent despatches to Washington viâ Hayti. where they were handed in by a torpedo-boat, and to have announced the sinking of a ship in the channel at Santiago by similar means.

The cables at Martinique were used in like manner, as appears from the following reports:—

"*Washington, May* 13.

"Despatches from Captain Cotton, Commander of the 'Harvard,' best known as the former liner 'New York,' were received at the Navy Department to-day. They state that four Spanish armoured cruisers and three destroyers called at Port de France and passed St. Pierre bound northward in the direction of Cuba."

("Standard," May 14.)

"*New York, May* 13.

"The 'Herald' correspondent at St. Pierre, Martinique, telegraphing viâ Hayti, says that the Spanish torpedo-boat destroyer 'Furor' arrived there late on Wednesday night, but immediately put to sea again. Her arrival created tremendous excitement; about 5 o'clock on Thursday afternoon the Spanish torpedo-boat destroyer 'Terror' also arrived at St. Pierre."

"As this despatch goes," continues the correspondent, "five Spanish war-ships are in sight, bound north, apparently towards Cuba. It is believed that they are part of the Cape Verde squadron."

("Standard," May 14.)

Thus the messages of one of the belligerents were openly accepted on the territories of Great Britain, Denmark, the Netherlands, France, and the Republic of Hayti, and no diplomatic remonstrance, so far as is known, was made by the other belligerent in any case

Moreover, the messages were sent indiscriminately by the operating forces of the United States, by Consuls of the same Power, and by private individuals or representatives of the press.

As regards the telegrams sent by the forces of the States, they certainly were not "narratives of past events *bonâ fide* intended for publication as news," nor were they handed in by despatch-boats as distinguished from war-ships. The "Harvard" and "Yale," which are reported to have cabled important despatches from Kingston and St. Thomas, were powerful armed cruisers.

At Cap Haytien (Republic of Hayti) the despatches were taken to and from the port by a torpedo-boat.

It appears, therefore, that the authorities of Jamaica, St. Thomas, and Hayti made no endeavour to restrict the use of the cables at their ports, even to the extent and in the manner indicated by the Law Officers, and, in the case of Jamaica, the rules laid down by Mr. Chamberlain must have reached the Governor while the cables were being extensively used in the manner described.

So, again, it is clear that the Spanish naval forces used cables at Martinique (and probably also at Curaçao) for communication with Madrid—

"*Madrid, May* 13.

"Great excitement has been caused in official centres by the news of the arrival of the Cape Verde squadron at Martinique. It is now said that the squadron went there purposely to coal, and two large trans-Atlantic steamers waited in Martinique laden with the necessary coal to transfer to the bunkers of the war-ships. The other object of the visit of the Cape Verde fleet to Martinique was to be able to communicate with the Government, and to ascertain the whereabouts of the American squadron. Admiral Cervera now knows everything which has transpired since

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his departure from Cape Verde. He has full instructions, and will leave Martinique immediately for an unknown destination."

("Standard," May 14.)

"*Madrid, May* 14.

"A telegram from Martinique states that only one Spanish torpedo-boat destroyer, and not the whole squadron, as at first reported, entered the harbour of Port de France. This destroyer carried despatches."

("Standard," May 16.)

In the east, after the cutting of the Manila–Hong Kong cable by Admiral Dewey, all telegrams had necessarily to be sent by both belligerents from some neutral port, and the cables at Hong Kong and Labuan were freely used for the purpose; the despatches cabled were sent indiscriminately by vessels forming part of the navy of the United States and by trading steamers. The despatches were known by the British authorities directly to concern the conduct of the war (and not to be merely "narratives of past events *boná fide* intended for publication as general news"), since the officers dispatching them, whether on board a despatch-boat or a trading-steamer, were allowed to remain in port for the express purpose of receiving an answer from Washington or Madrid, as the case might be. The Spanish Commander also communicated through the Spanish Consul at Singapore.

Note.—This applies also to the west. See examples at Jamaica, on p. 12 of "Incidents."

The vessel which conveyed some of the most important of Admiral Dewey's despatches to Hong Kong—the "Hugh McCulloch"—though generally described as a despatch-boat, and said to be unarmed, is reckoned, in President McKinley's Message to Congress announcing the victory at Manila, as a unit in the squadron which engaged the enemy, and, at a later stage, she is stated to have taken part in the final bombardment of Manila. It is difficult, therefore, to avoid considering her as a war-ship, and, in any case, her use for the purpose of cabling despatches shows how difficult it would be to enforce the distinction between a war-ship and a despatch-boat, suggested by the opinion of the Law Officers.

Another neutral country—Egypt—was also used during the war as the *terminus ad quem* of the messages of a belligerent addressed by the Central Government to its officers engaged in the operations of the war. This appears from the following reports:—

"*Madrid, June* 27.

"Orders have been sent to Admiral Camara's squadron to proceed through the canal to Suez."

("Times," June 28.)

"*Madrid, July* 4.

"An official despatch says that the last vessels of Admiral Camara's squadron have passed the Suez Canal."

"*Port Saïd, July* 5.

"The Spanish torpedo-boats have been ordered to Messina."

"(*Later.*)

"Admiral Camara's torpedo-boats have left here to return to Spain."

("Daily Telegraph," July 5.)

Not only were cables passing over, starting from, and arriving at neutral territory used during the war by one belligerent without protest from the other, but there were instances in which new arrangements, favourable to a belligerent, and involving the transmission of telegrams over the territory of a neutral, were made, with very slight, if any, objection from the other party.

The most remarkable case related to the cables of the Compagnie Française des Câbles Télégraphiques. A cable of this Company connecting Guantanamo, in Cuba (Spanish territory), with Cap Haytien, in Hayti (Republic of Hayti), was at one time cut by the Americans. Subsequently Guantanamo came into the hands of the Americans. and the French Company were allowed to restore and work the cable from Santiago to Guantanamo and thence to Cap Haytien, where it was connected with a direct cable to New York. At the Cuban end the cable was led first into a cable ship of the American fleet at Guantanamo, and afterwards into a telegraph station at the head-quarters of the American army at Santiago; and the line was worked under a military censorship established by the American operating forces. Thus, a Company of neutral nationality became the instrument of conveying telegraphic despatches between the forces and the head-quarters of one of the belligerents, and the territory of another neutral was used for the transmission of such despatches. The case was carried even further, for an intermediate office (Mole St. Nicholas, on the territory of the Republic of Hayti) was cut out to expedite communication for the benefit of the belligerent; and a number of new offices were opened—on the line worked for the benefit of the belligerent—on the territory of the other belligerent, viz., in Cuba. The opening of these offices was communicated to the International Telegraph Bureau at Berne by the North Atlantic Cable Companies, as though it were a perfectly regular proceeding. Not till this was done was any protest elicited from Spain; and then it related only to the opening of new offices on her territory without her consent. Spain is not known to have made any representation to the French Government as to the action of the French Company, or any

representation to the Republic of Hayti as to the use of its territory for the transmission of telegrams by a cable which had been placed, by exceptional means, at the disposal of the United States.

The other case is less striking. The West India and Panama Cable Company—an English Company—had, when the war commenced, a cable working from Jamaica (British territory) to Martinique (French territory) through Ponce, in Porto Rico (Spanish territory); but Ponce itself was not a telegraph office, the two cables being joined in the Telegraph Hut and through communication afforded. When the forces of the United States occupied Ponce, a telegraph office was opened by the Company at that place, and thus a Company of a neutral State and the territories of two neutral States were used to transmit telegrams from an office opened especially for the convenience of one of the belligerents. No protest was, however, made by Spain, the other belligerent.

No doubt, however, the weakness of the belligerent whose interests were prejudicially affected by these novel telegraphic arrangements must be taken into account in estimating the value of the incidents.

At the commencement of the war, General Greely, the Chief Signal Officer of the United States, issued an order to the Transatlantic Cable Company working in the United States. This order (dated the 12th May, 1898, and printed at p. 28 of the paper entitled "Incidents of the Spanish-American War")* forbade the transmission of telegrams falling within certain specified classes on the ground that they were in fact messages of an enemy, and consequently contraband of war. The order is somewhat ambiguous in some of its expressions, but it appears to be governed by the concluding paragraph which refers to "the propriety of American and foreign Corporations abstaining from the transmission *within American jurisdiction* of information, contraband of war, to the enemy of the United States," and the order seems to have had for its main object the prohibition of Spanish messages or messages useful to Spain over the land-lines and cables of the Companies actually connected with United States' territory.

Accordingly, the Cable Companies which are constituted under the laws of neutral States *e.g.*, Great Britain and France, construed the order as relating only to the short cables actually landed in the United States and the land-lines to towns in the States, and not to the main Transatlantic cables, laid, for the most part, between points in British territory—in one case between points in French territory. They consequently declined to transmit official Spanish telegrams or messages useful to Spain as defined by the order to and from places in the United States, but continued throughout the war to transmit such telegrams across the Atlantic between points in British or French territory, *e.g.*, Canada and Newfoundland (British) and St. Pierre (French), on the one hand, and Ireland, Great Britain, and France on the other. In particular, telegrams were being sent between Spain and the West Indies viâ Halifax, in Nova Scotia, and Bermuda.

The two Cable Companies which are constituted in and controlled from America (the Commercial Cable Company and the Western Union Company) on the other hand, did, after General Greely's order, refuse to transmit Spanish Government telegrams across the Atlantic, and such telegrams were diverted to the cables of the British Companies.

The United States' Government acquiesced in the construction put upon its order by the British and French Cable Companies, and no attempt was made to coerce these Companies (*e.g.*, by seizing their property in United States' territory or cutting their cables in United States' waters) into a complete boycotting of Spanish Government messages or messages useful to Spain.

Indeed, the incident seems to show that the action of the United States' Government was founded less on any doctrine relating to the duties of neutral States than on the view that private trading Companies enjoying advantages at the hands of a belligerent should not use those advantages for the benefit of the other belligerent. It is in this spirit that General Greely comments upon the conduct of the foreign Cable Companies in his Report, made after the conclusion of the war. "The French Telegraphic Cable Company," he says, "gave the strongest possible evidence of loyal and faithful compliance with the requirements of the United States, acceptable evidence that the hospitality shown by the Government to this Company was appreciated. During the critical period in Cuba, this Company strove to fulfil its obligations as a neutral Corporation, although most trying and difficult conditions obtained, with a Spanish military censor at its office in Santiago, and an American military censor at Playa del Este." (See "Incidents," p. 48).

General Greely's order and the action taken upon it also show how the intimate commercial relations between civilized nations at the present day make it difficult to interfere,† in the interests of a belligerent, with the great channels of communication.

The Spanish Government made no attempt, by exercising any power it possessed over the Cable Companies using its territories, to prevent the transmission of American official messages through neutral, or even at one point, through Spanish territory.

It may, therefore, confidently be said, that every incident of the late war supports the principle laid down by the Law Officers, that it is not the duty of a neutral State to prevent the transmission, by telegraphic lines or cables on its territory, of the messages of belligerents.

It is, however, to be borne in mind, that, owing to the situation of the belligerents, each found it in his interests to use telegraphs on neutral territories. Consequently, neither would perhaps be likely to complain of the facilities afforded to the other in this connection.

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* This paper accompanies this Case.

† The British Government has, during the war with the South African Republic, stopped at Aden code or cypher telegrams for the *whole* of East and South Africa.

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As the obverse of the freedom of neutral telegraphs, the Law Officers laid down, that a belligerent "might protect himself by cutting 'the cable' (used to carry his adversary's messages) on the high seas or in the enemy's territorial waters."

It is interesting to note to what extent the practice of the late war illustrates this view.

In giving their advice, the Law Officers made no distinction between the cutting of a cable connecting—

1. Two stations of the enemy;
2. A station of the enemy and the station of a neutral;
3. Two neutral stations.

The war furnishes many instances of the cutting of cables, in the first category; *e.g.*, that between Santiago de Cuba and Manzanillo (Cuba), and that between Manila and Iloilo (Philippine Islands), both of which cables were cut by the United States.

The United States also cut cables in the second category, namely, between Manila and Hong Kong, and between Santiago de Cuba (Spain) and Hayti (Republic of Hayti). They also attempted to cut the cables between Santiago de Cuba (Spain) and Jamaica (British), and they succeeded in cutting one, but apparently it was a "dead" cable which had been abandoned. (See "Incidents," pp. 23 and 46.)

Great Britain made no remonstrance against the cutting of the Manila–Hong Kong cable, or the avowed intention of the United States to cut the Santiago–Jamaica cables, if they could.

But no cable in the third category was cut by either belligerent, though Spain at one time talked of isolating the United States by cutting all the transatlantic cables.

These cables could not have been cut so as to isolate the United States except by cutting them between two stations of neutrals; and the suggestion that they might be so cut evoked some little comment in the press of this country. But no serious attempt was made to act upon the suggestion.

All the cables cut seem to have been cut in territorial waters and not on the high seas. The Hong Kong–Manila cable was cut in Manila Bay; and, in cutting the cable loops along the coast of Cuba the United States sometimes lost heavily from the fire of the forts.

It appears that the restriction of cable cutting by the United States to the territorial waters of the enemy was not accidental, but was founded on the deliberate opinion of the Chief Signal Officer—doubtless, in its turn, based on legal advice. In his Report, General Greely says: "Long before the expedition sailed, the Chief Signal Officer had carefully considered the question of cable cutting, and had announced his official opinion that the destruction of a cable, even though the property of a neutral, was fully justified, provided that operations were confined within the territorial jurisdiction of the enemy."

The whole paragraph which commences with this sentence is interesting as showing the view taken by the United States' authorities. (See "Incidents," p. 46.)

Professor Holland, the well-known authority on international law, in a letter to the "Times," expressed the opinion that the cutting of a cable between a belligerent and a neutral was lawful in territorial waters, but not on the high seas, and that under no circumstances was the cutting of a cable between two neutral stations permissible. (See "Times" of the 24th May.) The views and practice of the United States were in accordance with Professor Holland's dicta.

In considering the law as to the cutting of cables the analogy of the seizure of vessels carrying enemy's despatches naturally occurs to the mind. Indeed, the Law Officers to some extent founded their opinion on this analogy.

It is to be noted, however, that a private ship carrying despatches is only liable to seizure if found with the despatches on board. The analogy, if it should hold good, would therefore only justify the cutting of the cable at the time when the message was passing (obviously an impossibility), or the cutting of a cable by which messages were habitually sent. On the other hand, the cutting might, by analogy, clearly take place on the high seas, as the right to seize ships for carrying contraband is exercised more particularly there.

It is interesting to consider the question of compensation by the light of the supposed analogy.

It has never been suggested that the owner of a ship carrying the enemy's despatches could claim compensation for the seizure of his ship by the State affected—in fact, such an idea involves a contradiction in terms. The penalty he pays for serving one of the belligerents is the forfeiture of his property to the other.

Yet it has been suggested that the owners of a cable serving a belligerent where such owners are subjects of a neutral State, have a claim to compensation against the other belligerent if as an act of war he cuts their cable; and it has even been discussed whether, if the cable belongs to the subject of the enemy, such subject may not have some claim to compensation on the ground that the destruction of private property, if not demanded by the necessities of war, is illegal. The Attorney-General of the United States, however, is stated to have rejected the claims of British Companies to compensation, basing his ruling on the doctrine that the right of a belligerent to destroy property within the enemy's territories includes the right to damage, in lawful hostilities, the property of neutrals. (See "Standard" of the 6th February, 1899; "Incidents," p. 26.)

These conflicting views and suggestions seem to show that the analogy between the carriage of despatches by the private vessel of a neutral, and the transmission of telegrams over cables belonging to the subjects of a neutral, cannot be pushed too far. Indeed, the Law Officers point out, in their opinion of the 7th May, 1898, that there is a fundamental distinction between the deliberate acceptance of despatches by a ship, the ordinary duty of which is not to carry such despatches at all, and the acceptance of the telegrams of a belligerent by a State or a Company for transmission, in turn with other messages, over cables open to all the world.

Packets of a regular mail-line have never been considered in fault for carrying a belligerent's despatches. (See Hall's "International Law," 4th edition, 703.)

At the recent Peace Conference the Representative of Denmark proposed that an amendment should be made in the project of the Brussels Conference to the effect that landing cables within territorial waters should be placed in the same category as land telegraphs. The result of this would have been to declare that such cables might be seized or destroyed by an army of occupation, even though belonging to Companies or private persons, but that the material should be restored and indemnities provided upon the declaration of peace. The proposal was first amended by an omission of any reference to territorial waters, the wording of the clause running, "les télégraphes de terre y compris les câbles d'atterrissage;" and subsequently, upon instructions from the Home Government, the British Delegate asked the Danish Delegate to abandon his proposal, on the ground that it had been agreed to exclude naval matters from the deliberations of the Conference.

If, then, the practice of the late war confirms the view that it is not the duty of neutrals to prevent the transmission of the telegraphic messages of belligerents, but to leave belligerents to protect themselves, and if the drift of opinion seems even to be in favour of some limitation of belligerents' right of self-protection, and to a certain extent to set towards the preservation and free use of neutral cables, it seems questionable whether there is any necessity for the introduction of new conditions having for their object the preservation of neutrality, into the relations of the State towards Cable Companies consisting of its subjects or operating from its shores. The right of a State to impose a censorship in its own interests, on telegrams leaving or reaching its territories, has never been called in question. It is expressly asserted by the following clauses of the Telegraph Convention of St. Petersburgh:—

"ARTICLE VII.

"The High Contracting Parties reserve to themselves the power to stop the transmission of any private telegram which may appear dangerous to the security of the State, or which may be contrary to the laws of the country, to public order, or decency.

"ARTICLE VIII.

"Each Government also reserves to itself the power to suspend the service of the international telegraphs for an indefinite period if it deem necessary, either generally or only upon certain lines and for certain classes of correspondence, upon condition that it immediately advises each of the other Contracting Governments."

These Articles do not, of course, create a right, but save it, having regard to the opening Article of the Convention, which asserts that "the High Contracting Parties recognize the right of all persons to correspond by means of the international telegraphs" (Article I).

The United States (as it happens, not a party to the Convention) exercised the right of censorship freely. The manner of the exercise is worth notice. On the 25th April, 1898, by order of the President, the cable telegraph systems, seven in number, having their termini in New York, were constructively taken possession of by the Chief Signal Officer of the United States' army. This action appears to have been taken under some statutory provision of the United States' law, which is variously stated as "vesting in the Chief Signal Officer the control and operation of military telegraph lines," and as "charging the Chief Signal Officer with the control of all telegraph and cable lines within the United States in time of war." It appears that possession was not actually taken by the military authorities. The Presidents of the various Companies entered into written engagements with the Chief Signal Officer to abide by his directions, and assistants in each Company's office were sworn to faithfully observe the orders of the Military Censor—an officer appointed *ad hoc* by the Chief Signal Officer. The telegraphs were thus administered primarily for the benefit of the State, both in respect of suppressing objectionable messages, giving information from messages, and expediting the communications of the Government with its forces. Subject to this primary object, the telegraphs were worked, as in time of peace, for the benefit of the community. (See the interesting Reports of the Chief Signal Officer and the Military Censor, "Incidents," pp. 47 and 55.)

Similar arrangements could be made in the United Kingdom and the Colonies, whenever the interests of the country demanded it, under the clause already alluded to, which gives a right of possession and control in case of emergency. It may be thought better to leave the supervision of a Commercial Company's telegrams to the operation of such a general clause, carefully framed, than to insert any clause expressly having reference to the preservation of neutrality. As the Law Officers advised with reference to the Barbados case (see *ante*, p. 3), the apprehended use by a belligerent of the cable of a neutral might, conceivably, under certain circumstances (*e.g.*, if it were known that the other belligerent would undoubtedly view the permission to use the cable as an act of war), give rise to such an emergency as is contemplated by the clause. The right of interference in the last resort being thus preserved, it may perhaps be thought undesirable and impolitic—in view of the general tendencies indicated by the late war, and of the fact that the interests of this country—with its widespread commercial connections and its powerful navy—

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would appear to be best served by maintaining the freedom of cables on neutral territory—to take any new step which should seem to be in the direction of impairing that freedom.

The form of the landing licence to be henceforth granted by the Board of Trade to Cable Companies has for some time past been under the consideration of a Committee representing many of the Government Departments. The form of emergency clause recommended by this Committee will be found in the Appendix to this Case (see letter G). It is still, however, under consideration in some parts.

In connection with the question of inserting a special clause relating to the duties of neutrals, the procedure to be adopted in carrying out the advice given by the Law Officers in 1898 might, under similar circumstances, arise for consideration. The view taken by the Post Office, and approved by the Foreign Office, was that no directions need be given either to State telegraphists or to the Cable Companies, but that, if an illegal user of the telegraphs at a British port by a belligerent was contemplated, the Governor of the place should intervene by requesting the belligerent ship to leave the port, or by otherwise preventing the access of the belligerent to the telegraph office.

The action of the Colonial Office in the Barbados case, and Mr. Chamberlain's despatch of the 17th May, may, on the other hand, perhaps be interpreted as suggesting that the views of the Government should be communicated to its own telegraphists and to the Cable Companies (which have offices in the United Kingdom as well as in the Colonies) in order that they may establish a censorship.

This question does not, indeed, press for immediate consideration, and its importance is much diminished if the Law Officers should be of opinion that the practice of the late war shows that some of the qualifications of the general principle which they laid down are difficult of enforcement, and not likely to be insisted on by belligerents.

The importance of international telegraphy to the civilized world is of comparatively recent growth, and it cannot be said that international law has definitely pronounced upon the important questions which may arise at any moment from the conflicting interests of neutrals and belligerents in time of war. It may be convenient, therefore to consider some of these questions from a general point of view before particular cases arise for decision.

The Law Officers are requested to advise—

1. Whether, in their opinion, it is expedient to introduce into landing licences, or other instruments regulating the relations of the Government to private Telegraph Companies, any clause having reference to the establishment of a censorship over the messages transmitted, with a view especially to the maintenance of neutrality, or whether the imposition of any censorship which may be desired should be left to the operation of a comprehensive emergency clause providing for censorship as well as compulsory possession.

2. Whether, in the event of a war in which this country is neutral, direction should be given to the telegraphists of the State, and to the private Telegraph Companies, with a view to the exercise of a censorship, or whether any improper use of telegraphs should be left to prevention, in the rare cases in which it may arise, by other means.

3. Whether, having regard to the practice of the Spanish-American war, it is desirable in any future case to make any attempt to prevent the use of neutral telegraphs—

(*a.*) By belligerent cruisers as distinguished from despatch-boats;

(*b.*) By belligerent cruisers for the dispatch of messages in cypher or of other messages, the object of which is to influence warlike operations, as distinguished from other messages, and particularly from messages giving a narrative of past operations *bonâ fide* intended for general publication as news.

4. With reference to the power of a belligerent to protect himself by cutting a cable, whether this power is limited to a cable—

(*a.*) Connecting two stations of a belligerent, or the station of a neutral Power with the station of a belligerent;

Or extends to a cable connecting stations—

(*b.*) Of two neutral Powers; or

(*c.*) Situate on different territories of the same neutral Power;

And whether, in every case, or what cases, the right of cutting may be exercised in the waters of a belligerent only, or also on the high seas; and

5. Generally.

APPENDIX.

EMERGENCY CLAUSES.

(A.)—*In Licence granted by Board of Trade to the Western Union Telegraph Company.*

AND also that if and whenever, in the opinion of one of Her Majesty's Principal Secretaries of State, an emergency shall have arisen in which it is expedient for the public service that Her Majesty's Government should have control over the transmission of messages by the Company's telegraphs or by the said cables or cable, it shall be lawful for the Secretary of State, by warrant under his hand, to direct and cause so much of the Company's works as are within the United Kingdom, or any part thereof, to be taken possession of in the name and on behalf of Her Majesty, and to be used for Her Majesty's service, and subject thereto for such ordinary service as may seem fit, and in that event Her Majesty's Government shall respect and abide by all the obligations of the Company and keep the Company indemnified against all claims and damages, costs, charges and expenses arising thereout, and, in the event aforesaid, the Secretary of State shall have power to direct and authorize such persons as he thinks fit to assume the control of the transmission of messages by the Company's telegraphs or by the said cables or cable, either wholly or partly, and in such manner as he may direct.

Provided always that no such warrant shall have effect for a longer time than one week from the issuing thereof. Provided, nevertheless, that the said Secretary of State may issue successive warrants from week to week as long as, in his opinion, such emergencies continue.

Provided also, and it is hereby agreed and declared, that the Commissioners of Her Majesty's Treasury shall pay to the Company as compensation for any loss of profit and for any damages, costs, charges, and expenses sustained by the Company by reason of the exercise by the said Secretary of State of any of the powers hereby reserved such sum as may be settled between the said Secretary of State and the Company by agreement, or, in case of difference, by arbitration, such arbitration to be conducted in manner provided by section 51 of the Telegraph Act of 1863.

(B.)—*In Treasury Contracts* (*South African Contract of* 1879).

In case of war, rebellion, or other emergency, the Imperial Government of the United Kingdom, or the Government of any British Colony or possession, duly authorized by Her Majesty's Government in that behalf, may take possession of the cables, stations, offices, and apparatus of the said line, and may keep possession thereof for so long as such Government may think requisite, and the Companies and their successors in business shall do all in their power to enable such Government to have and enjoy the benefit and advantage thereof. And Her Majesty's Government shall make to the Companies, or their successors in business, such compensation in money for all loss suffered by the Companies, or their successors in business, by the exercise of the powers by this clause as shall be admitted or determined (in case of dispute) by arbitration to be reasonable in that behalf.

(C.)—*In Jamaica Law,* 1898 (*Direct West India Company*).

In case of war, rebellion, or other emergency, the Government may take possession of the line and of the stations, offices, and apparatus on such telegraph line, may keep possession thereof for so long as the Governor may think requisite, and may, while such line is in possession of the Government, work the same by Government servants. The Governor shall, out of the general revenue of the Colony, make to the Company such compensation in money for all loss suffered by the Company by the exercise of the powers by this section conferred, other than loss calculated on the basis of an assumed increase of receipts while such telegraph line remains in the hands of the Government, as shall be admitted or determined, in case of dispute by arbitration, to be reasonable in that behalf.

(D.)—*In Zanzibar, Seychelles, and Mauritius Contract of April* 11, 1893.

In case of war, rebellion, or other emergency, Her Majesty's Government may take possession of such telegraph line and of the stations, offices, and apparatus on such telegraph line, and may keep possession thereof for so long as Her Majesty's Government may think requisite, and the Company shall do all in its power to enable Her Majesty's Government to have and enjoy the benefit and advantage thereof, and Her Majesty's Government may work such telegraph line by Government servants. And Her Majesty's Government shall make to the Company such compensation in money for all loss suffered by the Company, by the exercise of the powers by this clause conferred, as shall be admitted to be reasonable or determined, in case of dispute by arbitration, as hereinafter mentioned.

(E.)—*In Turks and Caicos Island Ordnance of* 1891.

Where, in the opinion of the Commissioner, an emergency has arisen in which it is expedient for the public service that Her Majesty's Government should have control over the transmission of messages by the said Company's telegraph, the Commissioner, by warrant under his hand, may direct and cause the said Company's works, or any part thereof, to be taken possession of in the name of Her Majesty's service, and subject thereto for such ordinary service as may seem fit; or may direct and authorize such persons as he thinks fit to assume the control of the transmission of messages by the said Company's telegraph, either wholly or partly, and in such manner as he directs. Any such warrant shall not have effect for any longer time than one week from the issuing thereof, but the Commissioner may issue successive warrants from week to week as long as, in his opinion, such emergency continues; and the Commissioner shall forthwith thereafter

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report the same, together with his reasons for issuing any such warrant or warrants, to the Governor-in-chief of Jamaica, and there shall be paid to said Company as compensation for any loss of profit sustained by the said Company by reason of the exercise by the Commissioner of any of the powers of the present section, out of the general revenue of these islands, such sum as may be settled between the Commissioner and the Company by agreement or, in case of difference, by arbitration, such arbitration to be conducted as follows :—

1. The Commissioner and the Company shall each, within fourteen days after the delivery by one to the other of a demand in writing for an arbitration, appoint an arbitrator

2. The two Arbitrators nominated shall, before entering on the arbitration nominate an Umpire.

3. If either party or Arbitrator make default in nominating an Arbitrator or Umpire within fourteen days after receiving from the other a demand in writing for such nomination, the Judge of these islands may, on the request of the Commissioner of the said Company, under his hand nominate an Arbitrator or Umpire.

4. The Arbitrators shall make their Award within twenty-eight days after their nomination, otherwise the matter shall be left to be determined by the Umpire.

5. The Umpire shall make his Award within twenty-eight days after notice from the Arbitrators, or one of them, that the matter is left to be determined by him; or in default a new Umpire shall be appointed as nearly as may be in manner aforesaid, who shall make his Award within the like time, or in default be superseded, and so *toties quoties*.

The Award of the Arbitrators or Umpire shall be final and conclusive as between the Commissioner and the said Company.

(F.)—*Indian Telegraph Act*, 1885.

"(1.) On the occurrence of any public emergency, or in the interest of the public safety, the Governor-General in Council or a Local Government, or any officer specially authorized in this behalf by the Governor-General in Council, may—

"(*a.*) Take temporary possession of any telegraph established, maintained, or worked by any person licensed under this Act; or

"(*b.*) Order that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted or shall be intercepted or detained, or shall be disclosed to the Government or an officer thereof mentioned in the Order.

"(2.) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point."

(G.)—*Form settled by recent Inter-Departmental Committee.*

And it is hereby agreed and declared as follows, that is to say :—

(1.) If and whenever any Department of Her Majesty's Government requires the Company to transmit any message on Her Majesty's service, such message shall have priority over all messages, and the Company shall, as soon as reasonably may be, transmit the same and shall, until transmission thereof, suspend the transmission of all other messages.

(2.) If and whenever in the opinion of one of Her Majesty's Principal Secretaries of State an emergency shall have arisen in which it is expedient for the public service that Her Majesty's Government should have control over the transmission of messages by the Company's telegraphs, it shall be lawful for the said Secretary of State by warrant under his hand to direct and cause so much of the Company's works as are within the United Kingdom or any part thereof to be taken possession of in the name and on behalf of Her Majesty, and to be used for Her Majesty's service, and subject thereto for such ordinary service as may seem fit, and in that event any person authorized by the said Secretary of State may enter upon the offices and works of the Company and take possession thereof and use the same as aforesaid.

(3.) One of Her Majesty's Principal Secretaries of State may, when he considers such an emergency as aforesaid to have arisen, instead of taking possession of the offices and works of the Company, direct and authorize such persons as he thinks fit to assume the control of the transmission of messages by the Company's telegraphs either wholly or partly, and in such manner as he may direct, and such persons may enter upon the Company's premises accordingly, or the said Secretary of State may direct the Company to submit to him, or any person authorized by him all telegrams tendered for transmission or arriving by the Company's telegraphs, or any class or classes of such telegrams, and to stop or delay the transmission of any telegrams, or deliver the same to him or his agent, and generally to obey all such directions with reference to the transmission of telegrams as the Secretary of State may prescribe; and the Company shall obey and conform to all such directions.

(4.) In any such case as aforesaid Her Majesty's Government shall pay to the Company by way of compensation for any direct injury or loss of profit sustained by the Company by reason of the exercise by the Secretary of State of any of the powers hereby reserved such sum as may be settled between the Secretary of State and the Company, or, in case of difference, may be determined by arbitration.

No. 32.

[November 27, 1900.]

Foreign Office to Attorney-General.

Dear Attorney-General, *Foreign Office, November* 20, 1900.

Use of telegraph lines by belligerents: As to difference between despatch-boat and cruiser.

YOU will recollect that in 1898 the Lord Chief Justice (then Attorney-General) and yourself with Simpson wrote a rather detailed Report on the subject of the obligations of a neutral Power with regard to the use of telegraphic lines or cables by belligerents (see annexed copy of Law Officers' Report of the 7th May, 1898).*

Towards the end of paragraph 4 of that Report you drew a distinction between the treatment to be accorded to a "despatch-boat" sent under such circumstances as were mentioned in Lord Tweeddale's letter and that to be accorded to a "cruiser," and the distinction which you drew in 1898 in this regard is preserved by the terms of the later Report which you furnished on the 15th August last.

The whole matter is now engaging the attention of the Departments principally concerned (Admiralty, General Post Office, Colonial Office, and Foreign Office), with a view to the preparation of instructions for their officers by the light of these two Reports, and some doubt exists amongst those who have had to deal with the Reports as to the exact sense in which you employed the expression "despatch-boat" in the Report of the 7th May, 1898.

My own strong belief is that you were intending to draw a distinction between vessels of war or national ships of a belligerent on the one hand, and vessels ("despatch-boat sent under such circumstances as were mentioned in Lord Tweeddale's letter") on the other hand, which were not actually in the navy of the belligerent, nor employed by it for belligerent purposes, and which consequently do not come under the restrictions as to stay in port, limited right of coaling, &c., applicable in the case of national vessels.

But owing to the fact that the term "despatch vessel" is also employed to denote a well-known class of national vessels, in which armament is entirely subordinated to speed, the Report is perhaps open to the construction which has also been put upon it, that the distinction intended to be drawn is between a "cruiser" or fighting national vessel on the one hand, and a despatch vessel or national news-vessel on the other.

It seems to me that this cannot really be so, as there is no distinction in essence between a despatch vessel and a fighting vessel in the public employment of the State. Both are national vessels, and each is equally subject to the restrictions adverted to above.

We do not like, however, especially in the presence of the doubt which has been expressed to put a gloss upon your language which it is possible it may not have been intended it should bear, and I therefore have suggested that it would be desirable to refer the matter back to you privately. We can, on hearing from you, either put an explanatory note, with your authority, in the margin of the Report, or if you think that the language of the 1898 Report ought in any respect to be amplified with regard to this special point that can equally readily be done.

Yours very sincerely,
(Signed) W. E. DAVIDSON.

List of Papers.

Law Officers	May 7, 1898.
Ditto	August 16, 1900.

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* See Law Officers' Report for 1898, under Spain.

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Report.

I agree with the view expressed in your letter of the 20th as to the meaning of the passage in paragraph 4 of our Report of the 7th May, 1898.

(Signed) R. B. FINLAY.

Probably a note might be added explaining that the passage does not apply to vessels forming part of the fleet of the belligerent, though they are chiefly or entirely used for carrying despatches.

R. B. F.

Royal Courts of Justice,
November 27, 1900.

ITALY.

No. 33.

[February 3, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 29, 1900.

Gentlemen,

O. in C. applying Extradition Treaty with San Marino.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the draft of an Order in Council, carrying into effect an Extradition Treaty between the United Kingdom and the Republic of San Marino, which was signed at Florence on the 16th October last, and of which the ratifications were exchanged at Rome on the 5th ultimo.

I am to inclose the accompanying letters from the Home, Colonial, and India Offices, expressing concurrence in the terms of the draft Order in Council, and I have the honour to request that you will favour Lord Salisbury with your opinion as to whether it may, in its present form, be laid before the Queen in Council for Her Majesty's approval.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Draft Order in Council.	
Home Office	January 8, 1900.
Colonial Office	January 9, „
India Office	January 24, „

Report.

In our opinion the draft Order in Council, initialled by us, may properly be submitted to the Queen in Council for Her Majesty's approval.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
February 3, 1900.

Annex.

Draft Order in Council.

WHEREAS by the Extradition Acts, 1870 to 1895, it was, amongst other things, enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient;

And whereas a Treaty was concluded on the 16th day of October, 1899, between Her Majesty and the Captains Regent of the Most Serene Republic of San Marino for the mutual extradition of fugitive criminals, which Treaty is in the terms following:—

[See Treaty Series No. 9, 1900.]

And whereas the ratifications of the said Treaty were exchanged at Rome on the 5th day of December, 1899:

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in virtue of the authority committed to her by the said recited Acts, doth order, and it is hereby ordered, that from and after the * day of January, 1900, the said Acts shall apply in the case of San Marino, and of the said Treaty with the Captains Regent of the Republic of San Marino:

Provided always that the operation of the said Acts shall be and remain suspended within the Dominion of Canada so long as an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," shall continue in force there, and no longer.

R. E. W.
R. B. F.

JAPAN.

No. 34.

[April 10, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 4, 1900.

Gentlemen,

Titles to land in British Concessions in Japan; claim to levy rates.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list which relate to the question of the titles to land held by British subjects in the foreign Concessions in Japan, and the claim of the Japanese authorities to levy rates and taxes in respect of such land and the buildings thereon.

Article XVIII of the Treaty between Great Britain and Japan of the 16th July, 1894 (Paper A), which came into force on the 17th July last, provides that the several foreign Settlements in Japan shall be incorporated with the respective Japanese communes, and shall thenceforth form part of the general municipal system of Japan. By the same Article it is further provided that, when such incorporation takes place, the existing leases in perpetuity under which property is now held in the said Settlements shall be confirmed, and no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of such property.

On the 7th July, 1899, an Imperial Japanese Ordinance (No. 329) was issued relating to the registration of rights in immovables acquired by foreigners, and providing that such rights, if not already registered at a foreign Consulate, must be registered at the proper Japanese registry office within one year of the coming into effect of the revised Treaties (Sir E. Satow, No. 130, 26th July, 1899, Paper B).

In a despatch dated the 5th September, 1899 (Paper C), Her Majesty's Minister

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* Date to be inserted by Council Office, and to be a date ten days after publication in the "London Gazette."

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reported that the Judicial authorities at Yokohama, to whom the duty of registering such rights belonged, interpreted the Ordinance in such a way as to materially affect the privilege secured to British subjects by Article XVIII of the Treaty. Her Majesty's Consul at Yokohama was informed by the President of the Local Court that whenever a lot of Settlement land, belonging to a foreigner, has been registered, the title-deed ceases to have any legal value, and the entry in the register becomes the sole evidence of title. Moreover, the land book provides only for the registration of superficies, mortgages, and short leases. The character of superficies, Sir E. Satow states, is defined in the Japanese Civil Code. The effect of Article 276 of that Code is that if the superficiary owner becomes bankrupt the landlord—in this case the Japanese Government—may claim the extinguishment of the superficies.

In these circumstances, Sir E. Satow addressed a note to the Japanese Government, a copy of which is inclosed in his despatch, pointing out that the Ordinance, as interpreted by the Japanese authorities, had the effect of invalidating the leases in perpetuity, which Article XVIII of the Treaty expressly stipulates shall be confirmed.

The Japanese Minister for Foreign Affairs, in his reply (inclosure in Sir E. Satow's No. 9, 22nd January, 1900, Paper D), explains that the word superficies, when applied to such leases as those now in question, is recognized by his Government to mean a special kind of superficies, and not superficies under the provisions of the Civil Code. His Excellency further states that the title-deeds of leases in perpetuity held by foreigners would, after their registration under the Imperial Ordinance No. 329 (see above), still have the same validity as before such registration. Viscount Aoki also incloses a copy of an Imperial Ordinance No. 458 of the 27th December, 1899, amending Imperial Ordinance No. 329. In this later Ordinance the words "perpetual lease" are specially inserted within brackets after the word "superficies," and his Excellency states that this makes it clearer that the "so-called superficies is a perpetual lease." He considers that the amending Ordinance has the effect of confirming the validity of the title-deeds; and Sir E. Satow observes that if it should prove that the Japanese Courts take the same view as his Excellency, the result may be to confirm the existing leases in perpetuity in the manner contemplated by Article XVIII of the Treaty of 1894. As, however, the word "superficies" is objected to by foreigners, and Sir E. Satow was of opinion that it imported into the matter an element of doubt and confusion that might have been avoided, he addressed a further communication to Viscount Aoki, taking note of his declaration, and reserving the rights of British subjects secured to them under Article XVIII of the Treaty.

In a despatch No. 10 of the 22nd January (Paper E) Sir E. Satow forwards a report of a meeting of land-renters in the former foreign Settlement at Yokohama, which was held on the 19th of that month, and at which dissatisfaction was expressed at the terms of the Imperial Ordinances Nos. 329 and 458, and it was resolved to address the Japanese Government on the subject through the foreign Representatives at Tôkiô.

In a further despatch No. 18 of the 13th February (Paper F) Sir E. Satow incloses a letter from Mr. W. Till, the representative of the British land-renters, together with the Resolutions passed at the public meeting above referred to. It will be seen that Her Majesty's Minister, in his reply, stated that while the use of the word "superficies" might be objectionable in connection with "leases in perpetuity," it appeared to him that no practical inconvenience need be experienced if the Courts placed on the two Ordinances the meaning which the Japanese Government have officially declared that they attach to them, and that until a case occurred proving that the Courts take a different view he did not see his way to making any further official representations to the Japanese Government on this point.

On behalf of the land-renters it is contended *inter alia*—

1. That it has been proposed to alter the tenure of their property;

2. That there has hitherto been no confirmation by the Japanese Government of their existing leases in perpetuity as called for in the Treaties;

3. That the law of superficies provides that if no time for the duration of the superficies has been fixed in the Act by which it was created the Court may fix the duration of the right at from twenty to fifty years, and it is suggested that at some future time, as a perpetual lease has no time fixed for its duration, the Court would have the power to reduce it to (say) fifty years from the time of its commencement, unless the perpetual leases be specially confirmed.

Sir E. Satow subsequently received a deputation of the land-renters; an account of what passed is given in his despatch, and I am to invite your special attention to the views expressed by him at this interview.

The question of taxation is dealt with in Sir E. Satow's despatches No. 166 of the 5th October, 1899, and No. 196 of the 29th November, 1899. (Papers G and H.)

In the first of these despatches Sir E. Satow forwards a letter from Mr. A. B. Walford, an English barrister residing at Yokohama, in which, on behalf of certain British subjects, he contends that land-renters in the foreign Settlements are not liable to pay house taxes or local rates, or stamp duties, or taxes on registration of a transfer of land.

The proposed tax of 2½ per cent. on transfers of land having been abandoned by the Japanese Government it is no longer necessary to consider this point.

At all the ports open to foreign residence by the Treaty of 1858, land was leased to foreigners in perpetuity by the Japanese Government at a rental fixed at a figure which covered some, but not all, of the municipal charges. But Article XVIII of the Treaty of 1894 (Paper A) is held by Mr. Walford to go further, in providing that no conditions whatsoever other than those contained in the existing leases shall be imposed in respect of property held by foreigners in the existing Settlements.

Article XXI of the French Treaty, dealing with the same matter, adds that no imposts, taxes, or charges shall be levied other than those expressly stipulated in the leases in question, and British land-renters would be entitled to claim the benefit of this clause by virtue of the most-favoured-nation Article of the British Treaty.

A Memorandum on the subject by Mr. Wilkinson (the Judge of Her Majesty's Court for Japan), to whom Mr. Walford's letter was referred, is inclosed in Sir E. Satow's despatch, as well as a copy of a Memorandum which Her Majesty's Minister delivered to the Japanese Minister for Foreign Affairs on the 29th September last, and in which Sir E. Satow pointed out that the land and buildings in the foreign Settlements had hitherto been exempt from all Imperial and local taxes, with such exceptions only as are contained in the respective title-deeds, and stated that, under the provisions of Article XVIII of the Treaty of 1894, it was clearly intended that they should continue to be so exempted. Sir E. Satow further suggested that "property" referred to in that Article included both land and houses.

Viscount Aoki in his reply (inclosure in Sir E. Satow's No. 196) (Paper H), while admitting that it is intended by the Article that no burdens shall be imposed upon the land other than those contained in the leases, contends that this exemption does not extend to the houses built on the land; that the "property" referred to is the property set out in the leases, or, in other words, the land leased in perpetuity.

Sir E. Satow incloses forms of some of the leases which have been issued at different times, and are still in force, and in which the only property referred to as to be leased is land.

On the other hand, in the leases issued for land in the Settlement at Nagasaki, and in the original Settlement at Yokohama, buildings are referred to in the clause which deals with forfeiture for non-payment of rent, the buildings in that case becoming the property of the Japanese Government, and it is contended on behalf of the lessees that this clause shows that the buildings are held under the leases.

In the leases for land in the Settlements at Hiogo, Osaka, and Yedo (Tôkiô) there is no similar forfeiture clause and no mention whatever of buildings, though Sir E. Satow states that it would probably be contended on behalf of the lessees that the land was intended to be built upon, and was leased with that object.

If the view taken by Viscount Aoki were accepted, it would appear that foreigners would as regards repairs of roads and drains, lighting the streets, &c., be paying twice for the same municipal services as explained in Sir E. Satow's despatch.

On the other hand, there are now other local heads of expenditure besides those just mentioned towards which, in Sir E. Satow's opinion, foreigners cannot equitably claim exemption from contributing.

I am to request that you will take the papers submitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion—

1. As to whether any further representations should at present be addressed to the Japanese Government with reference to the confirmation of the titles to land held by British subjects on perpetual lease in the foreign Settlements or Concessions, and, if so, on what grounds such representations should be made; and

2. As to what instructions should be given to Her Majesty's Minister at Tôkiô

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with regard to the claim of the Japanese authorities to levy local rates in respect of the buildings on such land.

His Lordship will also be glad to receive any observations of a more general character which you may desire to offer on the subject of this reference.

I have, &c.
(Signed) FRANCIS BERTIE

List of Papers.

(A.)	Anglo-Japanese Treaty of 1894 (Treaty Series No. 23 of 1894).		
(B.)	Sir E. Satow	(No. 130)	July 26, 1899.
(C.)	Ditto	(No. 150)	September 5, „
(D.)	Ditto	(No. 9)	January 22, 1900.
(E.)	Ditto	(No. 10)	January 22, „
(F.)	Ditto	(No. 18)	February 13, „
(G.)	Ditto	(No. 166)	October 5, 1899.
(H.)	Ditto	(No. 196)	November 29, „
(I.)	China Association		March 27, 1900.

Report.

1. We do not regard the present state of things with respect to the title of land held by British subjects on perpetual lease as constituting a satisfactory settlement of the Treaty obligation.

The Japanese "superficies," as defined in the Japanese Civil Code (Articles 265-269), appears to be closely analogous to the form of property known by the same name in the Roman Law, from which, indeed, it appears to have been taken. It is the right of using the surface of land which remains the property of another person, and is, in its nature, different from a lease of the land itself. We think that registering these perpetual leases under the head "superficies," even with the addition of the words "perpetual lease," is very apt to create confusion, and we are by no means satisfied that the Japanese Courts would take the same view as that expressed by Viscount Aoki in his despatch of the 15th January, 1900. Viscount Aoki refers to Article 45 of the Law concerning the operation of the Civil Code. But it is to be observed that that Article refers in terms to a "superficies" created for an alien. A perpetual lease is not a "superficies," but confers a right of property in the land itself, and this would appear to be the nature of these leases as they have been hitherto understood in Japan. We would, therefore, suggest that the Japanese Government should be requested to consider the possibility of passing a Law in terms recognizing the exceptional rights in these perpetual leases which are secured to their holders by Article XVIII of the Treaty.

The method which has so far been adopted is very cumbrous. We think it doubtful whether the desired end has been attained, and it would certainly appear to affect the value of these leases owing to the doubt raised as to their falling under the Japanese conception of "superficies," which is a different kind of property altogether.

2. It appears to us that Her Majesty's Minister at Tôkiô should be instructed to resist the claim of the Japanese authorities to levy local rates in respect of the buildings on such land. We cannot recognize as valid the distinction which Viscount Aoki asserts between the right to tax the land and the right to tax the house. The house is the property of the perpetual leaseholder just as much as the land on which it has been built. We think that Article XVIII, when it provides that no conditions other than those contained in the leases should be imposed in respect of the property, protects the perpetual leaseholders from local rates as well as from any additional rent or taxation. If any doubt could be entertained on the point it would be removed by the terms of the French Treaty and the note to the German Treaty, and the right of British subjects to equality of treatment.

(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

Royal Courts of Justice,
April 10, 1900.

MEXICO.

No. 34A. [Colonial Office.]

[October 18, 1900.]

Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, October 18, 1900.

Sir,

As to Extradition of Deserter on ground of larceny of his uniform.

WE were honoured with your commands signified in Mr. Lucas' letter of the 19th ultimo, stating that he was directed by you to transmit to us for our consideration—

1. A despatch from the Governor of British Honduras, dated the 23rd August last, relative to the case of four persons whose extradition had been demanded by the Mexican Government under the provisions of the Treaty made between Great Britain and the United States of Mexico in September 1886, and who were now under arrest at Belize;

2. The original proceedings taken before the Acting District Commissioner at Belize upon the application made for extradition;

3. The Report made by the Attorney-General of British Honduras to the Governor on the case;

4. A copy of the Extradition Treaty of September 1886, made between Great Britain and the United States of Mexico;

5. Copy of "The Extradition Act, 1870;"

6. Draft of Secretary of State's proposed telegram and despatch to Officer administering the Government of British Honduras;

7. Copy of Secretary of State's letter to the Foreign Office (11th September, 1900); and,

8. Copy of reply of Foreign Office thereto (17th September, 1900).

That Mr. Lucas was to ask us to be good enough to take these papers into our consideration, and to advise you—

1. Whether larceny of his uniform by a fugitive soldier or sailor was an extraditable offence according to English law, or to the law of her Colonies having a similar system of criminal jurisprudence;

2. Whether we concurred in the proposed reply of the Secretary of State to the Officer administering the Government of British Honduras, or if not,

3. Generally, as to what reply should be returned.

We have taken the papers into our consideration, and, in obedience to your commands, have the honour to

Report—

1. That we think that under ordinary circumstances a deserter would not properly be found guilty of larceny in respect of the uniform which he was wearing at the time of his desertion. The uniform is accessory to his person, and in ordinary cases the proper inference would be that he took it with him, not with the felonious intention of appropriating it, but because he was wearing it at the time, and could not go without it.

There might, of course, be special circumstances from which such a felonious intent might be inferred, as if, for instance, the deserter afterwards sold the uniform in question. There are, however, no such special circumstances in this case, and we do not think that extradition for larceny should be granted if it be the case that the only articles that the deserters took with them were those that they were wearing at the time. There is, upon the evidence, nothing to show whether this be the case or not. It is not proved that the articles found in their possession were those that they were wearing at the time of desertion, and there is no satisfactory evidence that the men took with them any other article. We think that some inquiry should be made on this point, and unless there is some evidence to show that the prisoners took other articles or property of the Mexican Government with them, or feloniously converted those that they were wearing, extradition should not be granted.

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2 and 3. We suggest that instead of the proposed replies, there should be sent a telegram and despatch in the sense of our answer to the first question. We have prepared drafts herewith.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

Annexes.

Draft of Telegram from Mr. Chamberlain to the Officer administering the Government, British Honduras.

(Telegraphic.) *October* , 1900.

October.—Referring to your despatch No. 148, 23rd August.

Extradition should not be granted for larceny, merely of articles worn at time of desertion. Further inquiry must be made whether other articles were taken; if so, extradition may be granted.

Despatch follows by mail.

Draft of Despatch from Mr. Chamberlain to the Officer administering the Government, British Honduras.

(No. .)

Sir, *Downing Street, October* , 1900.

I HAVE the honour to acknowledge the receipt of your despatch No. 148 of the 23rd August last, with reference to the case of four fugitive offenders whose extradition has been demanded by the Government of the United States of Mexico, under the Extradition Treaty made between that country and Great Britain in September 1886.

2. In continuation of my telegram to you of the 23rd October I have to inform you that after having carefully considered the Attorney-General's Report upon the case, I think that if the only articles in respect of which larceny is charged were those worn at the time of the desertion, extradition should not be granted. Further inquiry should be made on this point, on which the evidence does not at present throw sufficient light, and if it appears that these men took with them other articles than those they were wearing at the time of desertion, extradition may be granted.

3. With regard to the probability that the punishment that would be inflicted by the Mexican Tribunal would be made to cover the offence of desertion, which is not an extraditable offence, I cannot assume against the Mexican Courts that they would inflict any punishment that is not warranted upon a conviction for larceny; but it is necessary first to see that there is a real case of larceny *primâ facie* established. To say that the mere fact of a soldier having uniform on when he deserted renders him subject to extradition, would be in substance to make desertion an extraditable crime.

4. I agree with the Attorney-General in thinking that a deserter cannot be properly charged with stealing such articles of uniform as he was wearing at the time of his desertion, merely in respect of this fact, and that there is not sufficient evidence to connect these men with the larceny of the articles of uniform shown to have been missing after they had deserted. It is. however, not proved that the articles found in the possession of the prisoners were merely those worn by them at the time of desertion; but the circumstances are such that before extradition be granted this point should be cleared up, and if the fair conclusion is that they were, extradition should not be granted. Under such circumstances there would be no sufficient evidence of felonious intent. If, however, it appears that the prisoners took with them other articles, extradition should be granted.

5. If extradition be granted, for the purpose of insuring the due observance of Article VII of the Treaty, I have to request you to call the special attention of the Mexican authorities to the exact offence for which these men are surrendered, viz., larceny of articles other than the articles of uniform they were wearing when they deserted.

I am, &c.

PERSIA.

No. 35.

[December 12, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November* 27, 1900.

Illegal importation of arms into Persia.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list which relate to a case of importation on a British ship of arms into Bushire in contravention of the Persian law.

The facts of the case as they appear from telegraphic reports of Her Majesty's Chargé d'Affaires at Tehran and Her Majesty's Consul-General at Bushire, are as follows:—

The British ship "Hathor," which was chartered by the firm of Messrs. Bucknall Brothers of 23, Leadenhall Street, and which was in the course of a voyage from Cardiff, and Marseilles to Suez Canal ports, Jibuti, Aden, Bushire, and Bussorah, arrived on the evening of the 8th November in the harbour of Bushire, when Colonel Kemball, Her Majesty's Consul-General at that place and Political Resident in the Persian Gulf, received information from M. Simais, a Belgian, who is Director of the Persian Customs at Bushire, that the vessel was suspected of carrying arms. This information was based on statements made to the Persian Customs officer by the coolies unloading the cargo.

Colonel Kemball sent a Representative to accompany the Custom-house officer on board, when 30 packages containing 329 arms and 27 cases containing 32,000 rounds of ammunition were found stored in the forehold with the cargo.

The master of the "Hathor" professed entire ignorance of these goods, which were not entered in the ship's manifest. He informed the Director of Customs that he believed they were shipped by an Arab passenger—a native of Koweit (which is a district on the Arabian coast of the Persian Gulf, not far from the mouth of the Shat-el-Arab). The Arab denied all knowledge of them, and was not entered as a passenger, though he declared that he paid the master his passage-money, and that he had upon him a paper signed by the master.

The goods appear to have been shipped at the French port of Jibuti—the cases of ammunition were marked "Jibuti; munitions de sûreté; cartouches;" one of the packages of arms was inscribed with the name "Mubarek" in Arabic, Mubarek being the name of the Arab passenger (Mubarek is also the name of the Sheikh of Koweit); others had letters in Arabic, and also numbers written upon them. The arms are of French manufacture, and many of them are marked with the lion and sun, which makes it probable that they were intended for Persia.

The master authorized the Director of Customs to take charge of the arms and ammunition, and the Director demanded a fine of 800*l.* from the master, or, in his default, from the charterers, in accordance with Article 4 of the Persian Law of the 1st January, 1900 (see Paper P). The fine was demanded through Colonel Kemball, but no charge has been regularly made before his Consular Court.

The Director of Customs allowed the "Hathor" to proceed on her voyage to Bussorah on the understanding that the case would be taken on her return, and the detention of the ship is then claimed until the matter is settled. The information in the telegrams is somewhat conflicting on the question whether any security has been given for the fine; but according to the latest report from Colonel Kemball no bail bond was taken, nor was any money lodged before the ship's departure. The statement which was made in Mr. Spring-Rice's telegram No. 84 of the 10th November (Paper A), that money to meet the fine was deposited with the Imperial Bank of Persia, appears therefore to be erroneous.

No arrangement appears to have been made as to what Tribunal is to take the case when the ship returns.

Colonel Kemball has little doubt of the connivance of the master or of his knowledge of the fact that the Arab passenger and the contraband cargo were on board.

The reasons given for this view are (1) that the master omitted to show on the ship's manifest the cases and packages, which are both numerous and bulky, and

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which could not have been the private effects of the passenger; (2) that he denied all knowledge of them; (3) that he purposely omitted the name of the passenger from his papers and also from the bill of health; (4) that he made contradictory statements to the Director of Customs and to Colonel Kemball in a *procès-verbal*.

From the above statement of the facts it appears that a considerable quantity of arms and ammunition destined for Persia was taken into Bushire in a British ship in contravention of the Persian Law of the 1st January, 1900, and that this was probably done by an Arab native of Koweit with the connivance of the master, a British subject. The arms and ammunition have been seized by the Persian authorities, and the questions of the punishment of the Arab, the imposition of a fine upon the master, and the further detention of the ship are still pending.

So far as the Arab is concerned no certain information as to his nationality has yet been received, and further inquiries will be made in the matter; but it would appear that, as a native of Koweit, he will be justiciable by Persian Tribunals in the presumable absence of any claim on the part of the Sheikh of Koweit to extra-territorial jurisdiction in Persia. He has, however, been claimed by the Turkish Vice-Consul as an Ottoman subject.

With regard to the seizure of the arms by the Persian authorities it is to be observed that the Persian Law of the 1st January, 1900, has been notified to all British firms and shipping agents by Her Majesty's Consul-General at Bushire, and this fact might be held to justify the Persian authorities in seizing the arms in the territorial waters of Persia.

The case of the master is on a different footing. It appears that the Persian Law of the 1st January, 1900, has never been made applicable to British subjects by a Queen's Regulation under Article 49 of the Persian Coasts and Islands Order in Council of the 13th December, 1889, or under Article 290 of the Persia (Inland) Order in Council of the same date (Papers Q and R); and the question therefore arises whether a British subject can be made amenable to the Persian Law in the absence of such Queen's Regulation. It is to be observed, with regard to the Articles of the two Orders in Council above referred to, that Article 49, sub-Article (1), of the Persian Coasts and Islands Order does not contain certain words which appear in the corresponding Article 290 of the Persia (Inland) Order. These words in Article 290, sub-Article (1) of the Inland Order are:—

"Or of any native or local law or custom, whether relating to trade, commerce, revenue, or any other matter."

The original papers have been carefully inspected with a view of ascertaining whether there was any reason for this omission, and it has been clearly established that no such reason existed at the time when the Orders were prepared in 1889, and that the words above quoted were inadvertently omitted from the Persian Coasts and Islands Order.

Instructions on various other points besides those above enumerated are requested by Mr. Spring-Rice, but the only one of these which calls for any special observations is the suggestion of the Persian authorities (see his telegram No. 93 of the 24th November, paragraph 1, Paper I) that the master might be tried by the Customs authorities with the assistance of Her Majesty's Consul-General under Article 7 of the Treaty between Persia and Russia of 1828 (Paper S). Lord Lansdowne, as at present advised, does not quite understand how the Persian Government can have a valid claim to jurisdiction over a British subject by virtue of a provision in a Treaty between Russia and Persia to which Great Britain is not a party, in view also of the fact that the Queen has exclusive jurisdiction over British subjects in Persia by usage, sufferance, and other lawful means, although Her Majesty cannot, in the case of Persia, claim such jurisdiction under the specific language of any Treaty or actual grant.

It appears to Lord Lansdowne that the questions put in Mr. Spring-Rice's telegrams Nos. 85 and 93 of the 14th and 24th November (Papers B and I) relating to the possibility of proceeding against the master under Article 233 of "The Persia (Inland) Order, 1889," and Articles 10 and 57 of "The Coasts and Islands Order, 1889," should be answered in the negative, but his Lordship thinks it right to call your attention to them.

Among the papers inclosed will be found a correspondence which has passed with Messrs. Bucknall Brothers, the charterers of the "Hathor" (Papers T, U, V, W, X), and it will be seen that in their letter of the 26th November, to which no reply has yet been returned, they request that steps may be taken to obtain the immediate acquittal or release of the master and steamer which is now stated to be detained at Bushire; and further, that representations may be made to the Persian authorities insisting that any fine which may have been paid shall be reimbursed, or if no fine has been paid, that none shall be imposed.

I am to request that you will be good enough to take the accompanying papers into your consideration and favour Lord Lansdowne with your opinion on the following points:—

1. Whether the master of the "Hathor" is amenable to Persian law.
2. Whether the Persian law should not form the subject of a Queen's Regulation or Regulations under Article 49 of the Persian Coasts and Islands Order in Council of the 13th December, 1889, and under Article 290 of the Persia (Inland) Order of the same date, so as to enable infringements of its provisions to be punished in Her Majesty's Consular Court when such infringements are committed by British subjects.
3. Whether the Persian authorities have any right to detain the ship on her return to Bushire failing the payment of the fine by the master or charterers.
4. Whether the Persian Law of the 1st January, 1900, can be enforced under Article 233 of the Persia (Inland) Order, containing general provisions for criminal authority and procedure, taken in connection with Article 10 of the Persian Coasts and Islands Order with respect to smuggling. (See Mr. Spring-Rice's telegram No. 85 of the 14th November, Paper B.)
5. Whether the master can be prosecuted in a British port on the charge of the arms not having been included in the ship's manifest. (See Mr. Spring-Rice's telegram No. 89, Paper F.)
6. Whether the Political Resident in the Persian Gulf (who is also Her Majesty's Consul-General) can compel the master's return to Bushire. (See Mr. Spring-Rice's telegram No. 89, Paper F.)
7. Whether Persia can claim jurisdiction over the master under Article 7 of the Treaty between Persia and Russia of the 22nd February, 1828 (Paper S). (See Mr. Spring-Rice's telegram No. 93, Paper I.)
8. If the answer to the preceding question is in the negative, whether the master can be tried by Her Majesty's Consul-General under Article 10 of the Persian Coasts and Islands Order respecting smuggling, and Article 57 of the same Order conferring the powers of a Justice of the Peace on Her Majesty's Consul-General. (See Mr. Spring-Rice's telegram No. 93, Paper I.)
9. Whether, in your opinion, any other, and if so what, general instructions may advantageously be given to Colonel Kemball and Mr. Spring-Rice respectively, in regard to this case.
10. What reply should, in your opinion, be returned to Messrs. Bucknall Brothers' letter of the 26th November (Paper X).

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Mr. Spring-Rice	(No. 84. Telegraphic)	November 10, 1900.
(B.)	Ditto	(No. 85. Telegraphic)	November 14, „
(C.)	Ditto	(No. 86. Telegraphic)	November 20, „
(D.)	Ditto	(No. 87. Telegraphic)	November 20, „
(E.)	Ditto	(No. 88. Telegraphic)	November 20, „
(F.)	Ditto	(No. 89. Telegraphic)	November 22, „
(G.)	Ditto	(No. 92. Telegraphic)	November 23, „
(H.)	Colonel Kemball	(Telegraphic)	November 24, „
(I.)	Mr. Spring-Rice	(No. 93. Telegraphic)	November 24, „
(J.)	To Mr. Hardinge	(No. 11. Telegraphic)	February 1, 1898.
(K.)	To Mr. Spring-Rice	(No. 57. Telegraphic)	November 17, 1900.
(L.)	Mr. Spring-Rice	(Private. Telegraphic)	November 22, „
(M.)	To Colonel Kemball	(Telegraphic)	November 23, „
(N.)	To Mr. Spring-Rice	(No. 59. Telegraphic)	November 23, „
(O.)	To Sir M. Durand	(No. 79)	August 3, 1898.
(P.)	Mr. Spring-Rice	(No. 11. Commercial)	May 28, 1900.
(Q.)	Persia Order in Council, 1889.		
(R.)	Persian Coast and Islands Order in Council		December 13, 1889.
(S.)	Treaty between Russia and Persia, 1828.		
(T.)	India Office		November 19, 1900.
(U.)	Messrs. Bucknall Brothers		November 21, „
(V.)	Ditto		November 22, „
(W.)	To Messrs. Bucknall Brothers		November 22, „
(X.)	Messrs. Bucknall Brothers		November 26, „
(Y.)	Memorandum: Foreign Office (Mr. Oakes)		November 27, „
(Z.)	Messrs. Bucknall Brothers		November 27, „

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Report.

1. In our opinion the master of the "Hathor" is not amenable to Persian law. The importation of arms into Persia is not an offence under the laws of England, and as the Persian Law of the 1st January, 1900, has not been made applicable to British subjects, the master has not been guilty of an offence cognizable in the British Courts in Persia. To acquiesce in his being tried by a Persian Court would be an abandonment of the position hitherto asserted that British subjects should be tried in Persia by a British Court, and is, we submit, most unadvisable.

2. We think it would be advisable that the Persian Law of the 1st January, 1900, should be made applicable to British subjects. This may be effected by Regulations under the Order in Council as to inland Persia (Article 290). As regards the Coast and Islands Order, owing to the different wording of Article 49, this cannot be effected by Regulations, and if it could the penalty would be only 100 rupees.

Under these circumstances probably the best course would be to pass an Order in Council dealing with the point as regards all parts of Persia.

3. As the ship has not been detained at Bushire, this question does not arise.

4. The answer to this question is in the negative, as the importation of arms is contrary to prohibition, and could not be held to constitute the offence of smuggling as defined by Article 10.

5. We do not think that, under the circumstances stated, any prosecution would lie against the master of the "Hathor."

6. No.

7. Such jurisdiction could not be be claimed by Persia under the Article in the Treaty referred to. That Treaty is not binding upon Her Majesty's Government, and the most-favoured-nation clause in the Treaty of Paris could not curtail the rights of Her Majesty's Government.

8. As stated in the answer to the 4th question, the facts would not support a charge of smuggling.

9. We think Colonel Kemball and Mr. Spring-Rice should be instructed to explain to the Persian authorities the reason why proceedings have not been instituted, and the intention of Her Majesty's Government forthwith to apply the Persian Law of the 1st January, 1900, to British subjects.

10. It is now unnecessary, as the ship has not been detained, to consider the reply to Messrs. Bucknall's letter.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
December 12, 1900.

PORTUGAL.

No. 36.

[July 24, 1900.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, July 17, 1900.

Delagoa Bay Railway Arbitration Award. U.S. Scheme.

I HAVE the honour to transmit to you, by direction of the Marquess of Salisbury, the papers noted in the accompanying list, in connection with the Award recently pronounced by the Berne Tribunal of Arbitration, which, as you are no doubt aware, was constituted, under an Agreement for Arbitration signed on the 13th June 1891, between the Representatives at Berne of the United States, Great Britain, and Portugal, to fix the compensation due by the latter country for the rescission of the Lourenço Marques Railway Concession, and the taking possession of that railway by the Portuguese Government.

The text of the Award, which was delivered on the 29th March last, is contained in the accompanying volume (Paper A). The material portions of it, in so far as present purposes are concerned, will be found on pp. 195, 196, 197, 199, and 200. (See passages in italic.)

The decision of the Arbitration Tribunal is given on pp. 199 and 200, and is as follows:—

"1. Le Gouvernement du Portugal, partie défenderesse, est condamné à payer aux Gouvernements des États-Unis de l'Amérique du Nord et de la Grande-Bretagne, parties demanderesses, ensemble, en plus des 28,000*l.* versées à compte en 1890, la somme de 15,314,000 fr., en monnaie légale Suisse, avec, en plus, les intérêts simples de cette somme, au taux de 5 pour cent l'an, du 25 Juin, 1889, jusqu'au jour du paiement.

"2. Cette somme, après déduction de ce qui sera nécessaire pour couvrir les frais de l'Arbitrage incombant aux parties demanderesses, et, de plus, le reliquat des 28,000*l.* versées à compte en 1890 seront affectés au paiement des créanciers obligatoires, et autres, s'il y a lieu, de la Delagoa Bay Company, selon leur rang.

"Les parties demanderesses dresseront à cet effet un état de distribution.

"Le Gouvernement du Portugal aura à verser entre les mains du Gouvernement des États-Unis la somme qui, suivant le dit état, reviendra à Mme. MacMurdo, représentée par ce dernier Gouvernement, en sa qualité de créancière obligatoire en 1er et en 2e rang.

"Il versera le surplus au Gouvernement de la Grande-Bretagne pour le compte de tous les autres ayants droit.

"3. Le délai de six mois fixé par le dernier alinéa de l'Article IV du Compromis Arbitral courra à partir de ce jour.

"4. Quant aux frais:

"Les dépens des parties seront compensés. Les frais de l'Arbitrage, suivant état à fournir en conformité de l'Article V du Compromis, seront supportés par parts égales, par les trois parties en cause, soit par un tiers par chacune d'elles.

"5. Les conclusions des parties, pour autant qu'elles diffèrent du dispositif ci-dessus, sont écartées.

"6. Une expédition authentique de la présente sentence sera délivrée par l'intermédiaire du Conseil Fédéral Suisse à chacune des trois parties en cause.

"Ainsi délibéré en séance du Tribunal Arbitral, et expédié à Berne le 29 Mars 1900.

"Les motifs ont été approuvés à Berne le 30 Mai, 1900."

The manner in which the amount awarded is to be distributed is specified on pp. 195, 196, 197.

It will be seen that no exceptional treatment is to be accorded to Mrs. MacMurdo, the American claimant, but that she is to be treated precisely like any other first or second mortgage bondholder in the Delagoa Bay Railway Company, in so far as the amount of her share in the Award is concerned.

On p. 197, last paragraph, it is laid down that Portugal need not await scheme of distribution, but may at once free herself from further responsibility by placing the entire sum due in the hands of some depositary of undoubted stability.

In connection with this passage, it will be seen from the accompanying letter from the Treasury of the 7th July (Paper B), that a proposal was made to the Bank of England on the 3rd instant by the Comptoir National d'Escompte de Paris, to pay over a sum of 939,996*l.* 13*s.* 2*d.*, with some addition for accrued interest, in full discharge of the obligations of the Portuguese Government towards the Governments of Great Britain and the United States under the Award. As the Bank of England had no instructions to receive the amount, and were unable to give a receipt in the form required, the money was declined.

On the 13th instant the United States' Ambassador addressed a note to Lord Salisbury (Paper C). This note states the readiness of the United States' Government to accept a plan, understood to be the result of suggestions made by the British claimants to the American claimant, and which is briefly as follows:—

1. The first mortgage debenture holders agree to accept 4 per cent. instead of 7 per cent. on their securities, thus creating a new and separate fund of about 240,000*l.*

Of this the American claimant is to receive 83,000*l.*, and is to pay all costs and

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expenses in connection with the arbitration, for which she or the United States' Government are liable.

Another sum of 7,800*l.* out of this fund is to be paid to the United States' Government for distribution among the depositors of 39,000*l.* of second debentures, which were delivered to the United States' Minister in London in 1891.

With these deductions, the remainder of the fund, that is to say, 149,200*l.*, less the British costs of arbitration, is to be distributed among the other holders of second debentures.

A further sum of 2,500*l.* with 4 per cent. interest is to be paid to the United States' Government for equal division between the American claimant and the depositors of 2,500*l.* first debentures with the United States' Minister in London in 1891.

The note explains that under the Award as it stands the first debenture holders, if paid interest at 7 per cent. as they claim, would practically exhaust the whole fund, the only amount coming to the United States being 2,500*l.* with interest on account of first debentures deposited in 1891 with the United States' Minister in London.

If Her Majesty's Government accept the plan, the United States' Government will join them in notifying Portugal of their readiness to receive the indemnity and to give joint and several receipts for the whole amount, and for the parts to be paid by Portugal to each Government respectively under the proposed plan.

The question, however, arises as to how far Her Majesty's Government would be justified, and if justified, would be wise, in taking any responsibility not specifically cast upon them by the terms of the Award itself.

Lord Salisbury is disposed to think that Her Majesty's Government should confine themselves to carefully fulfilling their obligations under the "Compromis Arbitral" (see pp. 88 to 91 of the Volume, Paper A), and the Award, and he doubts whether they can actively participate in any arrangements other than those contemplated by these documents, for the division of the sum awarded among the rightful claimants.

He is disposed to think that any arrangement between the various claimants such as is set out in Mr. Choate's note should be carried out independently of Her Majesty's Government by some machinery, which would give it effect after the payments resulting from the strict interpretation of the Award have been made at the instance of Her Majesty's Government.

I am to request you to take these papers into your consideration, and favour his Lordship with your opinion:—

1. Whether, having regard to the language of the Award, Her Majesty's Government would be justified in entering into the question dealt with in the note of the United States' Ambassador.

2. Should your answer to the previous question be in the affirmative, whether it would be advisable or prudent on the part of Her Majesty's Government to enter into the question dealt with in the note of the United States' Ambassador.

Lord Salisbury would at the same time be glad to be favoured with any general observations which you may have to offer on the case.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Copy of the Final Award.
(B.) Treasury letter of July 7.
(C.) Note from Mr. Choate of July 12.

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 20, 1900.

Gentlemen,

WITH reference to my letter of the 17th instant, I have the honour, by direction of the Marquess of Salisbury, to transmit to you the accompanying copies of a letter from the Lords Commissioners of the Treasury, and of the reply which has been returned to it relative to the Delagoa Bay Arbitration Award.*

I have, &c.
(Signed) FRANCIS BERTIE.

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* Treasury, July 16; to ditto, July 19, 1900.

Report.

We do not think Her Majesty's Government would be justified in being, or ought to be, involved in any scheme of distribution outside the Award. The scheme suggested by the American Ambassador appears to us to be one entirely outside and apart from the Award.

(Signed) R. B. FINLAY.
EDWARD CARSON.

No. 37.

[October 8, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, October 1, 1900.

Gentlemen,

Delagoa Bay Railway Arbitration: Distribution of Award.

IN your letter of the 24th July last you reported, with reference to a proposal made by the United States' Ambassador respecting the disposal of the sum awarded by the Delagoa Bay Arbitration Tribunal, "that you did not think Her Majesty's Government would be justified in being, or ought to be, involved in any scheme of distribution outside the Award." I have now the honour, by direction of the Marquess of Salisbury, to transmit to you a letter, together with its inclosures, signed by Representatives of the first and second mortgage debenture-holders of the Delagoa Bay and East African Railway Company, submitting a scheme for the distribution of the money paid under the Award.*

The substance of the Agreement is given in the second paragraph of the letter.

The third paragraph states that this scheme, which was unanimously approved by meetings of both classes of debenture-holders, is by virtue of the trust deeds (Inclosures 3 and 4) binding upon all the debenture-holders, and the writers are informed that it will be accepted by the Government of the United States.

If this statement is correct, the arrangement would seem to have the approval of all claimants under the Award, but Lord Salisbury has asked for an assurance from the Company that the scheme has the consent of all the parties who can possibly claim a right to share in the distribution of the money paid under the Award.

By clauses 2 and 7 of the "heads of compromise or arrangement" (Inclosure 5), it is agreed that the receipts of Messrs. Glyn, Mills, Currie, and Co. shall be a good and effectual discharge to the Governments of Great Britain and of the United States.

I am to request you to take these papers into your consideration, and I am to inquire whether the facts reported therein in any way affect the opinion reported in your letter of the 24th July.

Lord Salisbury would, at the same time, be glad to be favoured with any general observations which you may have to offer on the subject.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

Assuming that all the beneficiaries are bound, we see no reason why Her Majesty's Government should not concur in the scheme proposed.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 8, 1900.

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* Delagoa Bay Mortgage Debenture-holders, September 21, 1900.

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No. 38.

[December 28, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, December 4, 1900.

Gold of late South African Republic: Shipment at Lourenço Marques.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers marked in the accompanying list, on the subject of certain gold which is alleged to have been improperly seized by the late Government of the South African Republic.

The Johannesburg Chamber of Mines, acting on behalf of the Mining Companies whose mines had been worked by the late Government of the South African Republic, represented that nearly 2,000,000*l.* of gold had been taken from the mines, and that a large amount of bar gold was believed to be at Lourenço Marques, to which the officials of the late Government could have no right, as they had now become private individuals. The Chamber therefore asked that steps might be taken to recover the gold.

The Portuguese Government was approached on the subject, and issued an order prohibiting the export of bar gold from Lourenço Marques.

Shortly after the date of this order, Messrs. Wilcken and Ackermann, of Lourenço Marques, who were well-known agents of the late South African Republic, alleged that they held a large amount of gold which had been delivered to them by the Government of the Republic in payment of goods legitimately imported, and they therefore asked permission to export it. They offered to prove the legitimacy of the transaction by an inspection of their books. This offer was eventually accepted. But on Her Majesty's Consul-General proceeding to act on it, the firm disclosed only such documents and evidence as showed that the Transvaal Government had handed to them 105,000*l.* in bar gold, and refused to disclose the names and accounts that would have been required to satisfy an Accountant of the truth of their original statement that the gold had been handed to them in payment of goods legitimately imported. Notwithstanding these facts, however, the Consul-General did not feel justified in pressing for a further detention of the gold, and, having so informed the Portuguese authorities, it was allowed by them to be exported.

Messrs. Wilcken and Ackermann had already exported a large amount of bar gold not long before the issue of the prohibition to export, and when this gold reached Hamburg an embargo was laid upon it, as is understood, by a German Insurance Company which had granted a policy on certain gold which the Transvaal Government had commandeered soon after the beginning of the war. This step was taken, according to a verbal communication by Mr. Fraser (of Messrs. Goertz and Co.), not because the Company had any special claim to this particular parcel of gold, or could in any way identify it with the commandeered gold, but because they believed it to be the property of the Government of the South African Republic, and therefore capable of arrest to satisfy the Company's claims.

Her Majesty's Consul at Trieste has now written to the effect that uncoined gold was exported on the "Styria" from Lourenço Marques by Messrs. Wilcken and Ackermann on the 2nd October, and therefore after the issue of the prohibition against exportation.

Advances made by a Trieste bank on this gold were used to make certain payments to ex-Transvaal soldiers who had returned in the "Styria."

The refusal of Messrs. Wilcken and Ackermann to show how the gold passed into their possession as payment for goods delivered, the action of the German Insurance Company in laying an embargo on the gold at Hamburg, and the use to which that landed at Trieste was put tend to show, it is thought, that Messrs. Wilcken and Ackermann held the gold merely as agents for the late Government of the South African Republic, and in these circumstances, Lord Lansdowne would be glad to be favoured with your opinion as to whether it would be advisable, having regard to the previous history and all the circumstances of the present case, to bring before the Portuguese Government the facts which have recently come to light, and to request that Government in any future case of a similar kind to stop the export of the gold until the would-be exporter produces proof of the legitimacy of the transaction by which he became possessed of it, and further, whether, having regard to the fact that the gold has already actually left Lourenço Marques, Her Majesty's Government can otherwise take any further (and, if so, what) action in the matter.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

Intelligence		September 1, 1900.
Ditto		September 10, ,,
Ditto		September 11, ,,
To Sir A. Milner	(Telegraphic)	September 22, ,,
Sir A. Milner	(Telegraphic)	September 22, ,,
Intelligence		September 26, ,,
To Lisbon	(No. 63. Telegraphic)	
From Lisbon	(No. 53. Telegraphic)	
Intelligence		September 26, ,,
From Lisbon	(No. 64. Telegraphic)	
Colonial Office		October 5, ,,
To Lisbon	(No. 69. Telegraphic)	
From Lisbon	(No. 67. Telegraphic)	
To Lisbon	(No. 70. Telegraphic)	
From Lisbon	(No. 68. Telegraphic)	
To Lisbon	(No. 74. Telegraphic)	
To Colonial Office		October 10, ,,
To Consul Crowe	(No. 221. Telegraphic)	
From Lisbon	(No. 70. Telegraphic)	
Consul Crowe	(No. 434. Telegraphic)	
From Lisbon	(No. 72. Telegraphic)	
To Consul Crowe	(No. 224. Telegraphic)	
Consul Crowe	(No. 436. Telegraphic)	
To Consul Crowe	(No. 226. Telegraphic)	
Consul Crowe	(No. 437. Telegraphic)	
Ditto	(No. 438. Telegraphic)	
From Lisbon	(No. 58)	
Ditto	(No. 61)	
To Consul Crowe	(No. 230. Telegraphic)	
From Lisbon	(No. 76. Telegraphic)	
Mr. H. Johnson		October 19, ,,
Consul Crowe	(No. 440. Telegraphic)	
Ditto	(No. 443. Telegraphic)	
Two Memorandums (Mr. Bertie)		October 19, ,,
Minute (Lord Salisbury)		October 19, ,,
To Consul Crowe	(No. 231. Telegraphic)	
Minute (Sir M. Ommanney)		October 20, ,,
From Lisbon	(No. 77. Telegraphic)	
To Consul Crowe	(No. 233. Telegraphic)	
To Lisbon	(No. 82. Telegraphic)	
From Lisbon	(No. 79. Telegraphic)	
To Lisbon	(No. 84. Telegraphic)	
To Consul Crowe	(No. 234. Telegraphic)	
Messrs. Waltons and Co.		October 22, ,,
To Lisbon	(No. 82A. Telegraphic)	
To Consul Crowe	(No. 236. Telegraphic)	
From Lisbon	(No. 80. Telegraphic)	
Consul Crowe	(No. 446. Telegraphic)	
Ditto	(No. 447. Telegraphic)	
To Lisbon	(No. 85. Telegraphic)	
To Messrs. Waltons and Co.		October 24, ,,
Consul Crowe	(No. 448. Telegraphic)	
Ditto	(No. 449. Telegraphic)	
To Lisbon	(No. 91. Telegraphic)	
To Messrs. Waltons and Co.		October 24, ,,
Messrs. Waltons and Co.		October 25, ,,
From Lisbon	(No. 81. Telegraphic)	
War Office		October 26, ,,
Intelligence		October 27, ,,
Messrs. Waltons and Co.		October 29, ,,
Consul Ward	(No. 70. Telegraphic)	
From Lisbon	(No. 66)	
To Consul Ward	(Telegraphic)	November 1, ,,
To Consul Churchill	(Telegraphic)	November 1, ,,
Consul Churchill	(Telegraphic)	November 2, ,,
Colonial Office		November 2, ,,
To Consul Churchill	(Telegraphic)	November 3, ,,
Consul Churchill	(No. 3)	
Intelligence		November 3, ,,
Messrs. Waltons and Co.		November 3, ,,
Consul Churchill	(Telegraphic)	November 4, ,,

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To Consul Crowe	(No. 238. Telegraphic)	
To Consul Rolfe	(Telegraphic)	November 6, 1900
Memorandum	(Telegraphic)	November 6, „
Intelligence		November 7, „
Messrs. Waltons and Co.		November 8, „
Consul Crowe	(No. 451. Telegraphic)	
To Colonial Office		November 9, „
To Consul Crowe	(No. 239. Telegraphic)	
To Consul Ward	(Telegraphic)	November 10, „
Consul Ward	(No. 17)	
To Lisbon	(No. 100)	
Consul Ward	(Telegraphic)	November 11, „
Ditto	(No. 18)	
Colonial Office		November 15, „
Memorandum (Mr. Farnall)		November 16, „
Intelligence		November 17, „
Colonial Office		November 17, „
Intelligence		November 21, „
Consul Rolfe	(Telegraphic)	November 27, „
Colonial Office		November 27, „
Memorandum (Mr. Farnall)		November 28, „

Report.

In our opinion the facts stated with reference to the exportation of gold by Messrs. Wilcken and Ackermann are not sufficient to support any claim to the ownership of such gold, and we do not think the Portuguese Government, upon such facts, could reasonably be asked to take any further action.

As regards future cases, unless there are facts which can be submitted to the Portuguese Government which show a title to gold that may be about to be exported, we do not think that the Portuguese Government could be asked to do more than delay the exportation pending inquiry, and, unless upon such title being shown, there would be no ground for requiring the would-be exporter to produce proofs of the legitimacy of the transaction by which he became possessed of it.

As to the gold in the present case, on the materials before us, we are of opinion that Her Majesty's Government cannot take any further action.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
December 28, 1900.

SALVADOR.

No. 39.

[August 7, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 26, 1900.

Gentlemen,

Trade-marks Convention with Salvador. Proposed Additional Articles.

I HAVE the honour to state, by direction of the Marquess of Salisbury, that, in the course of the negotiation of a Convention between this country and Salvador relating to trade-marks, the Government of that Republic proposed that the arrangement should include in the form of Articles, copies of which are inclosed, stipulations respecting the position of mercantile and other firms and Societies in the two countries, and providing for protection against the circulation of counterfeit notes and coins.

His Lordship has now decided to instruct Her Majesty's Minister in Central America to sign a Convention restricted to the matter of trade-marks, and to inform him that the question of dealing in a separate arrangement with the subjects of the two Articles referred to is under consideration.

In these circumstances Lord Salisbury would be glad to be favoured with your opinion whether the proposed provisions would be in accordance with English law, and, if so, whether they could be usefully and properly embodied in a separate Convention with Salvador.

His Lordship would also be glad to receive any general observations which you may have to offer on the matter.

I have, &c.
(Signed) ST. JOHN BRODRICK.

Report.

We think Article III unnecessary so far as the establishment of such associations and agencies in this country is concerned.

The English law recognizes foreign corporations, and the provision for their enjoyment of the rights given by the law of their domicile, so far as it is not opposed to English law, is nugatory. We would refer to the Conventions of the 15th May, 1862, with France, of the 25th November, 1867, with Italy, and of the 27th March, 1874, with Germany, for clauses dealing with this subject.

As to Article IV, it is objectionable, and would not be practicable in its enforcement. It might be pointed out that any foreigner can set in motion the laws in this country relating to forgery or counterfeiting if his rights are infringed.

We cannot recommend the adoption of either of these Articles.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 7, 1900.

Annex.

Draft of Articles III and IV of Convention between Great Britain and Salvador relating to Trade-Marks.

ARTICLE III.

MERCANTILE, banking or credit, industrial and agricultural corporate Bodies or Associations of either Contracting State will enjoy in the other such rights and privileges as are now granted, or may hereafter be granted to them by the laws of the country of their domicile, provided that such rights and privileges are not opposed to the laws of the State that has to afford them protection.

Agencies, branches, or delegations of such corporate Bodies or Associations, whether mercantile, banking or credit, industrial or agricultural, of one Contracting State, which are established, or may hereafter be established, in the other Contracting State, will enjoy the rights and privileges referred to in the preceding paragraph, providing that they fulfil the formalities which are enjoined by the local laws, and present the guarantees required by the State which grants the protection.

ARTICLE IV.

The Contracting Parties guarantee to one another the most complete protection against every kind of forgery and counterfeiting of monetary tokens, marks, seals, State bonds and notes or obligations issued by private individuals, public or private corporate Bodies or Associations, whether mercantile, banking or credit, industrial or agricultural.

Consequently, as soon as one of the two Contracting Parties receives notice that one of the forgeries or counterfeitings provided for in the preceding paragraph has taken place in its dominions or possessions, it will order the embargo of the monetary tokens, marks, seals, public papers or bonds, notes or obligations that have been forged, and of the machines and other instruments which served for the forgery. The embargo will take place at the demand of the law officers or at the request of the interested party, but always in accordance with the internal legislation of either State, and without prejudice to the prosecution and punishment, in accordance with such legislation, of the crimes of forgery and counterfeiting.

1900

SIAM.

No. 40.

[November 5, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, October 18, 1900.

Siam: Draft [Registration] Order in Council.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you herewith the correspondence noted in the accompanying list, relative to the registration of British subjects in Siam.

I am at the same time to inclose the draft of an Order in Council which has been prepared by Mr. Albert Gray in conformity with the opinion expressed in the Law Officers' Report of the 8th February, 1899, a copy of which is inclosed for convenience of reference.

I am to request that you will take these papers into your consideration, and that you will favour Lord Salisbury with your opinion as to whether the draft Order may, in its present form, be laid before the Queen in Council for Her Majesty's approval.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Confidential Print, pp. 1–81.		
Siam Order in Council		December 13, 1889.
Ditto		March 7, 1898.
Agreement	(No. 16. Treaty Series)	November 29, 1899.
Law Officers' Report		February 8, „
Mr. Greville	(No. 2. Treaty)	December 1, „
To Mr. Stringer	(Telegraphic)	March 31, 1900.
Mr. Stringer	(No. 7. Treaty)	June 1, „
To Mr. Gray		August 11, „
Mr. Gray	(Semi-official)	September 7, „
To Mr. Gray	(Ditto)	September 22, „
Mr. Gray		October 8, „
Final Revise of draft Order.		

Report.

As altered and initialled by us, the draft Order in question may properly be submitted for the approval of the Queen in Council. We have not altered Article 4, as we presume that local conditions make this clause desirable, but its terms are somewhat wide.

(Signed) ROBERT B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 5, 1900.

Annex.

Draft Order in Council.

REGISTRATION.

General Provisions.

WHEREAS by Treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty has jurisdiction within the territories of the King of Siam:

Now, therefore:—

1. In this Order the expression "British subject" includes a person who, by virtue of

section 15 of "The Foreign Jurisdiction Act, 1890," or otherwise, enjoys Her Majesty's protection in Siam.

2. A register of British subjects shall be kept in the office of every Consulate in Siam.

3. Every British subject resident or arriving in Siam, being of the age of 21 years or upwards, or being married, or a widower, or widow, though under that age, may, subject to the provisions of this Order, be registered in a Consular register.

4. The registration of a man shall comprise the registration of his wife or wives if living with him; and the registration of the head of a family shall comprise the registration of all females and minors, being his relatives, in whatever degree, living under the same roof with him at the time of his registration.

5. A British subject resident in Siam shall not be registered elsewhere than in the register of the Consular district in which he resides; but a person arriving in Siam may be registered either in the register of the Consular district in which he first arrives or in that of the district in which he goes to reside.

6. A person arriving in Siam, and not already registered, must apply for registration within one month after arrival; a person resident in Siam must apply for registration in January in every year: Provided that a person who fails to obtain registration within the time so limited may be registered at any time if he excuses his failure to the satisfaction of the Consular officer.

7. A person registered in any register of British subjects established under "The Siam Order in Council, 1899," shall be registered under the provisions of this Order, unless the Consular officer is satisfied, after inquiry, that the previous registration was erroneous, or that such person is not entitled to registration under the provisions of this Order.

8. The Consular officer shall, on every registration, give to the person registered a certificate of registration signed by him, and sealed with his Consular seal.

9. The name of a wife, if her registration is, under the provisions of this Order, comprised in her husband's, shall be indorsed on the husband's certificate.

10. The names and descriptions of females and minors, whose registration is under the provisions of this Order comprised in that of the head of a family, shall be indorsed on the certificate of the head of the family.

11. Every person applying to be registered under this Order shall, unless excused by the Consular officer, attend personally for that purpose at the Consulate on each occasion of registration.

12. Every person shall, on every registration of himself, pay a fee of *2s. 6d.*, or such other fee as the Secretary of State from time to time appoints. The amount of the fee may be uniform for all persons, or may vary according to the position and circumstances of different classes if the Secretary of State from time to time so directs, but may not in any case exceed *5s.*

13. If any British subject fails to obtain registration under the provisions of this Order, he shall not be entitled to be recognized or protected as a British subject *in Siam*, but he shall, although not registered, be subject to the jurisdiction of Her Majesty's Consular Courts in Siam.

Provisions affecting particular Classes of British Subjects.

14. A person, not of Asiatic descent, arriving in Siam, and applying to be registered as a British subject, shall be so registered if the Consular officer is satisfied, after such inquiry as he may deem fit, that he is entitled to the status of a British subject.

15. A person of Asiatic descent arriving in Siam, and applying to be registered as a British subject, shall be so registered if he (*a*) produces a passport as a British subject from British India or a British possession; or (*b*) files an affidavit or sworn declaration showing that he was born within Her Majesty's dominions or within the territory of any Prince or State in India under the suzerainty or in alliance with Her Majesty, or that he has been naturalized in the United Kingdom; and (*c*) in either case gives satisfactory evidence of his identity.

16. A person born in Siam, being the child of a person of Asiatic descent who arrived in Siam, may be registered as a British subject if it is proved that the father (*a*) was registered as a British subject at the time of the child's birth; or (*b*) ~~though~~ *being* entitled was prevented from being so registered by causes for which he was not responsible.

Any child of a person registered under the provisions of this Article shall not be entitled to be registered as a British subject by reason only that his father and grandfather were so registered.

17. A person of Asiatic descent, being a native of Upper Burmah or of the British Shan States, shall not be registered as a British subject if it appears that he arrived in Siam before the 1st January, 1886, and has become domiciled there.

18. A woman, being the widow of a person of Asiatic descent who was in his lifetime registered as a British subject, shall be registered as a British subject if her name appears on the last certificate given to her husband before his death, *but not otherwise.*

19. The Consular officer may, without fee, register any British subjects, being minors, living in the houses of foreigners or Siamese subjects.

20. Article 94 of the "Siam Order in Council, 1889," is hereby repealed, provided all registers kept under that Order shall continue in force until superseded by registers kept under this Order.

21. This Order may be cited as "The Siam (Registration) Order in Council, 1900."

(Initialled) R. B. F.
E. C.

No. 41.

[November 7, 1900.]

Foreign Office to the Lord Chancellor.

Registration of British subjects. O. in C. in Siam: As to wife or wives.

My dear Lord Chancellor, *Foreign Office, November* 7, 1900.

WE are anxious for an opinion from you on a small question of wording which has arisen in carrying into effect an Agreement with the Siamese Government for the registration of British subjects in Siam. You have already advised on the subject.

The Law Officers considered that as the new rules cut down in some respects the previous rights of British subjects they ought to be embodied in an Order in Council.

An Order has been drafted accordingly.

The Law Officers have approved it, but as you will see they think the terms of Article 4 rather wide.

That Article provides, *inter alia*, that "the registration of a man shall comprise the registration of his wife or wives if living with him."

The Siam Order in Council of 1889 provided only, section 94 (1), that "the registration of a man shall be deemed to include the registration of his wife (unless she is living apart from him)."

Your opinion given in January 1899 was that, in view of the provision in the Interpretation Clause of the Order that the singular includes the plural, the word "wife" was sufficient to include wives.

Davidson thinks that you would be in favour of omitting in the new Order in Council the words "or wives" as superfluous, and that this is desirable in order to avoid formal and specific recognition of polygamy by an Order in Council.

On the other hand, supposing these words to be omitted, I think that a Consular officer reading in Article 4 "the registration of his wife" and collating it with Articles 9 and 10 "the name of a wife," "the names and descriptions of females and minors," might feel grave doubts whether he might register and indorse on any one certificate more than the name of a single wife.

Could you kindly let us have your view?

Yours very sincerely,
(Signed) T. H. SANDERSON.

P.S.—I have annexed all the papers which I think you will require.
Law Officers' opinion and draft Order in Council.
Mr. Gray's letter inclosing the draft Order in Council.
Law Officers' previous opinion that an Order in Council is necessary.
Your opinion of the 10th January, 1899, with Siam Order in Council of 1889.
T. H. S.

I think the words "or wives" ought to stand.

I think this was the legal construction of the Order as it stood before, but I think it is better to make it plain.

I do not appreciate the objection to plainly expressing what is the legal interpretation of the one word.

We cannot get rid of the fact that we do in fact recognize the polygamous marriages of British subjects both in India and Siam.

(Signed) HALSBURY.

November 7, 1900.

SWITZERLAND.

No. 42.

[August 28, 1900.]

Foreign Office to the Law Officers of the Crown.

Maltreatment of brothers Justice in Switzerland.

Gentlemen, *Foreign Office, August* 13, 1900.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the inclosed papers relative to the treatment experienced by two brothe[illegible] Messrs. Michael and William Justice, British subjects, at the hands of their employer, M. Barral, the Superior of the Bethlehem Institute at Immensee, and of the police authorities of the Canton of Schwyz.

In November last a letter was received from the Messrs. Justice complaining that owing to their refusal to join M. Barral's "Order" they were overworked and underfed, and were not receiving regular payment of their salaries. The letter was referred to Her Majesty's Consul-General at Zurich, who wrote to M. Barral, with the result that the letter lodged a complaint against the Messrs. Justice with the District Magistrate, and the brothers were eventually sent in custody, under circumstances of considerable hardship and great indignity, to Her Majesty's Consulate at Zurich.

On the 27th January Mr. William Justice, who with his brother had been sent to his home in Ireland, died from the effects, it is alleged, of the cold and hunger suffered at the time that he was in the custody of the Swiss police.

Representations with regard to the case had already been addressed to the Swiss Government by Her Majesty's Minister at Berne, and in consequence of the unsatisfactory nature of their reply, which will be found inclosed in Mr. St. John's despatch No. 15 of the 23rd February, he was instructed to submit all the papers in the case to M. Boiceau, the Legal Adviser to Her Majesty's Legation.

M. Boiceau in his Report, which forms the inclosure in Mr. Lowther's despatch No. 66 of the 27th ultimo, gives a complete and detailed account of the whole case and expresses the opinion that the surviving brother and Mrs. Justice, the mother, can only obtain the reparation to which he considers they are entitled by the institution of proceedings before the competent Court of Law against the police authorities at Kussnacht and M. Barral.

Lord Salisbury is disposed to think that, in the interest of British subjects generally, every effort should be made to obtain legal redress for the treatment to which the Messrs. Justice were exposed, and that a competent Swiss lawyer should be employed for the purpose.

It is, however, unlikely that Mrs. Justice and her son can themselves bear the expense of legal proceedings, or give security for costs, and it seems doubtful whether a suit undertaken by them *in formâ pauperis* would offer satisfactory prospect of success.

I am to request that you will take the inclosed papers into your consideration and that you will favour Lord Salisbury with your observations on the case generally, and especially with your opinion as to the expediency of instituting legal proceedings, and whether the case is one of such a nature as to justify an application to the Treasury to defray the necessary expenses.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

Mr. St. John	(No. 15)	February	23, 1900.
Mr. Lowther	(No. 66)	July	27, „

1900

Report.

Upon the facts stated there has been oppression of a gross character exercised against the brothers Justice.

As to the question of legal liability by Swiss law, we must, of course, rely upon the opinion of M. Boiceau; we have not the materials for forming an independent judgment on the question of Swiss law and procedure. We understand him to suggest a suit against M. Barral, in the nature of an action for a malicious arrest, and against the Magistrate for lending himself to M. Barral's proceedings and for neglect of duty.

We think that the case is one of such a nature that the Treasury may properly be asked to defray the necessary expenses for the legal proceedings advised by M. Boiceau.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 28, 1900.

TURKEY.

[Colonial Office.]

No. 42A.

[July 10, 1900.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, July 10, 1900.

Sir,

Irregular Cyprus Corps for service in army. WE were honoured with your commands signified to us in Mr. Bertram Cox's letter of the 27th ultimo, stating that he was directed to request our consideration of certain questions which had arisen with regard to a proposal of the Colonial Defence Committee, having for its object the raising of an Irregular Corps in Cyprus for service with Her Majesty's army abroad.

That Mr. Bertram Cox was to transmit to us copies of (1) the Convention between Great Britain and Turkey, dated the 4th June, 1878; (2) the Annex to that Convention, dated the 1st July, 1878; (3) Agreement of the 14th August, 1878, as to vesting powers of Government of Cyprus in Her Majesty; (4) Order in Council, dated the 14th September, 1878; (5) Order in Council, dated the 30th November, 1882; (6) Army Act, 1881; (7) Cyprus Ordinance 5 of 1878; (8) Law Officers' Reports of the 21st March, 1879, and 8th January, 1881, with regard to the position of natives of Cyprus.

That it would be seen that by the Convention of the 4th June, 1878 (Article I), the Island of Cyprus was assigned to England to be "occupied and administered" by her until such time as Russia should restore to Turkey the Asiatic possessions (Batoum, Kars, &c.) which she had taken from her in the late war.

And that by the Annex to this Convention, dated the 1st July, 1878, certain conditions were imposed upon such annexation and administration, and an express provision was inserted (Article VI) that upon such restoration of conquests as above mentioned the island would be evacuated by England, and the Convention be at an end.

That on the 14th August, 1878, an Agreement was made transferring to and vesting in Her Majesty, "for the term of the occupation and no longer, full powers for making Laws and Conventions for the government of the island in Her Majesty's name, and for the regulation of its commercial and Consular relations and affairs free from control by the Sublime Porte."

That on the 14th September, 1878, an Order in Council was passed for making provision "for the exercise of the power and jurisdiction vested by Treaty in Her Majesty the Queen in and over the Island of Cyprus" by the appointment of a High Commissioner, and of Legislative and Executive Councils with the usual powers given to a Colonial Governor.

That that Order was amended by a further Order, dated the 30th November, 1882, so far as matters relating to legislation and the Legislative Council were concerned.

That it would be seen from the despatch of the Secretary of State for Foreign Affairs of the 30th May, 1878, proposing the Convention that the intention was that the Island of Cyprus should "still continue to be part of the Ottoman Empire," and it was there stated what where the reasons which led Her Majesty's Government to desire to occupy the island.

That Mr. Bertram Cox was further to refer us to "The Army Act, 1881" (44 & 45 Vict., cap. 58), sections 95, 177, and 190 (8) and (23), which latter section included Cyprus in the definition of "Colony," and to Cyprus Ordinance 5 of 1878.

Finally, he was to request us to take the papers into our consideration, and to advise you whether the conditions under which Great Britain occupied the Island of Cyprus would permit of the passing of an Ordinance in Cyprus for the purpose of raising a force which would be liable to serve with Her Majesty's army in any part of the world.

We have taken the papers into our consideration, and in obedience to your commands have the honour to

Report—

That, in our opinion, it would not be competent for the Legislative Council of Cyprus by an Ordinance to authorize the raising of a force for service in Her Majesty's dominions outside Cyprus.

The power granted to Her Majesty by the Agreement of the 14th August, 1878, to make Laws and Conventions for the government of the island, and under which the Legislative Council is constituted, would not extend to raising forces for service outside the island.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

No. 43.

[November 21, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 15, 1900.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you herewith, for your consideration, a despatch, together with its inclosures, from Mr. H. W. de Sausmarez, Assistant Judge of Her Majesty's Supreme Consular Court at Constantinople, relative to a question which has arisen with regard to the jurisdiction of that Court in the case of one Zacharia Eutychides. Jurisdiction of Her Majesty's Court over Zacharia Eutychides, charged with forgery.

The facts of the case are fully set out in this despatch, and are briefly as follows:—

In the months of March, April, and May of this year, a series of frauds were perpetrated by means of forged cheques on the "Bank of Mitylene," a Turkish institution carrying on business at Mitylene, in the Island of Lesbos.

An application was made on behalf of the bank to the Supreme Court at Constantinople for a warrant of arrest of Eutychides, who is a British subject, on the ground of his having been a party to the forging, or, at all events, to the uttering of these cheques.

Mr. de Sausmarez, the Assistant Judge of the Supreme Court, to whom this application was made, intimated a doubt as to the Court's jurisdiction in the matter, and the application was thereupon dropped.

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Subsequently, however, a fresh application was made on the sworn information of the cashier of the bank, Demetrius François Vernondaki, who is a Greek subject, and who produced an authorization from his Consul for his submission to Her Britannic Majesty's Court.

A warrant for the arrest of Eutychides, on the charge of forging two cheques, and of uttering the same, knowing them to be forged, was thereupon granted. Before, however, the warrant could be executed, Eutychides had left the jurisdiction of Her Majesty's Consular Court, but his arrest and surrender having been applied for under the provisions of Article 52 of "The Ottoman Order in Council, 1899," and "The Fugitive Offenders' Act, 1881," he was surrendered to Her Majesty's Supreme Court for the Ottoman Dominions, under the warrant of Her Majesty's then Secretary of State for the Home Department, dated the 18th September, 1900, and has, under the said warrant, been since conveyed to Constantinople in the custody of an official of the Consular Court.

The cheques which form the subject of the prosecution purport to be drawn by the firm of Doros Brothers, who, like Vernondaki, are subjects of His Hellenic Majesty.

The specific charges (1) of uttering a forged cheque for £ T. 400; (2) of obtaining £ T. 400 from Vernondaki by false pretences; and (3) of falsification of accounts, on which, as a result of the preliminary examination, Eutychides has been committed for trial before Her Majesty's Supreme Consular Court, will be found fully set out in the inclosure in Mr. de Sausmarez' despatch.

It is not suggested that the loss will be borne by any party other than the Bank of Mitylene, but Vernondaki contends that it was necessary for him to apply to Her Majesty's Supreme Consular Court, he being a subject of His Hellenic Majesty. No demand has been made to Her Majesty's Court by the Ottoman authorities for the delivery to them of Eutychides, nor have they objected to the exercise by that Court of jurisdiction in the case; they have, however, refused to hand over to Her Majesty's Supreme Court the cheques which form the subject of the prosecution, and the Court is only in possession of copies of those documents.

I am to inclose a copy of "The Ottoman Order in Council, 1899," and in connection with the general question of British jurisdiction in the Ottoman Dominions, I am to refer you to pp. 152–154 of the late Mr. W. E. Hall's "Treatise on the Foreign Powers and Jurisdiction of the British Crown." In cases where a British subject has committed a criminal offence against an Ottoman subject within the Ottoman Dominions, such British subject has, in practice, for many years past been held to be justiciable by the Ottoman Tribunals, a British Dragoman being present to watch the proceedings on his behalf.

In view, however, of the fact that the prosecutor in this case is not an Ottoman, but a Greek subject, and that he has, moreover, with the consent of the Greek authorities, himself invoked the exercise of Her Majesty's jurisdiction, Lord Lansdowne, as at present advised, is of opinion that it is neither necessary nor desirable for Her Majesty's Government themselves to initiate any discussion, or to suggest that any doubt exists, with reference to the extent of the jurisdiction, either sole or concurrent, of the Supreme Consular Court in the case of criminal offences committed by British subjects within the Ottoman Dominions against other British subjects on the one hand, or against the subjects of third Powers on the other, or to appeal as matters stand to the various Treaties bearing on the subject. The Treaty between the United States and the Porte, to Article IV of which Mr. de Sausmarez refers, is, however, inclosed, should you wish to refer to it, and other Treaties, containing analogous provisions, are mentioned in the note on p. 153 of Mr. Hall's work on Foreign Jurisdiction, to which reference has already been made.

It is to be assumed, for the purpose of this reference, that the criminal offences which form the subject of the present charge were committed by a British subject at Mitylene, in the Island of Lesbos, in the Ottoman Dominions, and that they were committed against the subject of a third Power, and not against a subject of the Ottoman Porte.

In pursuance of the provisions of section 4 of "The Foreign Jurisdiction Act, 1890," Mr. de Sausmarez has now submitted the following question to Her Majesty's Secretary of State for Foreign Affairs:—

"Whether the trial of the said Zacharia Eutychides upon the said charges is a proceeding within the jurisdiction of Her Majesty in Turkey?"

It becomes necessary to carefully consider the exact terms in which Lord Lansdowne should answer the question thus formally submitted.

I am accordingly to request that you will take these papers into your consideration, and, as the accused person is awaiting his trial, that you will, at your early convenience, favour his Lordship with your opinion—

1. As to the precise terms of the answer which his Lordship should return to the specific question put by the Assistant Judge of Her Majesty's Supreme Consular Court for the Ottoman Dominions.

2. Should you be of opinion that the said Court has jurisdiction in the matter, whether it should formally request the Ottoman authorities to hand over the cheques necessary for the purposes of the prosecution.

I am also to request that you will at the same time be good enough to favour Lord Lansdowne with any general observations which you may have to offer on the case.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

Mr. de Sausmarez .. .. .. (With Minutes.)	(No. 5. Treaty)	October 31, 1900.
Treaty between United States and Sublime Porte		May 7, 1830.
"Ottoman Order in Council, 1899."		

Report.

1. The Assistant Judge of Her Majesty's Supreme Consular Court for the Ottoman Dominions should be informed, in reply to the question submitted by him under section 4 of "The Foreign Jurisdiction Act, 1890," that the trial of Zacharia Eutychides on the charges appended to the document submitting the said question, is a proceeding within the jurisdiction of Her Majesty in Turkey.

In our opinion, the jurisdiction exists both by custom and also under the Treaty rights of Her Majesty's Government, but it is unnecessary, in replying to the Assistant Judge, to refer to the origin or foundation of the jurisdiction.

2. Application should be made by the Court, and, if necessary, by the Foreign Office, to the Ottoman authorities to hand over, or produce, the cheques necessary for the purposes of the prosecution.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 21, 1900.

No. 43A. **[Colonial Office.]**

[December 28, 1900.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, December 28, 1900.

Sir,

Raising of Irregular Force in Cyprus: further respecting.

WE were honoured with your commands signified in Mr. H. Bertram Cox's letter of the 29th ultimo, stating that he was directed by you to acknowledge the receipt of our Report of the 10th July last, on the subject of the proposal for raising an Irregular Corps in Cyprus for service with Her Majesty's army abroad.

That you desired Mr. Bertram Cox to return to us the papers which were referred to in our Report, and to request that we would consider further, whether, in view of section 176 (3) of "The Army Act, 1881,"—which by section 190 (23) extended to Cyprus—any local law would be necessary for the raising and the discipline of a force of Irregulars, to be paid for from Imperial funds and officered by officers of the regular army, but available for general service.

That as regarded the general question of raising troops in Cyprus, you desired

Mr. Bertram Cox to point out that there appeared to be nothing in the Conventions with Turkey to prevent such a step, that the Cypriot was before the occupation liable to military service or to payment of the exemption tax, and that that liability was transferred to Her Majesty—the tax being still levied, and that that circumstance would seem to afford justification of the proposal to utilize the military services of Cypriots in lieu of the tax, especially as it was only intended to recruit volunteers, and further that the island was assigned to Her Majesty in order to enable her to make provision for implementing her obligation to defend the Asiatic dominions of the Sultan, and that, in order that that obligation might be fulfilled, it seemed essential that Her Majesty should be able to defend her own dominions from attack, and that with that object should be at liberty to make use of the resources handed over by the Sultan for the purpose of enabling her to fulfil her obligation.

That Mr. Bertram Cox was further to point out that a Chinese regiment had been raised at Wei-hai-Wei and was now serving against disorderly forces in the very country which granted the lease of the territory in which the regiment was recruited; and that a closer parallel was afforded by the practice in Bosnia, a country which was held from the Sultan of Turkey on similar terms to those governing Her Majesty's occupation of Cyprus. That Mr. Bertram Cox was to inclose copy of a letter from the Foreign Office, transmitting a despatch from Her Majesty's former Ambassador at Vienna, which shewed that whereas Bosnians were treated, for the purposes of naturalization, exactly as any other foreigners, yet soldiers in the Bosnian regiments took the oath to the Emperor and were treated in every way as Austro-Hungarian soldiers, though remaining Bosnian subjects.

That Mr. Bertram Cox was to request that we would take the matter into our consideration, and would report:—

1. Whether a Cypriot Corps could not be raised without infringing the Conventions under which the island was occupied;

2. If such a corps could be raised, whether the provisions of the Army Act were not sufficient authority for the necessary action on the part of Her Majesty's Government without any further legislation?

In obedience to your commands we have taken the matter into our consideration, and have the honour to

Report—

That a Cypriot Corps could be raised for service in Cyprus without any question of infringement of the Convention, and—while there would be power to legislate in Cyprus for such a force—the members of it would be subject to the provisions of the Army Act in so far as these provisions were not modified by an Ordinance of the Legislature of Cyprus, or under section 177 of "The Army Act, 1881."

We understand, however, that the question put to us, relates to a proposal to raise a Cypriot Corps for service in any part of the world.

By the Convention, Cyprus was assigned to be occupied and administered by England. We do not think that, if the Sultan should object, the assignment of the island for this limited purpose could be relied upon as justifying the raising of a force there for general service. No objection could, however, properly be taken by any power other than Turkey, and if it be the case, as suggested by Sir N. O'Conor's despatch of the 20th June, 1900, that the Sultan will not raise any objection, this point will probably not prove of practical importance. Another difficulty, however, arises with reference to the status of Cypriots. The proposed corps would be part of Her Majesty's regular forces within the definition in the Army Act, 1881, section 190 (8), as being a force consisting of soldiers liable by the terms of their enlistment to render continuously, for a term, military service to Her Majesty in any part of the world—(see Colonial Office to Law Officers, 27th June, 1900.)

By section 95 of "The Army Act, 1881," the number of aliens serving together, at any one time, in any corps of the regular forces is not to exceed the proportion of one alien to every fifty British subjects—a provision which was first introduced into our military law in 1837 by 1 Vict., cap. 29.

If Cypriots are to be regarded as aliens, it is manifest that this provision would be violated by the formation of the proposed corps as part of Her Majesty's forces, as defined by the Army Act. To treat Cypriots as British subjects would be inconsistent with the Reports of the Law Officers of the 11th November, 1878, the 21st March, 1879, and the 8th January, 1881, and while we observe that some relaxation of this view has obtained in the matter of passports and protection under them, we do not feel justified, on the materials before us, in advising a new departure of such gravity as would be involved in the assertion that Cypriots are to be treated as British subjects for the purposes of the Army Act.

Section 176 (3) of "The Army Act, 1881," does not remove this difficulty. It does not confer upon Her Majesty any power of raising forces which she does not otherwise possess. It only renders subject to military law any such forces as are there referred to, and which have been lawfully raised.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

UNITED STATES.

No. 43B. **[Colonial Office.]**

[May 4, 1900.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, May 4, 1900.

Sir,

Detention of S.S. "Tartar" at Hong Kong.

WE were honoured with your commands signified in Mr. Lucas' letter of the 5th October, 1899, stating that he was directed by you to request our consideration of a question which had arisen with reference to the detention of a vessel chartered by the United States' Government by the harbour authorities of Hong Kong.

That it appeared from a note from the United States' Ambassador (a copy of which was transmitted to us) that the British steam-ship "Tartar" was chartered by the United States' Government, and used as a military transport for the conveyance of troops to and from the United States and the Philippine Islands, and that while on her homeward voyage she was detained at Hong Kong for non-compliance with the local port Regulations.

That in answer to telegraphic inquiries made by the Colonial Office, the Governor of Hong Kong replied that the British ship "Tartar," carrying United States' troops, had entered the port of Hong Kong on the 6th September, and that complaint had been made to the Harbour-master by some persons on board of overcrowding. That on the application for clearance of the vessel on the 13th September, it appeared that the certificate of the "Tartar" showed that she was licensed to carry 741 passengers, whereas the declaration of the master showed that she had on board 1,140. That thereupon the Harbour-master declined to grant a clearance until sufficient apparatus for preservation of life had been supplied. That this was done, and the vessel cleared on the afternoon of the 14th September.

That in refusing a clearance under the circumstances, the Harbour-master acted in accordance with the provisions of Ordinance 26 of 1891 of Hong Kong, and the Attorney-General of the Colony had advised that, having regard to the provisions of section 4 (5) and section 6 (1) of that Ordinance, such action was correct.

That it appeared, however, to you that it was open to question whether the "Tartar" being employed, though temporary, as a transport in the service of the United States' Government should not have been considered a public ship, and as such not bound to comply with the provisions of the local law.

That Mr. Lucas was to request us to take these matters into our consideration and to advise:—

1. Whether the "Tartar" was a public ship.
2. Whether the "Tartar" was bound to comply with the provisions of the local law of Hong Kong while in the waters of the Colony.
3. Whether the Harbour-master was justified in refusing to clear the "Tartar" under the circumstances set forth.

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4. Generally.

In obedience to your commands we have taken the matter into our consideration and have the honour to

Report—

1. That the facts are not stated in sufficient detail for us to arrive at a conclusion on this point. But it is usual to accept the assurance of a Government that a vessel is a public vessel of that Government, and we think this assurance ought to be accepted in such a case as this. The "Tartar" would be an American public vessel if under the control of officers commissioned by the United States' Government, and the assertion of the Government on the point should for such a purpose as this be treated as conclusive.

2. If the "Tartar" should have been treated as a public vessel of the United States—as we think she should—she was not bound to comply with the local law on a matter of this kind affecting merely the internal economy of the vessel.

3. We think she should have been cleared, if any Representative of the United States' Government asserted her to be a public vessel.

4. We have nothing to add.

We have, &c.
(Signed) RICHARD E. WEBSTER.
ROBERT B. FINLAY.

No. 44.

[November 30, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, October 23, 1900.

Gentlemen,

Recognition by U.S. Govt. of Spanish Colonial Concessions to British Companies.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you, herewith, a copy of a despatch from Her Majesty's Ambassador at Washington, forwarding two opinions of the Attorney-General of the United States of America relative to the recognition, by his Government, of Concessions which had been granted by Spain to certain British Companies, prior to the outbreak of the Spanish-American war in 1898.

The earlier of these opinions relates, more particularly, to a claim of the Manila Railway Company in connexion with certain subventions granted to it by Spain. This matter will shortly form the subject of a separate reference to you from this Department. For the special purposes of the present reference, however, it is thought that you will desire to have your attention particularly directed to this opinion, because (1) it is referred to in the later opinion on the Cable Company's cases, and also (2) because it cites, in a convenient form, the opinion of many eminent writers on the obligations of nations in these matters.

The later opinion concerns the question of the recognition by the United States of the Concessions granted by Spain—

(*a.*) To the Eastern Extension, Australasia and China Telegraph Company, Limited, in the Philippine Islands; and

(*b.*) To the Cuba Submarine Telegraph Company in Cuba.

In a separate list you will find the previous correspondence which has passed between Her Majesty's Government and that of the United States with regard to the two last-mentioned cases, and I am to direct your attention especially to the opinions of the Law Officers of the Crown, which are dated respectively the 4th January, and the 2nd May, 1899, and on which the representations of Her Majesty's Government to the Government of the United States of America were based.

In connection with these questions I am to ask you to take into your consideration the terms of Notice No. 9, of 1900, issued on the 8th September last by Her Majesty's High Commissioner for South Africa, and particularly the words which are underlined in red in the copy of that Notice, which is herewith inclosed. It is understood that certain questions which have arisen with regard to the construction to be placed upon that Notice are about to be referred to you for your opinion by Her Majesty's Secretary of State for the Colonies.

I am to request that you will take these papers into your consideration, and that you will favour Lord Salisbury with your opinion—

1. As to whether it is necessary or desirable, in view of the attitude which has been taken up by Her Majesty's Government in regard to the Concessions granted by the South African Republic, that Her Majesty's Ambassador at Washington should be instructed to advance any further arguments in reply to the opinion of the United States' Attorney-General, which appears to have been communicated to his Excellency as embodying the views of the United States' Government; and

2. If so, in what terms such reply should be framed.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

Law Officers		May 2, 1899.
To Sir J. Pauncefote	(Telegraphic)	January 17, „
Sir J. Pauncefote	(No. 2. Treaty)	January 20, „
To ditto	(Telegraphic)	February 3, „
Sir J. Pauncefote	(No. 8. Treaty)	February 14, „
Ditto	(No. 14. Treaty)	March 28, „
Law Officers		January 4, „
Proclamation (Sir A. Milner) No. 9		September 8, 1900.
Lord Pauncefote	(No. 33. Treaty)	October 4, „

Report.

We do not think that the attitude taken up by Her Majesty's Government in regard to Concessions granted by the South African Republic forms any obstacle to pressing the claims made upon the United States' Government on behalf of the Telegraph and Cable Companies in the Philippines and Cuba.

There is nothing in the Notice issued by the High Commissioner on the 8th September, 1900, at variance with the opinions expressed by the Law Officers in the Reports of the 4th January and 2nd May, 1899, and we think it is desirable, having regard to the importance of the questions raised and the interests involved, that the claim should be further pressed.

2. We think that the United States' Government should be informed that, notwithstanding the opinions of the Attorney-General of the United States, Her Majesty's Government adheres to the views already expressed.

It might be pointed out that there is no warrant for the contention raised by the Attorney-General of the United States that the obligations undertaken by Spain in relation to the Companies in question are divisible into those for the general benefit of Spain and those exclusively for local benefit. To admit such a contention would leave it open, in all cases of conquest or cession, to the succeeding Government to repudiate the obligations of their predecessors on alleged grounds of motives, which, even if they could be proved to have existed, cannot affect the rights of property secured to individuals or Companies as a consideration for executing works of local improvement.

Such a contention is, in our opinion, contrary to the recognized principles of international law as set out in the opinions of the Law Officers above referred to.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 30, 1900.

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No. 45.

[December 12, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 22, 1900.

Gentlemen,

Claim of Manila Railway Company for interest guaranteed under their Concession from Spanish Government.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted in the accompanying list, relative to the claim against the United States' Government of the Manila Railway Company for the interest guaranteed by the Spanish Government under the Company's Concession of 1885 (See Inclosure 5 in Paper A).

The Company have explained, in their letter of the 11th August, 1899 (Paper A), their grounds for holding the United States' Government liable for the payment of the interest, and in the pamphlet which forms Inclosure 5 of that letter will be found a copy of their Concession.

On the receipt of that letter Her Majesty's Representative at Washington was instructed to give to the agent of the Company in that capital such unofficial support as he properly could towards obtaining a favourable consideration of the Company's request, and when the Company's letter (Paper B) of the 7th March last was received, setting forth the straits to which they were reduced by the delay in arriving at a decision on the part of the United States' Minister of War, Lord Pauncefote was requested to bring the facts therein stated to the knowledge of the United States' Government, and to add that the case appeared to involve considerable hardship, and even injustice, to the Company.

Lord Pauncefote inclosed, in his despatch No. 134 of the 2nd May last (Paper C), a copy of the note addressed by him to the United States' Government on the subject, together with a brief statement of the Company's claim drawn up by their agent, and communicated by his Excellency to the United States' Government at the same time.

Lord Pauncefote has now forwarded in his despatch No. 33, Treaty, of the 4th instant (Paper D) copies of the opinions of the United States' Attorney-General with regard to the obligations of the United States towards the Manila Railway Company, and also towards certain Telegraph Companies with Concessions in Cuba and Manila whose claims form the subject of a separate reference to you from this Office.

The conclusion arrived at appears to be that the Concessions in question are not binding as Contracts on the United States, but that the grantees have an equitable claim on the provinces, to be adjusted, as regards the Philippines, by Congress or possibly by the Executive of the United States, if the settlement cannot await action by the future Government.

You are aware of the policy which has been adopted by Her Majesty's Government with regard to certain Concessions which were originally granted by the Governments of the then Transvaal Republic and Orange Free State respectively, and which were still running in favour of the concessionnaires at the time of the annexation of those two Republics to Her Majesty's dominions, and of the terms of Notice No. 9 of 1900 issued on the 8th September last by Her Majesty's High Commissioner for South Africa.

A copy of that Notice (Paper E) is inclosed herewith for convenience of reference, and I am to draw your attention specially to the words underlined in red, as it is thought that the attitude already adopted by Her Majesty's Government in somewhat analogous circumstances towards holders of Concessions in South Africa may afford an important indication of the limits within which the claims of British concessionnaires in Cuba or Manila may consistently and properly be pressed on the attention of the United States' Government.

I am to request that you will take the inclosed papers into your consideration, and, having regard to the terms of Sir A. Milner's Notice, that you will favour Lord Salisbury with your opinion as to whether the view of the United States' Attorney-General may be accepted by Her Majesty's Government as equitable so far as the case of the Manila Railway Company is concerned, or whether any, and, if so, what representations should be addressed to the United States' Government on the subject.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Manila Railway Company		August 11, 1899.
(B.)	Ditto		March 7, 1900.
(C.)	Lord Pauncefote	(No. 134)	May 2, „
(D.)	Ditto	(No. 33. Treaty)	October 4, „
(E.)	Notice No. 9		September 8, „

Report.

We beg to refer to our Report of the 30th November, which deals with the matter now submitted to some extent.

We are unable to agree with the reasoning of the Attorney-General of the United States, and advise that the United States' Government should be requested to recognize the whole claim of the Company.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
December 12, 1900.

ZANZIBAR

No. 46.

[June 28, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 14, 1900.

Gentlemen,

Treaty between Germany and Zanzibar: Operation of Article providing for revision.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers noted on the accompanying list, in connexion with a question which has arisen as to the construction of Article XXIV of the Treaty between Germany and Zanzibar which was concluded on the 20th December, 1885, and ratified on the 5th July following.

In the view of Her Majesty's Government who, since the assumption by this country of a Protectorate over Zanzibar, are charged with the conduct of all the Sultan's foreign relations, a revision of this Treaty is highly desirable in the interests of Zanzibar, and in these circumstances it becomes necessary to ascertain what consequences would follow if Great Britain were, on behalf of Zanzibar, to move for a revision of the Treaty, and if Germany on her side were either to refuse to entertain the proposal, or were unable to come to an agreement with this country as to the alterations to be introduced into that document.

Article XXIV contains the following amongst other provisions, namely, that:—

"After the expiration of fifteen years, to commence from the day of the ratification of this Treaty, it shall be competent for the High Contracting Parties to move for a revision of the present Treaty in order to allow of such alterations, additions, or amendments being made, as experience may have shown to be necessary or desirable.

"Such a motion must, however, be notified one year previous to the expiration of

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the present Treaty, otherwise the Treaty will be considered as tacitly prolonged for a further term of ten years . . . ."

No specific provision is, however, made for such an eventuality as that of the parties to the Treaty being unable to agree on the alterations to be made in it; though the words "expiration of the present Treaty," which occurred in the above quoted Article, seem to imply that the Treaty can come to an end. As the text of the Treaty leaves the matter apparently in doubt, indications of the intentions of those by whom the Treaty was negotiated must be looked for elsewhere; and the correspondence which took place at the time of the negotiations of the Treaty between Germany and Zanzibar, and of the Treaty of 1886 between Great Britain and Zanzibar, which was founded on it, seems to throw some light on the subject.

The Treaty between Germany and Zanzibar was partly negotiated with the Sultan of Zanzibar by Sir John Kirk, Her Britannic Majesty's Agent and Consul-General at Zanzibar, acting on behalf of Germany, and on the 16th October, 1885, Sir John sent home a draft as about to be submitted to the Sultan by the German Plenipotentiary (Admiral Knorr), who thenceforward acted as negotiator for Germany.

The Article in this draft, which corresponded with the XXIVth Article of the signed Treaty, ran as follows:—

"After the expiration of ten years, to begin with the day of the ratification of the Treaty, the High Contracting Parties can move for a revision of the present Treaty in order to resolve on those alterations . . . . which experience shall have proved to be necessary or desirable. Such a motion must, however, be announced at least one year before."

There is nothing in this Article to indicate any intention to terminate the Treaty.

Sir J. Kirk, who had informed Her Majesty's Government that it was essential that the five nations, viz., the United States, France, Germany, Great Britain, and Italy, should all adhere to the same principles, and make their Treaties in conformity with the principles adopted, was also authorized to negotiate a British Treaty on the basis of the German Treaty. He proceeded to do so, and on the 14th November, 1885, the Sultan accepted the draft British Treaty in principle, reserving minor points for future discussion.

On the 28th November Sir John Kirk telegraphed that the Sultan's interests as regarded the remaining details of the German Treaty and Tariff had been confided to him (Sir J. Kirk) and to the German Consul.

On the 19th December, 1885, Sir J. Kirk sent home the draft British Treaty, which, he said, was in exact accordance with that agreed to between the German Representatives and the Sultan.

Article XXVI of the British draft Treaty (which remained unaltered in the Treaty as eventually signed), ran as follows:—

"The present Treaty shall remain in force for a period of fifteen years, to reckon from the day of the exchange of ratifications.

"It shall be competent for the High Contracting Parties thereafter to move for a revision of the present Treaty in order to allow of such alterations, additions, or amendments as experience may have shown to be necessary or desirable; but such a motion must be notified by the Party claiming a revision one year previous to the expiration of the present Treaty, otherwise what is herein agreed upon shall be considered binding upon both Parties for a further period of ten years."

On the 28th January, 1886, the following inquiry, among others, was addressed by telegraph to Sir J. Kirk:—

"Article XXVI of draft British Treaty. Is it meant that, if due notice is given, but Parties cannot agree on terms of revision, Treaty shall lapse after fifteen years?"

It may here be observed, in explanation, that Her Majesty's Government were then anxious to secure their Treaty privileges for as long a term as possible.

Sir J. Kirk replied as follows:—

"I am afraid the Germans understand it in the sense stated, and attach importance to it; they wished Treaty to expire after ten years, and extended it to meet my wish."

In view of this statement by Sir J. Kirk, it seems impossible, notwithstanding the wording of the first draft of the German Treaty, to doubt the intention of the negotiators to terminate the Treaty after fifteen years, in the event of no revision having previously resulted from notice duly given.

The date upon which the Treaty would terminate in such a case would clearly be fifteen years from the date of the exchange of the ratifications; and as the exchange

took place at Zanzibar on the 5th July, 1886, the Treaty would therefore expire on the 5th July, 1901.

I have the honour to request you to take the above observations and the inclosed copy of the German-Zanzibar Treaty into your consideration, and to favour Lord Salisbury with your opinion as to the consequences which would ensue in the event of a failure of the Parties to that Treaty to come to an understanding as to the manner in which it should be revised.

His Lordship would also be glad at the same time to be favoured with any general observations which you may have to offer on the matter.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

1. Memorandum, Mr. Oakes .. .. October 19, 1899.
2. "Africa No. 1 (1887)." (Treaty between Great Britain and Zanzibar, April 30, 1886.)
3. "Africa No. 3 (1887)," containing Treaty between Germany and Zanzibar, December 20, 1885.

Report.

In our opinion, the notification of a motion for a revision of the Treaty under Article XXIV would, if no agreement were come to, operate so as to prevent the Treaty from being tacitly prolonged for a further term of ten years.

Although there is no express provision that the Treaty was only to last for fifteen years, it is provided by implication.

If, therefore, it is desired that the Treaty should be prolonged for the further period of ten years, and there is danger of Germany not agreeing to the desired alterations, we would suggest that no motion should be notified under the Article of the Treaty.

(Signed) ROBERT B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 28, 1900.

No. 47.

[July 10, 1900.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 25, 1900.

Gentlemen,

Detention of s.s. "Bhundara" at Zanzibar in quarantine. Claim for compensation.

I HAVE the honour, by direction of the Marquess of Salisbury, to transmit to you the papers marked in the accompanying list with reference to a claim which has been put forward by the British India Steam Navigation Company for 2,965*l.*, as compensation for the detention in 1898 and 1899 of the steam-ship "Bhundara" at Mombasa and Zanzibar before the grant of pratique.

On the 25th December, 1898, this ship arrived at Mombasa with cases of plague on board, and having had six deaths from that epidemic since her departure from India nine days previously.

Her passengers numbered some 1,400, of whom over 1,000 were Indian coolies under engagement to work on the Uganda Railway. She also carried 700 tons of rice destined for Zanzibar.

At that time the only Plague Regulations existing in the East Africa Protectorate and Zanzibar were provisional ones (see Inclosures 1 and 2 in Paper A), and had not yet received the sanction of the Secretary of State; but by the declaration of "urgency" attached by Sir A. Hardinge to his issue of the East Africa Regulations

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(Inclosure 2 in Paper A), they became at once enforceable, and Her Majesty's Government were made responsible for them unless and until they were disallowed, and publication of their disallowance had been formally made. They remained in force until May last, when revised Regulations were issued.

Article XIV is a saving clause reserving to Her Majesty's Commissioner and to the Sultan's Government power, when deemed fit, to relax or increase the stringency of any of these Regulations in special cases.

Under the said clause Sir A. Hardinge declined to permit the vessel to remain at Mombasa, and advised the Government of Zanzibar to adopt a similar course should she proceed thither; but owing to representations received from the owners, and in view of the fact that the last plague cases on board were stated to have recovered on the 27th December, and that no fresh ones had occurred since, the vessel was allowed to land the coolies on the 16th January, 1899, at a temporary quarantine camp established on the Island of Manda, Lamu; and on the 22nd January Her Majesty's Sub-Commissioner at Mombasa telegraphed that the "Bhundara," having returned to Mombasa, had been disinfected and was then engaged in discharging her cargo.

She then left for Zanzibar, arriving there on the 26th January. After due precautions had been taken as to the disinfection of the rice cargo destined for that port the ship was given free pratique, and left Zanzibar on the 1st February.

The various dates specified by the British India Steam Navigation Company in their letter of the 10th August, 1899 (Paper B), are correct, except in so far as an error appears to have been made by the owners' Calcutta agent in giving the 24th December, 1898, as the date of the occurrence of the last case of plague; the accounts received by this Department make the date to have been the 26th, whereby the claim for demurrage would be diminished by 200*l*.

A Memorandum has been prepared in this Department in regard to the action taken by Her Majesty's Government respecting requests for the support of claims for compensation made by British subjects on foreign Governments in consequence of losses suffered through the application of Sanitary laws (Paper C).

I am, however, in this connexion to explain that the Islands of Zanzibar and Pemba are under British protection, but are administered by the Sultan. Mombasa is in the Sultan's mainland dominions, but is, with the rest of His Highness' mainland dominions, included, for administrative purposes, in the East Africa Protectorate, and is administered by officers appointed by, and responsible to, Her Majesty's Government.

I am to add, in view of the terms of the third paragraph of the letter from the owners' Calcutta agent, that the provisions of the Venice Convention of 1897 (Paper D) did not, during the time the "Bhundara" was in African waters, form part of the legislation either of Zanzibar or of the East Africa Protectorate; nor does Her Majesty's Government appear to have been under any legal obligation to enact those provisions in either territory.

I have the honour to request you to take this letter and its inclosures into your consideration, and to favour Lord Salisbury with your opinion as to whether the owners of the "Bhundara" have a legal claim for damages against the Administration of the East Africa Protectorate $\frac{\text{or}}{\text{and}}$ against the Government of the Sultan of Zanzibar, and, if so, I am to request you to favour his Lordship with your views regarding the amount and apportionment of the sum claimed in the letter from the Company (Paper B), together with any general observations which you may have to offer on the case.

His Lordship would be much obliged if an early reply could be returned to this letter.

I have, &c.
(Signed) CLEMENT Ll. HILL.

List of Papers.

(A.)	Sir A. Hardinge	(No. 391)	December	15, 1898.
(B.)	British India and Steam Navigation Company		August	10, 1899.
(C.)	Memorandum by Mr. Streatfeild..		August	21, „
(D.)	Venice Convention		March	19, 1897.

Report.

We do not think, on the facts as stated in the papers submitted to us, there is any evidence that the Administration of the East Africa Protectorate or the Government of the Sultan of Zanzibar acted unreasonably or vexatiously in the matter in question in enforcing Regulations thought necessary for the public safety and for preventing the introduction of plague.

The owners of the "Bhundara" have, therefore, no legal claim for compensation against either the East Africa Protectorate or the Government at Zanzibar.

The owners of the "Bhundara" should be informed that their claim for compensation cannot, under the circumstances, be admitted.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 10, 1900.

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1901

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Printed for the use of the Foreign Office. *May* 1902.

CONFIDENTIAL.

(7733.)

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BY THE

LAW OFFICERS OF THE CROWN, &c.

1901.

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CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.: 1901.

ABYSSINIA.

No. 1.

[September 14, 1901.]

Foreign Office to the Law Officers of the Crown.

(Confidential.)

Foreign Office, September 7, 1901.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the correspondence noted in the accompanying list relative to an application made by certain shareholders of the Abyssinian Exploration (Parent) Company to Lieutenant-Colonel Harrington, His Majesty's Agent and Consul-General in Abyssinia, now on leave in this country, to make an affidavit in connection with a petition to wind up the Company.

Abyssinian Exploration Company. Application of shareholders for Affidavit by Colonel Harrington.

On the 19th of July last the Abyssinian Exploration (Parent) Company addressed a letter to Lord Lansdowne (Paper A), requesting that His Majesty's Representatives in Abyssinia and at Jibuti, a French port on the Red Sea from which access is obtained to Abyssinia, might be instructed to assist their Manager, Mr. Wileman, whom they were sending to Abyssinia with a view to commencing operations under a Concession held by them.

The letter inclosed a copy of the Company's prospectus with a translation of the Concession.

The Concession purports to convey in the name of Count Nicholas de Leontieff, Governor-General of the Equatorial provinces of Ethiopia, acting in virtue of powers granted to him by the Emperor Menelek of Ethiopia, the right of working all mines in those Equatorial provinces on certain conditions and within the limits defined for a period of fifty years.

At the bottom of p. 2 of the prospectus it is stated that certain papers may be inspected at the offices of the Company's solicitors, amongst which is a Decree of the Emperor Menelek, dated the 12th June, 1897, appointing Count Leontieff to be Governor-General of the Equatorial provinces, and granting to him (*inter alia*) the right to exploit the resources of the provinces mentioned in the Concession.

Lord Lansdowne had already forwarded to His Majesty's Agent in Abyssinia a copy of the prospectus, which had appeared in the advertisement columns of the "Times" and other newspapers, and this had reached Lieutenant-Colonel Harrington in the interior of Abyssinia after he had left the capital on his way to England on leave of absence.

In his despatch No. 24 of the 6th July (Paper C), Lieutenant-Colonel Harrington reported that on receipt of the prospectus he forwarded it to the Italian Agent at the capital, as a friendly colleague, and requested him to inquire of the Emperor whether Count Leontieff had any authority to grant Concessions in Abyssinia.

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The reply of the Italian Agent, who brought the matter to the Emperor's notice, showed that Count Leontieff had no such authority, that the Decree of the 12th June, 1897, mentioned in the prospectus, was an incorrect translation of a Decree in Amharic, the language of Abyssinia, issued by the Emperor on the 9th June, 1897, and that the actual terms of this Decree did not confer on Count Leontieff the powers claimed for him in the prospectus.

The Emperor wished Lieutenant-Colonel Harrington to know that he gave him full permission to make these facts public.

In consequence of the information contained in Lieutenant-Colonel Harrington's despatch the Abyssinian Exploration Company were informed on the 6th ultimo that the Emperor had authorized Lieutenant-Colonel Harrington to make it publicly known that he had never given to Count Leontieff any authority to grant Concessions to foreigners (Paper D).

On the 9th ultimo the Company forwarded to Lord Lansdowne a copy of the alleged Decree of June 12, 1897, and inquired whether he was acquainted with it (Paper E).

They were informed on the 19th ultimo (Paper F) that, according to the information received by His Majesty's Government, the document was an incorrect translation of a Decree issued in Amharic by the Emperor Menelek on the 9th June, 1897. Correct translations of the Decree in French and English were transmitted to them.

The translation into English had been transmitted to the Foreign Office by Lieutenant-Colonel Harrington in a despatch dated the 30th April, 1898 (paper FF), and was the work of his interpreter.

On the 2nd instant Lieutenant-Colonel Harrington addressed a despatch to Lord Lansdowne (Paper G), inclosing an extract from a further letter which he had received from the Italian Agent in Abyssinia, stating that the Emperor authorized Lieutenant-Colonel Harrington in clearer and more definite terms than those previously employed, to publish the correct translation of His Majesty's Decree of the 9th June, 1897, and to make known all the information he possessed in regard to the real limits fixed for Count Leontieff's action in the grant of the Equatorial provinces of Abyssinia.

On the 27th July, four of the shareholders of the Abyssinian Exploration Company (Messrs. Stanbury, Crowson, C. E. Rowe, and H. C. Rowe), wrote to Lord Lansdowne inquiring whether the Concession granted by the Emperor Menelek was a just and valid one, as rumours to the contrary had appeared in the press (Paper H).

A reply was sent to them on the 6th ultimo (Paper I) in terms similar to those of the letter to the Abyssinian Company of the same date (Paper D).

On the 17th ultimo, Lieutenant-Colonel Harrington communicated to the Foreign Office a letter addressed to him by Messrs. Burgess, Cosens, and Co., solicitors, acting for the four shareholders named above, in which they announced their clients' decision to file a Petition to wind up the Company, and inquired whether Lieutenant-Colonel Harrington would be prepared to make an affidavit in support of this case. A copy of Lieutenant-Colonel Harrington's reply appears on the back of the letter.

In a letter dated the 2nd instant (Paper K), Lieutenant-Colonel Harrington communicated to this Department further letters from Messrs. Burgess, Cozens, and Co., and on the 3rd instant they addressed a letter to Lord Lansdowne (Paper L) in which they mentioned that their clients' Petition to wind up the Company was filed on the 2nd instant, and that counsel was about to appeal that the case be heard as one of special urgency on the 18th instant.

On the 5th instant they addressed a further letter to Lord Lansdowne (Paper M), stating that their clients were advised by counsel that an affidavit by Lieutenant-Colonel Harrington in verification of the statements in the letter sent to them from this Office on the 6th ultimo was essential for the support of their Petition to wind-up the Company, and that the letter alone would be insufficient for the purpose. In these circumstances they requested that Lieutenant-Colonel Harrington might be authorized to make such an affidavit.

Messrs. Burgess, Cosens, and Co. addressed a private and confidential letter to Lieutenant-Colonel Harrington on the 5th instant (Paper N), inclosing a copy of their clients' Petition, a notice of a statutory meeting of the Abyssinian Exploration Company, to which is annexed a Report of the Directors, and an Enquiry Agent's Report containing information in regard to certain of the Directors of the Company.

Lord Lansdowne requests that you will take the papers sent herewith into your consideration, and that you will favour him, at your early convenience, with your opinion as to whether, Lieutenant-Colonel Harrington may properly be authorized to make an affidavit in support of the Petition, and, if so, what should be the terms of the affidavit, or, in the contrary case, what should be the nature of the reply to be returned to Messrs. Burgess, Cosens, and Co.

His Lordship would also be glad to be furnished with any observations which you may have to make in regard to this matter.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Abyssinian Exploration Company		July	19, 1901.
(B.)	Ditto		July	19, „
(C.)	Lieutenant-Colonel Harrington	(No. 24)	July	6, „
(D.)	To Abyssinian Exploration Company		August	6, „
(E.)	Abyssinian Exploration Company		August	9, „
(F.)	To ditto		August	19, „
(FF.)	Lieutenant-Colonel Harrington	(No. 6)	April	30, 1898.
(G.)	Ditto	(No. 26)	September	2, 1901.
(H.)	Messrs. Stanbury, &c.		July	27, „
(I.)	To ditto		August	6, „
(J.)	Lieutenant-Colonel Harrington		August	17, „
(K.)	Ditto		September	2, „
(L.)	Messrs. Burgess, Cosens, and Co.		September	3, „
(M.)	Ditto		September	5, „
(N.)	Ditto		September	5, „

Report.

I do not think it desirable that Lieutenant-Colonel Harrington should make an affidavit in this case. His only information is that which was received by him in his official capacity, and it is not, unless under very special circumstances, desirable that evidence should be tendered in respect of information so received. By making an affidavit Lieutenant-Colonel Harrington would be mixing himself up in a private dispute, and it is not desirable that an official in his position should be exposed to cross-examination as to what passed with the Emperor Menelek.

I think Messrs. Burgess, Cosens, and Co. should be informed that it is deemed unadvisable that Lieutenant-Colonel Harrington should, with reference to the proposed winding up of this Company, make an affidavit as to matters which came before him in his official capacity.

(Signed) R. B. FINLAY.

Royal Courts of Justice,
September 14, 1901.

AFRICA.

No. 2.

[January 29, 1901.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 10, 1901.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list, with regard to the arrest of certain French citizens in Johannesburg by the British military authorities and to their deportation to Ceylon, where they are at present detained, as prisoners of war.

Frenchmen serving with Boers in Ceylon as Prisoners of War.

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The circumstances of the case are so far known to Her Majesty's Government almost exclusively from the account given of them by Count E. de Courcenay, one of the prisoners. The only Report on the subject which has been received from the Field-Marshal Commanding-in-chief in South Africa, gives no details. These circumstances, as reported in Count de Courcenay's letter of the 28th August (Inclosure in document C), are as follows:—

The French citizens in question had originally taken up arms for the South African Republic, but had laid them down two months before the 6th July last when their arrest took place. Two of them had already taken the oath of neutrality in conformity with Lord Roberts' Proclamation of the 31st May (Inclosure E), and the five others were actually arrested in the office whither they had gone to do likewise.

They explain that they did not take the oath immediately on the publication of the Proclamation because they were at that time engaged in the Mines Police, and were already bound by an oath of neutrality, which, as they had been told, was effectual ("valable").

They also explain that they did not protest at the time against their arrest, as they understood they were merely to be sent out of the country.

It is stated further in the communication of the 24th ultimo from the French Ambassador that all the men had received residential permits ("permis de séjour") from Lord Roberts, and were not arrested till a month after the British troops had occupied Johannesburg; that they were made the object of no charge; that no sentence was pronounced against them; and that they were not even tried.

The Ambassador adds that, according to the French Consul at Cape Town, the British authorities hold that a man who has once borne arms may be made a prisoner of war at any time thereafter during the continuance of hostilities; but his Excellency argues on the contrary, that, according to international law, the fact of bearing arms for one belligerent is not an offence for which a penalty can be inflicted by the other belligerent, the right to make a man a prisoner of war being exercisable solely to prevent him bearing arms after capture, and being therefore exercisable solely against actual combatants on their being forced to lay down their arms.

The French Government in no way contest the right of the British authorities to expel these persons; but, in view of the above-mentioned arguments, request that they may be released from captivity as prisoners of war.

Annexed to the papers are Memoranda (Papers F and J) by the Legal Adviser of the Department and by the Director of Military Intelligence respectively on the right of the Field-Marshal Commanding-in-chief in South Africa to expel obnoxious persons from the theatre of war and of the Colonial authorities to expel obnoxious persons from those portions of the Cape Colony and of Natal which have not been placed under martial law, together with a further Memorandum (Paper K) by Sir John Ardagh on the special point which forms the subject of this reference.

I have the honour to request you to favour Lord Lansdowne with your opinion on the point thus raised by the French Ambassador, it being assumed, pending the arrival of the futher Report which Lord Roberts has been asked to furnish, that the facts are as stated by his Excellency and by the prisoners themselves in the inclosure in the document marked "C."

I also have the honour to request you to favour his Lordship with any observations you may have to offer on the case generally.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) M. Cambon	October 9, 1900
(B.) To War Office	October 15, „
(C.) Colonial Office	October 20, „
(D.) War Office	November 5, „
(E.) Proclamation: Lord Roberts	May 31, „
(F.) Mr. Davidson, Memorandum	November 22, „
(G.) M. Cambon	November 24, „
(H.) To War Office	December 10, „
(I.) War Office	December 20, „
(J.) Memorandum: Sir J. Ardagh	
(K.) Ditto	December 25, „

Report.

In our opinion the broad proposition contended for by the French Ambassador cannot be sustained, as we think that the right of making prisoners of war is not limited solely to the case of actual combatants on their being forced to lay down their arms.

A combatant does not secure the immunity contended for merely by ceasing to bear arms; he remains liable to be arrested and treated as a prisoner of war, if the belligerent thinks such a measure expedient.

Indeed, the immunity from treatment as prisoners of war which is usually extended to the non-combatant population does not apply without some qualification to the population of such a country as the Transvaal where all able-bodied men are, or may be, soldiers whether they have actually borne arms or not; the belligerent may, if he thinks his safety requires it, treat all such persons as prisoners of war, the case of sailors on captured merchant-vessels being a somewhat analogous case.

In the present case it does not appear that anything had taken place to make improper the arrest of these persons as prisoners of war. The Proclamation related to burghers, not to foreigners serving in the Boer armies; and it is not shown that the British authorities had accepted the oath of neutrality in the case of those who took it with knowledge that they were not burghers.

Whether their arrest and deportation were, under the circumstances, desirable or proper is a matter on which we have not materials for advising. Whether they should be released now on satisfactory assurances that they will not return to South Africa is a question of policy.

We further think that the point raised by Sir John Ardagh, that by taking up arms the parties in question ceased to be French citizens, is worthy of consideration, and may with advantage be taken, in view of the possibility of the French Government making demands for compensation for the deportation of these parties to Ceylon.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
January 29, 1901.

No. 3.

[February 6, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, December 6, 1900.

Gentlemen,

Ambulance with Boer forces: right to fly Dutch flag.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers enumerated in the inclosed list, relative to a complaint made by the Netherland Government that a Dutch ambulance in attendance on the Boer forces was prevented from flying the Netherland flag while temporarily within the British lines. This complaint raises questions of some importance and complexity as to the construction and meaning of the Geneva Convention of 1864.

For the purpose of elucidating these questions, it has been found necessary to go rather fully into the history of the Convention, and a statement has been prepared by Major-General Sir John Ardagh, K.C.I.E., the Director of Military Intelligence, in consultation with the Legal Adviser to this Department, which is annexed to this letter.

I am to request that you will take the papers transmitted herewith into consideration, and that you will favour the Marquess of Lansdowne with your opinion upon the validity of the complaint that the incident described in the Netherland Minister's Memorandum of the 28th July, 1900, constituted an infraction of the Geneva Convention and, in particular, upon the following questions:—

1. Does the Geneva Convention of 1864, according to the proper and natural construction of its provisions, apply solely to the *personnel* and *materiel* of the military ambulances and hospitals of belligerents?

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2. Does the Geneva Convention confer recognition, sanction, protection, or neutrality upon the *personnel* and *matériel* of voluntary Red Cross Societies or Associations for the aid of the sick and wounded in war, furnished—

(*a.*) By belligerent nationals?

(*b.*) By neutral nationals?

3. Does the Geneva Convention sanction or enjoin the use of the Red Cross flag or armlet by voluntary Aid Societies not forming an integral part of, or affiliated officially to, the army of the State to which they belong?

4. Is the "national flag" prescribed in Article VII of the Convention, that of the belligerent to whose army the ambulance or hospital belongs; or, that of the State to which the Aid Society furnishing the *matériel* and *personnel* belongs?

5. In the event of your being of opinion that the Geneva Convention does not contain any recognition of voluntary Societies for the aid of sick and wounded in war; are these Societies entitled to claim under general international law any special rights, privileges, or immunities, beyond those which may be accorded to them as a matter of grace, in consideration of their humane efforts to alleviate suffering, by the military authorities of the belligerents, in so far as the necessities of war permit?

6. Having regard to the practical difficulties which have been experienced with regard to the construction and working of the Geneva Convention, is it, in your opinion, desirable that its terms should be revised?

7. Is it desirable that the employment of the Geneva Red Cross flag and arm badge should be protected and controlled by legislation?

Lord Lansdowne will be glad at the same time to be favoured with any general observations upon the matters involved which you may be good enough to offer.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

1. The Geneva Convention of 1864, according to the proper and natural construction of its provisions, in my opinion, applies solely to the military ambulances and hospitals of belligerents, including such as are affiliated to the army and under the control of the Commanding Officer. The inhabitants of the country who bring help to the wounded are entitled to protection under Article V.

2. (*a.*) The Geneva Convention has, in terms, no application to voluntary Red Cross Societies or similar Associations, but such Societies or Associations—if constituted by the inhabitants of the country—would be entitled to protection under Article V while bringing help to the wounded.

(*b.*) Such Societies or Associations, furnished by neutral nationals, are not dealt with by the Convention unless they be attached to one of the armies.

3. No.

4. The "national flag" prescribed in Article VII is the flag of the belligerent to whose army the ambulance or hospital belongs.

5. There is no provision of general international law according any special rights, privileges, or immunities to such Societies beyond those which ought to be accorded to them, as a matter of grace, in consideration of their humane efforts to alleviate suffering.

6. It may be pointed out that the interpretation which, in my opinion, should be placed upon the terms of the Geneva Convention appears not to have been universally adopted, and some of the despatches appear to indicate that His Majesty's Government has acquiesced in a more liberal construction of these provisions. This may make it undesirable that His Majesty's Government should, at once, declare in an unqualified way for the construction of the Convention indicated in this Report.

Whether any revision of its terms should be attempted is a matter of policy and largely one of military expediency.

It is possible that the considerations applicable to hospital ships by no means apply with equal force in the case of warfare on land, and that considerable inconvenience might result if neutral ambulances and hospitals, for which the Commander of the opposing forces is not responsible, were recognized as entitled to the protection of their own national flag.

7. It is not, in my opinion, desirable that the employment of the Geneva Red Cross flag and arm-badge should be protected and controlled by legislation. This should be left to International Convention and the control of the military authorities on the spot.

(Signed) R. B. FINLAY.

Royal Courts of Justice,
February 6, 1901.

Annex I.

Statement.

THE amelioration of the condition of sick and wounded soldiers in war began to attract attention many centuries ago, and became the subject of Treaties and Conventions made between nations and between military Commanders in the past. These Agreements concerning the treatment to be accorded to sick and wounded were ordinarily special and temporary, and although they afforded indications of a recognition of humanitarian principles by belligerents, and examples from which a certain degree of uniformity in practice might be deduced, they were inadequate to constitute a definite system, and were entirely devoid of international recognition or acceptance.

After the capture of Jerusalem in 1187, Saladin gave permission to the Knight's Hospitallers to enter and attend to the wounded Christians.

In 1743, before the battle of Dettingen, a Treaty for the protection of the wounded and the hospitals was made between the Austro-Hanoverian army under George II and the French army under Marshal de Noailles.

When the French retreated from Oporto in 1809, the Duke of Wellington gave "safe conducts" to the French medical officers whom he requested to be sent to treat the wounded they had left in his hands.

There were other examples during the Napoleonic wars, but on their close interest in the wounded died away.

The exertions of Miss Nightingale during the Crimean War, and of other philanthropic persons on similar occasions, drew public attention to the matter; but the chief credit of having aroused an active interest in alleviating suffering upon the battle-field is due to M. Dunant, whose book, entitled "Un Souvenir de Solferino," gave a vivid description of the painful spectacles which he beheld after that battle, and the misery and distress which were entailed upon wounded soldiers by the inadequate arrangements for their succour.

Dunant was the first to propound the proposal for the creation of voluntary Societies for the aid of the sick and wounded. His volume produced a profound impression in Europe, and led to the formation in Geneva—his native town—of a Committee for the aid of wounded soldiers. This Committee issued on the 1st September, 1863, invitations to an International Conference at Geneva for the purpose of considering the question. It was attended by thirty-six Representatives from European States, the large majority belonging to the medical profession and many to the military branch of it.

Lueder, p. 64.
Moynier, p. 59.

A Circular accompanying the invitations set forth the objects in view, viz.:—

Lueder, p. 60.

The formation in each State of National Societies for the purpose of supplementing the insufficiency of the military sanitary services; the formation and organization in time of war by the Committees of the belligerent nations of voluntary corps of hospital attendants; and the provision of the requisite transport, supplies and medicines: the whole to be placed at the disposition and under the orders and discipline of the army Chiefs.

The Conference met at Geneva on the 26th October, 1863, and adopted Resolutions to the above effect, as well as the specification of a white armlet with a red cross as a uniform distinctive mark.

They also added recommendations to the effect that:—

(*a.*) Governments should protect and facilitate the operations of Aid Committees.

(*b.*) Neutrality should be accorded by belligerents to ambulances and hospitals, to the official sanitary personnel, to the voluntary attendants, to the inhabitants who helped the wounded, and to the wounded themselves.

(*c.*) Uniform distinctive marks and flags should be adopted in all armies.

It was fully understood that the Resolutions and recommendations were merely expressions of personal opinion, without legal value and of no binding effect on the States to which the Representatives belonged; and it became clear that in order to advance beyond this academic stage the subject must be discussed by responsible Representatives duly accredited by the respective States.

At the instigation of the Geneva International Committee, the Swiss Federal Council issued invitations for an International Congress to assemble at Geneva on the 8th August, 1864.

Twenty-five States were invited, and sixteen sent Representatives. (It may be observed that the war between the Germanic Confederation and Denmark was then going on.) The principal abstentions were Austria, Bavaria, the Papal States, Russia, Turkey, and Greece. Great Britain was represented by Dr. Longmore and Dr. Rutherford.

During and subsequent to the Conference of 1863, it had become evident that the proposal to

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neutralize, or, indeed, to give State recognition to, Voluntary Aid Societies would meet with considerable opposition. The Geneva International Committee, therefore, in drafting a project of Convention to form the basis for discussion at the Congress, were apparently apprehensive that the introduction of contentious matter might render the meeting abortive, and, although it was patent to all that they took the deepest interest in the question of Aid Societies, these are not mentioned or alluded to in any way in the draft.

Lueder, p. 94.

General Dufour, the Swiss Commander-in-chief, was elected President of the Congress, and in his opening Address he declared that the question before them was only that of neutralizing the ambulances and their personnel, and in no way of the extension or the foundation of Aid Societies.

The draft and the introductory Address are important evidences of intention.

In the discussions which ensued, the German and Belgian Delegates advocated the neutralization of volunteer hospital attendants, and the French Delegates stated that they were expressly forbidden by their Government to accept this proposal. The Swiss and Dutch Delegates supported the French opposition. As it had been agreed that the majority could not bind the minority, only those Articles upon which the opinions of the Delegates were unanimous could be accepted, and those upon which there was a diversity of views were dropped.

The draft as amended by the Congress became the final form in which the Geneva Convention, as it now stands, was signed by the twelve Plenipotentiaries who had full powers, on the 22nd August, 1864, viz., Baden, Belgium, Denmark, France, Hesse-Darmstadt, Italy, Netherlands, Portugal, Prussia, Spain, Switzerland, and Wurtemburg.

Most of the Powers, including Austria, Great Britain, Russia, Turkey, and the United States, subsequently acceded at various dates up to 1882.

Hague Conference.

The Convention has not been amended since 1864, and is still in force. An adaptation of its principles to maritime warfare forms the subject of a separate Convention signed at the Hague on the 29th July, 1899.

Proposals have frequently been made for the revision of the Convention of 1864. The Swiss Federal Council issued invitations for a Congress for the purpose of revising the Geneva Convention in 1868; the Congress met at Geneva on the 5th October, 1868, and, as on the former occasion in 1864, the Swiss International Committee charged itself with the preparation of draft proposals for consideration.

The details of these proposals will be subsequently alluded to, but at this point it is only necessary to state that the Congress agreed to fifteen additional Articles, and that the Delegates of fourteen States signed them on the 20th October, 1868, under reserve of the approval of their Governments.

Great Britain, France, and Russia disapproved of certain Articles. The Franco-German War supervened, and the Additional Articles have never been ratified.

Brussels Conference, Protocol 9, August 11, 1874.

The question of revision of the Geneva Convention was next officially treated at the Conference of Brussels in 1874, when the Delegates, failing to agree as to the nature of modification, confined themselves to laying the various amendments proposed before their respective Governments for consideration.

At the Peace Conference held at the Hague in 1899, a Convention for the adaptation of the principles of the Geneva Convention of 1864 to maritime warfare was agreed to, signed, and subsequently ratified.

Hague Conference, Final Act, July 29, 1899.

This Conference also unanimously expressed the wish that steps might shortly be taken for the assembly of a Special Conference having for its object the revision of the Geneva Convention.

Hague Conference, Sitting July 5, 1899.

No action has yet been taken upon the recommendation, and it appears to be open to any Power to call attention to it, but the initiative rests especially with the Swiss Federal Council.

This completes the official history of the Geneva Convention up to the present time.

The subject of aid to the sick and wounded in war has, however, been constantly kept before the world by the Red Cross Societies which were formed in all civilized States as a sequel to the initiative given by the parent Society at Geneva in 1863. International Conferences of these Societies were held at Paris in 1867; Berlin, 1869; Geneva, 1884; Karlsruhe, 1887; Rome, 1892; and Vienna, 1897. These meetings now take place quinquennially, the place and programme being arranged by the International Committee at Geneva.

Meetings have also been convened by other Aid Societies from time to time, the most recent having been an International Congress held in Paris in August 1900.

At these Conferences the revision of the Geneva Convention and the status of Aid Societies have usually been the principal subjects discussed.

Memorandum, Baron Gericke.

In the course of various wars which have taken place since 1864, allegations have been made of infractions of the terms of the Geneva Convention, and a case has recently arisen in South Africa, which is set forth in a Memorandum communicated to the Foreign Office by the Netherland Minister, dated the 28th July, 1900.

The substance is as follows:—

A Dutch Red Cross ambulance, at Elandsfontein on the 29th May, had hoisted upon it the Netherland national flag. A British officer lowered and carried away the flag. Lord Kitchener came up and inquired what the ambulance was. Dr. Hollander, who presumably was in charge of the ambulance, replied that it belonged to the Netherland Red Cross, and that a British officer had deemed it his duty to lower the Netherland flag. Lord Kitchener accepted the responsibility of having given the order, and added, "I will not allow any other flag in this country except the British."

Dr. Hollander replied that, in conformity with the Geneva Convention, he had the right and the duty to fly the flag. Lord Kitchener told him that he did not care.

The Minister then observes:—

"Il résulte de la teneur du deuxième alinéa de la Convention de Genève du 22 Août, 1864, que le drapeau de la Croix Rouge pour ambulances, &c., doit être accompagné en toute circonstance du drapeau national.

"Ce qui précède constituerait donc une infraction de la Convention Internationale à laquelle la Grande Bretagne a adhéré le 18 Février, 1865."

Apart from the exactitude of the narrative, which will be reported upon by Field-Marshal Lord Roberts, two questions present themselves:—

1. Whether the Geneva Convention applies to a Netherland Red Cross ambulance?
2. What is the "national flag" prescribed in Article VII?

It is manifest from Baron Gericke's Memorandum that the Netherland Foreign Minister is under the impression that the Geneva Convention does apply to a Netherland Red Cross ambulance, and that the "national flag" means the flag of the nation whose subjects furnished the ambulance.

This belief appears to be widely entertained. The ambulances of British and other Aid Societies have on many occasions flown the flags of their own nation when, as neutrals, they were engaged in succouring the sick and wounded of belligerents; and the Geneva Convention is popularly regarded as the fundamental charter of the Red Cross Societies, which in recent years have done so much to alleviate suffering in war.

It is, on the other hand, maintained by those who have studied the subject, both in the Foreign Office and in the War Office, that the supporters of the views which have just been quoted, misapprehend the meaning and interpretation of the Convention, and attribute to it a far more extended field of application than its language warrants. They contend that it does not apply to voluntary Aid Societies or Red Cross Associations, but solely to the military ambulances and hospitals of belligerents, and that the national flags specified in Article VII are the flags of the belligerent nations.

In support of their views they adduce the following arguments:—

1. There is no mention whatever in the Convention of Geneva of 1864 of Red Cross Societies or Aid Societies, voluntary or neutral.

2. The organizations upon which neutrality is conferred by the first Article are "les ambulances et les hôpitaux militaires," *i.e.*, military ambulances and hospitals. In certain English books this sentence has been improperly translated "ambulances and military hospitals." It will be observed that in Articles II and III the consecution is inverted, and that in Article IV the hospital and the ambulance receive different treatment.

3. The word "ambulance" in French is a military term, meaning a movable hospital equipment accompanying troops in the field for the succour, treatment, and transport of the wounded from the field to the permanent or temporary hospitals.

In English military parlance, "ambulance" has the same meaning. The term has, however, been appropriated in recent years by civil organizations, such as the St. John's Ambulance Society, by public hospitals, police, fire brigades, &c., in connection with aid in ordinary cases of accident or mishap. The word is now often used in English by an elliptical figure of speech for an ambulance waggon.

4. In 1864 there were practically no other ambulances in Europe but those used in armies.

5. Article II specifies the personnel in terms only employed in the army.

6. Article III states that, under certain circumstances, this personnel may rejoin the corps to which it belongs, indicating thereby that it must be military.

7. The Conference at Geneva in 1868 for the revision of the Convention had before them the following proposal, *inter alia*, viz.:—

Lueder, p. 163.

"3. Garantir aux individus faisant partie du personnel sanitaire la conservation de leur traitement pendant leur séjour chez l'ennemi."

"Traitement" here clearly means the pay and allowances to which they were entitled in their own army, and obviously cannot apply to Voluntary Aid Societies.

Lueder, p. 96.

8. A proposal to neutralize voluntary hospital attendants was made and rejected during the debates upon the Articles of the Convention.

9. At the Conference of 1868 for the revision of the Convention the following proposals were made and rejected:—

"4. Mettre le personnel des Sociétés de Secours au bénéfice de la neutralité.

"5. Réglementer les rapports à établir entre les Commandants-en-chef et les Sociétés de Secours."

This rejection shows that the omission of Aid Societies from the original Convention and from the additional Articles of 1868 was not a mere accidental oversight, but a deliberate and intentional exclusion.

10. At the Conference of Brussels in 1874, on the rules of military warfare, one of the draft Articles submitted was:—

"39. Le personnel mentionné à l'Article II de la Convention de Genève, ainsi que les membres des Sociétés de Secours admis sur le théâtre de la guerre par les autorités militaires, jouiront des droits garantis par la dite Convention à moins qu'ils ne prennent part aux hostilités."

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The Conference failed to agree, and the Article fell through. It would evidently never have been put forward if the Aid Societies had already been recognized as coming under the protection of the Geneva Convention.

These arguments, it is claimed, tend to prove conclusively that the Geneva Convention in its fair and natural sense when construed according to the ordinary accepted canons of interpretation, only applies, and was intended only to apply, to the *personnel* and *matériel* of the military ambulances and hospitals of belligerents; and that all the efforts which have since been made to extend its provisions to Voluntary Aid Societies have failed owing to want of unanimity.

Report of 6th International Conference of Red Cross Societies, p. 4.

In most of the continental States, National Aid Societies or Red Cross Societies have been organized and equipped in time of peace in order to form, under definite Regulations, an integral part of the regular Army Medical Service in time of war.

When this incorporation takes place, the *personnel* and *matériel* of these Red Cross Societies pass under the protection of the Geneva Convention as units of the national forces, in a manner analogous to the change of status of militia or volunteers in this country, who become subject to the Army Act when embodied for service. In countries in which liability to military service is general there is little difficulty found in subjecting the Red Cross Societies to strict State control tempered by certain privileges and immunities, and for national purposes there can be no objection to the system, or to the method by which these Aid Societies, which are voluntary and civil in time of peace, are transformed into branches of an Army Medical Service in time of war, become subject to the military authorities of their belligerent State, and are thus brought within the provisions of the Geneva Convention.

It is contended, however, that this procedure is inapplicable to the case of Red Cross Societies and volunteer ambulances of neutral nationality furnishing succour to the sick and wounded of a belligerent State.

If these organisations remain civil and voluntary they can have no claim to the privileges of the Geneva Convention, and are only entitled to such facilities and such benevolent treatment as the belligerent Commanders may, subject to military exigencies, accord them in consideration of the benefits accruing to sick and wounded combatants through their humane efforts.

There is, however, another aspect of the question to be considered. The first duty of a neutral is to abstain impartially from giving aid or support to either of the belligerents in carrying on the war. That principle is fully recognized by all writers upon international law, but there are exceptions to its absolute and universal application in practice. Real impartiality is stated by Wheaton to consist in refusing aid to both combatants, and not in giving it in the same measure to each.

To this, however, the generally admitted right of individual neutrals to trade with belligerents—even in contraband—subject to risk of capture and condemnation, is a notable exception, in which this country is deeply concerned. An apparent equality of measure in benevolence may be, in fact, exceedingly partial and favourable to one of the belligerents, especially when the want supplied is only felt by that belligerent, as, for instance, war material, food, or coal, with all which the other belligerent may be well furnished.

In like manner, the almost total absence of a military medical service on one side renders the aid furnished by neutral Red Cross Societies and ambulances to the sick and wounded of that side a most material factor in sustaining the power of resistance of the troops, and enabling them to prolong their opposition.

In the present war in South Africa it is beyond doubt that the Boers owe the greater part of their ambulance and hospital service to the contributions of neutral States, and there is evidence tending to prove that in several instances the humanitarian pretext was made use of as a cloak to cover the movements of armed subjects of neutral States in making unofficial war. Some, indeed, threw the pretence entirely aside, and openly joined the fighting ranks of the Boers. Others professing neutrality acted as spies, and surreptitiously carried correspondence, and Lord Roberts recently reported that a Dutch doctor, with the Red Cross badge on his arm, was found killed in action with a rifle in his hand, and wearing a bandolier half emptied of cartridges.

However exceptional these cases may be, and however laudable the humane and charitable purpose of the Aid Societies, no surprise can be felt at the disinclination on the part of the Delegates in 1864, 1868, and 1874 to place irresponsible civil Aid Societies on the same footing as the regular military medical service, with its responsibility to authority and its long and honourable record.

It would seem that the only procedure open to a neutral ambulance in order to become entitled to the privileges of the Geneva Convention is to join and be incorporated with the military medical service of a belligerent. In States where there is no legislation analogous to our Foreign Enlistment Act, or Neutrality Proclamations, it is open to individual citizens to take service with a belligerent at their own risk, and unless the sum of such individual acts constitutes a proof of *animus adjuvandi* on the part of the Government of the State, no breach of neutrality can be alleged.

But the case of an organized Society recognized by the State stands upon a different basis. It such a body as the Dutch National Red Cross Society dispatches an ambulance with the approval and consent of its Government to join and be incorporated in the military medical service of the Boer army, such an act is *primâ facie* a breach of neutrality, and would afford grounds for a diplomatic protest or even stronger measures.

It is not suggested that the Netherland Government displayed as a neutral State any undue partiality towards the Boer belligerents. The offer of the services of a Dutch Red Cross ambulance was made formally to Her Majesty's Government, and was politely declined on the ground that the British medical service was adequate.

The offer was also made to and accepted by the Boers, so that the measure meted to each was so far equal. But the Netherland Government does not appear to have perceived the technical dilemma in which the Dutch ambulance stood. If it entered into and became a part of the Boer army, a breach of neutrality would be committed; and if it did not place itself under the Boer Military Commander, it would not be entitled to the privileges of the Geneva Convention.

In the case now under consideration, it is quite clear that the Dutch ambulance had no intention of renouncing its nationality, as it hoisted the Netherland flag openly. It was not therefore a belligerent, and could not claim the privileges of the Geneva Convention, if the premises and deductions set forth above are accepted as well founded.

The appeal of Dr. Hollander to the provisions of the Geneva Convention, put forward by the Netherland Minister under the instructions of the Netherland Secretary of State for Foreign Affairs, appears therefore to fail; and it may be further pointed out that even if the Convention of Geneva had been applicable to this case, the claim of Dr. Hollander, that by the VIIth Article of that Convention it was his right and his duty to fly the Netherland national flag, is also untenable.

The first portion of Article VII runs as follows:—

"Un drapeau distinctif et uniforme sera adopté pour les hôpitaux, les ambulances, et les évacuations. Il devra être, en toute circonstance, accompagné du drapeau national."

Apart from the other Articles of the Convention, it is undeniable that the natural meaning and interpretation of this clause is that the hospital or ambulance, besides flying the Geneva Red Cross flag, should also hoist the flag of the nation to which it belonged.

But when it is considered that the ambulances and hospitals are military and belligerent, it results that the national flags flown by them must be those of one of the belligerents. The flags of neutrals are not mentioned, and the ambulances and hospitals of neutrals have no place whatever in the Convention, and no claim under Article VII to fly the flag of a neutral State on the battle-field. That right and duty is reserved to belligerents only.

It is, however, a well-established fact that not only the Dutch Aid Societies, but also those furnished by England and Germany, when neutrals, have flown their own national flags, under the impression that Article VII entitled them to do so. The error is therefore pardonable, and is clearly due to the natural meaning of that Article when read alone without those which precede it.

The misconception is further encouraged by the analogy furnished by the Convention of 1899 for the application of the Geneva Convention to maritime warfare, which in Article V lays down that—

Peace Conference at the Hague, Blue Book, p. 351.

"All hospital ships shall make themselves known by hoisting, together with their national flag, the white flag with a red cross provided by the Geneva Convention."

Here the national flag is undoubtedly the flag of the nation which provides the hospital ship, whether she be neutral or belligerent, and it is not unreasonable to arrive at the inference that the wording of Article VII of the original Convention was capable of a similar interpretation. Its limitation to belligerents only becomes evident when the extent of the applicability of the whole Convention is studied.

From the diversity of views entertained on the interpretation of the Geneva Convention, it is clear that the actual wording of the Articles is wanting in precision; and the numerous attempts which have been made during the last thirty-six years to procure emendation, indicate that the text, both in principle and in extent, leaves much to be desired, and affords openings for serious abuses.

Among the many complaints which have been presented against the Convention of 1864 the following may be mentioned:—

1. The preamble and the Articles are ambiguous. In the mind of the public, and sometimes of the official authorities, there is no distinction drawn between the Red Cross Societies and the organizations entitled to use the Red Cross by the terms of the Geneva Convention between the official military medical service and the Volunteer Aid Societies—all are popularly supposed to be regulated by the Convention.

2. Red Cross Societies and Voluntary Aid Societies are not even mentioned in the Convention. At the time when it was drawn up, these Associations were extremely few in number, and were still in process of evolution. They have, in the course of the last thirty-six years, developed into wide-spread, useful, and stable organizations, constituting an important factor in the question of the care of sick and wounded; their status, rights, and duties remain still undefined, while their capabilities, their merits, and their utility eminently deserve recognition, in so far as their operation can be made to conform with the necessities of war.

3. The privileges and immunities accorded by Articles II and V upon those who attend and succour the sick and wounded are vague, indefinite, and inconvenient.

Neutrality ceases when an ambulance or hospital has no sick and wounded, while the presence of two patients is sufficient to confer it.

An inhabitant of the country who affords shelter to two wounded men has an immunity from billetting and war contributions.

4. The provisions of Articles I and VI are vague, and might become embarrassing to a military commander.

At Lindley, in the Orange Free State, on the 17th July, 1900, Captain Longhurst, R.A.M.C., was in charge of a British Hospital, and had stored in his office a number of arms and accoutrements belonging to patients in hospital, in accordance with paragraph 1726 of the Queen's Regulations for the Army.

The British troops left. The Boers entered the town and found arms in the hospital, accused Captain Longhurst of violating the Geneva Convention, and threatened to have him tried and punished for having arms concealed under cover of the Red Cross, in contravention of Article I of the Geneva Convention.

They also objected to the employment as hospital orderlies, wearing the Red Cross arm badge, of combatant soldiers who had recently been fighting.

British ambulance waggons, moreover, carry arms as part of their equipment, and this practice might also be alleged to be an infraction of the Convention.

It is evidently desirable that a clear understanding on these points should be arrived at by modifying the Convention or the Regulations.

5. The Red Cross flag and armlet prescribed by Article VII are, in most countries, not protected by legislation, and their employment is open to serious abuse. Authority to use the Red Cross flag or badge should be granted only by specified Naval and Military Departments. Unauthorized use should be subjected to heavy penalties; and improper, fraudulent, or dishonourable employment of the flag or badge by authorized persons should be subject to severe punishment.

Up to the present time there have been frequent instances of misuse, and, so far at any rate as this country is concerned, no means of repressing them at present exist.

The Geneva flag has been used as a trade-mark on provisions, as an advertisement by tradesmen, by Voluntary Societies having no connection with the Red Cross, by the organizers of dishonourable stratagems, by spies, by marauders, and by irresponsible individuals.

Until an exclusive right to use and control is conferred upon Her Majesty's Government, and legal penalties for infraction instituted, there can be no check upon these abuses. The legislation should cover the whole Geneva Convention, as well as Red Cross and Aid Societies.

Annex II.

List of Books and Papers accompanying Letter from the Foreign Office to the Law Officers of the Crown, dated December 6, 1900.

1. Geneva Convention, 1864.
2. Geneva Conference, 1868.
3. Brussels Conference, 1874.
4. Peace Conference (Hague), 1899.
5. Étude sur la Convention de Genève, par G. Moynier, 1870.
6. La Convention de Genève pendant la Guerre Franco-Allemande, par G. Moynier, 1873.
7. La Convention de Genève au point de vue historique, par C. Lueder, 1876.
8. Report of 6th International Conference of Red Cross Societies at Vienna, by Surgeon-Major Macpherson, 1898.
9. Congrès International des Œuvres d'Assistance en temps de Guerre. Paris, 1900.
10. Memorandum, Baron Gericke, dated July 28, 1900.
11. Foreign Office to War Office, August 17, 1900.
12. War Office to Foreign Office, October 30, 1900.

No. 4.

[February 7, 1901.]

Foreign Office to the Attorney-General.

Foreign Office, February 6, 1901.

Sir,

Commission to examine Claims of people expelled from South Africa.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers, as marked in the accompanying list, on the subject of a Commission which it is proposed to appoint for the purpose of investigating the claims of foreigners expelled from South Africa by the British authorities.

The circumstances which have led to the proposed appointment of the Commission in question are briefly as follows:—

In September last (Paper A) the German Embassy informed this Department that they would have to present various claims for compensation on behalf of Germans expelled from South Africa, and suggested that it might be convenient to deal with these claims by a Mixed Commission on the lines of the Anglo-German Commission which had so successfully settled the German claims in connection with the seizure of the German ships "Bundesrath" and "General."

It did not appear, however, to Her Majesty's Government (Paper B) that the two cases were parallel; for while it is admitted that it is for a Prize Court—and therefore for an international Tribunal—to decide whether there is ground for arresting a neutral ship on suspicion of carrying contraband, it never can be admitted that any authority other than British can decide whether the military have just ground for expelling aliens from a territory owned or occupied by Great Britain.

Letters were accordingly drafted to the War Office and Colonial Office (Paper C) drawing attention to the claims which had been received from various foreign Governments whose nationals had been expelled from South Africa, explaining the manner in which Lord Lansdowne considered that those claims could best be dealt with, and asking those Departments for any observations they might have to offer on the course suggested.

After some correspondence (Papers D to M inclusive) both Departments eventually expressed their general concurrence in the draft instructions to the President of the Commission which were inclosed in the letter from this Department of the 9th January (Paper G). The Colonial Office, however, suggested that the 5th paragraph should run as follows:—

"On the conclusion of your investigations in South Africa you should return to England, and, after taking any further evidence in London which you may find necessary, you should furnish His Majesty's Government with a report on the results at which you have arrived, in which should be included the amounts at which you assess the damages in such cases as you think call for any, together with the particulars which have enabled you to arrive at the various assessments. The principle which should guide the Commission in these assessments should be that of fair and reasonable compensation for direct damage, excluding indirect or consequential damages," while the War Office further proposed that, for the expression in the 1st paragraph of those instructions "foreigners in consequence of their expulsion," &c., should be substituted the following clause:—

"Persons of various nationalities in consequence of alleged arbitrary treatment by the British military authorities in South Africa, in the way of arrest, detention, expulsion, or deportation; and in respect of suffering, loss, and damage to person, property, or business occasioned by such treatment."

Lord Lansdowne is prepared to adopt the amendment suggested by the Colonial Office in the letter above referred to, but he is inclined to think that the additions proposed by the War Office, especially the words "and in respect of suffering, loss, and damage to person, property, or business occasioned by such treatment," might be taken to mean that His Majesty's Government are willing to admit claims for indirect or consequential damages—which is not the case.

I am to request you to take the accompanying papers into your consideration, and to favour his Lordship, at your early convenience, with your views as to whether the amendment suggested in the War Office letter of the 30th ultimo is liable to bear the above interpretation, and, if so, what way you would propose that it should be altered with a view to avoiding all misapprehension as to the intentions of His Majesty's Government on the subject.

Lord Lansdowne would also be glad to be favoured with any general observations you may have to offer on the draft instructions to the President of the proposed Commission, as well as on the various suggestions that have since been made by Mr. Underdown, in regard to its *modus operandi* (Paper O), especially on the proposal that it should commence its sittings in London instead of in South Africa.

You will see from the Papers marked (P), (Q), (R), and (S) that the German Government have expressed a wish that a German legal specialist should be allowed to appear before the Commission as counsel to advocate individual German claims, and that His Majesty's Government have assented to their request.

I have, &c.
(Signed) FRANCIS BERTIE.

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List of Papers.

(A.)	Sir T Sanderson's Memorandum	September 22, 1900.
(B.)	Minutes and Memoranda on Count Hatzfeldt's proposal, November–December, 1900.	
(C.)	To War Office and Colonial Office	December 8, „
(D.)	War Office	December 13, „
(E.)	Colonial Office	December 15, „
(F.)	To ditto	January 2, 1901.
(G.)	Ditto	January 9, „
(H.)	To War Office	January 9, „
(I.)	Colonial Office	January 17, „
(J.)	To ditto	January 18, „
(K.)	Colonial Office	January 25, „
(L.)	To War Office	January 29, „
(M.)	War Office	January 31, „
(N.)	Ditto	January 30, „
(O.)	Mr. Underdown	February 4, „
(P.)	Mr. Bertie (Memorandum)	January 5, „
(Q.)	To Colonial and War Office	January 10, „
(R.)	Colonial Office	January 25, „
(S.)	War Office	January 31, „
(T.)	To Count Hatzfeldt	February , „

N.B.—(S) and (T) are letters of an unimportant nature, dealing with the appearance of Dr. Sieveking before the Commission.

Report.

In my opinion it is not desirable to insert in the reference the paragraph proposed by the War Office. It appears to me that it may be open to the objection stated in the letter now under reply, and that the claims for investigation should be confined to those made on behalf of foreigners. Perhaps after the words "foreigners" in the first paragraph of the reference it might be desirable to insert the words "subjects of friendly Powers," as, of course, it is not contemplated that any claims by subjects of the late Republics should be investigated.

I suggest, for consideration, that it might be well to formulate the matters into which the Commissioners are to inquire. As the draft reference stands at present, the Commissioners are to assume that the General has an absolute right to expel, during hostilities, from the theatre of war any person whose presence is *considered by him* to be dangerous. Taken strictly, this would exclude any inquiry by the Commissioners as to whether the expulsion was, under the circumstances, unreasonable; but the papers before me seem clearly to intimate that it is the intention of His Majesty's Government that this line of inquiry should be open to the Commissioners.

It might be desirable also to direct the Commissioners to assume that every State has, by international law, the right to expel aliens whose presence is considered dangerous, as it is possible that it may be desirable to have recourse to this principle in support of some of the deportations from Cape Colony. I do not overlook the fact that Sir J. Ardagh, in his very able Memorandum, gives reasons for considering the whole of South Africa to be within the theatre of war, but questions may be raised upon this.

I would suggest the insertion, after the third paragraph, of a paragraph in some such terms as the following:—

"You are to investigate whether the power of expulsion is shown in any cases to have been exercised unreasonably or capriciously, or whether it was attended in its exercise with the infliction of any unnecessary hardship."

I think that the alteration in the last paragraph proposed by the Colonial Office may be accepted, subject to one observation. We can hardly exclude *all* consequential damage, inasmuch as the consequences may be the immediate result of the act complained of. I would suggest that the last words of this paragraph should run as follows:—

"Compensation for direct damage, excluding consequential damages, except for natural and proximate consequences of the act complained of."

The whole subject of remoteness of damage has given rise to a great deal of discussion in the Courts of this and other countries, and it is extremely difficult to state with completeness and accuracy the true principles within the compass of a short sentence.

The words above suggested have often been used in legal decisions, and will, I think, be sufficient to intimate to the legal member of the Commission that the principles of English law, excluding remote damages, are to be applied.

One or two observations occur to me upon Mr. Underdown's suggestions.

The power to give full indemnity to witnesses could be conferred only by Statute.

I do not think that it is desirable to make the Chairman's opinion final on points of law. It may very often be difficult to say precisely where fact ends and law begins, and I think it would be much better not to attempt any distinction of this sort, but to trust to the deference which the other members of the Commission will naturally pay to the opinions of the legal member on questions of law.

I think the clause giving power to the Commissioners to refer questions of law to to the Law Officers of the Crown is very objectionable. The Commissioners ought to decide for themselves, and it will be for the Government, with the assistance, if necessary, of the advice of the Law Officers, to decide how far they will act on their recommendation.

(Signed) R. B. FINLAY.

Royal Courts of Justice,
February 7, 1901.

Note.—For draft instructions to the President of the Commission, see Report of the 26th February.

No. 5.

[February 26, 1901.]

Foreign Office to the Attorney-General.

Foreign Office, February 19, 1901.

Claims of Foreigners expelled during Boer war: Instructions to Commission.

Sir,

BY direction of the Marquess of Lansdowne, I have the honour to transmit to you a draft, amended in accordance with the suggestions contained in your letter of the 7th instant, of the communication which his Lordship proposes to address to the President of the Commission to investigate the claims to compensation which have been made by various foreigners, in consequence of their expulsion by the British military authorities from the Transvaal and the Orange River Colony respectively.

I am to request you to inform his Lordship whether this draft, as now amended, meets with your approval.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

As altered and initialled by me, I approve the amended draft Report.

(Signed) R. B. FINLAY.

Royal Courts of Justice,
February 26, 1901.

Annex.

Draft of Letter to President of Commission.

Foreign Office, February , 1901.

Sir,

I AM directed by the Marquess of Lansdowne to inform you that you have been chosen by His Majesty's Government for the position of President of the Commission which it has been decided to appoint for the purpose of investigating the claims to compensation which have been made by various

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foreigners, subjects of friendly Powers, in consequence of their expulsion by the British military authorities from the Transvaal and the Orange River Colony.

This Commission will, beside yourself, consist of A. (military officer), B. (civilian), C. (military officer), D. (civilian), and its business will be to investigate these claims, inquiring carefully into the grounds for each expulsion, ~~with a view to ascertaining if it was justified, and, if so, how and why~~.

~~The principle by which you will be guided in~~ *You are to assume, for the purposes of* this inquiry, ~~is~~ that a General commanding an army in the field has an absolute right to remove or expel, during the continuance of hostilities, from any place within the theatre of war, all persons whose continued presence therein is considered by him to be dangerous, prejudicial, or inconvenient in connection with his military operations, and to deport such persons to such a distance from the theatre of war as shall be necessary effectually to prevent their speedy return to it.

You are further to assume that every State has by international law the right to expel aliens whose presence is considered dangerous.

You are to investigate whether the power of expulsion is shown in any cases to have been exercised unreasonably or capriciously, or whether it was attended in its exercise with the infliction of any unnecessary hardship *in any such cases whether a claim for compensation is established.*

You will open your sittings in London; and after investigating such claims as are brought before you here, you will proceed to South Africa with a view to continuing your investigations on the spot.

The various military and civil authorities of the places at which you may see fit to prosecute your researches will be instructed to give you every facility for carrying out the task intrusted to you.

On the conclusion of your investigations in South Africa, you should return to England, and after taking any further evidence in London which you may find necessary, you should furnish His Majesty's Government with a Report on the results at which you have arrived, in which should be included the amounts at which you assess the damages in such cases, if any, as you think, call for compensation, together with the particulars which have enabled you to arrive at the various assessments. The principle which should guide the Commission in these assessments should be that of fair and reasonable compensation for direct damage, excluding consequential damages except for natural and proximate consequences of the act complained of. In the event of any of the claimants, or their respective Governments, to whom your awards will in due course be communicated, not being content with your award, you will be expected to examine their further representations, and advise His Majesty's Government as to the reply which should be returned to them.

Mr.   has been appointed Secretary to the Commission, for the purpose of seeing to the discharge of such clerical work as may be found necessary in the course of your Mission, and generally facilitating your task.

The financial arrangements are dealt with in a separate despatch.

I am, &c.

(Initialled)   R. B. F

No. 6.

[June 5, 1901.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,   *Foreign Office, May 14, 1901.*

Nationality of V. Verby and children in the East Africa Protectorate.

I HAVE the honour, by direction of the Marquess of Lansdowne, to inclose, for your consideration, a despatch, dated 30th January of last year, from Sir Arthur Hardinge, at that time Her late Majesty's Agent and Consul-General at Zanzibar, in which certain questions are raised relative to the national status (*a*) of M. Vladimir Verby, a lay missionary in the service of the Church Missionary Society at Taveta, in British East Africa, who is stated to be a Bulgarian by birth and to have been recently married to an English lady; also (*b*) of any children, born in the Protectorate, being the issue of such marriage.

The first question put by M. Verby, according to Sir A. Hardinge's despatch, was whether his residence in a territory which, "though not nominally, is for all practical purposes a part of Her Majesty's dominions," could not be regarded as equivalent to residence in a British Colony. In connection with this inquiry reference is made to the case of a fugitive from justice in German East Africa who had sought an asylum in the adjoining British Protectorate. The facts of this case will be explained briefly at a later stage of this letter.

It seems probable, from the context, that M. Verby was under the impression that residence anywhere in "Her Majesty's dominions" would qualify him for naturalization under the Act of 1870 (33 Vict., cap. 14). One of the conditions precedent, however, to naturalization under that Act is a residence of five years in the United Kingdom, which obviously could not be fulfilled by residence either in a British Protectorate or in a British Colony.

Whether residence in the East Africa Protectorate might or might not be considered, for the purpose of colonial naturalization, equivalent to residence in any Colony, is technically a question of the construction of the law of the particular Colony concerned. As a matter of fact, however, it may be safely assumed that no Colony has, by its municipal legislation, prescribed that residence in the East Africa Protectorate is equivalent to residence in the Colony for the purposes of complying with the conditions precedent to naturalization, the operation of which would, in no circumstances, extend beyond the limits of the Colony itself.

No machinery has as yet been established by means of which an alien can become naturalized in the British East Africa Protectorate, or, so far as Lord Lansdowne is aware, in any other British Protectorate, with the exception of Southern Rhodesia, for which special provision was made by the Orders in Council of the 7th March and 19th May, 1899. It would seem, therefore, that M. Verby's residence in the Protectorate is, at present, of no avail for the purpose of his acquiring either British or British colonial naturalization, and Lord Lansdowne proposes, with your concurrence, to instruct His Majesty's Agent and Consul-General at Zanzibar to inform him to that effect.

The second question asked by M. Verby involves consideration of a more complex and far-reaching character. He inquires whether children born of his marriage in the British East Africa Protectorate would be British subjects, and, if not, what their nationality would be, assuming that he takes no steps to register them, or to procure their registration as Bulgarian or Ottoman subjects.

No provision is made in "The East Africa Order in Council, 1897," for compulsory registration, but, even were such the case, it is not apparent how the national status of either M. Verby or his children could be affected thereby. What the nationality of the children may be in contemplation of Ottoman or Bulgarian law is immaterial; the real issue to be determined is whether they can be said to be British subjects *jure soli*. The answer to this depends presumably upon the solution of two questions, viz.:—

(*a.*) Does His Majesty, by his Representatives, exercise, in fact, dominion and sovereignty in such portion of the territory of the British East Africa Protectorate as lies outside the mainland portion over which the Sultan of Zanzibar still retains his sovereign rights; and, if so—

(*b.*) Can it be properly said that children born on such territory are, at common law, British subjects *jure soli*, by virtue of their birth in the King's dominions.

As you are aware, the principles involved in the first of these questions were discussed at considerable length in the trial of Regina *v.* Jameson. A paper summarizing the contentions of the Crown, and the arguments advanced against them on that occasion, is inclosed for convenience of reference. The accompanying volumes of the "Map of Africa by Treaty" contain all the documents of importance relating to the early history and constitution of the East Africa Protectorate, such as the various Concessions granted to the British East Africa Company by the Sultan of Zanzibar; the Royal Charter granted to the Company in 1888; the various Treaties made by the Company with native Chiefs; the transfer by the Company of the territory which it administered to the British Crown in 1895. The East Africa Order in Council of 1897 is likewise inclosed, together with a map of the Protectorate (packet A). These papers will enable you to form an opinion as to whether His Majesty exercises "dominion and sovereignty" in the territory in question, should you consider it necessary to determine that point before expressing an opinion on the second question, which is really the crucial one.

It may now be convenient to refer briefly to the Lohse incident, to which Sir Arthur Hardinge alludes, although it only indirectly affects the specific questions raised in his despatch. In August 1897, Sir Arthur Hardinge reported that the German authorities of the adjoining dependency had requested the surrender of a native convict, accused of murder, who had escaped from the German gaol at Moshi and taken refuge at Taveta. He inquired if he might surrender the fugitive in the absence of an Extradition Treaty between the German dependency and the British Protectorate. The papers relating to this case are inclosed in a separate packet marked (B) and I am to invite your special attention to Lord Salisbury's Minute of the 19th August. You will observe from the telegram to Sir Arthur Hardinge of the 30th August, that, as an executive act, Lord Salisbury stated that he was prepared to maintain that British East Africa is "part of Her Majesty's dominions" for the purpose of the operation within the limits of the Protectorate of "The Extradition Act of 1870," at least in so far as regarded persons over whom the Courts had

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jurisdiction under the new Order in Council. It is to this instruction that Sir Arthur Hardinge now alludes. A question involving somewhat similar considerations has recently arisen in Southern Nigeria (see packet C).

The present reference has been forwarded to the Colonial Office for Mr. Secretary Chamberlain's concurrence and for any additional observations which he might wish to offer. The correspondence with that Department, together with a Memorandum by the Lords of the Judicial Committee of the Privy Council in the case of Staples *v.* the Queen, of the grounds of their Report to Her late Majesty the Queen, dated the 27th January, 1899, which has been obtained for your confidential information, will be found in packet (D).

I am to request that you will take these Papers into your consideration, and that you will favour Lord Lansdowne with your opinion:—

1. As to whether you concur in the instructions which it is proposed to send to His Majesty's Agent and Consul-General at Zanzibar in reply to the first question raised in Sir A. Hardinge's despatch.

2. As to whether any children of M. Verby's which may be born in the East Africa Protectorate, but outside the Sultan's territory, can be held to have been born in the King's dominions, and, as such, to be natural born British subjects *jure soli*.

His Lordship, while desirous of confining the comments which are now submitted to you with the inclosed Papers as far as possible to the specific questions raised by Sir Arthur Hardinge, would nevertheless be glad to be favoured with any general observations you may think well to offer, with regard to the national status of children born in British Protectorates.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

PACKET (A).

Sir A. Hardinge	(No. 1. Treaty)	January	30, 1900.
Hertslet's Map of Africa, 3 vols.			
Map of British East Africa Protectorate.			
"East Africa Order in Council, 1897."			

PACKET (B).

Sir A. Hardinge	(Telegraphic)	August	10, 1897.
Ditto	(Telegraphic)	August	14, „
Mr. Maycock (Memorandum)		August	17, „
Lord Salisbury (Minute)		August	19, „
Summary of Arguments in Regina *v* Jameson (printed Memorandum) September 1897.			
Sir A. Hardinge	(Telegraphic)	August	27, „
To ditto	(Telegraphic)	August	30, „
Sir A. Hardinge	(Telegraphic)	September	2, „
To ditto	(Telegraphic)	September	3, „

PACKET (C).

Colonial Office	February	16, 1900.
To ditto	February	27, „

PACKET (D).

To Colonial Office	April	9, 1900.
Colonial Office	May	2, 1901.
Confidential Memorandum of Judicial Committee of Privy Council	January	27, 1899.

Report.

1. We concur in the instructions which it is proposed to send to His Majesty's Agent and Consul-General at Zanzibar in reply to the first question raised in Sir A. Hardinge's despatch.

2. We are of opinion that the British East Africa Protectorate cannot be considered as a portion of His Majesty's dominions so as to confer upon the children of aliens who may be born there the status of British subjects.

The Order in Council of 1897, under which the administration of the Protectorate is carried on, is expressly framed under the Foreign Jurisdiction Act, which is only applicable to territories outside His Majesty's dominions.

It may well be that such territories should be treated as within His Majesty's dominions for the purposes of Extradition Treaties and of the Foreign Enlistment Act as these involve relations with other Powers, and the territories are in fact under His Majesty's control. But they have not for all purposes been made part of His Majesty's dominions.

It has not yet been thought expedient to confer the status of British subjects upon the natives of Protectorates. Whether the time has come for such an exercise of sovereignty over all, or any, of the Protectorates as would make them, for all purposes, a portion of His Majesty's dominions is a question of policy on which we are not called upon to advise.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 5, 1901.

No. 7.

[June 11, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 23, 1901.

Gentlemen,

War in South Africa: Censorship of telegrams. Claims for compensation.

I HAVE the honour, by direction of the Marquess of Lansdowne, to inclose, for your consideration, the papers noted in the accompanying lists marked (A) and (B) respectively, which relate to claims for compensation arising out of telegrams stopped or delayed by the military censorship which it was found necessary to establish at Aden and elsewhere during the military operations in South Africa.

The origin and history of this censorship is fully set out in the accompanying printed Secret Memorandum.

The Articles of the International Telegraph Convention on which it was based are cited in paragraph 2. The manner in which its establishment was first notified to foreign States is explained in paragraph 5. The actual text of that notification is given in Appendix I, page 19; and the subsequent notices issued from time to time, through the channel of the International Bureau at Berne, are collected in Appendix II, pp. 20–26 of the same Memorandum.

The two specific questions on which Lord Lansdowne desires to be favoured with your opinion, are as follows:—

1. The liability of His Majesty's Government to pay compensation for loss occasioned in consequence of a message dispatched on the 22nd November, 1899, from Lourenço Marques to Messrs. Ringel, of Hamburg, having been held up by the Military Censor at Aden, which action the German Government maintain constitute an infraction of the VIIth Article of the International Telegraph Convention.

2. The liability of His Majesty's Government to pay compensation to the Eastern Telegraph Company in respect of certain telegrams which have passed over their lines, but which were stopped, delayed, deleted, or transposed by the Military Censors at Aden and elsewhere.

The first of those questions is referred to in paragraph 21, p. 13, of the printed Memorandum, and the whole of the correspondence relating to it is put up in Packet (A).

It will be seen, on reference to Lord Salisbury's note to Count Hatzfeldt of the 23rd October last, that His Majesty's Government advanced the contention that their right to detain or delay telegraphic messages rested upon Article VIII rather than upon Article VII of the Telegraph Convention. That the IIIrd Article of the same Convention expressly declared that no responsibility is accepted on account of the Service of International Telegraphy; and that, therefore, there had been no infraction of the Convention and no ground for claiming compensation. The grounds on which the German Government dissent from this view are stated in Count Hatzfeldt's note of the 16th March last. This last note was referred for the observations and opinion of His Majesty's Postmaster-General, and I am to direct your especial attention to Sir George Murray's letter of the 11th instant, and to the views expressed therein.

With regard to the second question, I am to refer you to the correspondence in Packet (B), and to the views of the Post Office also contained in Sir G. Murray's letter of the 11th instant.

I am to request that you will take these papers into your consideration, and that you will report to Lord Lansdowne—

1. Whether you consider the views in the Post Office letter of the 11th May, so far as they relate to the German claim, and as qualified by Mr. Lamb's semi-official letter to Mr. Bertie of the 13th instant, to be well founded and such as may properly form the basis of a reply to Count Hatzfeldt's last note.

2. Whether you consider the views expressed in the same letter, so far as they relate to the claim of the Eastern Telegraph Company, to be right and proper in the circumstances.

Lord Lansdowne will also be obliged if you will favour him with your opinion generally on the papers sent herewith.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)

[*]International Telegraph Convention.		
[†]Memorandum (Mr. Maycock)	(Secret)	November 1900.
Baron Eckhardstein		September 21, ,,
To Post Office		October 4, ,,
Post Office		September 17, ,,
To Count Hatzfeldt		October 23, ,,
Count Hatzfeldt		March 16, 1901.
To Post Office		March 28, ,,
Post Office		May 11, ,,
Ditto	(Private)	May 13, ,,

(B.)

War Office		March 28, ,,
To Post Office		April 9, ,,
Post Office		May 11, ,, } See (A).
Ditto	(Private)	May 13, ,, } See (A).

Report.

We think the action of His Majesty's Government should be justified under Article VIII, and that the view taken by the Postmaster-General as to the transmission of telegrams "at the sender's risk" is sound. We do not think that Article III can be relied on for this purpose; but in all other respects we think that the Post Office letter of the 11th May, as qualified by Mr. Lamb's, may properly form the basis of a reply to Count Hatzfeldt's last note.

2. Yes.

Nothing further occurs to us.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 11, 1901.

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[*] International Telegraph Convention and Service Regulations, Budapest Revision, 1896. Foreign Office Library Folio No. 1444.

[†] Confidential No. 7374.

No. 8.

[June 25, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 13, 1901.

Gentlemen,

Nationality of Germans in late Orange Free State.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted on the accompanying list, which relate to the nationality of certain persons who were Burghers of the late Orange Free State.

The circumstances of the case are briefly as follows:—

Persons of German nationality had in many cases obtained the Burghership of the Free State and were resident within what had been the territory of that Republic at the date of its annexation to the British dominions.

The Proclamation of the 3rd September, 1900 (Document A) by Field-Marshal Lord Roberts announcing the annexation of the Orange Free State contained the following provision:—

"All persons residing in the Orange River Colony, heretofore Burghers of the Orange Free State, have . . . . . become the subjects of Her Majesty except those Burghers who were attached to some commando prior to the annexation, and who have continuously since then been in arms against Her Majesty."

A Memorandum of the 16th March last from the German Embassy (Document B), stated that the attention of the German Government had been called to this Proclamation, by which numerous Germans were turned, without their concurrence, into British subjects, and that the Imperial Government would therefore be grateful if the opportunity could be offered to the Germans affected by the Proclamation of refusing in some way to accept the status of British subjects.

It is in regard to this request that your advice is now sought.

On receipt of this Memorandum His Majesty's Ambassador at Berlin was requested to obtain the opinion of the Legal Adviser to the Embassy as to whether Germans who had become Burghers of the Orange Free State could in any, and if so, in what, circumstances, retain their German nationality. The report has been received and will be found in the inclosed despatch from Sir F. Lascelles, No. 57, Africa, of the 22nd ultimo (Document C). According to this report German nationality is lost:—

1. By dismissal on application. This request for dismissal can only be refused when certain conditions as to the fulfilment of the compulsory military service in Germany have not been complied with.

2. By decision of the authorities. This is a dismissal without application, by disobeying the command to return home in case of war and by entering without permission the State service of a foreign Power; and, with certain exceptions which appear however to be of no great importance for the purposes of the present reference.

3. By living uninterruptedly for the period of ten years in a foreign country.

A German does not, therefore, according to the opinion of Justizrath Schneider, lose his German nationality by becoming a Burgher of the late Orange Free State unless one or other of the above-mentioned conditions is fulfilled.

There appears to be no fixed and universally recognized rule of international law with respect to the acquisition of a new nationality on the conquest or cession of the whole or part of a State.

Definite public announcements as to the nationality of subjects of a State the whole of which has been annexed by another State, do not appear to be usual. This is probably due to the fact that as the old nationality ceases to exist, there can be no question of making arrangements whereby certain classes of persons may retain it. It has no doubt been assumed that all persons of the old nationality, whether domiciled in the territory of the old State or not, acquire the nationality of the conquering and annexing State; the most that the latter can do is not to hinder its new subjects from acquiring the nationality of some third State. The following examples may be cited: the conquest and annexation of Geneva, of Mühlhausen in 1792, and of the Netherlands by France in 1795, of Hanover and Hesse-Cassel by Prussia in 1866, of Burmah by Great Britain in 1886, and the annexation of the Ionian Islands to Greece in 1864.

In none of these cases does any specific arrangement appear to have been made

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under which members of the annexed populations could avoid accepting the nationality of the annexing State. In the cases of the annexations of Mühlhausen and of Geneva, natives were declared to be born Frenchmen by the fact of annexation, but the liberty of emigration was granted to them. Any such specific grant is perhaps of little practical value where the whole State is annexed; for, from the moment at which conquest and annexation have been actually accomplished, the nationality of the annexing State is the only one available, and a subject or citizen of the annexed State who does not wish to adopt the nationality of the annexing State must, before he can logically reject or renounce such nationality, find some third State willing to adopt him as a subject. In the meantime, however, he must apparently of necessity be of the conqueror's nationality, or of none at all.

Two particular cases of considerable interest in this connection may here be mentioned:—

1. The case of Count Platen Hallemund, a Hanoverian subject, a brief account of which is given in a letter to the London "Observer" of the 19th ultimo (Document D).

From this letter it appears that Count Platen Hallemund migrated to Austria with the dispossessed King of Hanover, but was cited before a Berlin Court on a charge of high treason alleged to have been committed by him abroad as a subject of the King of Prussia.

It was argued by eminent jurists that the Count's emigration from Hanover at the time of the annexation had prevented the transfer of his allegiance to Prussia; but this plea was overruled and he was, according to the letter in the "Observer," sentenced *in contumaciam* to penal servitude.

The records of this Department do not contain any report of this case, but it is not perhaps rash to suppose the Court to have held that, Hanoverian nationality having ceased to exist, the Count must necessarily have become invested with Prussian nationality, and that, from the point of view of Prussian law, he necessarily continued to be a Prussian subject until such time as he acquired another nationality in such a manner as to divest him of Prussian nationality.

2. The case of Chong Khan, who had been a subject of the King of Burmah, before the annexation of that State by Great Britain; this case is set out in the reference recited in the Report of the 24th March, 1888 (Document E), from your predecessors in office.

This man was resident out of Burmah, namely, in Siam, at the time of the annexation; but the Report mentioned advises that he had nevertheless become a British subject.

The whole of the Orange Free State has been annexed by Great Britain and the case appears, therefore, to be strictly similar to those mentioned above.

It is doubtful whether for the present purpose any useful analogies can be drawn from the consideration of cases in which a portion only of a State has been annexed, and the nationality of that State has not been extinguished by its entire absorption within the dominions of the annexing State. The radical difference between cases of partial and of entire annexation is that, where a part only of a State is annexed, the old nationality survives, and it becomes necessary to consider what classes of the persons who were before the annexation invested with that nationality, become invested after that event with the nationality of the annexing State.

A Memorandum which has been prepared in this Office, and which deals with the more important cases in recent times of partial absorption, is inclosed for your information and consideration should you so desire, in connection with the point more immediately under discussion (Document F).

The general question of the transfer to Great Britain of the allegiance of the Burghers of the late Orange Free State has already been before you and formed the subject of your Report of the 17th May, 1900 (Document G), in which you advised the Secretary of State for the Colonies that the "inhabitants" of the State would become British subjects upon annexation, but that it had been usual in recent times to allow those who did not desire to become subjects of the conqueror to leave the conquered territory within a reasonable time and that you thought this course would properly be followed in the present case.

It only remains to consider the special case of persons who are subjects of the annexed State or the annexed territory in virtue of naturalization. A case of this nature formed the subject of your Report of the 22nd October last, in which you advised that no distinction should be drawn between the case of a natural-born and that of a naturalized citizen.

The case of the persons on whose behalf is made the request contained in the above-mentioned German Memorandum is, therefore, that of naturalized subjects of a State the whole of which has been annexed, and whose nationality derived from that State has ceased to exist, but whose nationality of origin has not, according to the law of the country of origin, been lost to them.

I have the honour to request you to take the above-mentioned observations and papers into your consideration and to favour Lord Lansdowne with your opinion:—

1. As to what, from the stand-point of international law, are the legal merits of the application made in the Memorandum of the 16th March last from the German Embassy.

2. As to whether there is any objection from a legal point of view to releasing from their obligations under the Proclamation such Burghers of German origin as formally express their desire not to accept British nationality, on condition that they no longer remain in the British dominions in South Africa, and

3. Generally.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Proclamation by Lord Roberts	.. ..	September 3, 1900.
(B.)	Memorandum from the German Embassy	.. .. ..	March 16, 1901.
(C.)	Sir F. Lascelles	.. .. (No. 57. Africa)	May 22, „
(D.)	Extract from the "Observer" of	.. ..	May 19, „
(E.)	Law Officers	.. ..	March 24, 1888.
(F.)	Memorandum.		
(G.)	Law Officers to Colonial Office	.. ..	May 17, 1900.

Reference to the sources of information whence some of the statements in the reference have been drawn;—

Cogordan: "La Nationalité au point de vue des Rapports Internationaux," 1879, pp. 295–370.
This work contains an especially full account of the correspondence respecting the nationality of persons connected with Alsace-Lorraine.
(Useful Statement of Theory, p. 299.)
Despagnet: "Précis de Droit International Privé," 1898, pp. 296–314.
"Revue Générale de Droit International Public," vol. vi, 1899, pp. 625–628. Nationality of persons connected with the late Spanish Colonies.
"Revue Générale de Droit International Public," vol. vii, 1900, pp. 188–214. Nationality of persons connected with the districts annexed to Servia in virtue of the Treaty of Berlin.
(Useful Statement of Theory, p. 194, § 2.)
Calvo: "Droit International Théorique et Pratique," 1888, §§ 2466–2477.
Hall: 1880, pp. 494, 495.

Report.

1. We are of opinion that the application made by the German Embassy in the Memorandum of the 16th March, 1901, is reasonable and in accordance with international usage. As we advised in our Report of the 17th May, 1900, it has been usual in recent times to allow those who do not desire to become subjects of the conqueror to leave the conquered territory within a reasonable time.

2. We see no objection to His Majesty's Government making an announcement that Burghers of German origin who do not desire to become British subjects can show their election not to do so by making a declaration that they desire to retain their German nationality and transferring their domicile to German territory, and we think that under existing circumstances such conditions would be reasonable and proper.

Such a condition would not be open to the same objections as the one suggested, viz., that such Burghers should no longer remain in the British dominions in South Africa, and would be in accordance with the terms agreed to by Germany on the cession of Alsace-Lorraine.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 25, 1901.

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[Colonial Office.] *No. 8 A.*

[June 29, 1901.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, June 29, 1901.

Sir,

Extradition Treaties between British and foreign Protectorates.

WE were honoured with your commands, signified to us in the letter of Mr. Antrobus of the 15th instant, stating that he was directed by you to inform us that certain questions had arisen with reference to the surrender from British Protectorates of fugitive criminals from Foreign Protectorates, and that he was to transmit to us for our consideration a correspondence which had passed between the Colonial Office and the Foreign Office on the question.

That it would be observed that it had been suggested that the local authorities of the British Protectorates in West Africa should be empowered to conclude Agreements with the adjoining Colonies or Protectorates of France and Germany for the mutual surrender of such persons as came under their respective jurisdictions, such Agreements being drawn up, as far as possible, on the lines of the Extradition Treaties already existing between the United Kingdom and France or Germany.

That you were advised that the Extradition Acts did not apply to British Protectorates inasmuch as their operation appeared to be confined to His Majesty's Dominions. That it would therefore be necessary to provide by legislation in the British Protectorates concerned for giving powers to arrest and hand over offenders from French or German Colonies or Protectorates.

That Mr. Antrobus was to inclose copies of Reports* received from the Law Officers of the Crown with reference to this matter, and it would be observed that on the 21st of November, 1893, our predecessors, Sir Charles Russell and Sir John Rigby, reported that it would not be possible by Order in Council under the Foreign Jurisdiction Act to make Extradition arrangements between the territory within the field of operation of the British South Africa Company and the Orange Free State, and the South African Republic, and that it would seem to follow from this opinion that it would be equally impossible to give the administrative powers required, inasmuch as the authority to legislate in British Protectorates was given by Order in Council passed under the provisions of the Foreign Jurisdiction Act.

That Mr. Antrobus was, however, to point out that in their Report of the 18th April, 1894, the Law Officers, Sir Charles Russell and Sir John Rigby, reported that it was competent to the High Commissioner by virtue of his Commission to enter into Extradition arrangements with the South African Republic, the Orange Free State and the authorities of the Portuguese possessions in South Africa, and that, if such arrangements were made, legislation should be provided by Proclamation inasmuch as the Order in Council of the 9th May, 1891, a copy of which was inclosed, had committed to the High Commissioner for South Africa the exercise on behalf of Her late Majesty of all her jurisdiction, including that under "The Foreign Jurisdiction Act, 1890."

That it would be observed that the powers given to the High Commissioner by that Order in Council were conferred under the provisions of the Foreign Jurisdiction Act.

That Mr. Antrobus was also to call our attention to the fact that by the Cyprus Extradition Order in Council, dated the 15th of July, 1881, a draft of which was approved by the Law Officers on the 20th of May, 1881, power was given in pursuance of the provisions of the Foreign Jurisdiction Act to hand over persons who had been accused or convicted of offences committed in foreign countries to the respective Governments of those countries.

That Mr. Antrobus was to request us to take these matters into our consideration, and to advise you—

1. Whether, in the event of Agreements being made between the authorities of British and Foreign Protectorates for the mutual surrender of fugitive criminals, it would be within the power of the legislative authority of such British Protectorates to make laws similar to the Extradition Acts to provide for the arrest, detention and surrender of such criminals.
2. Generally.

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* Nos. 200, 255, 259, and 302 in Vol. III.; 112A and 114A in Vol. IV.; 29A, 46, 59, 74, 115, and 126 in Vol. V.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

That, in our opinion, in the case of Protectorates where His Majesty claims general jurisdiction, and not merely over British subjects, and by virtue of the prerogative assumes or delegates legislative authority, it would be competent for the legislative authority of the Protectorate to make laws similar to the Extradition Acts, so as to give effect to Agreements with other countries for the mutual surrender of fugitive criminals.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

List of Papers.

Colonial Office to Foreign Office	.. .. April	6, 1901.
Foreign Office to Colonial Office	.. .. "	30, "
Colonial Office to Foreign Office	.. .. May	30, "
Law Officers to Foreign Office	.. .. April	29, 1879.
Law Officers to Colonial Office	.. .. May	20, 1881.
Ditto	.. .. July	11, "
Ditto	.. .. November	24, 1883.
Law Officers to Foreign Office	.. .. March	3, 1888.
Ditto	.. .. "	14, "
Ditto	.. .. "	1, 1893.
Law Officers to Colonial Office	.. .. November	21, "
Ditto	.. .. April	18, 1894.
Ditto	.. .. August	24, "
Ditto	.. .. "	12, 1896.
Ditto	.. .. February	3, 1897.
Order in Council	.. .. May	9, 1891.
Ditto	.. .. July	30, "

No. 8 B. [Colonial Office.]

[October 3, 1901.]

Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, October 3, 1901.

Sir,

Jurisdiction of Natal Courts over people carrying on business in the Colony.

WE were honoured with your commands signified in Mr. H. Bertram Cox's letter of the 23rd August last, stating that he was directed to request us to take into consideration, and to favour you with our Report on a proposal which had been made by the Durban Chambers of Commerce to strengthen the jurisdiction of the Natal Law Courts over persons carrying on some part of their business in that Colony but residing elsewhere.

That Mr. Bertram Cox was to transmit to us a despatch dated the 15th January, 1901, from the Governor of Natal, together with copies of an extract from a Report adopted at a General Meeting of the Durban Chamber of Commerce on the 20th November, 1900, a Minute by the Acting Chief Justice of Natal, dated the 10th December, 1900, and other papers accompanying the despatch referred to.

That on the 27th February those papers were laid before the Board of Trade, with a request that you might be furnished with their observations thereon.

That on the 2nd August the Board forwarded their observations, transmitting therewith copies of an opinion by Mr. Muir Mackenzie, dated the 22nd April, a Memorandum by the Inspector-General in Bankruptcy, dated the 25th April, and a further opinion by Mr. Muir Mackenzie, dated the 29th May.

That Mr. Bertram Cox was to request us to take the above-mentioned papers into our consideration, and to Report:

1. Whether we concurred generally in the Board of Trade's observations, and the opinion of Mr. Muir Mackenzie.

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2. Whether legislation of the character proposed by the Durban Chamber of Commerce was desirable.

3. If the answer to the last question was in the affirmative, upon what lines such legislation should proceed.

4. Generally.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to—

Report—

1. That we concur generally in the observations of the Board of Trade, and in the opinion of Mr. Muir Mackenzie, so far as it is material to the questions raised by the despatch of the Governor of Natal.

2. We do not consider that further legislation is necessary at present to remedy the evils complained of by the Durban Chamber of Commerce. If proper Rules on the lines of Order XI, and the draft Rules proposed by Mr. Muir Mackenzie, are framed under section 69 of "The Supreme Court Act, 1896, of the Colony of Natal," the plaintiff will be able to bring the defendant before the Courts of Natal, and to obtain Judgment in those Courts against him (Ashbury *v.* Ellis, 1893, A. C., p. 339). Whether that Judgment will be enforced by the Courts of another country must always be a question for the Courts of that country to determine; and, at any rate, the resident in Natal will be in no worse position than the resident in England with regard to the bringing of an action in a foreign country on the Judgment he has obtained in England or Natal, as the case may be.

3. We are of opinion that the proposal of the Acting Chief Justice, that all foreigners should be required by Statute, before they carry on business in Natal, to file in some proper office a document expressly agreeing to submit to the jurisdiction of Natal Courts, would tend to operate in restraint of trade, and would not be desirable. It will always be open to persons resident in Natal, when entering into a Contract with foreign persons or Corporations, to make it a term of the Contract that the Natal Courts shall have jurisdiction.

4. We think the draft Rules prepared by Mr. Muir Mackenzie should be submitted to the local authorities for their observations thereon.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

No. 9.

[October 11, 1901.]

Foreign Office to Law Officers of the Crown.

War in South Africa: Appeal of Boer Delegates to the Hague Tribunal.

Gentlemen,

Foreign Office, October 1, 1901.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers, as noted in the accompanying list, on the subject of the competence of the Administrative Council of the Permanent Court of Arbitration at the Hague to deal with a letter which has been addressed to them by the Boer Delegates in Europe soliciting their intervention in regard to various questions arising out of the war in South Africa.

It appears to Lord Lansdowne that Articles XXVI and XXXI of the Final Act of the International Peace Conference, in accordance with the terms of which the question would have to be considered, make it necessary that both the parties to a dispute and not one only should in such a case apply for arbitration; and that the attempt made by the Boer Delegates to overcome this difficulty by a reference to Article XXVII cannot be considered to the point since not only is that Article applicable to the Signatory Powers of the Final Act alone but even in their case only applies to disputes which seem likely to break out (où un conflit aigu menacerait d'éclater), and not to such as have already done so and been actually followed by war.

I am to request you to be good enough to take this letter and its accompanying papers into your consideration and to favour Lord Lansdowne with your opinion as to the correctness of the above view of the question, and also with any other observations in regard to it which may occur to you.

I am to add that his Lordship would be glad of an early reply on the subject as a sitting of the Administrative Council to consider the question is expected shortly to take place, and the tenour of the instructions to be given in regard to it to His Majesty's Minister at the Hague will naturally greatly depend on your answer to the present letter.

A copy of the Final Act of the Peace Conference is inclosed for convenience of reference pp. 284 *et seq.* of Miscellaneous No. 1, 1899.

I am, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Sir H. Howard, No. 38, Africa, 1901.
" " No. 132, Africa, 1901.
Miscellaneous, No. 1, 1899 [C. 9534].

Report.

We agree with the view taken by your Lordship as stated in the letter of reference. There is nothing in the Hague Convention to authorise the Signatory Powers or the Permanent Court to take any steps with a view to arbitration under the circumstances existing in the case of the war with the late South African Republics (now the Transvaal and Orange River Colonies).

Article XXVI has no application unless the belligerents agree to have recourse to the Permanent Court, and Article XXVII only applies to disputes between any of the Signatories, and, even in that case, is not relevant once hostilities have broken out.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 11, 1901.

Annex.

Extract from the "Indépendance Belge" of September 13, 1901.

LES Délégués Plénipotentiaires de la République Sud-Africaine et de l'État Libre d'Orange ont envoyé l'adresse suivante au Conseil Administratif de la Cour Permanente d'Arbitrage à La Haye:—

"*La Haye, le* 10 *Septembre,* 1901.

"Les Soussignés, Délégués Plénipotentiaires de la République Sud-Africaine et Délégués Plénipotentiaires de l'État Libre d'Orange, agissant au nom de ces deux États, ont l'honneur de soumettre à votre attention les communications et les considérations suivantes:—

"En date du 9 Avril de cette année le Président de votre Conseil a porté à la connaissance des Représentants des deux États susmentionnés que la Cour Permanente d'Arbitrage avait été constitutée à La Haye.

"En leur faisant cette communication, le Président de votre Conseil fixait plus spécialement leur attention sur la stipulation de la Convention de La Haye du 29 Juillet, 1899, pour le réglement pacifique de litiges internationaux, en vertu de laquelle la juridiction de la Cour Permanente peut s'étendre à des litiges existant entre des Puissances non-Signataires ou entre des Puissances Signataires et des Puissances non-Signataires.

"En accusant la réception de cette communication on a fait savoir—au nom des Gouvernements des deux États dont les Soussignés sont les Représentants autorisés—à son Excellence le Ministre qui, à cette époque, était Président de votre Conseil que, si une sentence arbitrale de la Cour pouvait mettre fin à la guerre Sud-Africaine, leurs Gouvernements en seraient fort heureux.

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"Aujourd'hui que cette guerre dure depuis près de deux ans, et que rien ne permet d'en prévoir la fin, à moins que, pour la terminer, on n'ait recours au moyen que les Puissances, il y a si peu de temps, ont reconnu être le moyen le plus efficace, et en même temps le plus équitable, de régler les litiges internationaux—à savoir une sentence arbitrale—il est naturel qu'une telle solution pacifique du conflit soit reconnue de plus en plus comme étant désirable pour les deux parties.

"C'est pourquoi les États, dont les Soussignés sont les Représentants autorisés, croient devoir réitérer la proposition qu'ils ont déjà faite avant que la guerre eût éclatée, mais qui fut repoussée alors par l'Angleterre, à savoir, que le réglement des litiges qui ont amené la guerre soit soumis à la décision d'une sentence arbitrale.

"En rappelant cette ancienne proposition, et en la renouvelant aujourd'hui, ils songent tout spécialement, entre autres points, à la question de savoir si l'Angleterre est ou non dans le vrai lorsqu'elle prétend que les deux Républiques ont commis dans actes dont le but aurait été de réprimer l'élément Anglais dans l'Afrique du Sud ou de le chasser du pays, et si, d'une manière générale, les Républiques se sont rendues coupables de tel acte qui aurait pu donner à l'Angleterre, d'après les principes internationaux, le droit de leur enlever leur indépendance.

"Ils renouvellent cette proposition avec une assurance d'autant plus grande que la Cour Permanente d'Arbitrage a été créée sur l'initiative de l'Angleterre elle-même, et que le Président de votre Conseil a bien voulu fixer leur attention sur la stipulation susmentionnée, formulée dans l'Article XXVI de la Convention de La Haye.

"A ce qu'ils viennent d'exposer les Soussignés désirent ajouter encore ceci :

"Dès le début de la guerre l'Angleterre a violé, et depuis que la guerre dure elle n'a cessé de violer, les règles universellement reconnues, reconnues par l'Angleterre elle-même, comme devant être observées, dans les guerres entre peuples civilisés, règles que la Convention de La Haye du 29 Juillet, 1899, concernant les lois et usages de la guerre sur terre a solennellement ratifiées, notamment les Articles IV, V, VH, XIV, XV, XVI, XXIII (les paragraphes (*c*), (*d*), (*e*), (*f*), et (*g*) de cet Article), XXV, XXVIII, XXXII, XLIV, XLV, XLVI, XLVII, L, LII, LIII, et LV du dit Règlement. En outre, l'Angleterre, par le fait de la Proclamation lancée par le Commandant-en-chef des ses armées dans l'Afrique du Sud, le Maréchal Lord Kitchener, donnée à Prétoria, et datée du 7 Août, 1901, a annoncé ouvertement son intention de se mettre, dans peu de temps, en flagrant désaccord avec l'Article XX du dit Règlement.

"Les Gouvernements des États que représentent les Soussignés sont entièrement disposés, dès que l'occasion leur en sera fournie, de confirmer en tous points ce qu'ils viennent d'avancer, d'en spécifier les détails, et d'en apporter les preuves complètes.

"Comme il plaît à l'Angleterre de nier que le droit de la guerre soit perpétuellement violé par elle, les États que représentent les Soussignés estiment que cette négation constitue un nouveau litige, au sujet duquel ils croient pouvoir faire également appel au jugement de la Cour Permanente d'Arbitrage, et solliciter une sentence arbitrale.

"Les Soussignés et leurs Gouvernements n'ignorent pas que, pour obtenir une sentence de cette nature, le consentement de l'Angleterre est indispensable.

"Aussi prennent-ils la liberté d'inviter votre Conseil à demander ce consentement, ou à essayer de l'obtenir, soit par votre médiation directe, soit par celle des Gouvernements que vous représentez.

"Ils se sentent d'autant plus encouragés à vous adresser cette demande qu'elle concorde parfaitement avec le grand et noble principe qui se trouve à la base de l'Article XXVII de la dite Convention.

"Si l'Angleterre répondait à cette démarche par un refus, ce refus prouverait qu'elle n'ose pas se soumettre à la sentence d'un Juge consciencieux, bien informé, et impartial.

"Elle continuera en même temps, par le fait de ce refus, à porter l'entière responsabilité du prolongement de cette guerre atroce et inutile, et elle aura reconnu tacitement que la façon dont cette guerre est faite est en opposition et en contradiction formelle avec les conditions d'humanité et de civilisation qu'elle a ratifié elle-même.

"C'est dans l'espoir qu'il vous plaira de donner suite à leur demande, et d'accorder votre intervention ou de prêter votre concours dans cette affaire si grave que les Soussignés vous prient d'agréer, &c.

"Les Délégués Plénipotentiaires de la République
Sud-Africaine:
(Signé) "W. J. LEIJDS.
"A. FISCHER.
"A. D. W. WOLMARANS.

"Les Délégués Plénipotentiaires de l'État Libre
d'Orange:
(Signé) "A. FISCHER.
"C. H. WESSELS.

"Au Conseil Administratif de la Cour Permanente
d'Arbitrage à La Haye."

No. 10.

[November 14, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, October 8, 1901.

Gentlemen,

Boers taking refuge in and British conveyed as prisoners of war into German territory.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers, as marked in the accompanying list, respecting the conduct of the German authorities in Damaraland in regard to (1) Allowing Boers or, it may be, rebels from Cape Colony to trek into their territories without, as is alleged, taking proper measures to prevent their returning to engage His Majesty's forces; and (2) Improperly receiving at the hands of the Boers British soldiers who had previously been made prisoners by them, and subsequently interning them, or otherwise dealing with such British soldiers as though they were belligerents who had voluntarily taken refuge within neutral territory.

With regard to the first point, you will see from the inclosed Memorandum by Sir J. Ardagh that while it is possible that the persons composing the trek were rebels, it is by no means certain that such was the case, and that the men of the party were disarmed on entering German territory. It is no doubt asserted that it was possible for them to buy arms and ammunition at Warmbad, a town about 35 miles distant from the frontier, and that in these circumstances, having placed their families and flocks and herds in safety, they could return to engage His Majesty's forces, but there is no pretence that anything of this kind has so far occurred.

With regard to the second point, viz., that the German authorities in Damaraland have received British prisoners at the hands of the Boers and have subsequently interned them, or otherwise improperly dealt with them, it appears that in one case two officers of His Majesty's forces, Captain Feltham and Lieutenant Joubert, were sent across the frontier on parole and were then informed by the German authorities that they were prisoners of war, while in another two troopers were taken by some rebels, placed in a boat, conveyed across the Orange River, and finally handed over to a German trooper as prisoners of war.

I am directed by the Marquess of Lansdowne to request you to take the accompanying papers into your consideration, and to furnish his Lordship with your opinion—

1. Whether the proceedings of the German authorities in connection with the Boer trek into their territories call for any representations on the part of His Majesty's Government, and, if so, what should be the nature of such representations; and

2. Whether His Majesty's Government should make any representation to the German Government in regard to the proceedings of the German authorities in connection with Captain Feltham and Lieutenant Joubert, as also in connection with the two troopers above alluded to; and if so, what form such representation should take, and, further, whether in any case His Majesty's Government would be justified in demanding the surrender of Lieutenant Joubert, who, so far as is known, is still a prisoner.

In regard to this point, I am to draw your special attention to the fact, which you may possibly consider as having a material bearing on the point at issue, that the persons who originally captured the four prisoners above referred to were rebels and not recognized belligerents.

I am also to invite your special consideration to the opinion of Mr. (now Sir J.) Rose-Innes, the then Attorney-General at the Cape, that if a belligerent conducts or transports a prisoner of war into neutral territory the prisoner becomes at once free and should not be detained, and to inquire whether you concur in that view.

Lord Lansdowne would also be glad to be furnished with any observations which you may have to offer on the case generally.

I have, &c.
(Signed) FRANCIS BERTIE.

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List of Papers.

Colonial Office	October 3, 1901.
Ditto	August 20, „
Ditto	August 29, „
Ditto	September 6, „
Ditto	September 28, „
Memorandum (Sir J. Ardagh)	September 17, „

Report.

1. WE are of opinion, upon the facts before us, that the proceedings of the German authorities in connection with the Boer trek into their territories do *not* call for any representations on the part of His Majesty's Government. There is nothing to show that these proceedings were in any way inconsistent with the duties of neutrality.

2. In our opinion, His Majesty's Government may properly make representations to the German Government in regard to the proceedings of the German authorities in the case of Captain Feltham and Lieutenant Joubert and in the case of the two troopers referred to in the despatch now under answer, and would be justified in demanding the surrender of Lieutenant Joubert.

It is the duty of a neutral to intern any troops of one of the belligerents which take refuge on the territory of the neutral, and there is a preponderance of authority for saying that this duty applies also in the case of isolated members of a belligerent force.

This duty springs out of the obligation of the neutral not to assist one belligerent by allowing the neutral territory to be used for the purpose of warfare by procuring a respite from the operations or forces of the other belligerent. The duty is one the performance of which is due to the other belligerent, and it attaches whenever belligerent troops or individuals have of their own initiative taken refuge in the territory of a neutral. It does not, and cannot, arise when the entry into neutral territory has taken place at the request of the other belligerent, or where the troops or persons in question have been brought into the neutral territory by him. To intern troops or persons entering the neutral territory in such circumstances would be, in fact, to violate the duties of neutrality, and to give help to one of the belligerents by virtually keeping his prisoners for him.

In the case of the troopers who were handed over by the Boers to the German authorities, it is clear that they ought at once to have been released by the Germans. We entirely agree with the opinion of Sir J. Rose-Innes, that if a belligerent conducts or transports a prisoner of war into neutral territory the prisoner becomes at once free, and should not be detained.

We do not think, for the present purpose, any valid distinction can be drawn between the case of these troopers and the case of Captain Feltham and Lieutenant Joubert. The latter did not take refuge in German territory from the pursuit of the Boers. They entered German territory at the instance of the Boers themselves, and in fulfilment of the parole which the Boers exacted from them as a condition of their release.

We observe that, in the despatch under answer, it is stated that the German authorities detained all these persons as prisoners of war; but we assume that the German authorities will allege, and rightly allege, that they were merely interned as combatants who had crossed the frontier. For the reasons we have above given, we do not think that the German authorities were justified in interning these persons; but it must, of course, be remembered that, in the case of Captain Feltham and Lieutenant Joubert, the German authorities might not know, or feel sufficiently assured of the fact, that it was at the instance of the Boers themselves that these officers had crossed the frontier.

We do not think that any reliance can, for this purpose, be placed upon the fact that the Boers in question were rebels, and not subjects of the late Republics, as they appear to have been, for practical purposes, belligerents.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 14, 1901.

No. 11.

[December 16, 1901.]

Foreign Office to the Law Officers of the Crown.

Oath of Neutrality: Position of Aliens fighting with Boers.

Gentlemen, *Foreign Office, December* 10, 1901.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers as marked in the accompanying list respecting a question which has been raised by the German Government as to the right of foreigners who, after fighting for the Boers, have taken advantage of Lord Roberts' Proclamation of the 31st May, 1900, to be treated on equal terms with such Boers as may have acted in a similar manner.

The War Office, on being consulted on the point, replied that the exceptional treatment accorded to burghers of the South African Republic by that Proclamation was not intended to apply to foreigners who were made prisoners of war while serving, or on account of having served, with the Boer forces; and that such foreigners were neither required nor permitted to take the oath of neutrality.

In these circumstances, they suggested informing the German Government in this sense, and adding that His Majesty's Government could not admit that aliens who had taken active part in a quarrel in which the neutral State to which they belonged was in no way concerned could claim any mitigation of the laws of war applicable to combatants.

Practically, the same view is expressed by Sir J. Ardagh, late Director of Military Intelligence, in his Memorandum of the 3rd October last.

I am to request you to take the accompanying papers into your consideration, and to advise Lord Lansdowne whether it is within the discretion of one belligerent Power to differentiate between prisoners who are *bonâ fide* subjects of the other belligerent Power and those who are aliens; or whether such belligerent is bound to treat all prisoners on an equal footing.

A copy of Lord Roberts' Proclamation of the 30th May, 1900, is annexed for convenience of reference.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Memorandum (German Embassy)..	February 26, 1901.
To War Office	March 25, „
War Office	April 24, „
To ditto	May 17, „
War Office	June 22, „
To ditto	July 25, „
War Office	September 25, „
Memorandum (Sir J. Ardagh)	October 3, „

Report.

In our opinion, it *is* within the discretion of a belligerent Power to differentiate between prisoners who are *bonâ fide* subjects of the other belligerent and those who are aliens.

Any relaxation of the rights of the belligerent to retain prisoners of war in confinement while the war lasts is matter of grace. As a matter of international good feeling a distinction should not be made capriciously, but it is obvious that there were excellent reasons for confining to burghers the relaxation offered by the Proclamation of the 31st May, 1900. It might well be supposed that burghers were likely to return to their homes and settle down, and that this was not so likely in the case of aliens who were serving in the Boer forces.

We are unable to see that the German Government have any ground of complaint in this matter. The distinction was made on reasonable grounds.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
December 16, 1901.

Annex.

Proclamation.

(No. 1 of 1900.)

To the Inhabitants of the South African Republic.

WHEREAS the forces of Her Majesty the Queen under my command have entered the territory of the South African Republic, and whereas false and malicious reports are being spread abroad as to the treatment which the inhabitants may expect from Her Majesty's troops, I, Frederick Sleigh, Baron Roberts, of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Commander-in-chief of Her Majesty's Forces in South Africa, am authorized by the Government of Her Majesty to make known, and do hereby make known, as follows:—

1. Subject to the terms and provisions of this Proclamation, personal safety and freedom from molestation are guaranteed to the non-combatant population.

2. All burghers who have not taken a prominent part in the policy which has led to the war between Her Majesty and the South African Republic, or commanded any forces of the Republic, or commandeered or used violence to any British subjects, or committed any acts contrary to the usages of civilized warfare, and who are willing to lay down their arms at once, to bind themselves by an oath to abstain from further participation in the war, will be given passes to allow them to return to their homes, and will not be made prisoners of war.

3. It is the intention of Her Majesty's Government to respect all private property of the inhabitants of the South African Republic, so far as may be compatible with the operations of war, provided that the inhabitants on their part abstain from wanton damage to property.

4. If, however, wanton damage is done to property, not only will the actual perpetrators of such acts and all directly or indirectly implicated in them be liable to the most severe punishment in person and property, but the property of all persons, whether in authority or otherwise, who have permitted or have not done their utmost to prevent such wanton damage, will be liable to be confiscated or destroyed.

5. All persons are, therefore, exhorted in their own interest to prevent such wanton damage.

[God Save the Queen.]

Given under my hand and seal, at Johannesburg, this 31st day of May, 1900.
(Signed) ROBERTS, *Field-Marshal,*
Commander-in-Chief, South Africa.

BORNEO.

No. 12.

[May 31, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 27, 1901.

Gentlemen,

Brunei Order in Council.

I HAVE the honour, by direction of the Marquess of Lansdowne, to submit to you the accompanying draft Order in Council (Paper A) which has been prepared by Mr. Albert Gray, under instructions from this Department, to provide for the exercise of His Majesty's extra-territorial jurisdiction within the dominions and territories of the Sultan of Brunei.

You are aware that an Order in Council for Brunei was passed in 1890, but that the technical steps necessary to bring it into operation were never completed, and that

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AFRICA.

No. 11*.

[December 31, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 7, 1901.

Gentlemen,

Marriages in Protectorates of non-British subjects: As to provision for

IN connection with the preparation of a draft Order in Council for regulating the exercise of the King's jurisdiction in Uganda, the question has been raised whether provision should not be made for the intermarriage in that Protectorate of persons neither of whom is a British subject under forms and ceremonies which would be either themselves prescribed by, or would be recognized as valid in contemplation of, English law. At the same time a similar question has come up for discussion with regard to North-Eastern Rhodesia and the British Central Africa Protectorate. "The Foreign Marriage Act, 1892," and Foreign Marriages Orders in Council of 1892 and 1895, which are, in terms, of application to all places outside His Majesty's dominions, provide for marriages only in which one or both parties are British subjects, and, consequently, do not meet the class of cases now under consideration.

The matter has formed the subject of correspondence with Mr. Albert Gray, who has now submitted the suggestion that the points arising should be referred to you for your opinion and advice. As Mr. Gray's letter gives a clear and succinct statement of the questions at issue and of the circumstances in which they have arisen, it will be convenient to quote it here in full:—

"In his letter of the 17th June last with reference to the draft Uganda Order in Council, Sir Clement Hill called my attention to the question of the solemnization of marriages in Uganda, observing that there is no provision under 'The Foreign Marriage Act, 1892,' for marriages between persons neither of whom is a British subject, and requested me to submit any suggestions I might have to offer as to providing facilities for the intermarriage in Uganda of persons neither of whom is a British subject under forms and ceremonies which would be either themselves prescribed by, or would be recognized as valid in contemplation of, English law.

"2. At the same time Sir Clement Hill sent, for my perusal, two despatches of Sir Arthur Hardinge and a Report from the Law Officers of the Crown (8th August, 1900), as to the application in East Africa of 'The Indian Christian Marriage Act, 1872.'

"3. Since then Sir Clement Hill has favoured me with the perusal of another set of despatches in which practically the same question is raised, first with regard to North-East Rhodesia, and secondly with respect to British Central Africa.

"4. Among the papers last mentioned was another Report from the Law Officers (2nd June, 1899), with respect to the marriage question in Southern Rhodesia.*

"5. All the five Protectorates mentioned are administered under Orders in Council passed under the Foreign Jurisdiction Act, and in all there are powers of subordinate legislation for 'peace, order, and good government.'

"6. As the Southern Rhodesia question has been settled, it may be well to take it first. Orders in Council under the Foreign Jurisdiction Act had applied the law of Cape Colony. Marriage Officers, erroneously appointed by the Administrator, had solemnized marriages. On the advice of the Law Officers the High Commissioner, by Proclamation, duly appointed Marriage Officers in accordance with Cape law, and the marriages previously solemnized were specially validated by an Order in Council (14th August, 1899).

"7. In North-East Rhodesia there is no application of either Cape or Indian law, it being intended that Cape law shall not extend beyond the Zambezi. In British Central Africa, East Africa, and Uganda there is a power to apply Indian law.

"8. Under the power to apply Indian law Sir Arthur Hardinge asked leave to apply the Indian Christian Marriage Act. He submitted (15th August, 1898) that 'the Foreign Marriage Act is entirely unsuitable to a territory such as the East Africa

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* This was a Report to the Colonial Office.

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Protectorate, and that the time has come to introduce here for all Europeans, or at least persons other than natives, subject to the East Africa Order in Council, some such measure as the Indian Christian Marriage Act, and perhaps even to extend it to native Christians.' For the reasons stated in his despatch of the 10th January, 1899, Lord Salisbury was not then prepared to take any steps in the direction indicated. Sir Arthur Hardinge, however, again advanced his request (20th December, 1899), referring to the fact that 'there are thousands of Goanese Catholics, besides numerous Greeks and Italians, up country since the railway has reached Nairobi who cannot contract civil marriages with one another,' and suggesting that the Indian Christian Marriage Act would probably be the best means of attaining the object desired.

"9. This despatch occasioned a reference to the Law Officers, who, in their Report of the 8th August, 1900, advised (*a*) that there is power to apply the Indian Christian Marriage Act to the Protectorate; (*b*) that the introduction of a law of divorce is not a necessary consequence; (*c*) that it would be very anomalous and inconvenient to have the Foreign Marriage Act and the Indian Act existing side by side, as the former presupposes a foreign country, and the latter a country under the dominion of the Crown; (*d*) that it is difficult to see on what principle, if we provide by territorial legislation for marriage, we should not provide for divorce or judicial separation; (*e*) that the question was part of the larger one whether Her Majesty's Government is prepared to assume the sovereignty of the territory, and that, 'if it is still to be regarded as a country in which the Foreign Marriage Act is in force,' the balance of convenience is, in their opinion, against the application of the Indian Act; (*f*) that, while as regards British subjects (who can employ the Foreign Marriage Act) there is no present hardship, the Governments of other countries can make provision for the marriages of their respective subjects; and (*g*) that, on the whole, legislation should be deferred until the British Government assumes nominal as well as virtual sovereignty.

"10. Neither in this Report, nor in that of June 1899, is any opinion stated that the Foreign Marriage Act must necessarily be operative in a British Protectorate. If it was operative in Southern Rhodesia when the Cape law was brought into force, the coexistence of the two marriage laws would have been 'anomalous and inconvenient.' But, in fact, the Law Officers do not appear to have considered the Foreign Marriage Act to be a factor in the Southern Rhodesia case, and the Colonial Office state that it is not used in any Protectorate administered by that Department.

"11. The Foreign Marriage Act in one sense extends to all places outside His Majesty's dominions, but it is not, in fact, operative in a Protectorate until Marriage Officers have been appointed. It appears, in fact, to be an Act merely to facilitate the marriage of British subjects in foreign parts. Section 23, as the Colonial Office point out, shows that the procedure of the Act is not to be regarded as exclusive, and I may add a reference to section 2, which begins: 'In every case of a marriage intended to be solemnized under this Act.'

"12. If the Foreign Marriage Act can be dispensed with altogether in the Colonial Office Protectorates by the non-appointment of Marriage Officers, it can be got rid of in the Foreign Office Protectorates by the withdrawal of the Marriage Officers' warrants.

"13. I agree that the Foreign Marriage Act, applying only to cases where one party at least is a British subject, must be sufficient for (*a*) countries where His Majesty has no jurisdiction, such as France, and (*b*) countries where his jurisdiction is confined to British subjects, such as Turkey or Zanzibar; in these places no further law is required. But I feel bound to agree with Sir Arthur Hardinge in regarding it as altogether unsuitable to East Africa and Uganda, where plenary powers of legislation are exercised under the Foreign Jurisdiction Act over all persons, British, foreign, and native.

"14. I think the British Government is under some obligation to provide a general marriage law in these Protectorates. Having assumed jurisdiction over all persons therein, we should not confine the privilege of marriage to British subjects. It may be true, as the Law Officers suggest, that Foreign Powers might make marriage arrangements for their own subjects, but they could not do this without the appointment of Consuls—a condition of things which, I understand, would be regarded with some disfavour by the Foreign Office. Moreover, this expedient would not make matters better for native Christians, who are not technically British subjects.

"15. If there is to be legislation, the question arises whether the law should be a general civil marriage law as under the Marriage Acts of the United Kingdom—such a law, indeed, as was introduced into Southern Rhodesia—or a law of Christian marriage as opposed to Hindu and Mahommedan marriage, such as is provided by the

Indian Christian Marriage Act. The matter would require some consideration with regard to the circumstances of the different Protectorates. I am inclined to suggest that the Indian Act should be applied to East Africa and Uganda, where the bulk of the law is Indian, and there is already a large Hindu and Mahommedan population whose marriages would require different treatment, and that in British Central Africa and North-East Rhodesia the law should be adapted from the Cape law or from English law as may seem fit.

"16. I am inclined to think that, in the case of North-East Rhodesia and British Central Africa (if the Indian Act is not applied in the latter), the legislation should be directly by Order in Council, and not by King's Regulations.

"17. The argument that a general marriage law would necessitate a divorce law is negatived by the Law Officers; but whatever objections there may be to such a law, it would seem better to provide facilities for marriage denying divorce than to promote concubinage by thwarting marriage.

"18. My own view is that there should be a divorce law as well as a marriage law. According to a recent decision of the Privy Council, the Court in such a place as Mombasa would not have jurisdiction to dissolve an English marriage, but it ought to have jurisdiction to dissolve marriages contracted in the Protectorate between natives or parties domiciled there.

"19. I would suggest that a further reference be made to the Law Officers. If they should be of opinion that His Majesty has power to legislate in regard to marriage in these Protectorates, dispensing with the Foreign Marriage Act, I respectfully submit that such a marriage law as is provided in a Colonial Office Protectorate ought not to be denied to a Foreign Office Protectorate, and that legislation should not be postponed in respect of any Protectorate until it becomes part of the British dominions—a condition which possibly may not be fulfilled for many years."

The correspondence referred to in Mr. Gray's letter, and specified in the accompanying list, is transmitted herewith.

I am directed by the Marquess of Lansdowne, in laying these papers before you, to state that his Lordship concurs with Mr. Gray in considering the present position of the question of marriages in the African Protectorates to be both anomalous and productive of serious inconvenience. It has been suggested, not for the first time, that the whole of the difficulty, as well as many others of a similar character, would at once be eliminated if the King thought fit to assume nominal as well as virtual sovereignty over those Protectorates; that is to say, if the latter were incorporated in His Majesty's dominions by annexation, and this possible solution was clearly present to your minds when you previously reported, on the 8th August, 1900, on the question of the advisability of applying the Indian Christian Marriage Act (Act 15 of 1872) to the East Africa Protectorate. This larger issue may require to be seriously considered and discussed hereafter; it is, however, improbable that a solution in such a direction of the marriage difficulty can be hoped for at an early date. In the meantime, Lord Lansdowne agrees with Mr. Gray that the question of the application of the Indian Act to Uganda and the East Africa Protectorate—to which might, perhaps, be added the Somaliland Protectorate, in which Indian law is also largely applied, and in which a considerable number of British Indian subjects are settled—and of direct legislation in the case of North-Eastern Rhodesia and the British Central Africa Protectorate deserves reconsideration.

I am accordingly to request that you will inform his Lordship whether, in the light of the observations submitted by Mr. Gray, you are of opinion that the King has power to legislate in regard to marriage in the several Protectorates referred to, dispensing with the application thereto of "The Foreign Marriage Act, 1892," and, if so, whether you would approve of the method of dealing with the question in respect to each of those territories which Mr. Gray suggests. Lord Lansdowne would also be glad to be favoured with any remarks of a general character which you may desire to offer on the subject.

I have, &c.
(Signed) MARTIN GOSSELIN.

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List of Papers.

(A.)—East Africa.

1. Sir A. Hardinge	(No. 10. Consular)	August	15, 1898
2. Mr. Gray (Memorandum)		December	7, „
3. To Sir A. Hardinge	(No. 1. Consular)	January	10, 1899.
4. Sir A. Hardinge	(No. 213)	December	20, „
5. Law Officers		August	8, 1900

(B.)—North-East Rhodesia.

6. British South Africa Company		September	3. 1900.
7. To Colonial Office		„	12, „
8. Colonial Office		November	3, „
9. To ditto		December	19, „
10. Colonial Office		January	21, 1901.
11. Ministers' Mission Union		February	6, „
12. To Mr. Sharpe	(No. 45)	April	1, „
13. Mr. Sharpe	(No. 108)	May	20, „
14. Ditto	(No. 146)	July	1, „
15. To Colonial Office		August	3, „
16. Colonial Office		„	29, „

(C.)—Uganda.

17. To Mr. Gray	June	17, 1901.

Report.

We are of opinion that the King has power to legislate in regard to marriage in the several Protectorates referred to, dispensing with the application thereto of "The Foreign Marriage Act, 1892," and we should approve of the method of dealing with the question in respect of each of those territories which Mr. Gray suggests.

The practice pursued in the Colonial Office Protectorates in South Africa is an important factor in determining the course to be taken in such matters in Foreign Office Protectorates, and the course proposed by Mr. Gray has the advantage of harmonizing the policy pursued in these two classes of Protectorates, and appears to us to be in itself desirable.

(Signed) R. B. FINLAY.
E. CARSON.

Royal Courts of Justice,
December 31, 1901.

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the Order was repealed last year for the reasons stated in the letter from this Office of the 18th December, 1899, a copy of which is inclosed for convenience of reference (Paper B).

Sir J. A. Swettenham, His Majesty's Consul-General for Borneo, subsequently drew attention to the inconvenience that might arise if no means were provided for the exercise of the jurisdiction vested in His Majesty by the Agreement of the 17th September, 1888, with the Sultan of Brunei (Paper C), and this view was later indorsed by Mr. Hewett, His Majesty's Consul for Brunei.

Measures were at that time in contemplation which would have altered the political conditions of the Sultanate, and rendered an Order in Council unnecessary; but these measures have been abandoned for the present, and Sir J. A. Swettenham, who had been requested in that event to state his views as to the necessity for an Order in Council, has adhered to the opinion he originally expressed (Paper D).

In forwarding, for your consideration, the papers noted in the accompanying list, I am to draw your attention specially to clause 61 of the draft Order, conferring Admiralty jurisdiction on the Court established under its provisions, and to the remarks on the subject contained in Mr. Albert Gray's letter of the 28th February last (Paper E).

I am also to draw your attention to the explanations given by Mr. Gray in his letter of the 19th instant (Paper F) with regard to the reasons which have led him to omit from clause 14 the words as to request and consent which appeared in Article 12 of the Order in Council for Brunei of 1890 (Paper G).

I am to request that you will be so good as to state whether the draft Order in Council, in the terms of which the concurrence of the Secretary of State for the Colonies has been obtained, may properly be laid before the King in Council for His Majesty's approval, and that you will favour Lord Lansdowne with any general observations which you may have to offer with regard to the Order as drafted.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Draft Order in Council.			
(B.) To Law Officers (in print)		December	18, 1899.
(C.) Agreement with Brunei ["Borneo No. 1 (1888)"]*		September	17, 1888.
(D.) Sir J. A. Swettenham (in print)	(No. 44)	August	8, 1900.
(E.) Mr. A. Gray		February	28, 1901.
(F.) Ditto		April	19, „

(G.) Brunei Order in Council, 1890.†

Report.

We approve of the draft Order in Council herewith, subject to the following observations:—

We suggest that difficulty might arise under Article 14 in its present form, as there might be two Courts exercising, or attempting to exercise, original jurisdiction. This difficulty might be met by the insertion as a proviso on sub-Articles (2) and (3) of some such words as those we have inserted in red ink‡ in Article 14.

We think that Article 61 should be struck out. It does not seem desirable to confer Admiralty jurisdiction when it could not be exercised against foreign ships.

(Signed) R. B. FINLAY.
E. CARSON.

Royal Courts of Justice,
May 31, 1901.

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* Parliamentary No. 3261.

† Confidential No. 6003*.

‡ Printed in italics.

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Annex.

BRUNEI.

Draft Order in Council.

WHEREAS, by Treaty, grant, usage, sufferance, and other lawful means, His Majesty the King has power and jurisdiction within the dominions and territories of the Sultan of Brunei:

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," and otherwise in him vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:—

Short title.

1. This Order may be cited as "The Brunei Order in Council, 1901."

Division of Order.

2. This Order is divided into parts as follows:—

Parts.		Articles.
I	General Provisions	3–6
II	Courts	7–14
III	Criminal Matters	15–44
IV	Civil Matters	45–81
V	Evidence	82–84
VI	Foreigners	85–86
VII	Deportation and Removal	87–88
VIII	Regulations, Commencement, &c....	89–95

PART I.—GENERAL PROVISIONS.

Interpretation.

3. In this Order, unless the subject or context otherwise requires—

"The Secretary of State" means one of His Majesty's Principal Secretaries of State;

"Prescribed" means prescribed by any Consular instructions, or by any order of notification signed or authorized by the Secretary of State;

The expression "Brunei," or "the limits of this Order," mean the dominions for the time being of the Sultan of Brunei and the islands and territorial waters belonging to the said dominions: provided that the expression "at Brunei" shall be construed as referring to the town or settlement called Brunei;

"Consular officer" includes any person for the time being acting in Brunei by virtue of His Majesty's Commission, or with the authority or approval of the Secretary of State as Consul-General, Consul, Vice-Consul, or Consular Agent;

"Consul" means any person for the time being acting as Consul for Brunei;

"Treaty" includes any Convention, Agreement, or Arrangement made by or on behalf of His Majesty with any State or Government, King, Chief, people, or tribe, and any Regulation appended thereto;

"Court" means any Court or person exercising jurisdiction under this Order;

"Governor" means the Governor of the Straits Settlements;

"Supreme Court" means the Supreme Court of the Straits Settlements;

"British subject" includes a British-protected person, that is to say, a person who either (*a*) is a native of any Protectorate of His Majesty, and is temporarily in Brunei, or (*b*) by virtue of "The Foreign Jurisdiction Act, 1890," or otherwise enjoys His Majesty's protection in Brunei;

"Foreigner" means a person, whether a native or subject of Brunei or not, who is not a British subject, as above defined;

"Native" means a native or subject of Brunei;

"Person" includes a corporation or association of persons;

"Oath" or "Affidavit" includes affirmation and declaration;

"Month" means calendar month.

The plural includes the singular, and the singular the plural, and the masculine the feminine.

Expressions referring to print or to writing include either print or writing, or a combination of both.

Application of Order.

4.—(1.) The powers conferred by this Order shall extend to the persons and matters following, in so far as by Treaty, grant, usage, sufferance, or other lawful means His Majesty has power or authority in Brunei in relation to such persons and matters, that is to say—

(*a.*) British subjects as herein defined.

(*b.*) The property and personal and proprietary rights and obligations of British subjects in Brunei (whether such subjects are or are not within Brunei), including British ships, with their boats and the persons and property on board thereof, or belonging thereto.

(*c.*) Foreigners, as herein defined, who submit themselves to the Court in accordance with the provisions of this Order.

(*d.*) Foreigners, as herein defined, with respect to whom any State, King, Chief, or Government whose subjects or under whose protection they are has by any Treaty, as herein defined, or otherwise agreed with His Majesty for or consented to the exercise of power or authority by His Majesty.

(2.) All His Majesty's jurisdiction exercisable in Brunei for the judicial hearing and determination of matters in difference between British subjects, or between foreigners and British subjects, or for the administration or control of the property or persons of British subjects, or for the repression or punishment of crimes committed by British subjects, or for the maintenance of order among British subjects, shall be exercised under and according to the provisions of this Order, and not otherwise.

Law to be administered.

5. Subject to the other provisions of this Order, the criminal and civil jurisdiction of the Court shall, as far as circumstances admit, be exercised on the principles of and in conformity with the Statute Law and other law for the time being in force in England, and with the procedure and practice of Courts of Justice and Justices of the Peace in England, according to their respective jurisdiction and authority.

For the purpose of facilitating the application of such Statute Law, the Court may construe any enactment, with such alterations and modifications not affecting the substance as may be necessary to meet the circumstances of the said territories.

Except as regards acts which are or may be made offences by this or any other Order in Council applying to Brunei, or by any Laws or Regulations made thereunder, such acts only as would be offences if committed in England shall be deemed to be offences rendering the person committing the same liable to punishment.

Application to natives and foreigners.

6. Crimes, wrongs, and breaches of contract against or affecting the person, property, or rights of natives of Brunei or other foreigners, as herein defined, committed by persons subject to this Order, are punishable or otherwise cognizable under the provisions of this Order, with the consent of such natives or foreigners, in the same manner as if they were committed against or affected the person, property, or rights of British subjects.

PART II.—COURTS.

(1.) *Court for Brunei.*

Court for Brunei.

7. There shall be, and there is hereby established, in and for Brunei a Court styled "His Majesty's Court for Brunei," in this Order referred to as "the Court."

The Court shall be held by the Consul or a Consular officer, who, in relation to the Court, is hereinafter referred to as "the Judge."

The Court shall sit at Brunei, or, as occasion may require, at any other place within the limits of this Order.

The Court shall be a Court of Record.

Registrar and other officers.

8. The Secretary of State may appoint a fit person to be Registrar of the Court, but where no other person is appointed to be Registrar the Consul or Consular officer holding the Court shall be the Registrar of the Court.

The Consul may, with the approval of the Secretary of State, appoint such clerks, messengers, or other officers of the Court as may seem fit.

The Registrar and any clerk of the Court designated by the Consul may administer oaths and take affidavits, declarations, and affirmations.

Minutes.

9. In every case, civil or criminal, heard in the Court, proper Minutes of the proceedings shall be drawn up, and shall be signed by the Judge or officer before whom the proceedings are taken, and sealed with the seal of the Court, and shall, where Assessors are present, be open for their inspection, and for their signature if concurred in by them.

The Minutes, with depositions of witnesses and notes of evidence taken at the trial by the Judge or officer, shall be preserved in the public office of the Court.

Sheriff.

10. The Consul shall have all the powers and authorities of the Sheriff of a county in England, with all the privileges and immunities of the office, and as such Sheriff shall be charged with the execution of all decrees, orders, and sentences made and passed by a Court, on the requisition in that behalf of the Court, he shall not be liable to any action or proceeding for anything done, or purporting to be done, or anything omitted by him as such Sheriff.

Assessors.

11. Where the Court thinks fit to hear and determine any case, civil or criminal, with Assessors, the Court shall nominate and summon as Assessors not less than two and not more than four indifferent British subjects of good repute, resident in Brunei or belonging to a British ship; but where the Court is able to obtain the presence of one fit person only as Assessor, the Court may sit with him alone as Assessor.

An Assessor shall not have voice or vote in the decision of the Court in any case, civil or criminal; but an Assessor dissenting in a civil case from any decision of the Court, or in a criminal case from any conviction, or the amount of punishment awarded, may record in the Minutes of

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Proceedings his dissent and the grounds thereof; and an Assessor dissenting shall be entitled to receive gratis a certified copy of the Minutes.

If any person summoned to act as Assessor fails, without lawful excuse, to attend at the trial, or at any adjournment thereof, or to continue to serve throughout the trial, he shall be liable under a summary order of the Court to a fine not exceeding 50 dollars, to be levied by attachment and sale of his goods, and in default of recovery thereby of the fine, to be imprisoned for any time not exceeding six days, if the fine is not sooner paid.

Saving for informalities.

12. No proceeding under this Order shall be invalidated by any informality, mistake, or omission, so long as, in the opinion of the Court, the essential requisites of law and justice have been complied with, or may be met by amendment.

(2.) *Supreme Court.*

Supreme Court.

13.—(1.) The Supreme Court shall have appellate jurisdiction under this Order.

The appellate jurisdiction of the Supreme Court shall be exercised by the full Supreme Court sitting in the Straits Settlements in such manner and according to such procedure as, subject to the provisions of this Order, and of any Rules made under this Order, the Supreme Court from time to time determines.

Judgments or orders of the Supreme Court, in the exercise of its appellate jurisdiction, shall be certified by the Supreme Court to the Court for Brunei, and (subject to any appeal to His Majesty in Council) that Court may and shall execute, and give effect to the same in like manner as to its own judgments or orders.

(2.) The Supreme Court, on Petition presented to it in accordance with any Rules to be made under this Order, or in such manner as the Supreme Court directs, and alleging that any order of the Court has the effect of a refusal of justice to any suitor or complainant, may, after such inquiry (if any), as it thinks fit to direct, issue an order directing the Court to take cognizance of the matter, and may, if satisfied that such order has not been properly complied with, entertain and determine the matter of the suit or complaint, and shall certify its determination to the Court, which shall give effect thereto.

(3.) Except as provided by this Order, the Supreme Court shall not exercise any control over the Court, whether by way of mandamus, prohibition, *certiorari*, writ of *habeas corpus*, or otherwise.

Original jurisdiction of Supreme Court.

14. The Supreme Court shall, for the purposes of this Order, have original jurisdiction as follows:—

(1.) When, under this Order, a person accused of crime is sent for trial to the Straits Settlements, the Supreme Court shall have the like jurisdiction, and may proceed in the same manner as if the crime had been committed in the Straits Settlements, except that the criminality of the act charged and the punishment to be inflicted must be determined according to the law applicable under this Order in Brunei.

(2.) The Supreme Court may exercise in Brunei, in relation to any civil or criminal matter, any original jurisdiction which can be exercised by the Court, and all the provisions of this Order shall apply accordingly (*mutatis mutandis*), and any appeal shall be to the full Supreme Court.

(3.) The Supreme Court may hear and determine at any place within the limits of this Order any criminal case which could under this Order be sent for trial to the Straits Settlements, and for that purpose shall have the like jurisdiction and may proceed in the same manner, as nearly as may be, as if it were trying the same case in the Straits Settlements, or as if it were the Court trying in Brunei a criminal case within the jurisdiction of the Court.

Provided that the powers conferred by sub-Articles (2) *and* (3) *of this Article shall, except in the case of the death, absence, or incapacity of the Consular officer, be exercised only on his request.**

(4.) The Supreme Court may hear and determine within the Straits Settlements any civil case arising in Brunei, with the consent of the parties and of the Consul, and for that purpose may adopt any procedure proper either in the Straits Settlements or in Brunei. In such case, any appeal shall be to the full Supreme Court.

(5.) For the purposes of the exercise of original jurisdiction under this Article, such Judge or Judges of the Supreme Court as the Chief Justice of the Straits Settlements from time to time nominates shall exercise the powers of the Supreme Court.

(6.) The Court for Brunei may and shall, according to its powers, execute, enforce, and give effect to any Judgment or order of the Supreme Court in the exercise of its original jurisdiction, and may and shall, for the purposes of anything to be done preliminary to a sitting of the Supreme Court (as, for instance, the summoning of Assessors or of witnesses), exercise (*mutatis mutandis*) all the powers which the Court has for any purpose under this Order in a case or matter pending before itself.

PART III.—CRIMINAL MATTERS.

Commencement of prosecution.

15.—(1.) A criminal prosecution is commenced by a complaint made to the Court, or by the issue of a summons or warrant by the Court of its own motion.

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* This paragraph has been added by the Law Officers.

(2.) For the issue of a summons the complaint need not be on oath, unless the Court so requires.

(3.) A warrant may be issued if the complaint is in writing and on oath, or if the accused person does not appear on a summons, and it is proved that the summons has been served or cannot be served.

(4.) On receiving a complaint, whether on oath or not, the Court may, if it is of opinion that the complaint discloses no offence, or is otherwise unsubstantial, decline to issue any summons or warrant.

(5.) An accused person arrested on warrant shall be brought before the Court within forty-eight hours after arrest unless exceptional circumstances prevent his being so brought, and the complaint shall be heard as soon thereafter as circumstances reasonably admit. Due notice of the time and place of hearing shall be given to the prosecutor (if any), and summonses issued to the witnesses, if any.

Proceedings on appearance.

16.—(1.) When the accused is before the Court, and the prosecutor has had notice of the time and place appointed for the hearing of the complaint, but does not appear, the Court, unless it thinks fit to adjourn the hearing, shall dismiss the complaint;

(2.) If both parties are present the Court shall proceed to hear the complaint; and

(*a.*) If the offence is legally punishable, or if the Court thinks it would be adequately punished with imprisonment not exceeding three months, or with fine not exceeding 50 dollars, the case shall be tried summarily on the complaint;

(*b.*) Otherwise, the Court shall take the depositions of the prosecutor and witnesses with a view to determining whether the accused shall be tried on a charge, and, if so, whether the case shall be tried before the Court or sent to the Supreme Court.

(3.) The following offences are not triable summarily, that is to say, treason, murder, rape, arson, housebreaking, robbery with violence, forgery, and perjury.

Summary trial on complaint.

17. At a summary trial the substance of the complaint shall be stated to the accused, and he shall be asked if he admits or denies the truth of the complaint. If he admits, the Court may convict him and award punishment, but may first take further evidence if it thinks fit. If he denies, the Court shall hear the evidence of the prosecutor and witnesses, and of the witnesses, if any, for the accused, and either discharge the accused or convict him and award punishment.

Preliminary examination.

18.—(1.) At the preliminary examination of a case which must be or may, in the opinion of the Court, require to be sent for trial to the Supreme Court, the procedure shall be as follows:—

(*a.*) The Court shall, in the presence of the accused, take the depositions on oath of those who know the facts and put them in writing;

(*b.*) The accused may cross-examine each witness for the prosecution, and the witness' answers shall form part of his deposition;

(*c.*) The deposition of each witness shall be read over to the witness and signed by him;

(*d.*) After the evidence of the witnesses for the prosecution has been taken, the Court shall ask the accused if he wishes to make any statement or has any witnesses to call or other evidence to adduce in his defence, and the Court shall then take his statement and the evidence of his witnesses (if any);

(*e.*) The accused shall be informed that any statement he may make may be used against him at the trial, and also that he may be sworn as a witness himself;

(*f.*) The Court having heard all the evidence, shall consider the whole matter, and if it thinks that a *primâ facie* case is made out against the accused, shall cause a charge, on which the accused is to be put on his trial, to be framed, and read over to the accused;

(*g.*) The Court shall bind by recognizance the prosecutor and every witness to appear at the trial and give evidence;

(*h.*) If a person refuses to enter into a recognizance, the Court may send him to prison, there to remain till the trial, unless in the meantime he enters into a recognizance;

(*i.*) Until the trial the Court shall either admit the accused to bail or send him to prison for safe keeping;

(*j.*) The accused shall be entitled to a copy of the charge on which he is to be tried;

(*k.*) The complaint (if any), the depositions, the statement of the accused (if any), the charge on which the Court orders him to be tried, and the recognizances shall be carefully transmitted to the Supreme Court.

(2.) At the preliminary examination of a case which may be tried on a charge before the Court, the procedure above described may be varied as follows:—

After hearing so much evidence as is, in the opinion of the Court, sufficient to raise a strong presumption against the accused and to enable the Court to frame a charge, the Court may proceed to frame a charge and appoint a day for the trial.

Charges.

19.—(1.) The charge upon which an accused person is tried shall state the offence, with such particulars as to the time and place of the alleged offence, and the person (if any) against whom or the thing (if any) in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2.) There shall be a separate charge for each offence, and every charge shall be tried separately, but if the acts form one transaction, or if the offences are of the same kind, the charges may be tried together, if the Court thinks fit.

(3.) When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or where one is accused of committing an offence and another with abetting or attempting to commit that offence, they may be charged and tried together or separately, as the Court thinks fit.

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(4.) The Court may alter any charge at any time, but if the alteration is likely to prejudice the accused or the prosecutor, the Court may adjourn the trial for such time as may be necessary.

(5.) No error or omission in stating the offence or the particulars shall be regarded as material unless the accused was misled by the error or omission.

(6.) When a person is charged with an offence, and the evidence proves either the commission of a minor offence or an attempt to commit the offence charged, he may be convicted of the minor offence or the attempt.

(7.) For the purpose of the application of any Statute law, a charge framed under the provisions of this Order shall be deemed to be an indictment.

Bail and remand.

20.—(1.) The Court may, at any stage of the prosecution, in its discretion admit to bail a person charged with any felony (except murder), or with riot, or assault.

(2.) In all other cases the Court shall admit the accused to bail, unless the Court sees good reason to the contrary.

(3.) Where an accused person is in custody he shall not be remanded at any time for more than seven days, unless circumstances appear to the Court to make it necessary or proper that he should be remanded for a longer time, which circumstances, and the time of remand, shall be recorded in the Minutes.

(4.) In no case shall a remand be for more than fourteen days at one time, unless in case of illness of the accused person or other case of necessity.

Adjournments.

21. The Court may from time to time postpone or adjourn any trial if it considers it necessary to do so in the interests of justice.

During the postponement or adjournment the accused may be committed to prison for safe custody, or admitted to bail, or suffered to go at large, as the Court thinks fit.

Search warrant.

22. Where there is reasonable cause to suspect that anything, by or in respect of which any offence, cognizable by the Court has been committed, is in any house or place within the jurisdiction of the Court, the Court may, by a search warrant, authorize an officer of the Court to search the house or place, and if anything searched for be found, to seize it and bring it before the Court for adjudication.

Execution of warrants.

23. A warrant for apprehension or a search warrant may be issued and executed on Sunday, Good Friday, or Christmas Day, where the urgency of the matter so requires.

Punishments.

24. The Court may award any such punishment as may be awarded by any Court of criminal jurisdiction in England for the time being.

Damages for assault.

25. The Court may, if it thinks fit, order a person convicted of an assault to pay to the person assaulted, by way of damages, any sum not exceeding 50 dollars.

Damages ordered to be paid may be either in addition to, or in lieu of, a fine, and shall be recoverable in like manner as a fine.

Where such damages are ordered, an action cannot be brought for the assault.

Sentence of death.

26. When a person is sentenced to death, the Court shall transmit the Judge's notes and a report on the case to the Governor in Council, and a sentence shall not be carried into effect unless confirmed by the Governor in Council.

The Governor in Council may commute the sentence to such punishment as he thinks proper in the circumstances, or may pardon the convict.

Expenses of prosecution.

27. The Court may order a person convicted before it to pay all or a part of the expenses of the prosecution, the amount to be specified in the order.

The Court may, when it thinks a prosecution is vexatious or frivolous, order the complainant to pay all or a part of the expenses of the prosecution and of the accused, the amount being specified in the order.

In both cases the Court may order that the whole, or such portion as the Court thinks fit, of the expenses so paid be paid over to the complainant or the accused, as the case may be.

Appeal to Supreme Court.

28.—(1.) In each of the following cases, namely:—

(i.) Where a person is convicted before the Court, and the person so convicted declares his desire to appeal to the Supreme Court on any question or questions of law raised by the person convicted or by the Court; or

(ii.) Where the Court thinks fit to reserve for the judgment of the Supreme Court any question of law arising on the trial—

The Court shall frame a statement setting out the facts, the grounds of the conviction and sentence, the question or questions of law, and any objection alleged by the person convicted.

(2.) The Court shall annex to that statement certified copies of the summons, indictment (if any), and proceedings, and of all documentary evidence admitted or tendered, and appearing to that Court to be material, and the depositions, the notes of the oral testimony, any statement or objections to the conviction or sentence made by the person convicted, and any argument thereon that he desires to submit to the Supreme Court, and a note of the reasons why any tendered evidence which is not transmitted appears to the Court to be immaterial.

(3.) The Court shall forthwith send the statement and its annexes to the Supreme Court.

(4.) The Court shall postpone the execution of the sentence pending the appeal, and shall, as on a remand, either (if necessary) commit the person convicted to prison for safe custody, or admit him to bail, with or without security, by recognizance, deposit money, or otherwise.

(5.) The Supreme Court shall hear and finally determine the matter, after considering the statement of the Court, and hearing publicly any argument offered on behalf of the prosecution, or of the person convicted.

(6.) The Supreme Court may require the Court to make any amendment in or addition to its statement or the annexes thereto.

(7.) The Judgment of the Supreme Court shall be delivered publicly.

(8.) The Supreme Court shall either affirm or annul the conviction, or amend it, and shall either affirm or annul the sentence or vary it, and shall give all necessary and proper consequential directions.

Limitation of power of Supreme Court.

29. The Supreme Court shall not annul a conviction or sentence, or vary a sentence, on the ground—

(i.) Of any objection which, if stated during the trial, might, in the opinion of the Supreme Court, have been properly met by amendment by the Court; or

(ii.) Of any error or informality which, in the opinion of the Supreme Court, did not affect the substance of the case or subject the appellant to any undue prejudice.

No appeal to Privy Council except by leave.

30. There shall be no appeal in a criminal case to His Majesty the King in Council from a decision of the Supreme Court, except by special leave of His Majesty in Council.

Prisons.

31. The Consul may by general order prescribe the manner in which and the prisons in which punishments are to be carried into execution.

Imprisonment beyond limits of Order.

32.—(1.) When an offender is sentenced to imprisonment and the Court thinks it expedient that the sentence be carried into effect within His Majesty's dominions, the place shall be either the Straits Settlements or a place in some other part of His Majesty's dominions the Government whereof consents that offenders may be sent thither under this Article.

(2.) The Court may, by warrant under the hand of the Judge, cause the offender to be sent to such place as aforesaid, in order that the sentence may be carried into effect accordingly.

(3.) The warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person named therein, and to carry him and deliver him up at the place named, according to the warrant.

Fugitive offenders.

33. "The Fugitive Offenders Act, 1881," and "The Colonial Prisoners Removal Act, 1884," shall apply to Brunei as if it were part of His Majesty's dominions, subject as follows:—

(*a.*) The Consul is hereby substituted for the Governor or Government of a British possession;

(*b.*) The Court is hereby substituted for a Superior Court, and for a Magistrate of a British possession;

(*c.*) For the purposes of the said Act of 1881, and of this Article in relation thereto, the said territories and the Straits Settlements shall be deemed to be one group of British possessions.

Offences on high seas, &c.

34.—(1.) In cases of murder or manslaughter if either the death, or the criminal act which wholly or partly caused the death, happened within Brunei, the Court shall have the like jurisdiction over any person who is charged either as the principal offender, or as accessory before the fact to murder, or as accessory after the fact to murder or manslaughter, as if both the criminal act and the death had happened within Brunei.

(2.) In the case of any offence committed on the high seas, or within the Admiralty jurisdiction, by any person on board a British ship, or by any British subject on board a foreign ship to which he did not belong, the Court shall, subject to the provisions of this Order, have jurisdiction as if the offence had been committed within the said territories. In cases tried under this Article no different sentence can be passed from the sentence which could be passed in England if the offence were tried there.

(3.) The foregoing provisions of this Article shall be deemed to be adaptations, for the purposes of this Order and of "The Foreign Jurisdiction Act, 1890," of the following enactments, that is to say:—

"The Admiralty Offences (Colonial) Act, 1849."
"The Admiralty Offences (Colonial) Act, 1860."
"The Merchant Shipping Act, 1894," section 686.

Detention of ship.

35. Where the Court issues a summons or warrant against any person on a charge of an offence committed on board of, or in relation to, any ship, other than a ship enjoying immunity from civil process, then if it appears to the Court that the interests of public justice so require, the Court may issue a warrant or order for the detention of the ship, and may cause the ship to be detained accordingly, until the charge is heard and determined and the order of the Court thereon is fully executed, or for such shorter time as the Court thinks fit; and the Court shall have power to make all such orders as appear to it necessary or proper for carrying this provision into effect.

Piracy.

36. Any British subject being in Brunei may be proceeded against, tried, and punished under this Order for the crime of piracy, wherever committed.

Levying war.

37.—(1.) If any British subject does any of the following things without His Majesty's authority, levies war, or takes any part in any operation of war against, or aids or abets any person in carrying on war, insurrection, or rebellion against the Sultan of Brunei;

Every person so offending shall be deemed guilty of an offence against this Order, and on conviction thereof shall be liable to be punished by imprisonment for any term not exceeding one year, with or without hard labour, and with or without a fine not exceeding 5,000 dollars, or by a fine not exceeding 5,000 dollars without imprisonment.

In addition to such punishments, every such conviction shall of itself, and without further proceedings, make the person convicted liable to deportation; and the Court may order that he be deported from Brunei to such place as the Court directs.

(2.) If any British subject, without the authority of His Majesty (proof whereof shall lie on the party accused), takes part in any operation of war in the service of the Sultan of Brunei against any persons engaged in carrying on war, insurrection, or rebellion against the Sultan of Brunei, he shall be deemed guilty of an offence against this Order, and on conviction thereof shall

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be liable to be punished by imprisonment for any term not exceeding one year, with or without hard labour, and with or without a fine not exceeding 5,000 dollars, or by a fine not exceeding 5,000 dollars without imprisonment.

Offences against religion.

38. If any British subject publicly derides, mocks, or insults any religion established or observed in Brunei, or publicly offers any insult to any religious service, feast, or ceremony established or kept in any part of Brunei, or to any place of worship, tomb, or sanctuary belonging to any such religion, or to the ministers or professors thereof, or wilfully commits any act tending to bring any such religion, or its ceremonies, mode of worship, or observances into hatred, ridicule, or contempt, and thereby to provoke a breach of the public peace, he shall be deemed guilty of an offence against this Order, and shall be liable, on summary conviction, to imprisonment for any term not exceeding six months, with or without hard labour, and with or without a fine not exceeding 500 dollars, or to a fine not exceeding 500 dollars without imprisonment.

His Majesty's Consular officers shall take such precautionary measures as seem to them proper and expedient for the prevention of such offences.

Offences against Treaties.

39. If any British subject violates or fails to observe any stipulation of any Treaty made with, or by, or on behalf of His Majesty for the time being in force, in respect of the violation whereof any penalty is stipulated for in the Treaty, he shall be deemed guilty of an offence against this Order, and on conviction thereof under this Order shall be liable to a penalty not exceeding the penalty stipulated for in the Treaty,

Support of wife and child.

40. The Court shall have jurisdiction to make an order requiring a person to contribute, in such manner as the Court directs, to the support of his wife or child, whether legitimate or not, being in the opinion of the Court under the age of 16 years. Any such order may be made in a summary way, as if the neglect to provide for the support of such wife or child were an offence against this Order, and a failure to comply with any such order shall be deemed to be an offence against this Order, and shall be punishable accordingly, and the Court may direct any penalty imposed for such offence to be applied for the support of such wife or child in such manner as the Court thinks fit.

Offences against this Order.

41. Where any act or omission is, by virtue of this Order, or of any Regulation made under this Order, an offence against this Order, and no penalty or punishment is specified in respect thereof, such offence shall be punishable with imprisonment for not exceeding three months, or fine not exceeding 500 dollars, or both.

Reports of sentences.

42. The Consul shall, when required by the Secretary of State, send to the Secretary of State a report of the sentence passed in every case heard and determined by him, with a copy of the Minutes of Proceedings and notes of evidence, and may send with such report any observations he thinks fit.

Inquests on death.

43. The Court shall have all the powers appertaining to the office of Coroner in England, provided as follows:—

(*a.*) Where a person is charged with causing the death, the Court may proceed forthwith with the preliminary examination;

(*b.*) Where no person is charged with causing the death, the Court shall hold an inquest, taking the depositions of those who know the facts. If, during or after the inquest, any person is so charged, the depositions shall be read over in the presence of the witnesses and of the accused, who shall be entitled to cross-examine each witness, and the procedure shall be as in other cases of preliminary examination. If after the inquest the Court does not see fit to cause any person to be charged, the Court shall send a copy of the depositions to the Supreme Court, together with a report as to the cause of death.

Remission of penalties.

44. The Governor of the Straits Settlements in Council shall have power, in the name of His Majesty, to remit or commute, in whole or in part, any sentence passed by a Court exercising criminal jurisdiction under this Order, and every such Court shall give effect to any such remission.

Nothing in this Order shall be deemed to affect His Majesty's prerogative of pardon.

PART IV.—CIVIL MATTERS.

Civil proceedings by action.

45.—(1.) Every civil proceeding in the Court shall be taken by action, and not otherwise, and shall be designated an action.

(2.) For the purposes of any statutory enactment or other provision applicable under this Order to any civil proceeding in the Court, an action under this Order shall comprise and be equivalent to a suit, cause, or petition or to any civil proceeding howsoever required by any such enactment or provision to be instituted or carried on.

Summary trial of actions.

46.—(1.) Every action shall he heard and determined in a summary way.

(2.) Every application in the course of an action may be made to the Court orally, and without previous formality, unless in any case the Court otherwise directs, or the Rules of Court otherwise provide.

(3.) No action or proceeding shall be treated by the Court as invalid on account of any technical error or mistake in form or in words.

(4.) All errors and mistakes may be corrected, and times may be extended, by the Court in its discretion, and on such terms as the Court thinks just.

Sittings of Court.

47.—(1.) The sittings of the Court for the hearing of actions shall be held at such places and on such days as the Court shall appoint.

(2.) The sittings shall ordinarily be public, but the Court may, for reasons recorded in the Minutes, hear any particular case in the presence only of the parties, their advisers and the officers of the Court.

(3.) Public notice of the sittings of the Court shall, as far as practicable, be given at Brunei, and if the sitting is to be held at any other place, also at that place.

Commencement by summons.

48. Every action shall commence by a summons, issued from the Court, on the application of the plaintiff, and served on the defendant (in this Order referred to as an original summons).

Action Book.

49. The Registrar shall keep a book, called the Action Book, in which all actions brought in Court shall be entered, numbered consecutively in each year in the order in which they are commenced, with a short statement of the particulars of each action, and a note of the several proceedings therein.

Force of summons.

50.—(1.) An original summons shall not be in force for more than twelve months from the day of its date (including that day).

(2.) If any defendant named therein is not served therewith, the plaintiff may, before the end of the twelve months, apply to the Court for renewal thereof.

(3.) The Court, if satisfied that reasonable efforts have been made to serve the defendant, or for other good reason, may order that the summons be renewed for six months from the date of renewal, and so, from time to time, during the currency of the renewed summons.

(4.) The summons shall be renewed by being resealed with the seal of the Court, and a note being made thereon by the Registrar, stating the renewal and the date thereof.

(5.) A summons so renewed shall remain in force and be available to prevent the operation of any statute of limitation, and for all other purposes, as from the date of the original summons.

(6.) The production of a summons purporting to be so renewed shall be sufficient evidence of the renewal and of the commencement of the action, as of the date of the original summons, for all purposes.

Non-prosecution of action.

51. If an action is not proceeded with and disposed of within twelve months from service of the original summons, the Court may, if it thinks fit, without application by any party, order the same to be dismissed for failure to proceed.

Particulars.

52. The Court may, at any time, if it thinks fit, either on or without application of a defendant, order the plaintiff to put in further particulars of his claim.

Pleadings.

53. There shall ordinarily be no written pleadings; but the Court may at any time, if it thinks fit, order the plaintiff to put in a written statement of his claim, or a defendant to put in a written statement of his defence.

Evidence.

54. The evidence on either side may, subject to the direction of the Court, be wholly or partly oral, or on affidavit or by deposition.

Discretion of Court as to practice.

55.—(1.) Notwithstanding anything in this Order, the Court (for reasons recorded in the Minutes) may at any time do any of the following things as the Court thinks just:—

(i.) Defer or adjourn the hearing or determination of any action, proceeding, or application;

(ii.) Order or allow any amendment of any pleading or other document;

(iii.) Appoint or allow a time for, or enlarge or abridge the time appointed or allowed for, or allow further time for the doing of any act, or the taking of any proceeding;

(iv.) Rehear any case and review its Judgments or orders in any case where, in the opinion of the Court, justice so requires.

(2.) Any order within the discretion of the Court may be made on such terms respecting time, costs, and other matters, as the Court thinks fit.

Costs.

56. Subject to the provisions of this Order and any Rules of Court, the costs of and incident to all proceedings in the Court shall be in the discretion of the Court.

Orders of Court.

57.—(1.) All orders of the Court shall, if not made in writing, be drawn up in writing and filed with the papers in the action.

(2.) The seal of the Court shall be affixed to every order, which shall then be part of the record in the action.

(3.) The order shall bear the date of the day of the delivery of the decision on which the order is founded.

(4.) All money ordered by the Court to be paid by any person shall be paid into the office of the Court, unless the Court otherwise directs.

Stopping ship.

58.—(1.) On proof of great urgency or other peculiar circumstances, after an action is brought, the Court may, if it thinks fit, on the application of a plaintiff, or of its own motion, make an order for stopping the clearance of, or for the arrest and detention of, a ship about to leave Brunei, other than a ship enjoying immunity from civil process.

(2.) The Court may at any time, on reasonable cause shown, discharge or vary the order.

Submission to arbitration.

59.—(1.) Any agreement in writing between any persons to submit present or future differences to arbitration, whether an arbitrator is named therein or not, may be filed in the Court by any party thereto, and, unless a contrary intention is expressed therein, shall be irrevocable, and shall have the same effect as an order of the Court.

(2.) Every such agreement is in this Order referred to as a submission.

(3.) If any action is commenced in respect of any matter covered by a submission, the Court, on the application of any party to the action, may by order stay the action.

Bankruptcy.

Bankruptcy.

60.—(1.) The Court shall have, with respect to all British subjects in Brunei, all such jurisdiction in bankruptcy as for the time being belongs to the High Court in England.

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(2.) Proceedings in bankruptcy shall be originated by a summons to the debtor to show cause why he should not be adjudicated bankrupt, or by a summons issued by the debtor himself to his creditor, or any of his creditors, to show cause why he, the debtor, should not be adjudicated bankrupt.

(3.) On or after the issue of such summons the Court may stay any proceedings pending in the Court in respect of any debt provable in bankruptcy, or may allow the proceedings to continue on such terms as the Court thinks fit.

(4.) On or after the issue of such summons the Court may appoint a receiver or manager of the property or business of the debtor.

Admiralty.

~~Admiralty jurisdiction.~~

~~61.—(1.) The Court shall have Admiralty jurisdiction for and within the said territories, and over vessels and persons coming within the same.~~

~~(2.) The following enactments of "The Colonial Courts of Admiralty Act, 1890," that is to say, section 2, sub-sections (2) to (4); sections 5 and 6; section 16, sub-section (3); shall apply to the Court as if that Court were a Colonial Court of Admiralty, and as if Brunei were a British possession; and for the purpose of this application the expressions "judgment" and "appeal" shall in the enactments so applied have the same respective meanings as are assigned thereto in section 15 of the said Act.~~

Lunacy.

Lunacy.

62. The Court shall, as far as circumstances admit, have, for and within the said territories, with respect to British subjects, all such jurisdiction relative to the custody and management of the persons and estates of lunatics as for the time being belongs to the Lord Chancellor or other Judge or Judges in England intrusted, by virtue of His Majesty's Sign Manual, with the care and commitment of the custody of the persons and estates of lunatics, or as may be exercised by a judicial authority under "The Lunacy Act, 1890," or any Act amending the same.

Probate and Administration.

Probate and administration.

63. The Court shall be a Court of Probate, and, as such, shall, so far as circumstances admit, have, with respect to the property of British subjects in Brunei, all such jurisdiction as for the time being belongs to the High Court in England in cases of probate and administration of estates.

Effect of probate.

64. Probate or administration granted by the Court shall have effect over all the property of the deceased in Brunei, and shall effectually discharge persons dealing with an executor or administrator thereunder, notwithstanding that any defect afterwards appears in the grant.

Production of wills, &c.

65. Any person having in his possession or under his control any paper or writing of a deceased British subject, being or purporting to be testamentary, shall forthwith deliver the original to the Court.

Any person neglecting to do so for fourteen days after having knowledge of the death of the deceased shall be liable to such penalty, not exceeding 200 dollars, as the Court thinks fit to impose.

Intestates' property vested in Consul.

66. From the death of a British subject, in Brunei, intestate, until administration granted, his personal property in Brunei shall be vested in the Consul.

Penalty for acting without authority.

67. If any person, other than the Consul, takes possession of, or in any manner administers any part of, the personal property of any person deceased without obtaining probate or administration within three months after the death of the deceased, or within one month after the determination of any suit or dispute respecting probate or administration (if there is any such which is not ended within two months after the death of the deceased), he shall be liable to such penalty, not exceeding 500 dollars, as the Court thinks fit to impose; and in every such case the same fees shall be payable by the person so administering as would have been payable by him if he had obtained probate or administration.

Custody of property.

68. Where a British subject, not having at the time of death his fixed place of abode in Brunei, dies there, the Court shall, where the circumstances of the case appear to the Court so to require, forthwith on the death of the deceased, or as soon after as may be, take possession of his personal property within the particular jurisdiction, or put it under the seal of the Court (in either case, if the nature of the property or other circumstances so require, making an inventory), and so keep the property until it can be dealt with according to law.

Administration of small estates.

69. Where it appears to the Court that the value of the property or estate of a deceased person does not exceed 500 dollars, the Court may, without any probate or letters of administration, or other formal proceedings, pay thereout any debts or charges, and pay, remit, or deliver any surplus to such persons in such manner as the Governor in Council may approve, and shall not be liable to any action, suit, or proceedings in respect of anything done, or purporting to be done, under this Article.

Appeal in Civil Cases.

Conditions of right to appeal.

70.—(1.) Where a civil action in the Court involves the amount or value of 500 dollars or upwards, any party aggrieved by any decision of the Court in the action shall have the right to appeal to the Supreme Court against the same on the following conditions, namely:—

(i.) The appellant shall give security to the satisfaction of the Court, and to such amount as the Court thinks reasonable, not exceeding 2,000 dollars, for the prosecution of the appeal, and for payment of any costs that may be ordered by the Supreme Court on the appeal to be paid by the appellant to any person.

(ii.) The appellant shall pay to the Court such sum as the Judge thinks reasonable, to defray the expense of the making up and transmission to the Supreme Court of the record.

(2.) In any civil case the Court may, if it thinks fit, give leave to appeal on the conditions aforesaid.

(3.) In any civil case the Supreme Court may give leave to appeal on such terms as it thinks fit.

Time for appeal.

71.—(1.) After three months from the date of a decision of the Court, an appeal against it shall not lie except by leave of the Supreme Court.

(2.) After six months from the date of a decision of the Court, application for leave to appeal against it shall not be entertained by the Supreme Court.

Execution pending appeal.

72.—(1.) Where a person ordered to pay money, or to do any other thing, appeals, the Court shall direct either that the decision appealed from be carried into execution, or that the execution thereof be suspended pending the appeal, as he thinks fit.

(2.) If the Court directs the decision to be carried into execution, the person in whose favour it is given shall, before the execution of it, give security to the satisfaction of the Court for performance of any order to be made on appeal.

(3.) If the Court directs the execution of the decision to be suspended, the person against whom it is given shall, before an order for suspension is made, give security to the satisfaction of the Court for performance of such order as shall be made on appeal.

Appeal papers to be filed.

73.—(1.) The appellant shall file an appeal motion-paper in the Court.

(2.) He may at the same time file any argument which he desires to submit to the Supreme Court in support of the appeal.

(3.) The motion-paper and the argument (if any) shall be served on such persons as respondents as the Court directs.

Respondent's papers.

74.—(1.) A respondent may, within seven days after service, file in the Court a motion-paper of cross appeal (if any), and such argument as he desires to submit to the Supreme Court on the appeal and cross appeal (if any).

(2.) Copies thereof shall be furnished by the Court to such persons as the Court thinks fit.

Transmission of documents.

75.—(1.) On the expiration of such seven days, the Court shall, without the application of any party, make up the record of appeal, which shall consist of the writ of summons, statements of claim and defence (if any), orders, and proceedings, all written and documentary evidence admitted or tendered, or a certified copy thereof, and the notes of the oral evidence, the appeal and cross appeal motion-paper, and the arguments (if any).

(2.) The several pieces shall be fastened together, consecutively numbered; and the whole shall be secured by the seal of the Judge, and be forthwith forwarded by him to the Supreme Court.

(3.) The Judge shall not, except for some special cause, take on himself the responsibility of the charge, or of the transmission to the Supreme Court, of original letters or documents produced in evidence. They shall be returned to the parties producing them; and they shall produce the originals, if required by the Supreme Court, at or before the hearing of the appeal.

Powers of Supreme Court after transmission of appeal.

76.—(1.) After the record of appeal is transmitted, until the appeal is disposed of, the Supreme Court shall be in exclusive possession of the whole action, as between the parties to the appeal.

(2.) Every application in the action, as between the parties to the appeal, shall be made to the Supreme Court, and not to the Court; but any application may be made through the Court.

Day of hearing appeal.

77.—(1.) The Supreme Court shall, after receiving the record of appeal, fix a day for the hearing of the appeal, and shall give notice thereof through the Court to the parties to the appeal, such a day being fixed as will allow of the parties attending in person, or by counsel or solicitor if they so desire.

(2.) But if all the separate parties to an appeal appear in person at Singapore, or appoint persons there to represent them as their counsel or solicitors in the appeal and cause the appearance or appointment to be notified to the Supreme Court, the Supreme Court may dispose of the appeal, without being required to give notice through the Court to the parties of the day fixed for the hearing thereof.

Presence of parties.

78. The Supreme Court may, if it thinks fit, require a party to an appeal to appear personally before it on the hearing of the appeal, or on any occasion pending the appeal.

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Decision of appeal.

79.—(1.) The Supreme Court may, from time to time, make any order necessary for determining the real question in controversy in the action, as among the parties to the appeal, and for that purpose may amend any defect or error in the record of appeal, and may enlarge the time for any proceeding except as otherwise by this Order expressly provided.

(2.) The Supreme Court may direct the Court to inquire into and certify its finding on any question, as between the parties to the appeal, or any of them, which the Supreme Court thinks fit to determine before final judgment is given in the appeal.

(3.) The powers of the Supreme Court under this Order may be exercised by the Supreme Court, notwithstanding that the appeal is brought against part only of the decision of the Court; and those powers may be exercised in favour of all or any of the parties to the action, although they have not appealed from, or complained of the decision.

(4.) Generally, the Supreme Court shall, as among the parties to the appeal, have as full jurisdiction over the whole action as if it had been originally instituted and prosecuted in the Supreme Court by parties subject to the original jurisdiction of the Supreme Court.

(5.) The Supreme Court may, if it thinks fit, remit the action to the Court to be reheard, or to be otherwise dealt with as the Supreme Court directs.

(6.) The appeal shall be determined by the Supreme Court according to the law to be administered under this Order by the Court.

Notices of appeal.

80.—(1.) Notwithstanding anything in this Order, an appeal to the Supreme Court shall not lie from an order of the Court, made on the application of one party without notice to the other party.

(2.) But if any person thinks himself aggrieved by such an order, he may, on notice to the other party, apply to the Court to vary or discharge the Order, and an appeal shall lie from the decision on that application.

Appeal to Privy Council.

81. For purposes of appeal in civil cases to His Majesty the King in Council, a decision of the Supreme Court on appeal under this Order shall have the effect of a decision of that Court under its ordinary primary jurisdiction.

Part V.—Evidence.

Witnesses.

82.—(1.) In any case, criminal or civil, and at any stage thereof, the Court, either of its own motion, or on the application of any party, may summon a British subject to attend to give evidence, or to produce documents, or to be examined.

(2.) If the person summoned, having reasonable notice of the time and place at which he is required to attend, fails to attend and be sworn, and give evidence, or produce documents, or submit to examination accordingly, and does not excuse his failure to the satisfaction of the Court, he shall be guilty of an offence against this Order.

(3.) A person punished under this Article shall not be liable to an action in respect of the same matter; and any such action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks fit.

(4.) In a criminal case, where it is proved that a British subject is likely to give material evidence, either for the prosecution or for the defence, and that he will not voluntarily attend to give evidence, the Court may issue a summons for his attendance.

(5.) If he does not obey the summons, and does not excuse his failure to the satisfaction of the Court, then, after proof of service of the summons, the Court may issue a warrant to compel his attendance.

(6.) Where it is proved that he will not attend to give evidence unless compelled to do so, the Court may issue a warrant in the first instance.

(7.) In civil cases any Court may, where the circumstances appear to justify it order that the expenses of a witness, on his appearing to give evidence, shall be defrayed by the parties, or any of them.

(8.) A person attending to give evidence before the Court shall not be compelled or allowed to give any evidence, or produce any document. if, in the opinion of the Consul signified by him personally or in writing to the Court, the giving or production thereof would be injurious to His Majesty's service.

Oath.

83.—(1.) Any person appearing before the Court to give evidence in any case, civil or criminal, may be examined or give evidence on oath in the form or with the ceremony that he declares to be binding on his conscience.

(2.) Any British subject wilfully giving false evidence in any suit or proceeding, civil or criminal, or any arbitration, or in any affidavit, shall be deemed guilty of wilful and corrupt perjury.

Application of Acts relating to evidence.

84.—(1.) The provisions of "The Evidence Act, 1851" (14 and 15 Vict. cap. 99), sections 7 and 11, relating to the proof of judicial and other documents, shall extend and be applied for all purposes as if Brunei were a British Colony.

(2.) The following Acts, namely:—

"The Foreign Tribunals Evidence Act, 1856;"
"The Evidence by Commission Act, 1859;"
"The Evidence by Commission Act, 1885;"

Or so much thereof as is for the time being in force, and any enactment for the time being in force, amending or substituted for the same, are hereby extended to Brunei and the Court, with the adaptations following, namely:—

In the said Acts, the Consul is hereby substituted for a Supreme Court, or the Judge of a Court in a Colony.

(3.) The following Acts, namely:—

"The British Law Ascertainment Act, 1859;"
"The Foreign Law Ascertainment Act, 1861;"

Or so much thereof as is for the time being in force, and any enactment for the time being in force, amending or substituted for the same, are hereby extended to Brunei and the Court, with the adaptations following, namely:—

In the said Acts the Consul is hereby substituted for a superior Court in a Colony.

Part VI.—Foreigners.

Actions by foreigners.

85.—(*a.*) Where a foreigner desires to institute an action against a British subject, or a British subject desires to institute an action against a foreigner, the Court may hear and determine it in accordance with the provisions of this Order.

(*b.*) Provided that the foreigner (i) first files in the Court his consent to the jurisdiction of the Court; and (ii) also, if required by the Court, obtains and files a certificate in writing from a competent authority of his own Government to the effect that no objection is made by that Government to the foreigner submitting in the particular cause or matter to the jurisdiction of the Court; and (iii) also, if required by the Court, gives security, to the satisfaction of the Court, to such reasonable amount as the Court directs by deposit money or otherwise, to pay fees. costs, damages, and expenses, and to abide by and perform the decision to be given by the Court or on appeal.

(*c.*) A counter-claim or cross-suit cannot be brought or instituted in the Court against a plaintiff, being a foreigner.

Actions by natives.

86. When, pursuant to the Agreement dated the 17th September, 1888, between Her late Majesty Queen Victoria and the Sultan of Brunei, a civil proceeding is brought by a native against a British subject, an officer appointed by the Government of the Sultan shall be entitled to be present at, and to take part in, the proceedings, but shall have no voice in the decision.

Part VII.—Deportation and Removal.

Deportation.

87.—(1.) Where it is shown on oath to the satisfaction of the Court that there is reasonable ground to apprehend that any British subject in Brunei is about to commit or cause a breach of the public peace, the Court may cause him to be brought before it and require him to give security to the satisfaction of the Court to keep the peace, or for his future good behaviour, as the case may require.

(2.) Where any British subject is convicted under this Order of any crime or offence, the Court may require him to give security to the satisfaction of the Court for his future good behaviour.

(3.) In either of these cases, if the person required to give security fails to do so, the Court may order that he be deported from Brunei to such place as the Court directs.

(4.) The place shall be a place in some part of His Majesty's dominions, the Government whereof consents to the reception therein of persons deported under this Order.

(5.) The person to be deported shall be detained in custody until a fit time and opportunity for his deportation arrives.

(6.) The Consul may order that the person to be deported do pay all or any part of the expenses of, or preliminary to, his deportation.

(7.) The Consul shall forthwith report to the Secretary of State any order of deportation made or confirmed by him, and the grounds thereof.

(8.) Where any person is deported to Singapore, he shall, on his arrival there, be delivered, with the warrant under which he is deported, into the custody of the Superintendent of Prisons of Singapore, who, on receipt of the person deported, with warrant, shall detain him, and shall forthwith report the case to the Governor, who shall either, by warrant if the person is a native of the United Kingdom and if the circumstances of the case appear to make it expedient, cause the person so deported to be taken to England, and in the meantime to be detained in custody (so that the period of such detention do not exceed three months), or else shall discharge him from custody.

(9.) If any person deported returns to Brunei without the permission of the Secretary of State, or of the Consul, in writing under his hand, he shall be guilty of an offence against this Order, and shall be liable, on conviction, to imprisonment for any term not exceeding one month, with or without hard labour, and with or without a fine not exceeding 200 dollars, or to a fine not exceeding 200 dollars, without imprisonment, and also to be forthwith again deported in manner hereinbefore provided.

Removal of persons under sentence.

88.—(1). Whenever under this Order any person is to be sent, removed, or deported from Brunei, the Court shall for that purpose (if necessary) cause him to be embarked on board one of His Majesty's vessels of war, or if there is no such vessel available, then on board any British or other fit vessel.

(2.) The warrant of the Consul, or of the Supreme Court (as the case may be), shall be sufficient authority to every constable, officer, or other person acting thereunder, and to the commander or master of any vessel of war, or other vessel (whether the constable, officer, or other

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person, or the vessel or the commander or master thereof, is named therein or not), to receive, detain, take, and deliver up such person, according to the warrant.

(3.) The warrant shall be delivered to the constable, officer, or other person acting thereunder, and a duplicate thereof shall be delivered to the commander or master of any vessel in which the person to whom the warrant relates is embarked.

PART VIII.—REGULATIONS, COMMENCEMENT, &c.

King's Regulations.

89.—(1.) The Consul may, subject to the provisions of this Order, make such Regulations, to be called "King's Regulations," as to him seem fit, for the peace, order, and good government of British subjects resident in, or resorting to, Brunei.

(2.) The power aforesaid extends to the making of Regulations for securing observance of the stipulations of Treaties between His Majesty and the Sultan of Brunei, and for enforcing any local law or customs, whether relating to trade, commerce, revenue, or any other matter, and for maintaining friendly relations between British subjects and native subjects and authorities, and for requiring Returns to be made of the nature, quantity, and value of articles exported from or imported into Brunei, by or on account of any British subject, or in any British ship and for prescribing the times and manner at or in which, and the persons by whom such Returns are to be made.

(3.) Regulations made under this Order shall not have effect unless and until they are approved by the Secretary of State, save that, in case of urgency declared in any such Regulations, the same shall take effect before that approval, and shall continue to have effect unless and until they are disapproved by the Secretary of State, and until notification of that disapproval has been received and published by the Consul.

Breach of Regulations.

90. Any Regulations made under this Order may, if the Consul thinks fit, impose penalties for offences against the same.

Penalties so imposed shall not exceed the following, namely: for any offence imprisonment for three months, with or without hard labour, and with or without a fine of 500 dollars, or a fine of 500 dollars without imprisonment; with or without a further fine, for a continuing offence, of 50 dollars for each day during which the offence continues after conviction.

In addition to or in lieu of penalties, such Regulations may provide for forfeiture of any goods, receptacles, or things in relation to which, or to the contents of which, any breach is committed of such Regulations, of any Treaty, or any native Law or Ordinance, the observance of which is provided for by such Regulations.

Publication of Regulations.

91. All Regulations made under this Order, whether imposing penalties or not, shall be printed, and a printed copy thereof shall be affixed, and be at all times kept exhibited conspicuously, in the public office of the Consulate at Brunei.

Printed copies of the Regulations shall be kept on sale at such reasonable price as the Consul from time to time directs.

Prison Regulations.

92. The respective powers aforesaid extend to the making of Regulations for the governance, visitation, care, and superintendence of prisons in Brunei, and for the infliction of corporal or other punishment on prisoners committing offences against the rules or discipline of a prison; but the provisions of this Order respecting penalties, and respecting the printing, affixing, exhibiting, and sale of Regulations, and the mode of trial of charges of offences against Regulations, do not apply to Regulations respecting prisons and offences of prisoners.

Rules of Court.

93. The Judge may, with the approval of the Chief Justice of the Supreme Court, make Rules of Court and prescribe forms of procedure as to all civil and criminal proceedings and the fees to be taken therein.

The Supreme Court may make Rules of Court and prescribe forms of procedure as to appeals to the Supreme Court under this Order, and may fix the fees to be taken on such appeals.

All such Rules shall be transmitted forthwith to the Secretary of State for his approval, and so far as they relate to fees, for the approval of the Treasury, and until disallowance by him shall have full force and effect.

Reports to Secretary of State.

94. Not later than the 31st March in each year, the Consul shall transmit to the Secretary of State a Report on the operation of this Order, so far as relates to judicial affairs, for the year ending the 31st December then last, showing the number and nature of the proceedings, criminal and civil, taken in the Court, and the result thereof, and the number and amount of fees received, and such other information, and being in such form, as the Secretary of State from time to time directs.

Commencement of Order.

95. This Order shall commence and take effect as follows:—

As to the appointment of any officers, the issue of any instructions, proclamations, or notifications, immediately from and after the passing of this Order;

As to all other matters and provisions comprised and contained in this Order, from and after the expiration of one month after this Order is first publicly exhibited at Brunei.

No. *12A*. **[Colonial Office.]**

[August 1, 1901.]

The Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, August* 1, 1901.

Opium seized on "Lorna Doone" at Labuan.

WE were honoured with your commands, signified in Mr. C. P. Lucas' letter of the 15th June last, stating that he was directed by you to forward, for our consideration, a letter from Sir Charles Brooke, G.C.M.G., Rajah of Sarawak, and to request the favour of our report upon certain questions of international law arising out of the circumstances described in that letter.

That Sir Charles Brooke asked for compensation for the action of the local representatives of the British North Borneo Company in Labuan in seizing opium on board the Sarawak Government steamer the "Lorna Doone," and detaining the vessel and its captain under section 9 of the Labuan Ordinance No. 2 of 1873.

That Mr. Lucas was to say that, in order to prevent the recurrence of seizures of this kind in future, you were giving instructions to the British North Borneo Company to have the Labuan Ordinance amended so as to exclude from its operation the case of a steamer merely calling at Labuan, but carrying opium consigned to another port.

That leaving the local law, therefore, out of the question, Mr. Lucas was to point out that the Rajah's claim for compensation would appear to you to depend upon the international *status* of Sarawak, as modified by the Agreement of the 14th June, 1888, whereby that country was placed under British protection.

That you were doubtful as to whether the "Lorna Doone" could be considered a public ship of a sovereign independent State, and, as such, entitled to exterritoriality.

That if Sarawak was to be looked upon as a sovereign or "semi-sovereign" State as regards the possession of public ships, it appeared to you that the formal statement of the Rajah that the "Lorna Doone" was such a ship was final, and that His Majesty's Government, no less than a Court of Law, would, on the authority of the "Parlement Belge" (L.R. 5 P.D., p. 219, and cases therein referred to), be bound to accept that statement without further inquiry.

That if, on the other hand, the status of Sarawak could be regarded as approximating to that of a protected native Indian State, it would clearly have no international personality at all, and would therefore be incapable of possessing "public vessels" *stricto sensu*.

That the matter was laid before the Secretary of State for Foreign Affairs in a letter from the Colonial Office, dated the 10th May, 1901, and that a copy of Mr. F. H. Villiers' letter in reply was inclosed for our information.

That Mr. Lucas was accordingly to request us to be good enough to report:—

1. What was the international status of Sarawak?
2. Was the "Lorna Doone" entitled to exterritoriality at Labuan as a "public ship"?
3. If not, was the Rajah entitled upon any other ground to compensation?

And further that, as it was believed that there was little authority or precedent upon the question of the rights of public vessels of protected States, Mr. Lucas was to ask us to favour you with a report upon the following questions:—

4. Was the public ship of an independent State under British protection entitled to the full rights of exterritoriality enjoyed by the public ships of ordinary sovereign States?
5. If not, was such a ship entitled to any limited form of exterritoriality, as, for example, in British waters, or in foreign waters, or how otherwise?
6. Or was such a ship entirely divested of its exterritorial character by the circumstance of its State being under British protection?

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

1. That as between Sarawak and His Majesty's Government, under the Treaty, Sarawak is entitled to be recognized as an independent State subject only to the limitations mentioned in the Treaty.

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2. It follows from the above that His Majesty's Government ought to recognize the "Lorna Doone" as a "public ship."

3. Does not arise.

4. We think this question could be only usefully answered upon a consideration of the circumstances of any particular case in which it may arise. As the foreign relations of Sarawak are under the control of His Majesty's Government, it will be for the Government to determine in any particular case how far such a claim should be asserted.

5 and 6. We do not think that such a ship can be regarded as entirely divested of its exterritorial character, and, as already advised, we think that it ought to be treated as a "public ship" in British waters.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

CHINA.

No. 13.

[March 15, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 14, 1901.

"Star" Newspaper *v.* Chamberlain. Should Kynoch papers be produced in Court?

Gentlemen,

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit herewith a letter from Messrs. Lewis and Lewis, stating that it is necessary for certain correspondence between this Office and Messrs. Kynoch (Limited) relative to letters of introduction asked for by the latter for Mr. Frank Huxham, their Secretary, to be produced in Court in connection with an action for libel which is being brought against the "Star" Newspaper Company at the suit of Mr. Arthur Chamberlain.

Messrs. Lewis and Lewis, who are acting as Solicitors for the defendant Newspaper Company in the matter, have this afternoon served the inclosed *subpœna duces tecum* on Mr. Campbell, C.B., of this Department, who saw their representative.

The only correspondence bearing on the matter which is, either in copy, draft, or original, in the possession and custody of this Department is inclosed for your inspection, and I am directed by Lord Lansdowne to request that you will favour his Lordship at your earliest convenience with your opinion as to whether this correspondence may properly be produced at the trial of the action by some gentleman from this Department, and with any observations of a general nature which you may have to offer on the subject.

As the case is expected to come on for hearing not later than Wednesday next, his Lordship would be greatly obliged if he could receive your Report at as early a date as possible.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Messrs. Lewis and Lewis	March 13, 1901.
Messrs. Kynoch (Limited)	October 14, 1898.
To ditto	October 19, „
To Her Majesty's Consuls in China and Japan..	October 19, „
Subpœna duces tecum	March 13, 1901.

Report.

I do not see that there is any ground on which the production of this correspondence can be resisted.

The Circular despatch of the 9th March, 1881, which is referred to in the letter of introduction, should also be produced.

(Signed) R. B. FINLAY.

*Royal Courts of Justice,
March* 15, 1901.

No. 14.

[March 21, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 14, 1901.

"Kow-shing" Arbitration Protocol: Chinese counter-amendments.

Gentlemen,

WITH reference to your Report of the 28th August last, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list relative to the proposed arbitration in the case of the "Kow-shing."

The note to the Chinese Minister (Paper K), as amended by you in your Report, was forwarded to him on the 30th August last, and a reply (Paper L) has now been received from him, making certain counter-amendments in the draft Protocol (inclosure in Paper K).

The two principal amendments consist (1) of an addition to the preamble, to the effect that the Chinese Government allege that the action of the "Naniwa" was contrary to international law, and (2) of the insertion in Article 1 of the words "having regard to the questions of international law involved and the terms of the charter-party." [*The amendments are indicated under these numbers in the margin of the Annex on p.* 2.]

I am to request that you will be so good as to favour Lord Lansdowne with your opinion in regard to these amendments; and in the event of your considering their insertion undesirable, with the grounds on which, in your opinion, the refusal of His Majesty's Government to accept them should be based.

His Lordship would also be glad to be favoured with any general observations you may have to offer on this case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Lofêngluh	March 21 1900.
(B.) To ditto	April 3, „
(C.) Law Officers	April 10, „
(D.) Lofêngluh	April 12, „
(E.) To ditto	April 24, „
(F.) Indo-China Steam Navigation Company	May 19, „
(G.) To ditto	May 31, „
(H.) Indo China Steam Navigation Company	June 8, „
(I.) Lofêngluh	June 15, „
(J.) Law Officers	August 28, „
(K.) To Lofêngluh	August 30, „
(L.) Lofêngluh	February 27, 1901.

Report.

In our opinion, the proposed alterations [(1) and (2)] in the recital, and Article 1 of the draft Protocol, submitted in the letter of Lofêngluh of the 27th February, 1901, are undesirable, and ought not to be accepted by His Majesty's Government.

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The suggested alterations are another effort to raise the question of the legality or illegality of the action of the "Naniwa" according to international law, which His Majesty's Government has already distinctly declined to do.

The Chinese Government should be so informed, and might be referred, for the reasons of such refusal, to Lord Salisbury's letter of the 30th August.

With reference to the alteration of the word "persons" in Article 1, we think it might be agreed to exclude Chinese soldiers, which could be effected by inserting after the word persons "not being Chinese soldiers," or words to that effect.

Nothing further occurs to us.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
March 21, 1901.

Annex.

Reamended draft Protocol (see foot-note for explanation of the successive proposed alterations).

WHEREAS the steam-ship "Kow-shing," the property of the Indo-China Steam Navigation Company, was, while under charter to the Chinese Government, ~~wilfully destroyed~~, *and carrying Chinese officers and troops*, on the 25th July, 1894, *fired on and sunk* by the cruiser "Naniwa," a ship of war belonging to the Japanese Government: *and whereas it is alleged by the British Government that the conduct of the Chinese officers and troops on board the "Kow-shing" led to the destruction thereof, and that the Chinese Government are responsible for the same.* And whereas it is (1) alleged by the Chinese Government that the action of the "Naniwa" with respect to the "Kow-shing" was in violation of the law of nations, and that, therefore, they are not responsible for the consequences thereof, the British Government and the Chinese Government haveing thus been unable to agree as to the liability for the damage caused by the loss of the ~~said vessel~~ "Kow-shing," the two Governments do hereby agree to submit the matter to the arbitration of his Excellency the Honourable Joseph H. Choate, the Ambassador of the United States of America to the Court of St. James'; and the said Governments do further agree that the questions to be submitted to the Arbitrator, and the mode of submitting their respective cases for his award, shall be as follows:—

Article 1. The subjects to be submitted to the Arbitrator shall be:—

~~1. Whether the destruction of the "Kow-shing," a British ship, by the "Naniwa," was justifiable and in accordance with the law of nations.~~

~~2. As between the owners and the charterers of the vessel, which of them, if either, ought to bear the loss.~~

(2) *Whether*, having regard to the questions of international law involved and the terms of the charter-party, *the Chinese Government are responsible for the loss of the "Kow-shing," and are liable to pay compensation to such owners and to the* ~~persons,~~ officers, and crew *on board who were injured in person or property, and to the representatives of such* ~~persons~~ of them *as perished.*

Should it become necessary to assess the amount of the loss caused to the owners by reason of the destruction of the said vessel, the Arbitrator shall either himself assess the amount of such loss, or cause the same to be ascertained for his information in such manner as to him shall seem proper.

Art. 2. Within ~~a~~ *two* months from the signing of the present Protocol the British Government shall ~~present to the~~ *on behalf of the owners of the "Kow-shing" and other claimants, present to the* Arbitrator a statement of claim setting forth the facts on which the said claim is based, together with documents pertaining thereto, and shall at the same time present to the Chinese Minister in London a copy of such statement of claim and documents.

Art. 3. Within ~~a~~ *two* months from the reception of the statement of claim and documents enumerated in the preceding Article, the Chinese Minister in London shall, on behalf of the Chinese Government, present to the Arbitrator a statement of defence to the claim, accompanied by documents in reply, and shall at the same time deliver to His Majesty's Principal Secretary of State for Foreign Affairs a copy of the said statement and documents *for communication to the owners and other claimants.*

To this *defence* a reply will be permitted, and to that ~~again~~ *reply* a rejoinder will be allowed, provided that in each case not more than ~~fourteen days~~ *one month* shall have elapsed since the

communication to the Arbitrator and the opposing party of the statement or pleading to which it is a reply; but after the exchange of the reply and rejoinder, no written communication shall be made on either side to the Arbitrator, unless the Arbitrator shall have asked by letter for further particulars. In that event, the other party will be entitled to a copy of the answer, and such time to reply to it as the Arbitrator, in the exercise of his discretion, may be pleased to allow.

Art. 4. The Arbitrator shall hear Counsel on both sides under such conditions and at such times as he may think proper to appoint, and he shall have power in his discretion to extend the times specified in Articles 2, 3, and ~~5~~ *6* hereof, and to make such other order, or orders, on either party as, in his opinion, may conduce to the full and fair decision of this claim.

Art. 5. All questions of procedure, including the conduct of the oral arguments and the production of documents, shall be determined by the Arbitrator, and the costs shall be borne as the Arbitrator shall direct.

Art. ~~5~~ *6*. The Arbitrator shall, within thirty days after the delivery of the rejoinder, proceed to examine and decide the questions hereby submitted to him, and shall give his Award as soon as possible after the conclusion of the proceedings, and shall communicate it to the Chinese Minister in London and to His Majesty's Principal Secretary of State for Foreign Affairs simultaneously.

Art. ~~6~~ *7*. The two Governments undertake to accept the Award, without reserve, and to give effect to it without delay.

Art. ~~7~~ *8*. If, from any unforeseen cause, the Arbitrator should permanently have to desist from his functions as Arbitrator, the two Governments agree to choose another as soon as possible to decide the matter in conformity with the procedure laid down in the present Protocol.

Done at London, this   day of   , in the year 190 .

No. 15.

[June 8, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 3, 1901.

Gentlemen,

"Kow-shing" Arbitration: as to exclusion of action of "Naniwa" from reference.

WITH reference to your Report of the 21st March, I have the honour to transmit to you, by direction of the Marquess of Lansdowne, a note from the Chinese Minister expressing regret that His Majesty's Government are unable to accept the modifications in the draft Protocol for submitting the question of the "Kowshing" to arbitration, which he had proposed in his note of the 27th February (Paper B).

Sir Chihchen Lofêngluh states that they were inserted in order to keep before the Arbitrator the question of the action of the Japanese ship "Naniwa," which His Majesty's Government were the first to raise in the communication called the "Memorandum" (Paper C).

His Majesty's Government asserted in that document the legality of the action of the Japanese ship, and Sir C. Lofêngluh states that, on the Chinese Government dissenting from this view, the Marquess of Salisbury suggested at an interview that the matter should be submitted to arbitration, adding that, in view of the delicate questions of international law involved in the settlement of the case, he would, if the Chinese Government should elect to do so, be prepared to submit it to the Judicial Tribunal established by the Hague Conference.

No record of this interview exists in this Department, but a note from the Chinese Minister (Paper D) is transmitted herewith, notifying the acceptance by the Chinese Government of the proposal made by Lord Salisbury at the interview mentioned above to refer the question to arbitration, and intimating that he would communicate later on the decision of the Chinese Government "as to which of the three modes of arbitration" proposed by Lord Salisbury, namely, that of submitting the questions at issue to the Hague Tribunal, to an English Judge, or to a foreign Jurist, should be adopted.

As the Law Officers of the Crown are aware, the Chinese Government selected the third alternative (Paper E), and proposed Mr. Choate as Arbitrator (Paper F).

No doubt, had the case been submitted to the Hague Tribunal, which was specially established by the consensus of all the Great Powers to arbitrate on matters involving considerations of international law, it would have been very difficult to withdraw the question of the justification of the action of the "Naniwa" under international law from the consideration of that Tribunal; but the Chinese Government

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Foot-note.—In the above amended form of the draft Protocol the erased type and italics represent respectively the deletions and additions proposed by His Majesty's Government to be made in the original draft of the Protocol, whilst the erased type underlined and the Roman type underlined represent respectively the deletions and additions which the Chinese Minister now proposes should be made in the amended Protocol.

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chose arbitration by a foreign jurist who has been offered and has accepted the office of Arbitrator, and there can, therefore, be no question now of submitting the matter to the Hague Tribunal. Subject to the observations which you may be good enough to offer, it appears to Lord Lansdowne that His Majesty's Government must maintain the views which they have hitherto advanced, and decline to be a party to submitting in the actual reference to arbitration any question involving a pronouncement on the action of the "Naniwa."

In the abstract, the question whether the Chinese Government are or are not liable in damages to the owner of the "Kowshing" can be considered quite independently of the question whether the Japanese Government are or are not liable. It is not requisite for the owners of the "Kowshing," in order to establish the liability of the Chinese Government to contend that the Japanese Government are not liable, neither is it necessary for the Chinese Government, in order to satisfy the Arbitrator of their own non-liability, to establish the liability of the Japanese.

It is not disputed that, as a matter of fact, the proximate cause of the sinking of the "Kowshing" was the firing into her below water-mark of missiles discharged from the "Naniwa." The object of the Arbitrator is, however, to investigate whether the Chinese Government (or those for whose action the Chinese Government is responsible) contributed or led in any way to this result by their wrongful conduct, and thus incurred pecuniary liability in respect of such result.

I am to request that you will take Sir C. Lofêngluh's note into your consideration, and will inform his Lordship whether the opinion expressed by you on the 21st March (Paper G) as to the exclusion of the action of the "Naniwa" from the terms of the reference to arbitration, is in any way modified by the arguments advanced in that note.

I am also to request that you will be good enough to offer any observations and suggestions which may occur to you with reference to the terms of the reply which should be returned by His Majesty's Government to Sir Chihchen Lofêngluh's last communication.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Sir C. Lofêngluh	.. ..	May 2, 1901.
(B.) Ditto	.. ..	February 27, „
(C.) Memorandum (see Annex to letter to Law Officers)	.. ..	May 22, 1896.
(D.) Sir C. Lofêngluh	.. ..	December 10, 1899.
(E.) Sir C. MacDonald	.. .. .. (Telegraphic)	January 13, 1900.
(F.) Sir C. Lofêngluh	.. ..	February 21, „
(G.) Law Officers	.. ..	March 21, 1901.

Report.

We see no reason to modify the opinion expressed by us in our Report of the 21st March last.

We think that the position taken up from the commencement by His Majesty's Government, viz., that the question for the Arbitrator is whether the Chinese Government are responsible for the conduct of their troops on board the "Kowshing," and whether such conduct led to the loss of the ship, is a correct one. We do not think that this position is in the least affected by the proposal which appears to have been made for reference to the Hague Tribunal, nor do we think that His Majesty's Government can properly introduce into the reference a clause as to the liability of the Japanese Government.

We have nothing to add to the opinions previously given by the Law Officers. It may perhaps be matter for consideration whether, in view of the very great delay which has taken place by the action of the Chinese Government, the agreement for reference should not be regarded as at an end unless the terms of reference are agreed to without further delay.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 8, 1901.

COLOMBIA.

No. 16.

[February 11, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 6, 1901.

Gentlemen,

Seizure of "Taboga" at Panamá

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list, which relate to the seizure of the British steam-ship "Taboga" by the local authorities of Panamá on the 12th November last.

The facts of the case, so far as reported to His Majesty's Government, are as follows:—

In the course of the Revolution, now proceeding in the Republic of Colombia, the town of Buenaventura, situated on the Pacific Coast of the Province of Panamá, and some 400 miles to the southward of that city, was invested by insurgents and the port blockaded. The critical condition of affairs made it imperative, in the opinion of the Governor of Panamá, to relieve the town, and in order to obtain the means of transporting troops, his Excellency entered into negotiations with the agent of the Pacific Steam Navigation Company for the use of their steamer "Taboga," a vessel of 348 tons, described by her owners as a mail-steamer, and by the Panamá authorities as chiefly used for the transportation of cattle along the coast.

The Company's agent having refused to entertain the proposal, either to charter or purchase the "Taboga," the vessel was forcibly taken possession of in the name of the Government by the local authorities, accompanied by a body of police, on the 12th November, and all foreigners among the crew were informed that they were at liberty to go on shore. The British master, officers, and engineers refused to serve on board the vessel and landed accordingly. (Paper O.)

The "Taboga" was subsequently armed with guns and sailed for Buenaventura and Tumaco with the Governor, General Alban, and a body of troops on board. (Paper P.)

On receiving from the Governor of Panamá notice of the expropriation of the vessel, Mr. Mallet, His Majesty's Consul at that place, and the Company's agent there, at once sent in protests against the forcible seizure of the vessel and her expropriation for military purposes by the Colombian authorities. (Paper M.)

With a view to the protection of British interests the Admiralty were, as soon as the facts were known, requested to send a man-of-war to Panamá, and His Majesty's ship "Pheasant" was accordingly dispatched from Esquimalt and arrived at Panamá on the 15th December.

On the previous day the Governor had returned to that port on board the "Taboga," after having routed the insurgents at Buenaventura and destroyed a rebel cruiser at Tumaco. (Papers P, Q, R.) In connection with these incidents it may be noted that it has been alleged by the insurgent General at Buenaventura that the "Taboga" when approaching that place, displayed the British Ensign, and that his defeat was largely owing to this deception.

This abuse of the British flag is, however, absolutely denied by General Alban. (Paper R.)

After remaining some twenty hours at Panamá the "Taboga" was again dispatched by the Governor on the following morning, some four and a-half hours before the arrival of Her Majesty's ship "Pheasant," with a fresh contingent of about 250 troops to be landed at Agua Dulce.

In view of the intention of General Alban to employ the "Taboga" a second time for military purposes, which was reported (Paper P) telegraphically by His Majesty's Consul, instructions were sent to Mr. Mallet on the 17th ultimo, by telegraph, to make a strong protest in the name of His Majesty's Government against the seizure of the vessel and the use subsequently made of her by the Colombian authorities. (Papers U, T.) It was added that both appeared to His Majesty's Government to be inconsistent with the principles of international law, and His Majesty's Consul

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was instructed to ask on the part of His Majesty's Government for a definite assurance that such conduct would not be repeated either in the case of the "Taboga" or of any other British vessel.

These instructions were also communicated to His Majesty's Minister at Bogotá, who was told to inform the Colombian Government of the protest and of the assurance demanded, and to request that orders might be sent which would effectually prevent the recurrence of any such proceedings. (Paper V.)

The Governor on his return to Panamá offered to return the "Taboga" to the Company's agent, who, however, demurred to accept the vessel pending an expert examination into her condition and a settlement of the question of compensation.

The agent has since, in the exercise of discretionary powers conferred on him by his employers, come to a settlement by direct negotiation with the local authorities, who have handed over the vessel and paid 6.000*l*. as compensation, the Central Government having agreed to accept responsibility for any arrangement arrived at by the two parties. (Paper EE.)

The Governor, in handing over the vessel, at the same time complied with the demand of His Majesty's Government for a written guarantee not again to interfere with a British vessel. But in view of the importance of the interests involved, it appears desirable to obtain some more formal admission of the unjustifiable nature of the course adopted.

In these circumstances it becomes necessary to consider, apart from the question of compensation, which has, it seems, been satisfactorily arranged between the Company and the local authorities, how far the forcible seizure of the "Taboga" at Panamá for employment, not in regard to some urgent emergency at Panamá itself, but at two ports at a considerable distance down the coast was justified; how far the action complained of has afforded good ground for an official protest on the part of His Majesty's Government; and in the event of the answer to the latter question being in the affirmative on what grounds such protest should be based, and in what terms it should be couched.

With a view to the consideration of these questions, I am to call attention to the contentions of the Colombian authorities in justification of their action. The Governor of Panamá in forwarding to His Majesty's Consul at Panamá the Decree of Expropriation issued by him, explained that the expropriation of the vessel was authorized by the laws of Colombia, and did not signify any offence or transgression against foreign property in Colombia; his Excellency added that the Company would be duly indemnified.

The Decree of Expropriation cited, in support of the course pursued, the laws of Colombia Nos. 56 and 119, of 1890; and further adduced the following considerations:—(See Consul Mallet's despatch No. 24, Paper M.)

1. The Republic of Colombia is in a state of war, brought about by revolutionists who have committed acts of violence and atrocities against persons and property.

2. The revolutionists have not respected foreign property, as is proved by the fact of their having taken coal at Taboga from the English Company, and by taking possession in June last of the steamer "Cisterna," and of launch No. 26 belonging to the Canal Company, which steamers they used against the Government until the 26th July, when they were recovered by the Government forces.

3. The revolutionists have threatened to take possession of the steamers "Quito" and "Manavi," running in the Pacific and belonging to the English Company, which is subventioned by the Government; and according to the contract of 1879 has to transport troops and war material for the Government; and have prevented the steamer "Manavi" on the 9th of this month from entering the port of Buenaventura, which they attack constantly and attacked in September last and which they pretend to blockade.

4. The commercial interests of all the country and especially those of the Company demand that the ports of Buenaventura and Tumaco should be relieved soon, for which object it is indispensable to have a steamer capable of transporting sufficient troops and provisions for the enterprise.

5. The steamer "Taboga," of the Pacific Steam Navigation Company, possesses all these requirements, and besides, has no fixed route as it is chiefly used for the transportation of cattle along the coast of the department.

6. The Government has proposed either to buy or to charter said ship and both proposals have been rejected by the agent of the Company and by its Directors in Valparaiso and Liverpool.

7. The laws of Colombia, like those of other civilized nations, permit the expropriation of private property, and more so the use of it for purposes of public benefit, such as opening the ports of Buenaventura and Tumaco, establish the interrupted communication of this port with the National Government and re-establish the way of communication and of mails. For these reasons and especially in view of Articles 27 and 31 of Law 56 of 1890, the civil and military Power decrees the temporary occupation of the steamer "Taboga," anchored at present and unloaded in this port of Panamá, and orders that the owners of the said ship be paid a fair price for its services during the time it may be occupied by the Government as well as for damages it may receive in the judgment of experts or by friendly agreement with the Company to which it belongs.

To resume briefly. The Decree of the Governor of Panamá contends (1) that a state of war exists.

With regard to this point, inquiry having been made as to whether the Colombian Government admitted the existence of a state of war and recognized the revolutionists as belligerents, it has been ascertained by telegraph that the Decree was made without the knowledge of the Central Government, and that they have never recognized the insurgents as belligerents. (Paper DD.)

2. That the protection of foreign interests demands the suppression of the insurrection.

3. That for this purpose steam transport was necessary for troops and provisions.

4. That the "Taboga" met the requirements of the situation.

5. That efforts to buy or charter the vessel had been rejected.

6. That expropriation of private property for the public benefit was permitted by the laws of Colombia as by those of other civilized States.

The justification thus advanced for the seizure and expropriation of the "Taboga" would appear in some sort to be an assertion of the right of angary.

The exercise of a somewhat similar authority by the Government of Uruguay in the case of certain British steamers at Montevideo in 1897 formed the subject of a reference to your predecessors in office on the 8th March of that year, and on that occasion the Law Officers stated in their Report of the 15th March (of which a copy is inclosed (Paper II) that "the right of angary has never been recognized except where there are belligerents;" they went on to state that "the proposed seizure of steamers belonging to British subjects" would not be justified because no war existed.

The report then goes on: "It" (the seizure of the steamers) "could only be justified as a measure of urgent military necessity."

A distinction would thus appear to be drawn between the right of angary and the plea of urgent military necessity, and as in view of the admitted absence of a state of war, justification under that plea cannot be maintained, it seems desirable to ascertain how far, in your opinion, this distinction may be relied upon, and whether, in the present case, justification can fairly be claimed under the latter.

In the event of its being held that a more formal and reasoned protest on the part of His Majesty's Government is warranted, it would seem expedient to consider, further, whether, apart from the general grounds of international law, a more special ground of protest is not afforded by the Conventional rights of this country under the Treaty of Commerce between Great Britain and Colombia of the 16th February, 1866 (a copy of which is inclosed (Paper KK).

Article XVI of the Treaty runs as follows:—

"The subjects and citizens of each of the Contracting Parties in the dominions and possessions of the other shall be exempted from all compulsory military service . . . . as well as from all contributions, whether pecuniary or in kind, imposed as a compensation for personal service; and finally, from forced loans and military exactions or requisitions."

Articles of a similar nature in Treaties with other countries have from time to time been appealed to, and when, in 1874, Her Majesty's Minister at Buenos Ayres inquired as to the extent to which British subjects were exempt from such exactions during the existing civil hostilities in the Argentine Republic, the Law Officers reported, on the 5th December of that year, that the words of the Treaty were express, and Her Majesty's subjects were thereby exempted from all military exactions or requisitions.

On a previous occasion, in 1866, Her Majesty's Chargé d'Affaires at Buenos Ayres had raised the question as to the liability of British subjects established in or

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trading at that place to obey a Decree of the Argentine Government by which horses, mules, and ships were compulsorily required for military service

The then Queen's Advocate (Sir Robert Phillimore), to whom the question was referred, reported as follows:—

"I am of opinion that exemption from the operation of these Decrees in favour of British subjects can be claimed under the 9th section of the Treaty of Buenos Ayres of the 2nd February, 1825, by the terms of which it is provided that British subjects shall be exempted from all compulsory military service whatsoever, whether by sea or by land, and from all forced loans or military exactions or requisitions." (24th August, 1866.)

During an insurrection which occurred at Buenos Ayres in July 1890, a launch belonging to Messrs. Shanks and Co., British subjects, of that city, was seized and pressed into the Government service by the Argentine authorities. The launch had been purchased in England by Messrs. Shanks for an Argentine customer at a cost of 1,000*l.*, and taken up the river about 12 miles above Buenos Ayres to a place called San Fernando. Here she appears to have been seized, but after ten days, the revolution being then over, she was put back by the Government authorities at San Fernando. Messrs. Shanks were aware that the launch had been returned. and had sent an employé privately to examine it, by whom it was reported to be in an unsaleable condition. But since its return had not been notified to them, they preferred to leave her where she was, and to sue the Government for her loss. They claimed 2,000*l.* They stated that they had not only lost the sale of the launch, but were about to be sued for non-fulfilment of contract by the customer for whom it had been procured.

The case was referred to the Law Officers (Sir Richard Webster and Sir E. Clarke), who reported, on the 14th May, 1892, that the claim was not one which Her Majesty's Government could properly press. The loss, they said, which was placed at an extravagant amount, was caused by the improper conduct of Messrs. Shanks themselves. On learning that the vessel had been removed they should have claimed its return, and they might then have been entitled to a nominal sum for the interference with their property. They had, however, sent in a claim for the value of the launch, and, though knowing she was at their disposal, had abandoned her.

It does not appear that the attention of the Law Officers was on this occasion drawn to Article IX of the Treaty of 1825, nor was there any reference to Treaty rights in their Report.

In the Uruguay case of 1897, which has been referred to in an earlier part of this letter in connection with the right of angary, the Law Officers reported that the seizure at Montevideo of steamers belonging to British subjects appeared not to be justifiable, and could only be justified as a measure of urgent military necessity; adding, however, that strangers resident in a country are liable to the same consequences as the native inhabitants of the country. But in the case of Uruguay there was then no Treaty to appeal to containing special exemptions for British subjects, the Treaty of the 26th August, 1842, which contained the usual Article for exemption from military requisitions, having expired on the 14th March, 1854.

A case of simple temporary detention of neutral vessels occurred during the American Civil War. In the case of the "A. G. Berry," which was prevented from leaving New Orleans for Matamoros, the Law Officers reported on the 9th February, 1864, that the principle on which this detention was justified was the urgent military necessity of the belligerent to prevent the issuing from his own ports of vessels which he apprehended would apprise his enemy of his strategic plans, and thus defeat their execution. This act of belligerent exigency, therefore, gave no grounds for remonstrance; though if the ship were indefinitely detained, that would be stretching the doctrine of military necessity beyond the usual limits, and would justify a remonstrance.

The above cases are the nearest precedents which can be discovered in the archives of this Department for the one which has now arisen in Colombia, but there appear to be none in which the circumstances have been identical with those of the "Taboga."

In the present instance it is to be noted that the Colombian Law 56 of 1890 (Inclosure in Paper M), which is specifically referred to in the Decree of Expropriation as furnishing the Government with the extradinary powers on which their action was based, contains under Article 3 the following proviso:—

"In the event of the presumption alluded to in the preceding Article (grounds of public utility for expropriation) not being refuted, the expropriation will be decreed against whomsoever it corresponds: be it a private individual, Society, Corporation, or community of any kind, or political or municipal entity *save the rights, exemptions, or immunities recognized in laws or in public Treaties.*"

This provision would appear to rebut the plea of legality on the ground of municipal law.

In these circumstances, I am to request that you will take the papers transmitted herewith into your consideration, and favour Lord Lansdowne with your opinion on the questions raised in this letter, viz.:—

1. Whether the forcible seizure of the "Taboga" in the circumstances stated was justified either on the plea of urgent military necessity or on any other, and, if so, on what grounds.

2. Should your answer to the previous question be in the negative, on what grounds should the formal protest which it will in that event be necessary for His Majesty's Government to address to the Government of Colombia be based.

Lord Lansdowne would at the same time be glad to be favoured with any observations of a more general nature which you may be disposed to offer on the matter.

I have, &c.
(Signed) F. H. VILLIERS.

P.S.—A further despatch just received from His Majesty's Consul at Panamá, which incloses copies of the official protest addressed by him to the local Governor on the 17th December last, and of his Excellency's reply, is also inclosed for consideration.

F. H. V.

List of Papers.

(A.)	Consul Mallet	(Telegraphic)	November 13, 1900.
(B.)	Ditto	(Telegraphic)	November 14, ,,
(C.)	Pacific Steam Navigation Company	(Telegraphic)	November 14, ,,
(D.)	To Mr. Welby	(No. 1. Telegraphic)	November 14, ,,
(E.)	To Consul Mallet	(Telegraphic)	November 15, ,,
(F.)	Pacific Steam Navigation Company		November 14, ,,
(G.)	Ditto		November 15, ,,
(H.)	Ditto (I)		November 16, ,,
(I.)	Ditto (II)		November 16, ,,
(K.)	M. Calderon		November 22, ,,
(L.)	M. Rostrepo	(Telegraphic)	November 30, ,,
(M.)	Consul Mallet	(No. 24)	November 15, ,,
(N.)	Pacific Steam Navigation Company		December 6, ,,
(O.)	Ditto		December 11, ,,
(P.)	Consul Mallet	(Telegraphic)	December 15, ,,
(Q.)	Pacific Steam Navigation Company	(Telegraphic)	December 15, ,,
(R.)	Consul Mallet	(Telegraphic)	December 16, ,,
(S.)	Memorandum (Mr. Davidson)		December 17, ,,
(T.)	To Consul Mallet (A)	(Telegraphic)	December 17, ,,
(U.)	Ditto (B)	(Telegraphic)	December 17, ,,
(V.)	To Mr. Welby	(No. 4. Telegraphic)	December 17, ,,
(W.)	Consul Mallet	(No. 25)	November 28, ,,
(X.)	Pacific Steam Navigation Company		December 21, ,,
(Y.)	M. Restrepo		December 3, ,,
(Z.)	Pacific Steam Navigation Company		December 24, ,,
(AA.)	Mr. Welby	(No. 1. Telegraphic)	December 17, ,,
(BB.)	General Reyes		December 27, ,,
(CC.)	Mr. Welby	(No. 4. Telegraphic)	December 23, ,,
(DD.)	To ditto	(No. 1. Telegraphic)	January 2, 1901.
(EE.)	Consul Mallet	(Telegraphic)	January 5, ,,
(FF.)	To Mr. Welby	(No. 2. Telegraphic)	January 8, ,,
(GG.)	Pacific Steam Navigation Company		January 21, ,,
(HH.)	Mr. Welby	(No. 1. Telegraphic)	January 12, ,,
(II.)	Law Officers' Report		March 15, 1897.
(KK.)	Treaty with Colombia		February 16, 1866.
(LL.)	Consul Mallet	(No. 1)	January 6, 1901.

Report.

1. The forcible seizure of the "Taboga" in the circumstances stated was unjustifiable. A state of war did not exist, and though military operations were in progress against the insurgents, the vessel was not seized on any ground of urgent

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military necessity, but as a matter of convenience for the conduct of an expedition to places at a distance from Panamá where the seizure took place.

2. I think that the formal protest to be addressed to the Government of Colombia should state in general terms that His Majesty's Government regard the seizure of the "Taboga" as quite unjustifiable. It may be pointed out that the insurgents had never been recognized as belligerents, and that the Colombian Government were not justified in exercising the rights of belligerents with regard to vessels the property of a subject of a neutral Power; while, at the same time, it should be stated that His Majesty's Government is not prepared to admit that the circumstances were such as would have justified the use made of the "Taboga," even if a state of war had existed.

It should be added that, apart from a state of war, there were no circumstances which could possibly excuse the seizure of the "Taboga." I do not think it is desirable in this despatch to enter into any discussion as to the circumstances under which urgent military necessity may justify the use of neutral property apart from belligerent rights. Some instances of the exercise of such a right on the ground of necessity in the case of military operations against insurgents, although no state of belligerency exists, are suggested by Mr. Davidson in his Minute on Consul Mallet's despatch No. 24, Political, of the 5th November, 1900, and others may arise. But, while ships which have merely put into the port of a friendly Power cannot be altogether excluded from liability to such use, they are entitled to specially favourable consideration as compared with the property of neutrals on land. It is not, however, in my opinion, desirable that His Majesty's Government should, on this occasion, commit themselves to any abstract propositions on this point.

It is enough to say that the circumstances here were clearly not such as to justify the seizure.

It is not necessary for this purpose to rely upon Treaty; the position of His Majesty's Government is sufficiently established on the grounds of general international law, but I think that Article XVI of the Treaty may be fairly referred to as aggravating the conduct of the authorities at Panamá in this matter.

I think that the Colombian Government may properly be asked to express regret for what has occurred, and to give a formal assurance that British vessels will not, in future, be exposed to such treatment.

(Signed) R. B. FINLAY.

Royal Courts of Justice,
February 11, 1901.

FRANCE.

No. 17.

[April 3, 1901.]

Foreign Office to Law Officers of the Crown.

Gentlemen,
Foreign Office, March 19, 1901.

"Waima" Collision: British Case, for submission to Arbitrator.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the accompanying draft Case on behalf of His Majesty's Government which has been prepared for submission to the Arbitrator chosen to decide on the respective claims of His Majesty's Government and the French Government in regard to the collision at Waima in 1893 and the loss of the "Sergent Malamine" in 1895.

The circumstances which have led to the drawing up of this document are briefly as follows:—

The "Sergent Malamine" was a vessel commanded by Lieutenant Mizon, a French officer who conducted an expedition up the Niger and the Benue Rivers, and whose proceedings eventually led to his recall by the French Government, and the

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COLOMBIA.

No. 16 A.

[December 4, 1901.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, November 14, 1901.

Treatment of Frontino and Bolivia Gold Company's property. Right of angary, &c.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list, concerning the treatment accorded to the property, rights, and interests of the Frontino and Bolivia Gold Mining Company by the Agent of the Colombian Government.

The facts of the case, as stated by Mr. Barker Johnston, the Superintendent of the Company in South America, are briefly as follows:—

The Company, an English one, having its trade domicil and registered offices at 184, Gresham House, Old Broad Street, E.C., with a nominal capital of 140,000*l.*, possesses a freehold property of about 4 miles long by about 2 miles broad, containing a number of gold-bearing lodes. At present six mines are being worked, fully equipped with hoisting and pumping machinery, and mills have been erected for treating the ore. The workmen employed when the mines are in full working order number about 1,650. They are fed and housed on the Company's property, which is inclosed and fenced.

The European members of the staff are twelve in number, and absolute neutrality in the political affairs of the country has, it is alleged, been strictly observed by everyone.

At the beginning of the present revolution Mr. Johnston obtained a safe-conduct from the proper military authority for such workmen as the Company required for carrying on their mining and farming operations. This does not seem to have been respected by the subordinate authorities since it was issued, and recruiting parties broke open and stole the Company's property, fired rifle shots into the mines, endangering the lives of the British subjects there, and killing some of the native workmen. The matter has been laid before the Departmental Government, but no satisfaction or protection has been obtained.

On the 24th January, 1900, a squad of soldiers entered one of the mines and stayed at the mouth of the shaft for three hours, and in consequence of the workmen being thereby prevented from attending to their duties, a loss of 2,000*l.* was inflicted on the Company owing to the flooding of the mine.

In September 1900 a Circular (which forms Inclosure 1 to Paper A) was issued by the Departmental Government of Antioquia, instructing the local authorities to respect the persons and property of foreigners, and for some time the instructions appear to have been observed; but on the 10th July last a telegraphic order was addressed by the Colombian Minister of Foreign Affairs to the Government of the Department, a copy and translation of which form Inclosure 2 in Paper A.

This order laid down in terms that foreigners residing in Colombia were subject to the Constitution and Laws of Colombia, in the same way as natives, compulsory military service being excepted, and that, consequently, if very urgent necessities made it indispensable to seize animals of foreign private individuals for the maintenance and restoration of public order, these animals might be taken under the same conditions as from Colombians.

Very shortly afterwards, on the 26th July, ten mules, the property of the Company, were demanded to be taken on hire for war purposes. On this demand being refused, the Superintendent of the mine pleading that he had not sufficient animals for carrying on the Company's work, soldiers were sent to the Company's stables, and fourteen mules were forcibly seized and taken away.

The Company's Manager protested against this arbitrary act, and reserved a claim for damages on account of the loss accruing to the Company, which is represented as very serious, as they are deprived of their means of transport for provisions and other mining stores.

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The question would therefore seem to arise whether such urgent necessity can be shown to have existed as would justify this seizure and take the case out of the operation of Article XVI of the Treaty between Great Britain and Colombia of 1866 (Paper B) by which British subjects are exempted from "forced loans and military exactions or requisitions."

The terms in which the telegraphic order is couched do not therefore correctly and fully define the position of British subjects in the matter.

The application of Article XVI to cases of this kind is incidentally referred to in the Reference to the Law Officers with regard to the steam-ship "Taboga," copy of which is inclosed (Paper C), and in Mr. Davidson's Minute on Consul Mallet's despatch No. 24, Political, of the 15th November, 1900, on the subject (Paper D), when the justification advanced for the seizure and expropriation of the "Taboga" appeared in some sort to be an assertion of the right of angary.

Your opinion was then asked as to how far a distinction which appeared to be drawn in a previous case of the seizure of some British ships at Monte Video in 1897, between the right of angary and the plea of urgent (military) necessity, might be relied upon in view of the admitted absence of a state of war. The Attorney-General, in his Report of the 11th February last (Paper E) did not consider it desirable on that occasion to enter into a discussion as to the circumstances under which urgent necessity may justify the use of neutral property apart from belligerent rights.

Whether such urgent necessity did arise in the present instance would seem to depend entirely on the appreciation of the actual facts and circumstances, and the view which may be taken of the evidence.

On such facts as are at present before Lord Lansdowne there does not appear to him to have been such an urgent, immediate, and pressing emergency as justified the forcible expropriation of the mules of the Frontino and Bolivia Gold Mining Company, against their owners' protests, especially as it is not clearly established that the mules could not have been as readily obtained from natives, who might, it would seem, other things being equal, not unreasonably be selected in preference to foreigners to discharge the burdens arising through urgent necessity of this kind.

In these circumstances I am to request that you will take the papers transmitted herewith into your consideration, and favour Lord Lansdowne with your opinion on the question whether His Majesty's Government should or should not protest against the occasion being regarded as one of "urgent necessity."

In the event of your reply to this question being in the affirmative, Lord Lansdowne would be glad if you would further state, for his Lordship's assistance, the grounds on which you consider that such a protest can most advantageously be based.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Sir J. Dimsdale, M.P.		October 18, 1901.
(A¹.)	Mr. Johnston .. .. Two Inclosures.		August „ „
(B.)	Treaty between Great Britain and Colombia..		February 16, 1866.
(C.)	Reference to Law Officers ("Taboga")		February 6, 1901.
(D.)	Consul Mallet ("Taboga") .. .. And Minutes.	(No. 24, Political)	November 15, 1900.
(E.)	Attorney-General (Report on "Taboga")		February 11, 1901.

Report.

We are of opinion that His Majesty's Government should protest against the forcible seizure of the property of the Frontino and Bolivia Gold Mining Company, and the other acts complained of.

The protest should be rested mainly on the XVIth Article of the Treaty; what has been done constitutes a direct infringement of that Article. His Majesty's Government should decline to admit that any such "urgent necessity" had arisen as could justify the seizure even if there were no Treaty in question, and should protest against these acts as unjustifiable, even if there were no Treaty.

It should also be pointed out that the telegraphic instruction of the 10th July, 1901, addressed by the Colombian Minister for Foreign Affairs to the Departmental Government of Antioquia did not sufficiently represent the rights of British subjects, under Article XVI, to be exempted from military exactions or requisitions.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
December 4, 1901.

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seizure by the Niger Company of the "Sergent Malamine" and its condemnation by the Company's Tribunals. The French Government have never allowed that the condemnation was justified, and claim compensation for the owners of the vessel, which eventually sunk at its moorings, and for the merchandise on board.

The "Waima incident" occurred as long ago as December 1893.

At that time the boundary between the British and French spheres in the Hinterland of Sierra Leone had been fixed by Agreements of 1889 and 1891, but the portion of that boundary near which the incident took place had not been laid down on the spot. A predatory band of Sofas were out near the frontier, and a British force was sent to meet them. The force had encamped at Waima on the 22nd December, and before daylight next morning was attacked by a French force under Lieutenant Maritz. Before the mistake was discovered, the British had lost Captain Lendy, D.S.O., Lieutenant Liston, Second Lieutenant Wroughton, one sergeant-major, and six privates killed, and seventeen wounded.

The British had no doubt that Waima was in British territory; the fact was contested by the French, but has since been established by observations.

His Majesty's Government do not assert that Lieutenant Maritz made an attack on a British post knowing it to be such, but they contend that there was culpable neglect on his part to ascertain where he was, which justifies them in making a claim for compensation of 10,000*l.*

His Majesty's Government and that of France have, after much negotiation, agreed to submit to arbitration their respective grievances in these two affairs, such arbitration to be limited to the following two points:—

1. The amount of indemnity to be paid by the British Government for the loss of the "Sergent Malamine," the minimum to be 5,000*l.*, and the maximum 8,000*l.*

2. The amount of indemnity to be paid by the French Government for the injury to British officers and soldiers at Waima.

They have further selected as Arbitrator Baron Lambermont, the Secretary General to the Belgian Foreign Office, and a Convention is about to be signed (No. 1 of Appendix) regulating the procedure to be followed in the matter.

I am accordingly to request you to take the draft Case relating to the Waima Arbitration into your consideration, and to favour Lord Lansdowne with your views as to whether it adequately sets forth the arguments which can be advanced on behalf of His Majesty's Government in the matter, together with any further observations which you may be good enough to offer.

I have, &c.
(Signed) MARTIN GOSSELIN.

Report.

In our opinion the statement of the case of His Majesty's Government in the draft is quite adequate and cannot be improved.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
April 3, 1901.

Annex.

Case of the British Government in connection with the Collision at Waima in 1893 *between British and French Troops.*

ON the 23rd December, 1893, a collision occurred at the village of Waima (Warina or Ouéma), within the British Colony of Sierra Leone, between a French force under the command of Lieutenant Maritz and a British force under the command of Colonel Ellis. The following casualties occurred upon the British side:—

Killed in action: West India Regiment—Lieutenant Liston, Second Lieutenant Wroughton, Sergeant-Major Carraher, four privates.

Constabulary: Captain Lendy, two privates.

Severely wounded: West India Regiment—Sergeant-Major Field and fourteen privates.

Constabulary: Three privates.

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Two statements showing the rank, rates of pay, and surviving relatives of the killed are printed in the Appendix.

1. The Government of the French Republic having agreed to make compensation to the relatives of those who were killed and to those who were wounded on this occasion, the only question is as to the sum to be awarded.

2. The position of Waima will be found marked on the accompanying map in latitude 8° 35′ north and longitude 10° 50′ west of Greenwich (equivalent to 13° 10′ 5″ west of Paris).

3. At the time when the above-mentioned collision took place the arrangements in force with respect to the frontiers of the British, French, and Liberian possessions in this region were as follows:—

By Articles II and III of a Convention, concluded between Great Britain and Liberia on the 11th November, 1885, the line of the River Mannah (Mano on the accompanying map) was recognized as the south-eastern frontier of the Colony of Sierra Leone.

By an Arrangement signed on the 10th August, 1889, and an Agreement signed on the 26th June, 1891, between the British and French Governments, the north-western, northern, and north-eastern frontiers of the Colony had been defined by a line commencing on the Atlantic coast and terminating at Tembikunda in latitude 9° 4′ north and longitude 10° 47′ west of Paris.

By a note addressed to Mr. Egerton by M. Ribot on the 4th March, 1892, the French Government had agreed that the frontier between the British and French possessions, southward from Tembikunda to the territory of Liberia, should follow the 13th degree of longitude west of Paris.

Lastly, by an Arrangement concluded between the French and Liberian Governments on the 8th December, 1892, the country to the east of the 13th degree of longitude west of Paris, and south of the parallel passing through Tembikunda, had been recognized as belonging to Liberia.

The effect of the above arrangements is shown on the accompanying map.

4. In December 1893, Her Majesty's Government found it necessary to dispatch, under the command of the late Lieutenant-Colonel Ellis, an expedition against the Sofas, a tribe who were then raiding the country in the interior of the Colony of Sierra Leone. On the 27th November instructions were transmitted by cable to the Officer Commanding in Sierra Leone that care should be taken not to approach too near places occupied by French troops or run any risk of coming into collision with them. On the 13th December, Colonel Ellis, who was then approaching Kommendi about 25 miles south-west of Waima, addressed to the Officer Commanding in Kissi (the French post nearest to the frontier) a letter announcing his approach. This letter was sent in duplicate by different routes, but does not appear to have reached its destination.

5. Colonel Ellis reached Kommendi on the 14th December, and occupied Waima on the 21st. On the 23rd December, before daybreak, the place was attacked by a French force under Lieutenant Maritz, who had made a night march for the purpose, believing the town to be in the occupation of the Sofas. The firing lasted forty minutes. Upon its slackening the British advanced, finding seven magazine rifles and eight Chassepôts. A wounded tirailleur Sénégalais was also found, and from him Colonel Ellis first learnt by whom he had been attacked. Later in the morning Lieutenant Maritz was also found mortally wounded. Before his death (which occurred shortly after noon) Lieutenant Maritz explained to Colonel Ellis that he had been led to believe the British were Sofas. The explanation was at once accepted by Colonel Ellis, who caused the body of Lieutenant Maritz to be buried with military honours, and wrote to the French Officer Commanding at Kissi, assuring him that friendly relations would not be disturbed by the mistake. In a message dispatched the same day to the Officer Commanding in Sierra Leone, Colonel Ellis expressed his conviction that Waima was well within the British sphere.

6. The movements of the force under Lieutenant Maritz during the few days immediately preceding the 23rd December, 1893, are to be gathered from the statements of the above-mentioned tirailleur Sénégalais, recorded by Colonel Ellis, the deposition of the same tirailleur subsequently taken at Freetown before the French Consul there, and a Memorandum communicated by M. Casimir-Perier to Her Majesty's Ambassador at Paris on the 17th May, 1894. These documents are all printed in the Appendix to this Case.

7. It appears from their evidence that Lieutenant Maritz had earlier in the month penetrated still further into the British sphere, and had engaged the Sofas on the 5th December at Tickourema.

This place (as explained by a map by M. Desbuissous, furnished to Her Majesty's Ambassador at Paris with the Memorandum of the 17th May, 1894) is identical with Tekwiama, and lies some 20 miles south-west of Waima. It is stated in the Memorandum of the 17th May, above referred to, that the French Government had refrained from communicating to their officers the arrangement embodied in M. Ribot's note of the 4th March, 1892, making the 13th degree of longitude west of Paris the frontier between the British and French spheres of influence to the south of the latitude of Tembikunda.

It is plain, therefore, that the operations of Lieutenant Maritz were being conducted without regard to any frontier in that neighbourhood, and that he was not misled by any then prevailing error or uncertainty as to the geographical position of Waima or Tekwiama.

8. In the Memorandum of the 17th May, 1894, some stress is laid on the statement of the tirailleur examined at Freetown that the firing was commenced by the British sentries. Whether this is so or not is immaterial. It is not suggested that the French force was not actually moving to the attack. On the contrary, Lieutenant Maritz believed the town to be in the hands of the Sofas, and was about (as he thought) to surprise them. It is not the case of an engagement which would otherwise have been avoided being precipitated by the mistake of a British sentry. The sentry made no mistake whatever. It was not yet daybreak. He saw a force which was both apparently and really about to attack. He was justified in firing, and he would have been wrong in not doing so.

9. The geographical position of Waima was ascertained by Major S. C. N. Grant, of the Royal Engineers, by astronomical survey in January 1896.

According to his observations, it lies in longitude 10° 50′ 11″ west of Greenwich, or 3′ 38·25″ to the west of the longitude of Tembikunda, which Major Grant placed in 10° 46′ 32·75″.

At the time when Major Grant was carrying out this work an Anglo-French Joint Commission was delimiting the boundary from Tembikunda northwards, and the French members of the Commission observed for longitude at Tembikunda, and made it 10° 47′ west of Greenwich. If this datum is taken, Waima lies in longitude 10° 50′ 38·25″, or 27·25″ further west than Major Grant had placed it.

The result is that Waima is, according to the English calculations, 11·6 miles to the west of the 13th meridian west of Paris, and 12·2 miles to the west of it according to the French calculations.

These facts, embodied in a Memorandum, were communicated to M. Cambon by the Marquess of Salisbury on the 23rd September, 1899, together with a copy of the map accompanying this Case.

M. Cambon, after referring them to his Government, admitted, in a note addressed to Lord Salisbury on the 29th January, 1900, that the position of Waima within British territory was thereby fully established.

10. Before the visit of Major Grant and of the Anglo-French Commission to this neighbourhood in January 1896, it was not admitted by the French Government that Waima was to the west of the 13th meridian of longitude west of Paris. Indeed, in the map by M. Desbuissous, already referred to, and the Memorandum which accompanied it, a theory is put forward that Waima is just to the east of that meridian. It is submitted, however, that the circumstance that the position of Waima was at, and for some time after, the collision not beyond dispute, is without any bearing on the degree of responsibility of the Government of the Republic for what has occurred. As has been shown in paragraph 7 of this Case, the French officers were acting in this neighbourhood without regard to any limitations by reference to longitude. On the other hand, it clearly appears from the message sent by Colonel Ellis on the 23rd December, 1893, that he was, on his side, acting under a sense of the obligation to confine his operations to the British sphere.

The Government of His Britannic Majesty claim from the Government of the French Republic the sum of 10,000*l.*

No. 18.

[May 22, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 19, 1901.

Messrs. J. Holt & Co.'s trading rights in the French Congo Colony.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers, as marked in the accompanying list, on the subject of the trade of Messrs. Holt and Co., in the French Congo Colony, as affected by the Concessions which have recently been granted therein by the Government of France.

The facts of the case are as follows:—

A large part of the French Congo Colony has already been granted to French Companies, and it is probable that in time the whole Colony will be granted to such concessionnaires. The particular rights of third parties are reserved, as are also the general rights created by the Berlin Act in such parts of the conceded territories as are in the Conventional basin of the Congo. Native villages and land in the actual occupation of natives are also reserved, and provision is to be made for the fishing and hunting rights of the natives. Not more than one-twentieth of the whole Concession is reserved to the Government, who may dispose of it as they like, but not for the purpose of "forest exploitation"; nor may the persons to whom pieces of these Government lands are granted trade with natives in vegetable or animal produce.

Rights and land reserved to the natives may not be conveyed to other persons without Government permission.

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The system of trade hitherto followed by British firms in the French Congo Colony has been:—

1. To send traders through the country who leave European goods with the natives and subsequently collect native produce in payment. This method of trade has now been rendered impossible by the suppression of the *patente ambulante*.

2. To establish trading stations whence the natives fetch European goods and afterwards bring the payment in native produce. The bulk of the trade is done on credit.

This second system of trading is still nominally lawful; but the land on which the natives have hitherto collected produce for barter has been conceded by lease to the new exploitation Companies, and the natives may no longer collect it except on behalf of the Companies; while the small areas of land reserved to the natives are quite inadequate to feed the trade hitherto done by the British firms.

The question arises as to whether the system of trade followed by the British firms has given them any rights which would be a bar to the territorial Government disposing of the lands from which the produce was collected and which are now included in the Concessions.

These lands were, so far as is known, unoccupied lands, in the sense that they were not cultivated or fenced in, and the British firms trading in those territories do not appear to have acquired any rights over either the land itself or over its produce, which was, in fact, collected, not by the firms themselves, but by natives, who used it to barter with the firms; but if it may be assumed that the land formerly belonged to the inhabitants, who have for years past gathered, and are still gathering, its produce, then they had formerly, and have had ever since, the right to sell it, and the trade thus established has become a vested interest of the British firms. It is not the gathering, but the selling of this produce which is now being interfered with by the concessionnaire Companies; and it is alleged by Messrs. Holt that the French Government, in granting these Concessions, have ignored the trade created by British firms.

Messrs. Holt, however, are ready to admit that a distinction may be drawn with regard to the grant of Concessions between the interior districts of the Colony, where trade has still to be created, and those on the littoral, where a trade has already been created by themselves and other British firms.

As the extent of unoccupied land decreases by the granting of successive portions of it to exploitation Companies, the area over which the British firms can carry on the system of trade hitherto followed correspondingly decreases. New trading stations cannot be opened without the permission of the Government, but even if permission were given to open stations in the neighbourhood of lands that are still unoccupied, there is every probability that as soon as the natives have been taught the value of the produce of the land it will be conceded to a Company and the new station will become useless.

It must next be asked whether the British firms had, according to the law of the French Congo Colony, acquired any vested interest in the trade which they had created with the natives; that is, had they acquired or created any actual property in the trade quite apart from the status, changeable or otherwise, of the unoccupied land from which the natives had been accustomed to gather the produce used in barter, and apart also from any rights which the natives may have acquired in the land or its produce.

The above considerations appear to afford the elements necessary for defining, from the point of view of the municipal law of the French Congo Colony, the legal position of the trade hitherto carried on by the British firms.

It is also necessary to examine the question in its relations to the Conventional Law obtaining in the French Congo Colony.

Article I of the Berlin Act provides that the trade of all nations shall enjoy complete freedom in the Congo Basin. The question arises whether this provision prevents general prohibitions against trade by any particular individual or class, and gives a right to the natives or others to continue to collect the produce of land, which was once unoccupied, after it has been granted to individuals or Companies.

With regard to the question of trading licences, it cannot be said that Article I precludes the territorial Government from requiring a licence from traders. Such a licence is required by traders in other parts of the Congo Basin, and, as long as the conditions for obtaining the licences are not prohibitive, such licences would seem to be a legitimate source of revenue required for maintaining the police and other branches of the Administration.

Article V of the Berlin Act provides that no monopolies or privileges of any kind in matters of trade may be granted in the conventional basin of the Congo. This, however, does not appear to preclude the territorial Government from granting leases of unoccupied land (or, indeed, the fee simple) to individuals or to Companies. The Concessions have merely introduced, without notice no doubt, the state of things existing in old-settled countries. Unoccupied land must be supposed to be at the disposal of the territorial Government, and this necessarily involves the right of that Government to grant it to individuals or Corporations, provided no hindrance created by conventional (or by municipal) law stands in the way.

This summary of their position was submitted to Messrs. Holt (Paper No. 49) with a view to their adding to it any arguments which they considered might tell in their favour, and they have now replied (Paper No. 50).

Messrs. Holt contend that "any Concession which has the effect of alienating the rights of the natives to collect and sell the vegetable and other products of the country is a direct violation of the principles of equity and the rights of the contracting powers" (pp. 3 and 4); and they maintain that if the natives had the right to sell land or its products to them before the French Government acquired political influence in the districts in question, and subsequent to the Berlin Act, the right is still intact.

There is no doubt much truth in the statements contained in the last paragraph of their letter; but it may be thought that these statements afford material rather for an appeal *ad misericordiam* to the French Government than for submission to a legal Tribunal.

Before, however, making such an appeal to the French Government, the good effect of which, it is to be feared, would be more than doubtful, Lord Lansdowne would be glad if you would take the accompanying papers into your consideration and favour him with your opinion as to whether the circumstances of the case justify a representation to the French Government on the more solid ground of legal right, as also with any further observations on the papers herewith submitted to you.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

1.	Messrs. Holt		April	19,	1899.
2.	Ditto		May	25,	„
3.	Ditto		May	29,	„
4.	Ditto		June	21,	„
5.	Ditto		June	28,	„
6.	To ditto		July	6,	„
7.	Messrs. Holt		July	11,	„
8.	Ditto		July	12,	„
9.	Ditto		July	13,	„
10.	Ditto		July	20,	„
11.	Memorandum by Mr. Streatfeild		July	24,	„
12.	To Messrs. Holt		July	25,	„
13.	Ditto		July	31,	„
14.	Messrs. Holt		November	29,	„
15.	Ditto		December	1,	„
16.	Mr. J. Holt		January	3,	1900.
17.	Messrs. J. Holt and Co.		February	17,	„
18.	To Sir E. Monson	(No. 51. Africa)	March	3,	„
19.	Mr. J. Holt		April	10,	„
20.	Messrs. J. Holt and Co.		May	17,	„
21.	To Sir E. Monson	(No. 106. Africa)	May	30,	„
22.	Mr. J. Holt		June	18,	„
23.	Ditto		June	28,	„
24.	Ditto		July	5,	„
25.	Nil.				
26.	Mr. J. Holt		July	18,	„
27.	To Sir E. Monson	(No. 129. Africa)	July	18,	„
28.	Ditto	(No. 140. Africa)	August	8,	„
28A.	Sir E. Monson	(No. 98. Africa)	August	13,	„
29.	Messrs. Holt		August	17,	„
30.	Ditto		September	17,	„

31. To Sir E. Monson	(No. 147. Africa)	August 24, 1900.
32. Mr. Lister		August 24, "
33. Acting Consul Nightingale	(No. 4. Africa)	August 25, "
34. Messrs. J. Holt		September 29, "
35. To Sir E. Monson	(No. 154. Africa)	October 5, "
36. Ditto	(No. 156. Africa)	October 8, "
37. To Messrs. Holt		October 10, "
38. Messrs. Holt		October 17, "
39. Ditto		October 17, "
39A. Sir E. Monson	(No. 109. Africa)	October 19, "
40. To ditto	(No. 162. Africa)	October 25, "
41. To Messrs. Holt		October 25, "
42. Messrs. Holt		October 31, "
43. To ditto		November 6, "
42A. Memorandum by Sir M. Gosselin		November 21, "
43A. Messrs. Holt		November 26, "
44. Mr. Herbert	(No. 127. Africa)	December 4, "
45. Ditto	(No. 129. Africa)	December 11, "
46. Ditto	(No. 130. Africa)	December 14, "
47. Memorandum (Mr. Farnall)		December 19, "
48. To Messrs. Holt		December 19, "
49. Ditto		December 21, "
50. To Mr. Herbert	(No. 185. Africa)	December 23, "
51. Sir E. Monson	(No. 3. Africa)	January 6, 1901.
52. To Messrs. Holt		January 14, "
51A. Messrs. Holt		January 15, "
52A. Ditto		January 23, "
53. To ditto		February 1, "
54. To Sir E. Monson	(No. 18. Africa)	February 7, "
55. Copy of Berlin Act*		February 26, 1885.

Report.

We cannot see any ground of legal right for representations as regards territory outside of the free-trade zone, though Messrs. Holt have, no doubt, been very hardly treated.

Any representations on their behalf in this respect can be based only on the moral claim to equitable consideration, which their past dealings may be considered to have established.

As regards territories within the free-trade zone, we think the case stands differently. It might fairly be contended that the vague rights of utilizing these vast tracts conferred by Article 1 of each of the Concessions (as printed in the "Journal Officiel" of the 21st July, 1899) are subject to the rights of trade reserved by the Act of Berlin (see the terms of reservation in Article I). But it is clear that these Concessions are construed as giving a monopoly of trade, and the right to exclude Messrs. Holt and any other British traders from trade with the natives. This construction appears to rest on the general right conferred of "jouissance et exploitation," a right which is different from that of property (see Article VII). So interpreted, it appears to us that the Concessions are in contravention of the Act of Berlin, as they confer on the grantees the right to deal with the natives for the products of these unappropriated territories to the exclusion of all others.

As regards the free-trade zone, we think that the Act of Berlin affords legitimate ground for remonstrance.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
May 22, 1901.

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* Treaty No. 757.

No. 19.

[November 7, 1901.]

Foreign Office to the Law Officers of the Crown.

"Sergent Malamine" Arbitration: British Case.

Gentlemen, *Foreign Office, October* 16, 1901.

WITH reference to your Report of the 3rd April, 1901, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you a copy of the Mémoire on the subject of the loss of the "Sergent Malamine" which the French Government have submitted to the Arbitrator, together with the draft of the reply of His Majesty's Government which has been prepared from the accompanying papers, under the terms of Article III of the Convention of the 3rd April last, under which the arbitration is held.

I am to request you to take the draft reply relating to the loss of the "Sergent Malamine" into your consideration, and to favour Lord Lansdowne with your views as to whether it adequately sets forth the arguments which can be advanced on behalf of His Majesty's Government in the matter.

His Lordship will at the same time be glad to be favoured with any further observations of a general nature which you may have to offer upon the papers now submitted to you.

The delay fixed by Article III of the Convention for the preparation of the reply will expire on the 16th proximo, and as the reply and annexed documents will have to be translated into French before that date, I am to request that Lord Lansdowne may be favoured with your Report with as little delay as possible.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

French Case.
Draft reply.
Papers connected with "Sergent Malamine" Case.
Case for British Government in connection with Waima Collision.

Report.

As altered in red ink* and initialled by us, we approve of the draft Case. Care should be taken that the spelling of the names in the Case corresponds with that on the map so as to avoid confusion.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 7, 1901.

Annex.

"Sergent Malamine" Arbitration.

Case on behalf of His Britannic Majesty's Government.

IN the Memorandum presented by the Government of the French Republic it is submitted that in order to arrive at the sum represented by the "loss of the 'Sergent Malamine'" the Arbitrator should take into consideration four elements of damage, namely:—

1. The value of the ship at the time of seizure.

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* Printed in italics.

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2. The loss of the entirety of a subvention which she would have earned during a period of three months and a-half following the seizure.

3. The diminution in the subvention which the owners are alleged to have suffered from the expiration of that period to the date of the ratification of the Convention of the 3rd April, 1901.

4. A loss of cargo, assumed to amount to a sum equal to the cost, including freight, of the cargo originally put on board the "Sergent Malamine," on her departure up the Niger.

The sums claimed under these heads amount together to 540,920 fr. 13 c., a sum greatly in excess of 8,000*l.*, the maximum sum which it is within the competence of the Arbitrator to award under the provisions of the Arbitral Convention.

His Majesty's Government contend that it is only the first of these elements, namely, the value of the vessel herself when seized that should, under the circumstances of the case, be taken into consideration by the Arbitrator. Such value is placed by the French Memorandum at the sum of 125,267 fr. 80 c., being the cost price of the vessel less depreciation at the rate of 5 per cent. per annum. It might well be argued that, having regard to the work on which she had been employed, this method of valuation is altogether too liberal. But, having regard to the fact that the above-named sum of 125,267 fr. 80 c. is approximately equivalent to the sum of 5,000*l.*, which the Arbitrator is in any event to award, His Majesty's Government do not think it worth while to trouble the Arbitrator in detail with considerations of this sort.

The arguments contained in the present Case will, therefore, be directed solely to the admissibility of the last three heads of damage put forward.

The expedition of Lieutenant Mizon to which the "Sergent Malamine" was attached arrived in the Niger Territories in September 1892, and proceeded to ascend the Niger and its tributary, the Benué. It was on this latter river that the events occurred which led to the seizure of the vessel.

The Benué flows into the lower waters of the Niger from the eastward, and the district which it traverses lies to the south of the line (drawn from Say on the Niger along the northern frontier of Sokoto to Barrua on Lake Chad), which, by an agreement made between the British and French Governments on the 5th August, 1890, was to divide the spheres of action of the two countries. At the date of that Agreement a large part of the River Benué was indeed already British territory, under the administration of the Royal Niger Company; and Lieutenant Mizon, himself, in letters exchanged with the representative of that Company in December 1890 (on the occasion of a visit made by him to the Niger in that year) acknowledged that the territories of the Company extended to Yola on the south bank, and 100 miles beyond Ribago on the north bank.

In August 1892, it was known that Lieutenant Mizon was again proceeding to the Niger; and on the 10th of that month the French Ambassador in London gave, on behalf of his Government, the most solemn assurance that the arms taken by this Mission were exclusively destined for the personal defence of its members, and that they would neither be given, nor ceded, nor sold to third persons. His Excellency at the same time defined the character of the expedition as being essentially scientific and commercial.

The expedition arrived at Akassa at the mouth of the Niger in September 1892. It consisted of two vessels, the "Sergent Malamine" and the "Mosca," which cleared at Akassa to pass beyond the Niger Company's territories.

No duty was charged upon the contents of the vessels on the faith of a written declaration signed by Lieutenant Mizon not to land goods or load produce, until his arrival at Adamawa, except at a port of entry and on payment of the proper dues to the Niger Company. A permit to carry arms was further given him on his assurance that they would not be used in the Niger Company's territories.

The expedition thereupon proceeded up the river, and Lieutenant Mizon at once proceeded to violate in every particular both the assurances given by the French Ambassador and those given by himself. He set up trading stations at Djiru, Mainerewa, and Koonini on the River Benué. He purported to declare a French Protectorate over the Sultanate of Muri, in which those places are situate, supplied the Sultan with arms and assisted him in attacking a neighbouring tribe. These facts appear clearly upon the evidence taken on the judicial proceedings which resulted in the condemnation of the "Sergent Malamine," and they are, indeed, admitted in a despatch from M. Casimir-Periet to the Marquess of Dufferin, dated the 9th February, 1894.

A reference to the map attached hereto will show that the Sultanate of Muri is a long way below Yola, and, therefore, by Lieutenant Mizon's own statement, within the territories of the Royal Niger Company. The district over which Lieutenant Mizon claimed to establish a French Protectorate extended from Jen to Abishi, about 200 miles, and included Ibi, the head station of the Niger Company on the Benué, where there was one of their constabulary depôts.

Upon complaint being made of these proceedings, the French Government undertook at once to supersede Lieutenant Mizon, and to direct that the expedition should evacuate Muri. Copies of a despatch and of a letter to this effect from the French Ministry of Foreign Affairs to the British Ambassador in Paris, were handed to Lieutenant Mizon by the representatives of the Company on the 11th August, 1893, the original having been handed to M. Nebout, who was designated as the successor of Lieutenant Mizon, at a point lower down the river. Lieutenant Mizon refused to give credit to these copies, but on the 20th August he received from M. Nebout the originals together with a telegram directed to himself from the French Under-Secretary of State for the Colonies. Notwithstanding these instructions Lieutenant Mizon purported during the course of the next few days to make a Treaty with the Emir of Yola, whom he supplied with arms, and to declare a French Protectorate in the district. These facts are not disputed. They are taken from the despatch of M. Casimir-Perier, already referred to. It may, however, be added that the arms supplied by M. Mizon to the Emir included rifled cannon of French manufacture which have since been used by the Emir against His Majesty's troops. The "Sergent Malamine" was further used for trading in Yola, payment of dues to the Royal Niger Company being refused. On the 4th September, 1893, M. Mizon addressed a letter to the representatives of the Niger Company, stating that while he proposed to start with his other vessel the "Mosca" on his return to Europe towards the end of the month, the "Sergent Malamine" would be left off Yola.

It was in consequence of these acts that the "Sergent Malamine" and her cargo was arrested by the officers of the Royal Niger Company in September 1893, and judicially condemned in legal proceedings regularly taken in the Courts of the district. These proceedings, including the evidence, are printed in the Appendix hereto.

Meanwhile, on the 26th October, 1893, the Earl of Rosebery, Her late Majesty's Secretary of State for Foreign Affairs, sent a despatch to Her late Majesty's Ambassador at Paris, for communication to the Government of the Republic, intimating that reparation was due for the losses entailed on the Niger Company by M. Mizon's acts. This communication was answered by M. Casimir-Perier in the despatch already referred to, dated the 9th February, 1894. In this despatch the explanations of M. Mizon, who had now returned to France, are given, and a counter-complaint is made of the seizure in Muri of the merchandize landed by Lieutenant Mizon at the trading stations set up by him in that Sultanate.

The above short statement brings the history of the matter down to the year 1894. At the close of that year, other matters of dispute being open between the British and French Governments, the proposal was made on behalf of the British Government that, as part of a general arrangement, the "Sergent Malamine" should be placed at the disposal of the French Government. It is to this proposal, as is correctly set forth in the French Memorandum, that the form of the present arbitration is to be traced, and the questions whether any sum beyond the actual value of the "Sergent Malamine" is to be awarded against His Majesty's Government.

In the first place it is submitted as clear upon the documents annexed to the French Memorandum that it cannot have been contemplated that compensation should be made by the British Government on any such basis as that which in that Memorandum is contended for.

As appears from those documents the original proposal in 1894 was that the "Sergent Malamine" should be restored, all discussion arising out of the action of Lieutenant Mizon being abandoned, including the heavy counter-claim of the Niger Company. In the despatch of Sir Edmund Monson of the 11th January, 1897, printed at p. 51 of the French Memorandum, it was stated that Her late Majesty's Government were prepared to adhere to this solution, but that owing to the loss of the "Sergent Malamine" they were unable to offer to restore her as originally intended. The despatch accordingly offered another concession on the part of Her late Majesty's Government "in view of their inability to restore the 'Sergent Malamine.'"

As is correctly stated on p. 20 of the French Memorandum, Her late Majesty's Government did not consider the offer of the restitution of the "Sergent Malamine" nor of any substitute for such restitution after it had become impossible as an admission of liability in principle. On the contrary the basis of that offer was necessarily that the discussion of the matter of strict right should be dropped, the Niger Company on the one hand, and the freighters and owners of the "Sergent Malamine," on the other, being left to bear their own losses except so far as the owners could be compensated by the material restoration of the vessel at that date.

The Government of the French Republic not feeling able, as it is stated in their Memorandum, "renoncer au bénéfice d'une situation déjà acquise," have made it a condition of subsequent negotiations that the position taken by Her late Majesty's Government in 1894 and 1897 should not be withdrawn from.

By the ~~Treaty~~ *Convention* of Arbitration the Arbitrator is, consequently, to determine within the prescribed limits the sum to be paid "pour la perte du 'Sergent Malamine.'" It is evident, however, that if these words were held to empower the Government of the Republic to bring into account elements of damage beyond the value of the vessel, the position taken by her late Majesty's Government will have been varied to their disadvantage. The heavy counter-claim of the Niger Company, in support of which it is obvious that very weighty considerations could have been pressed, would have been got rid of, while, on the other hand, the owners and freighters are admitted to bring into account every element of claim which they could have urged, if the conduct of the expedition had been unimpeachable.

For the above reasons it is submitted that it could not have been the intention of the parties, and that it would not be equitable under the circumstances to admit, in estimating the sum to be awarded any element beyond the value of the vessel. It is further contended that giving effect to the actual terms of the Convention, and applying the principles which regulate the amount of damage to be regarded as consequential upon the loss of a given article of property, such as a vessel, the three last heads of claim advanced in the French Memorandum are inadmissible.

So far as the loss alleged to have been incurred by the freighters is concerned, it is submitted that the Convention does not empower the Arbitrator to include this. The figure is to be assessed in respect of "la perte du 'Sergent Malamine.'" This does not refer to the seizure of the vessel by the officers of the Niger Company, but to the failure of the British Government to restore her.

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Supposing, however, the reference to be to the seizure, it still does not follow that her cargo should be the subject of compensation. As is well known, a vessel and her cargo are regarded as distinct object-matters both in international and municipal law, and this distinction is particularly important where, as in the present case, the ship and cargo are the property of different owners. The Compagnie des Chargeurs Réunis, who as set forth in the French Memorandum were the owners of the "Sergent Malamine" were distinct from the Compagnie Française de l'Afrique Centrale and do not appear, according to the French Memorandum, to have had any part in the enterprise in which the latter body so unhappily employed her. But the matter does not rest merely upon any narrow consideration of this kind. The seizure of the merchandize which had been embarked upon the "Sergent Malamine," or of the produce into which the merchandize so embarked had been converted by traffic with the natives, was to a large extent a separate transaction based upon different grounds, and made before the seizure of the "Sergent Malamine" was decided upon. It appears that some of the goods were seized by Mr. Wallace at the trading stations at Koonini and Mainerewa in August 1893, while on his way up the river to find the "Sergent Malamine," and a large quantity of ivory, the produce of trading at Koonini and Mainerewa, was seized on board the "Mosca," Lieutenant Mizon's other vessel, which was arrested for the purpose and afterwards released. This was after the seizure of the "Sergent Malamine." It seems impossible upon the most liberal interpretation of the terms of the Convention that the words "la perte du 'Sergent Malamine'" should include the loss of the cargo seized at Koonini and Mainerewa, still less the cargo taken out of the "Mosca," the arrest of which is not in any way referred to.

There seems, however, no distinction in point of merits between these three seizures, and the conclusion suggested is that the losses of the freighters of the "Sergent Malamine" are not to be taken into consideration. It is submitted that this view is supported both by the wording of the Convention itself and the history of the negotiations from which it resulted, and that it is consistent with the justice of the case.

There remains for separate consideration the claims in respect of the loss of subvention. It is clear that, if "la perte du 'Sergent Malamine'" refers merely to the failure to restore her, neither of these claims could be admitted. The first of the claims is in respect of the loss of subvention up to the 1st February, 1894, when the contract for the new and decreased subvention was entered into by the owners with the French Government. The second of these claims is in respect of the decrease in the subvention from that date down to the date of the Convention of Arbitration. The proposal of the British Government that the "Sergent Malamine" should be placed at the disposal of the French Government was made at the end of 1894, that is to say, after the contract for the diminished subvention. It follows, therefore, that if the proposal to restore the "Sergent Malamine" had been acted upon, the owners, while receiving back the vessel herself, would have been left to bear without compensation the losses of subvention now relied upon.

But whatever the exact signification of the phrase "la perte du 'Sergent Malamine'" may be, it is submitted that these claims for consequential damage cannot be sustained. The first claims are for the full amounts of the subvention alleged to have been lost, without any deduction for the cost which would have been entailed upon the owners of the "Sergent Malamine" in rendering the services required to earn it, and without any deduction in respect of the further depreciation of the "Sergent Malamine" in the course of rendering those services. According to the principle put forward in the French Memorandum the owners of the "Sergent Malamine" are to be credited with the presumed gross earnings of the vessel down to the date of the Convention of Arbitration, and are also to be compensated on the footing that after receiving those earnings they would still have had the vessel in their possession in as good a condition and of the same value as it was in 1893, that is, as if it had never been employed on the work of which those earnings would be the result.

This principle cannot be a just one. Indeed, if it ~~is~~ *be* sound it is hard to see why the loss should be regarded as ceasing at the date of the Convention of Arbitration and should not be treated as destined to continue for an indefinite period. If any consequential damage beyond the value of the vessel could have been proved, figures should have been submitted and verified, in which due allowance for expenses and depreciation should have been made, as this has not been done it is submitted that the Arbitrator should, in any case, reject these heads of claim. The probability is that no such damage was suffered. It is to be presumed that during the period when the "Sergent Malamine" was withdrawn from the postal service in order to be attached to the expedition of Lieutenant Mizon the postal service was not interrupted, but that means were found to carry on the service with another steamer, and that the services could have been so continued as well after the determination of Lieutenant Mizon's expedition as during its continuance.

~~If it could be shown that this involved greater expense than would have been incurred if the "Sergent Malamine" had been available, this could have been shown, and would have been a legitimate head of damage. In the same way, it~~ *It* is wholly unreasonable to suggest that the contract of the 1st February, 1894, providing for a diminished service and a correspondingly diminished subvention was caused by the loss of the "Sergent Malamine." Another vessel could have been procured and the service continued on the old footing, had the parties so desired; and if this had involved any extra expense, that could have been proved. If the only expense was replacing the "Sergent Malamine" by another vessel by the expenditure of a sum equivalent to the value of the "Sergent Malamine" that expense is made good by payment of such value.

For the above reasons His Majesty's Government submits to the Arbitrator that the

sum of 5,000*l.*, being approximately the value of the "Sergent Malamine," according to the figures presented by the French Memorandum, is all that should be awarded for the loss of that vessel.

R. B. F.
E. C.

Note.—Some alterations in wording were subsequently introduced in the text of the British Case.

No. 20.

[November 29, 1901.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November* 28, 1901.

I HAVE the honour, by direction of the Marquess of Lansdowne, to inclose, for your consideration, the papers noted in the accompanying list relative to the murder, on the 21st June last, at Argungu, in the British Protectorate of Northern Nigeria, of Captain C. V. Keyes, Indian Staff Corps, serving in the 1st Battalion of the West Africa Frontier Force.

Murder of Captain C. V. Keyes in Northern Nigeria.

The fullest particulars at present in the possession of His Majesty's Government with regard to this crime will be found in the second inclosure in the letter from the Colonial Office of the 11th September (Paper I). Stated shortly, it appears that, acting on instructions from the officer administering the Government of Northern Nigeria, Captain Keyes had proceeded to Argungu on the Birmir-Kebbi-Sokoto Road, in the British Protectorate, in order to arrest certain so-called traders from the adjoining French territory who had been raiding cattle in those parts. On arriving at their compound with an escort of seven soldiers, Captain Keyes demanded that their arms should be given up, which demand they refused to obey. Captain Keyes then proceeded to take the arms away from the native followers, when it is alleged that one of the party, named Buret, raised a revolver and shot Captain Keyes in the groin. He is also stated to have been shot through or close to the heart. At any rate his death appears to have been instantaneous.

It will be observed from Colonel Morland's Report that Captain Keyes was unarmed and only carried a stick, though a boy appears to have stated that Keyes fired two shots at Buret with a revolver, without, however, hitting him. Whatever the truth may be, the raiders seem to have returned within French territory after the affair.

On the 9th July the Governor of Dahomey informed the officer administering the Government of Northern Nigeria that orders had been issued to arrest the culprits if they entered the French Protectorate, and on the 23rd August, in answer to a request for information which His Majesty's Ambassador at Paris had been instructed to make, M. Delcassé informed his Excellency that three individuals had been arrested at Fillinqué and put into prison.

On the 10th September last, the officer administering the Government of Northern Nigeria, informed the Secretary of State for the Colonies, by telegraph, that the French authorities at Fillinqué had handed over to them three persons, of whom Buret was one, without any application having been made for their surrender and that they had been kept under arrest by the military authorities owing to the unsuitability of the civil prisons.

On the 15th October a further message was received from Jebba, the seat of the Government of Northern Nigeria, stating that the three men had been tried on a charge of murder, and convicted and sentenced to death by Acting Puisne Judge Pennington, and that the 4th November had been fixed as the date for their execution. This was followed by a further message on the 18th October to the effect that the Governor of Porto Novo, in the name of the French Government, had demanded the surrender of these three convicts on the ground that they had not been handed over to the British authorities in Northern Nigeria in conformity with the Extradition Treaty of 1896 between the United Kingdom and France. A copy of the Treaty is inclosed.

On the 21st October the French Minister at this Court made a similar representation at this Office (Paper M), and this was followed on the 26th ultimo by a more

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formal requisition (Paper Q) for the restoration of the prisoners, supported by a list of precedents. This was supplemented on the 23rd instant by the communication of documents to prove the identity and French nationality of the men.

I am next to invite your attention to the letter addressed on the 22nd October, by Lord Lansdowne's direction, to the Colonial Office, and to the instructions which have been sent, in accordance therewith, by the Secretary of State for the Colonies to the officer administering the Government of Northern Nigeria, to postpone the date of the execution of these men without admitting that there is any reason for questioning the propriety of the sentence (Paper N).

I am further to call your special attention to the report of the trial, of which a copy is inclosed in the letter from the Colonial Office of the 26th instant (Paper Z).

As you are aware, in the view taken by His Majesty's Government the Extradition Act and Treaties are of no application in the case of British Protectorates, which are not considered to be an integral part of the British dominions.

No formal arrangement at present exists for the surrender of criminals between the British Protectorates on the West Coast of Africa and the adjoining French and German Colonies or Protectorates, but having regard to the opinion expressed in your Report to the Colonial Office of the 29th June, 1901, His Majesty's Government contemplate suggesting local agreements based on the Extradition Treaties between the United Kingdom and those countries, both of which preclude the surrender of nationals.

The matter is, therefore, one which could not, in the view taken by His Majesty's Government, have been dealt with under the Extradition Treaty at present subsisting between Great Britain and France. At the same time, however, it is clear, having regard to the special reservation in the Treaty and to the existing practice between the two countries with reference to the non-surrender of nationals, that the French Government, with full knowledge of the undisputed facts of the case, neither would have surrendered, nor could have been reasonably expected to surrender under the Treaty or by some substituted extradition process of a less formal and regular kind, three persons who were French citizens.

At the same time, these offenders were not brought within the jurisdiction of the Northern Nigerian Courts in consequence of any demand or request made by the British authorities.

They came within that jurisdiction through the voluntary, if misconceived, action of a French official, for which no British authority was even indirectly responsible, and, being found within the jurisdiction, they were thereupon arrested, committed for trial, tried, and convicted in due course of law. It was, unfortunately, not until after verdict and sentence had been actually pronounced that any representation from the Government of the French Republic reached His Majesty's Government on the subject.

In these circumstances a juridical position of no little difficulty and delicacy has arisen, in dealing with which Lord Lansdowne would be glad of your assistance and advice.

A Memorandum by the Legal Adviser to the Department, briefly summarizing the more salient points of difficulty in connection with the case and offering such suggestions for their solution as have occurred to him, is inclosed for your consideration (see Annex).

Having regard to the peculiar nature of the case, it has been thought preferable not to submit specific questions for your opinion, but to request you to advise generally on the matter.

I am to add that this letter has been submitted to the Secretary of State for the Colonies for his approval and that Mr. Chamberlain concurs generally in its terms.

As there has already been considerable, though unavoidable, delay in the submission of the case to you, and as it is very desirable in the discussion of a matter of this nature with a foreign Government to avoid even the appearance of procrastination, Lord Lansdowne will be greatly obliged if you can favour him with your Report at your earliest possible convenience.

I have, &c.
(Signed) T. H. SANDERSON.

P.S.—An additional copy of this letter and of Mr. Davidson's Memorandum has been inclosed for the convenience of the Solicitor-General.

T. H. S.

List of Papers.

(A.)	Colonial Office		July 6, 1901.
(B.)	Ditto		July 17, „
(C.)	To Mr. Herbert	(No. 104)	July 26, „
(D.)	Sir E. Monson	(No. 78. Africa)	August 4, „
(E.)	Colonial Office		August 9, „
(F.)	To Sir E. Monson	(No. 115. Africa)	August 16, „
(G.)	Colonial Office		August 19, „
(H.)	Sir E. Monson	(No. 86. Africa)	August 27, „
(I.)	Colonial Office		September 11, „
(J.)	Ditto		September 16, „
(K.)	War Office		September 27, „
(L.)	Colonial Office		October 19, „
(M.)	M. Geoffray		October 21, „
(N.)	To Colonial Office		October 22, „
(O.)	To Sir E. Monson	(No. 63. Treaty)	October 23, „
(P.)	Colonial Office		October 23, „
(Q.)	M. Cambon		October 26, „
(R.)	Colonial Office		October 28, „
(S.)	Ditto		October 30, „
(T.)	To ditto		October 31, „
(U.)	Colonial Office		November 8, „
(V.)	Ditto		November 12, „
(W.)	M. Cambon		November 20, „
(X.)	Ditto		November 23, „
(Y.)	To Colonial Office		November 25, „
(Z.)	To M. Cambon		November 25, „
(Z^1.)	Colonial Office		November 26, „
(Z^2.)	Ditto		November 28, „

Report.

No question of law arises in this case. These men, having committed a murder within the jurisdiction of the British Courts, have been properly tried and condemned to death.

It appears to us, however, to be clear that they were given up by the French officer under a misconception. He was not aware that they were French citizens, and the analogy of the Extradition Treaty, though it does not apply, cannot be ignored.

In these circumstances, we think that it would be proper, provided that satisfactory assurances are given by the French Government that these men will be put on their trial for the murder, to accede to the demand that they should be delivered over to the French authorities. This course would be in accordance with the precedents cited by the French Government, and seems to us only proper from the point of view of international good feeling.

At the same time, it would be a grave miscarriage of justice if these murderers should, when handed over to the French, be tried and punished only as deserters from the French army; they should also be tried for the murder of Captain Keyes.

His Majesty's Government cannot, of course, ask the French Government to pledge itself that the decision of the English Judge should be considered as conclusive by the French Court; but we think that, before these men are given up, an assurance ought to be obtained that the trial and sentence by the English Judge will not be any bar to a prosecution in the French Courts, and that they will be put upon their trial for the crime of murder.

We think that the surrender could best be carried out under the authority of an Ordinance—which, we understand, can be readily passed—providing for their surrender to the French authorities. Any such Ordinance should, we think, recite the circumstances which point to the propriety of the surrender of these men. Without such an Ordinance, we do not see how the surrender can be legally effected.

R. B. F.
E. C.

November 29, 1901.

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Annex.

Memorandum by Mr. Davidson.

THE salient facts of this case are very simple, but the questions which arise on them are of considerable difficulty and delicacy.

In June last, Captain Keyes, a British officer serving in the West African Frontier Force in the British Protectorate of Northern Nigeria, was murdered by three French citizens, who, with a so-called trading caravan, had crossed the frontier from the adjoining French territory of Dahomey. These men subsequently made good their escape into French Dahomey, where, however, they were apprehended by the order of the Governor, apparently with a view to their trial by the French Courts, and while under detention were, through a misapprehension of a subordinate French official, handed over to the British authorities in Northern Nigeria without any application having been made by those authorities for their surrender, either by way of extradition or otherwise.

They were kept under arrest for a time by the British military authorities, and having been conveyed by them to Jebba, the seat of the Government of Northern Nigeria, they were handed over to the civil power, and in due course underwent their trial, and were convicted on a charge of murder committed within the jurisdiction of the Court for Northern Nigeria, by which Court they were thereupon sentenced to death and left for execution on the 4th November.

Between the date on which they were convicted and sentenced and that which had been fixed for their execution the French Government represented to that of His Majesty that the offenders had been handed over to the authorities of Northern Nigeria through an error on the part of a minor French official, whose action in the matter they entirely disavowed, that the men were French citizens, and that the provisions of the Anglo-French Extradition Treaty had not been complied with.

In these circumstances the French Government requested that the three offenders might be handed back to the authorities at Porto Novo for trial and punishment.

In the face of this representation it was obviously impossible to allow the execution to proceed, and it was accordingly postponed pending the further discussion and adjustment of the affair with the French Government.

Looking at the matter from the French point of view, it can scarcely be denied that there is considerable force in their representations.

It is now established beyond reasonable doubt that the men are French citizens, and it is clear, having regard to the special reservation in the Anglo-French Treaty of Extradition, and to the existing practice between the two countries with reference to the non-surrender of nationals, that, with knowledge of the facts of the case, the French Government neither would have surrendered, nor could have been reasonably expected to surrender under the Treaty, or by some substituted process of extradition of a less formal and regular kind, three persons who were French citizens.

The surrender did not, however, as a matter of fact, take place under the Treaty and Act, with the provisions of which there was no attempt to comply.

According to our view, indeed, the Act is not of application in the case of Protectorates which are not part of the British dominions within its meaning, though this involves merely a question of the construction of a municipal enactment with which the French Government are not concerned, and cannot be supposed to be conversant.

Whether the surrender took place under the Treaty or outside of the Treaty, the French objection to it on the ground that the men were French citizens is equally strong and equally logical—in the former case it would have been made in absolute contravention of the terms of the Treaty, in the latter it would have been contrary to the general principle enunciated in the Treaty and accepted by both nations.

The request, therefore, of the French Government that these men should be handed back to the authorities of Dahomey on the ground that they were surrendered by a minor French official under a grave misconception of his powers, and in derogation of the principle adverted to, is in itself far from unreasonable.

On the other hand, the matter has to be regarded from other aspects—those of British policy and of English law. In this connexion it is to be observed that the offenders were not brought within the jurisdiction of the Northern Nigerian Courts in consequence of any demand or request made by the British authorities.

They came within that jurisdiction through the voluntary—if misconceived—action of a French official, for which no British authority was even indirectly responsible. Having been found within the jurisdiction, they were thereupon arrested, committed for trial, tried, and convicted in due course of law, and it was, unfortunately, not until after the sentence had been actually pronounced that any representation from the Government of the French Republic reached His Majesty's Government on the subject.

It is not suggested, and could not, I think, be seriously maintained, that any grounds of law exist on which this verdict could be successfully impeached.

An appeal lies only to the Judicial Committee of the Privy Council, and in a criminal case must be preceded by an application for special leave to appeal. It is highly improbable that if such application were made on behalf of the prisoners (and it is still open to them to make it if they think fit), the Judicial Committee would grant it, and no other means of obtaining a revision or reconsideration of the verdict lie open through the Courts of Law.

Of executive methods of revision there are, of course "pardon" and "commutation"; either of these forms of exercise of the King's prerogative would, it is submitted, be most unsuitable in this case. Moreover, neither would satisfy French requirements.

If the men were pardoned, the result would be to outrage the feelings of the population, and more especially of the coloured inhabitants, of Northern Nigeria, and to set free, nominally without a stain on their characters, these three malefactors. If the remainder of their sentences were commuted, the conviction would, of course, stand against them, but they would have received a punishment grotesquely inadequate to the offence.

In either event they could not be handed over to the French authorities, as, on receipt of their pardon or commutation, they would be free to go where they listed (which would probably not be in the direction of Porto Novo or other French territory), and if the British authorities attempted to arrest them for the purpose of handing them over to France, they could immediately sue out a writ of *habeas corpus*. Moreover, it is extremely probable that even if they came, or were inveigled into French jurisdiction, the maxim "nemo debet bis vexari pro eodem delicto" would be applied, and that their former trial and pardon in the one case, and their former trial and conviction in the other, would operate as the French equivalent of an absolute plea in bar.

One other suggestion remains to be considered, and that is the suggestion of special legislation by Protectorate Ordinance to meet the case. Mr. Bertram Cox tells me that it is undoubtedly within the powers of the Protectorate Constitution to pass such an Ordinance as would be required for this purpose. The preamble to the Ordinance would set out the special circumstances of the trial and conviction, and the Ordinance itself would take power, notwithstanding those proceedings, for the conveyance in custody and subsequent handing over to the French authorities of the prisoners.

This seems, and no doubt is, in the abstract, a sufficiently high-handed and objectionable line of action; but the French request, if it is to be met at all, can only be met by resort to some rather desperate expedient, and perhaps all that can be said in favour of this particular suggestion is that it is possibly rather less objectionable than the others.

There only remains the alternative of courteously refusing the French request, and explaining the grounds which, to the regret of His Majesty's Government, render it impossible to comply with it. If this course be adopted, we shall, at any rate, be able to explain that in the special circumstances the sentence of death has been commuted to one of penal servitude for a considerable term, since in any case the prisoners, having been once respited, cannot consistently, with the observance of the ordinary humane practice in such matters, subsequently be executed.

Looking at the case in its purely legal aspect, this, as it appears to me, is the only satisfactory way of dealing with it. I believe also that it is the only way that will not create great dissatisfaction and distrust in the Protectorate, and injuriously affect British prestige in the eyes of the inhabitants.

It will, no doubt, not be acceptable to French susceptibilities, and should this course be adopted, the pill will require careful gilding before it is "exhibited."

(Signed) W. E. DAVIDSON.

Foreign Office,
November 26, 1901.

GENERAL.

No. 20 A. [Colonial Office.]

[February 8, 1901.]

Attorney-General to Colonial Office.

Royal Courts of Justice, February 8, 1901.

Sir,

I WAS honoured with your commands signified in Sir M. F. Ommanney's letter of the 1st instant stating that he was directed by you to request my consideration of certain questions which had arisen in consequence of the demise of the Crown.

Appointments, Commissions, &c.: As to lapsing of on demise of Crown.

That by the Imperial Act of Parliament 1, William IV, cap. 4, sec. 2, it was provided that no patent, commission, warrant, or other authority for the exercise of any office or employment, civil or military, within any of His Majesty's plantations or possessions abroad, determinable at the pleasure of His Majesty, or of any of His Majesty's heirs and successors, should by reason of any future demise of the Crown be

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vacated or become void until the expiration of eighteen calendar months next after any such demise of the Crown as aforesaid. That it was presumed that under the provisions of that section existing Letters Patent, Commissions, Instructions, and other instruments in force in the Colonies at the death of Her late Majesty Queen Victoria were continued in operation, and that the term "plantations" in that section might be taken as meaning Colonies, although the word as used at the date of the Act might possibly have been more properly confined to the American possessions of the Crown (*see* Sir George Cornewall Lewis's Essay on the Government of Dependencies, edited by Mr. C. P. Lucas, p. 174).

That it appeared, however, to be a matter of considerable doubt whether Protectorates, which were technically foreign countries in which His Majesty exercised jurisdiction under the Powers conferred by "The Foreign Jurisdiction Act, 1890," could be regarded as plantations or possessions, and that it would be a question for my consideration whether the Orders of Her late Majesty in Council providing for the government of Protectorates, and the Commissions issued to High Commissioners and other officers administering the government of Protectorates, had not lapsed as and from the 22nd ultimo.

That, in any case, however, it would seem that at the end of eighteen months documents covered by the section above referred to would come to an end and have to be renewed unless provision was made to the contrary. That such documents were in fact renewed in 1838 on the death of King William IV.

That the instruments in use in the Colonies were Letters Patent, Instructions to Governors and Officers administering the Government, Commissions appointing Governors and Lieutenant-Governors, dormant Commissions providing for succession to the Government on the death, absence, or incapacity of a Governor, Warrants for the appointment of Judges; and Warrants for the appointment of Legislative and Executive Councillors. That it was also probably the case that certain Attorneys-General, Colonial Secretaries, Queen's Counsel, &c., held office in the Colonies under the authority of Warrants from the Crown.

That copies of all the existing Letters Patent, Instructions, and Commissions at present in force, together with specimens of Warrants for the appointment of Judges, &c., and of Executive and Legislative Councillors and of Queen's Counsel, were forwarded for my information.

That at the time of the passing of the Act of William IV it was customary whenever a new Governor was appointed to issue fresh Letters Patent reconstituting the Government of the Colony. That the copy of the Commission dated the 20th August, 1872, appointing Sir Henry Barkly Governor of the Cape of Good Hope, and the copy of the Letters Patent dated the 10th March, 1874, appointing Mr. Cairns to be Governor of Trinidad, which were also inclosed, would show the manner in which in those Colonies, and until recent times, it was customary to appoint a Governor. That the more modern practice, however, had been to issue general Letters Patent providing for the constitution of the Colony and giving power to appoint a Governor by Commission under the Royal Sign Manual and Signet, and that instructions were issued to the officer administering the Government for the time being under the authority given by the standing Letters Patent. That you entertained some doubt whether it might not be argued that the Letters Patent in the more modern form might be considered as not determining on the demise of the Crown, and as being, at all events in some cases, altogether outside the provisions of the Act of 1 William IV., cap. 4, sec. 2, inasmuch as the Letters Patent themselves did not confer authority on a Governor for the exercise of his office, but merely provided that there should be a Governor, who obtained authority to exercise the functions of a Colonial Governor from his Commission. But that in certain cases, as, for instance, in the case of Cape Colony, under Letters Patent dated the 26th February, 1877, and of Newfoundland, under Letters Patent dated the 28th March, 1876, in the absence of a Governor and in the event of there being no Lieutenant-Governor, the administration of the Government devolved upon certain other officers named in the Letters Patent, and that, therefore, the Letters Patent, in those cases, and in similar cases, might be said to be Letters Patent for the exercise of an office.

That in the case of Protectorates such as Northern and Southern Nigeria, Southern Rhodesia, Barotsiland, North-Western Rhodesia, &c., Letters Patent were not issued, but that a Constitution was established by Order in Council, under the provisions of the Foreign Jurisdiction Act. That reference to such Orders in Council would show that, with the exception that the instrument was an Order in Council and not Letters Patent, substantially the same provisions were made as in the case of a Crown Colony.

That it would, therefore, be a question for my consideration whether, in the event of Letters Patent having to be renewed owing to the demise of the Crown, Orders in Council of the kind specified were, or were not, preserved in force by the Statute of William IV, and might not also have to be renewed. That it was desired, if possible, to avoid the inconvenience of issuing fresh Letters Patent, Instructions, Commissions, Warrants, and Orders in Council in every Colony and Protectorate. That it would be necessary to consolidate many of them before re-issuing them, and that the consolidation might in some cases, such as that of Malta and Mauritius, involve the raising of political questions, which it was desired, if possible, to avoid. It had, therefore, been suggested that a short instrument might be drawn up, either in the form of Letters Patent or Order in Council for Colonies and Protectorates respectively, which might provide that all existing Letters Patent, Instructions, Commissions, Warrants, and other documents, which were in force during the reign of Her late Majesty Queen Victoria, and which would at the expiration of eighteen months from the demise of the Crown become void, should be continued and remain in operation in all respects as though no demise of the Crown had taken place; and that you would be glad to be advised whether I thought that that course could be adopted.

That Sir M. Ommanney was to request me to take the above matters into my consideration and to advise you—

(1.) Whether the Orders in Council or Commissions relating to the government of Protectorates lapsed on the demise of the Crown, and, if so, whether the Royal Proclamation of the 23rd ultimo renewed their operation?

(2.) Whether any, and, if so, which, of the above-mentioned Letters Patent, Instructions, Commissions, and Warrants had, notwithstanding the Act of William IV, become void owing to the demise of the Crown?

(3.) If not whether any, and, if so, which of the said instruments would become void at the expiration of eighteen months after the demise of the Crown?

(4.) Whether the Royal Proclamation of the 23rd ultimo would of itself be sufficient to preserve the operation of any, or all of the said instruments, and, if not, what means should be adopted to continue the said instruments in operation. Could their operation be perserved—

(*a.*) By legislation in Colonies or Protectorates?

(*b.*) By Letters Patent in the case of Colonies, and Orders in Council in the case of Protectorates providing that notwithstanding the demise of the Crown those instruments should continue in operation?

(5.) Whether Letters Patent could be issued providing generally that in all Colonies and Protectorates that result should follow, or

(6.) Whether such a general provision could only be effected by an Act of the Imperial Parliament?

(7.) Whether it was desirable that such an Act of Parliament should be passed?

(8.) Generally.

I have taken the matters into my consideration, and, in obedience to your commands, have the honour to

Report—

1. The Orders in Council relating to Protectorates did *not* lapse on the demise of the Crown. These Orders in Council are legislative Acts by the proper authority providing for the government of Protectorates, and do not fall within the principle by which offices were vacated on the demise of the Crown.

Commissions relating to Protectorates *did* lapse on the demise of the Crown; they fall within the general principle as to offices, and are not covered by either the Statute of Anne or the 1st William IV. Of course Military Commissions are continued by the 7th William IV and 1st Victoria, cap. 31.

2. Letters Patent providing for the Constitution of a Colony and giving power to appoint a Governor by Commission, as also the instructions issued generally to any person holding office, do not become void owing to the demise of the Crown even in cases in which the Letters Patent may provide for the devolution, in the absence of the Governor of the Administration, upon the holders of other offices named in the Letters Patent. Such Letters Patent and instructions are in the nature of general provisions for the government of the Colony by the competent authority.

Appointments under Commissions and Warrants would have become void owing to the demise of the Crown where they relate to the Government of Colonies, were it not for the provisions of the Statute of Anne and 1 William IV, cap. 4. Such Commissions appoint a person named to an office, the Warrants authorise the appointment by some other form, such as Letters Patent under the Seal of the Colony, or simple notification by the Governor. It appears to me that all such appointments, whether made directly by the Commission or by some other instrument under the authority of the Warrant, would determine on the demise of the Crown but for the statutes above referred to. The officials hold office under the Crown and the general principle applies.

3. Offices held in the Colonies under Commissions, or the authority of Warrants, *will* become void at the expiration of eighteen months after the demise of the Crown and must be renewed.

4. The Royal Proclamation of the 23rd ultimo has no effect in preserving the operation of any of these instruments. It relates merely to the period during which offices continue to be held by virtue of the 6th Anne and the 1st William IV, and directs the officials to discharge their duties during such periods unless the Crown sooner determine their offices.

(*a*.) Their operation could not be properly preserved by legislation in Colonies or Protectorates. The Governor would be a party to such legislation, and, in Protectorates, must derive his authority from the Crown, while in the case of Colonies it would be a grave departure from constitutional usage to allow a local Act of Parliament passed during the eighteen months' continuance in office to affect the tenure of the Governor.

(*b*.) For the reasons given in answering questions 1 and 2, this course appears to me to be unnecessary.

5. I do not think that such Letters Patent should be issued. It would be almost impossible in such Letters Patent to enumerate the names of all the officials, and a mere general provision would not, in my opinion, be expedient.

6. Such a general provision could only be effected by an Act of the Imperial Parliament.

7. It appears to me desirable that such an Act of Parliament should be passed unless there are considerations of policy which render this inexpedient.

For the case of Protectorates legislation is necessary unless an Order in Council providing specially for each Protectorate should be passed.

In the case of Colonies and the United Kingdom, it may be desirable to provide that the demise of the Crown shall not affect the tenure of offices. Such legislation might be confined to the present reign, or might be general, as may be deemed most expedient.

I have, &c.
(Signed) R. B. FINLAY.

No. 21.

[March 12, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 7, 1901.

Gentlemen,

Harbour Dues in Guernsey. Position of L. & S. W. and G. W. Railways.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list with regard to a Petition of the States of the Island of Guernsey, praying for His Majesty's sanction and ratification of a reduction of harbour dues in respect of vessels belonging to the London and South-Western Railway and Great Western Railway Companies.

By an Order in Council of the 5th July, 1865, an alteration of the tariff of dues payable by vessels entering the harbours of the island was sanctioned by repealing the 3rd Article of the Tariff of Dues sanctioned by the Order in Council of the 17th December, 1860, by substituting for it the provisions set forth in the Schedule (A) annexed to the said Order, and at the same time by authorizing the levying of the dues set forth in the said Schedule in lieu of the Article so repealed.

Under Article 2 of the said Schedule every vessel of sixty or more tons entering one of the harbours of the island and transacting business there without, however, staying a full tide, is chargeable with a duty of 8*d*. per ton—the same to include under certain conditions the return voyage to Guernsey.

The General Managers of the two railways above mentioned have, however, addressed the President of the States of the island, drawing attention on behalf of their respective Companies to the very onerous nature of the dues and charges imposed by the harbour authorities at Guernsey, and asking for a modification of the present tolls.

As the result of this application, the States have petitioned the Crown to sanction in favour of vessels belonging to the London and South-Western Railway Company and Great Western Railway Company doing a regular service with the island a reduction from 8*d*. to 4*d*. per ton of the said dues; so long as the service in return for which it is proposed to reduce them is effectively maintained.

Lord Lansdowne, having been requested to favour the Lord President of the Council with any observations which his Lordship might desire to offer upon the Petition, informed His Grace that it would be contrary to the provisions of many existing Treaties of Commerce and Navigation to remit the harbour dues in favour of British vessels unless such remission were in similar circumstances equally extended to vessels of the countries with which those Treaties had been concluded; and that the practice in the United Kingdom has been for many years not to discriminate in this respect between British and foreign vessels.

As the Lord President understands the Petition, however, the proposal of the States of Guernsey is not to discriminate between British and foreign vessels, but between the vessels of the London and South-Western and Great Western Railway Companies, and all other vessels British and foreign. The arrangement seems to His Grace to be in the nature of a subsidy in respect of services rendered, and he presumes that from the point of view of the Treaty obligations of Great Britain to foreign States there would be no objection to a direct subsidy.

The Parliamentary papers which accompany this letter contain samples of the various clauses under which national treatment is secured by international convention to the shipping of certain foreign countries.

There does not appear to be any Treaty stipulation which would prevent the grant of a subsidy to a particular line or lines of vessels for special services without the simultaneous extension of the same advantage to foreign ships similarly engaged; but Lord Lansdowne is disposed to think that exemption from, or abatement of, harbour or port dues, though the effect of such exemption or abatement may, in a pecuniary sense, be the same as that of a subsidy, is in essence widely different.

As the point raised by the Petition of the States of Guernsey involves a question of principle of great importance, I am to request that you will be good enough to take these papers into your consideration, and that you will favour Lord Lansdowne with your opinion as to whether the prayer of the Petition can properly be granted, regard being had to Treaty obligations and to the established practice of His Majesty's Government in such matters.

His Lordship will also be glad to receive any observations of a general nature which you may have to offer on the subject.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

Privy Council Office	January 28, 1901.
To ditto	February 4, ,,
Privy Council Office	February 11, ,,
Parliamentary Paper, No. 13, Commercial (1887); and	
,, ,, No. 9, Commercial (1888).	
Guernsey Orders in Council—	
Volume 1, Livraison 8.	
,, ,, 9.	
,, ,, 10.	

Report.

I am of opinion that the prayer of the Petition might be granted without infringing Treaty obligations.

The remission is proposed, not in favour of British vessels, but in favour of the vessels of two particular Companies which render special services.

It may, however, deserve consideration whether it would not be better, as a matter of policy and to avoid possible controversy, that the proposed indulgence should, if it can be so arranged without inconvenience, take the form of an annual subsidy of an amount which would be equivalent, or nearly so, to the proposed remission.

(Signed) R. B. FINLAY.

Royal Courts of Justice,
March 12, 1901.

ITALY.

No. 22.

[March 12, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 5, 1901.

Gentlemen,

Proposed marriage of A. G. White, divorced at Stuttgart.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list relative to the proposed marriage of Mr. A. G. White, a British subject, who was divorced from his first wife at Stuttgart in 1891.

Mr. White wishes to marry at Naples, in accordance with the *lex loci*, a lady of Italian nationality, and, as he is a British subject, it is for that purpose necessary that he should produce to the Italian civil authorities a certificate (known as "nulla ostá") to the effect that in contemplation of English law no impediment exists to his proposed marriage.

Application for such a certificate has accordingly been made to Consul Neville Rolfe, who, before issuing it, desires to be assured that Mr. White's previous marriage would be held by the Tribunals of this country to have been legally dissolved by the decree of the Stuttgart Court.

The circumstances with regard to Mr. White's first marriage are as follows:—

He was married in 1888 at Her Majesty's Consulate at Naples to Henrietta Lewis, a British subject. In September 1889 they went to reside at Stuttgart. In 1891 the wife obtained from the Court in that city a decree of divorce against her husband for adultery. She made no charge of cruelty or desertion.

An extract (H) from the decree is inclosed, from which it will be seen that the Court declared its competence to grant the divorce on the ground that the husband was domiciled at Stuttgart, not only before, but also at the date when, the proceedings were commenced.

According to the law of Würtemberg, adultery on the husband's part, unaccompanied by desertion or cruelty, is a sufficient ground for divorce.

Mr. White believes his former wife to be still living, but states that he has no means of ascertaining the fact.

I am to request that you will be so good as to take the papers transmitted herewith into your consideration, and to favour Lord Lansdowne with your opinion as to whether the decree of divorce pronounced by the Stuttgart Court between Mr. A. G. White and his wife Henrietta (*née* Lewis) would be recognized by the Tribunals of this country as

valid in contemplation of English law, and with any general observations which you may wish to offer on the case.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Mr. Rolfe	.. ..	(No. 40)	December 21, 1900.
(B.) To ditto	.. ..	(No. 1)	January 3, 1901.
(C.) Mr. Rolfe	.. ..	(No. 6)	January 7, "
(D.) To ditto	.. ..	(No. 4)	January 21, "
(E.) Mr. Rolfe	.. ..	(No. 10)	January 25, "
(F.) To ditto	.. ..	(No. 7)	February 7, "
(G.) Mr. Rolfe	.. ..	(No. 11)	February 22, "
(H.) Translation of extract from decree of Stuttgart Court.			

Report.

It is quite clear that the divorce would be recognized as good by English law if Mr. A. G. White had acquired a domicile in the country where the decree was pronounced.

But mere residence from 1889 to 1891 would not necessarily constitute the acquisition of a domicile. For this purpose he must have settled at Stuttgart with the intention of making it his home. Mere residence, even for much longer than two or three years, does not confer a new domicile.

The only question in the case is one of fact—as to whether a Stuttgart domicile had been acquired.

I am by no means satisfied that the passage quoted from the Judgment of the Stuttgart Court (Document H) means that a domicile, in the proper sense of the term, had been acquired there. In some foreign countries divorces have been granted after a certain period of mere residence there. An Englishman residing abroad does not acquire a new domicile at every place at which he resides for two or three years.

If the Consul is satisfied that a domicile as above explained had been acquired at Stuttgart he may grant the certificate, but I cannot advise that it should be granted merely on the present materials.

(Signed) R. B. FINLAY.

Royal Courts of Justice,
March 12, 1901.

Annex.

Extract from the Decree of the Stuttgart Court.

Gründe.

DIE Beständigkeit des angerufenen Gerichts ist nach § 568, abs. 1, § 13 und § 235, 2, Zift. 2 der L.P.O. gegeben, da der Beklagte Ehemann ~~hier~~ seinen Wohnsitz zu nommen und denselben ausweislich der Urkunde über die Zustellung der Klage, jedenfalls noch zur Zeit der Klagerhebung, beibehalten hatte.

(Translation.)

Grounds for Judgment.

THE competence of the Court trying the case is established by § 568, paragraph 1, and § 13 and § 235, paragraph 2, No.2, of the L.P.O., since the husband, who is the defendant, has made his domicile here, and, as shown by the document regarding the notification of the action, still preserved it, at any rate, at the time when the action was brought.

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No. 23.

[May 24, 1901.]

Foreign Office to the Law Officers of the Crown.

Domicil of A. G. White, divorced at Stuttgart.

Gentlemen, *Foreign Office, May* 22, 1901.

WITH reference to the Attorney-General's Report of the 12th March last, I have the honour to transmit to you, by direction of the Marquess of Lansdowne, a further despatch from Mr. Rolfe, His Majesty's Consul at Naples, respecting the domicil of Mr. A. G. White at the time of his divorce.

Mr. Rolfe incloses an affidavit by Mr. White with five exhibits, to which translations of the material documents have been annexed.

I am to request that you will be so good as to take these papers into your consideration, and to furnish Lord Lansdowne with your opinion as to whether they afford satisfactory evidence of Mr. White having acquired a *bonâ fide* domicil in Stuttgart at the time of the institution of the divorce proceedings.

The papers previously sent to you are returned for convenience of reference.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Consul Rolfe, No. 14, May 13, 1901.
Papers previously referred.

Report.

We have perused the further papers, and ~~are~~ of opinion that they do not afford satisfactory evidence of Mr. White having acquired a domicil at Stuttgart at the time of the divorce proceedings. They merely show residence there, which does not confer a domicil for the purpose of dissolution of marriage.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
May 24, 1901.

JAPAN.

No. 24

[November 19, 1901.]

Foreign Office to the Law Officers of the Crown.

Municipal Rates in former foreign Settlement at Yokohama.

Gentlemen, *Foreign Office, September* 11, 1901.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, a despatch from His Majesty's Chargé d'Affaires at Tôkiô (Paper A) in regard to the claim of some foreign firms residing in the former foreign Settlement at Yokohama to exemption from the payment of a local municipal rate. The complainants base their claim to exemption from this rate not so much on the provisions of Article XVIII of the Anglo-Japanese Treaty of 1894 (Paper B) as on the following grounds:—

By the Agreement concluded on the 19th December, 1864, called the Conventional Memorandum (p. 35 of "Treaties on Trade, &c.," with Japan, marked C) the Japanese Government undertook, in view of the high rentals paid by all foreign leaseholders, to hand over to a municipal fund controlled by the leaseholders and to be used for municipal objects by the leaseholders themeslves, a deduction of 20 per cent. of the yearly rent paid by all lands leased to foreigners.

In 1871 the control of municipal affairs in the foreign Settlement was taken over by the Japanese Government (p. 1050 of "Treaties and Conventions," marked D): the 20 per cent. of the rents then ceased to be handed over to the leaseholders' municipal fund and was transferred by the Japanese Government to its local office to be used for the municipal expenses of the foreign Settlement.

During this time all the municipal objects of the foreign Settlement were supposed to be met out of the 20 per cent. of the rents plus the income derived from the sales of land to foreigners; nor was any additional tax ever levied.

But when foreign jurisdiction in Japan was abolished in 1899, the control of the foreign Settlement was transferred by the Central Government to a native Municipal Body, the Settlement was incorporated by Article XVIII of the Anglo-Japanese Treaty (Paper B), in the Japanese Commune, and all special rights enjoyed up to that time by British subjects were relinquished.

The Municipal Council of Yokohama now seeks to include among those on whom municipal taxes are levied the foreign residents in the former foreign Settlement, and this is objected to by them on the ground that when the Japanese authorities promised to devote 20 per cent. of the land rents to the municipal purposes of the Settlement, they formally undertook to relieve the Settlement from municipal charges from which foreigners were to be exempted "in view of the high rental paid by foreigners (see Conventional Memorandum, Paper C) thus implying that the 20 per cent. in question was a substitute for such municipal charges.

In September 1899, the Japanese Government proposed to levy upon property held by British subjects in the foreign Settlement in Japan under perpetual leases various charges including local taxation on land or buildings.

The question was referred to the Law Officers of the Crown, who reported on the 10th April, 1900 (Paper E), that Article XVIII of the Anglo-Japanese Treaty of 1894 protects the perpetual leasebolder from local rates in respect of the buildings on their land, and that if any doubt could be entertained on the point, it would be removed by the terms of the French Treaty of the 4th August, 1896, and of the note to the German Treaty of the 4th April, 1896, and the right of British subjects to equality of treatment.

His Majesty's Chargé d'Affaires at Tôkiô considers, however, that the imposition of municipal rates based on the national income and business taxes and not levied on perpetual leasehold property as such, is of a different character from a local rate levied on land and buildings.

The new tax is not leviable on the leaseholders *quâ* leaseholders but as persons or firms living within a Japanese commune or engaged in carrying on business therein, who are already liable to the Japanese Business Tax and Income Tax Law, and who may or may not be leaseholders.

As, however, the 20 per cent. deduction from the ground rents paid by land renters which, according to the terms of the Conventional Memorandum of 1864, was to be devoted to municipal purposes, continued to be so applied until 1899, when the new Treaties came into force, Mr. Whitehead suggests that it would, therefore, seem equitable that the ground rents or perpetual leasehold property should be reduced by the 20 per cent. formerly allotted to municipal expenses, if foreign residents in the former Settlements are subjected to full local rates. This view was held by Sir E. Satow, formerly His Majesty's Minister at Tôkiô (Paper F).

Article XX of the Anglo-Japanese Treaty of 1899, however, provides that "the present Treaty shall be substituted in place of the Conventions of the 14th October, 1854, of the 25th June, 1866, of the 26th August, 1858, and all arrangements, Agreements, subsidiary thereto, and that such arrangements, Agreements, shall cease to be binding.

It might possibly be argued that the Conventional Memorandum of 1864 and the Agreement of 1871 referring to the foreign Settlements are Agreements subsidiary to the Treaty of 1858 (see p. 11 of "Treaties on Trade, &c.," marked C), under which British subjects first obtained the right to reside in certain places in Japan.

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In that case the complainants' case would fall to the ground in so far as it is based on those Agreements.

I am to request that you will take the papers submitted herewith into your consideration and that you will favour Lord Lansdowne with your opinion as to whether the British residents in the former Settlements can claim exemption from this municipal rate under Article XVIII of the Anglo-Japanese Treaty, or under the French Treaty, or the note to the German Treaty.

2. If not, as to whether the Conventional Memorandum and the Agreement of 1871 can still be considered in force, and whether, in that case, a claim for exemption from municipal rates can be based on those Agreements.

3. If not, whether a representation might be made to the Japanese Government that they ought in equity to reduce the ground rents of the lands held by foreigners by 20 per cent., the amount which was contributed until 1899, out of such ground rents to municipal purposes.

His Lordship will also be glad to receive any observations of a general character which you may be good enough to offer on the subject of this reference.

I have, &c.

(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Mr. Whitehead	(No. 73)	July 2, 1901.
(B.)	Anglo-Japanese Treaty of 1894.		
(C.)	Book of Treaties, &c., with Japan.		
(D.)	Treaties and Conventions, p. 1050.		
(E.)	Law Officers' Report [No. 34, p. 99 of Volume.]		April 10, 1900.
(F.)	Sir E. Satow	(No. 175)	October 28, 1899.

Report.

1. In our opinion neither Article XVIII nor the Treaties referred to can be relied upon to exempt British residents in the former Settlement from the taxes or rates in question. These latter are not imposed in respect of the subject-matter of the leases, and are payable alike by all residents whether leaseholders or not.

2. We do not think that the Conventional Memorandum of 1864 and the Agreement of 1871 can still be considered as technically in force. The Conventional Memorandum of 1864 was superseded by the Agreement of 1871, and the arrangement made by the Treaty of 1894 that the local authorities should assume all municipal duties in respect of the Settlement is inconsistent with the idea that these duties are to be discharged by the officer created under the Agreement of 1871.

But we think that these documents give rise to a very strong claim for relief from the rent to the extent of 20 per cent. That amount was from 1864 to 1871 returned to the leaseholders to enable them to relieve the Japanese authorities from the burthen of roads, drainage, &c., and after 1871 was paid to the new official who, in his turn, relieved the leaseholders of this burthen. The rent was a high one, the Japanese authorities before 1864 undertaking this burthen, and it appears to us clear that in all fairness, the full rent should not now be exacted when a tax is imposed upon the residents in the Settlement for, among others, the very purposes to which the 20 per cent. deduction was applicable.

3. We think that such a representation may properly be made on the grounds indicated in the answer above to question 2.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 19, 1901.

MEXICO.

No. 24 A. **[Colonial Office.]**

[January 30, 1901.]

The Attorney-General to Colonial Office.

Sir,

Royal Courts of Justice, January 30, 1901.

Extradition of Military Deserters between Mexico and British Honduras.

I WAS honoured with your commands, signified in Mr. Bertram Cox's letter of the 4th instant, stating that, with reference to the Law Officers' Report of the 18th October last on the subject of the extradition of military and naval deserters who had escaped from Mexico into British Honduras, he was directed by you to inform me that upon consideration it appeared desirable that provision should be made by an agreement between Her Majesty's Government on behalf of the Colony of British Honduras and the Government of Mexico for the reciprocal surrender of military and naval deserters as such, irrespective of the question whether or not they had committed an offence extraditable under the present Treaty.

That in this connection Mr. Bertram Cox was to inclose, for my information, an extract from a Memorandum prepared in the Foreign Office, and in especial he was to refer me to a Report of the Law Officers, dated the 23rd November, 1893, with reference to a proposal for a similar agreement between the Governments of the Straits Settlements and of Netherlands India. That in that Report the opinion was expressed that no reciprocal arrangement for the arrest and surrender of military and naval deserters could be entered into on behalf of Her Majesty without further legislation, that neither "The Foreign Deserters Act, 1852," nor the Extradition Act of 1870 applied to the case suggested, and that statutory authority to enter into the proposed arrangement would be necessary.

That Mr. Bertram Cox was also to refer me to the Law Officers' opinion of the 8th June, 1883, regarding an agreement between the English General in command of the Fortress of Gibraltar, who was also Governor, and as such had full power to legislate for Gibraltar and the Spanish General at Algeciras. That the agreement in question was still in force and was frequently acted upon. That it had, however, been suggested that the later Law Officers' opinion of 1893 implied that Imperial legislation was required to validate a Convention for the surrender of military deserters, and he was therefore to request that I would take the papers into my consideration and advise:—

(*a.*) Whether there was anything in section 238 of "The Merchant Shipping Act, 1894," the Extradition Acts, or generally in any Imperial Statute to prevent Her Majesty's Government from entering on behalf of the Colony of British Honduras into an arrangement with the Government of Mexico for the reciprocal surrender under proper conditions of military and naval deserters.

(*b.*) Whether, assuming that the answer to the first question was in the negative, a Colonial Ordinance would be sufficient to provide for the carrying out of such an arrangement.

In obedience to your commands I have taken the paper into my consideration, and have the honour to

Report—

(*a.*) That, in my opinion, His Majesty's Government cannot, on behalf of the Colony of British Honduras, enter into the suggested arrangement with the Government of Mexico for the reciprocal surrender of naval and military deserters without fresh legislation. The right of His Majesty's Government to enforce extradition is at present derived from "The Extradition Act, 1870," and it would require statutory authority from the Imperial Parliament, or the local Legislature, to bring into effect any arrangement with reference to naval and military deserters who are not included in the Extradition Act.

(*b.*) A Colonial Ordinance would be sufficient for the purpose. An Act of the local Legislature in British Honduras is all that is wanted to confer upon the Executive

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there the requisite authority. Indeed the 18th section of "The Extradition Act, 1870," contemplates and provides for the case of such local enactments for extradition. My view on this point is in accordance with the opinion of the Law Officers of the 8th June, 1883. The opinion of the Law Officers of the 23rd November, 1893, merely says that for such extradition arrangements legislative authority is wanted, a proposition with which I entirely concur. I do not think that that opinion should be read as meaning that the authority of the Imperial Parliament is wanted.

The Hong Kong Ordinance of the 2nd September, 1870, is an instance of local legislation for this purpose, and I think that this course should be followed in the present case.

I have, &c.
(Signed) R. B. FINLAY.

NETHERLANDS.

No. 25.

[July 22, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 15, 1901.

Gentlemen,

John Godden's Claim relative to Phosphate of lime in Aruba, &c.

I HAVE the honour to transmit herewith the papers noted in the annexed list, relating to the complaint of Mr. John Godden against the action of the Netherland Colonial authorities of the Islands of Curaçoa and Aruba.

This case has been referred to successive Law Officers of the Crown on four previous occasions, and has formed the subject of four separate Reports. The first is that of the 28th April, 1886, signed by Sir Charles Russell and Sir Horace Davey, and also by Sir J. Parker Deane.

The second and third are dated the 30th March, 1887, and the 29th February, 1888, respectively, and are both signed by Sir R. E. Webster and Sir E. Clarke.

The fourth is dated the 11th November, 1899, and signed by Sir R. E. Webster and Sir R. Finlay. To this Report is prefixed the letter of reference from this Office of the 18th October of that year, containing a succinct history of the case.

Mr. Godden now submits, in support of his claim, an opinion by Mr. H. de Ranitz, of the Dutch Bar, and begs for a reconsideration of his case.

I am to request that you will be good enough to take these papers into consideration, and that you will inform Lord Lansdowne whether their perusal leads you to think that the views expressed by the then Law Officers in their Report of the 11th November, 1899, require modification or amplification to any, and, if so, to what, extent.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

Law Officers and Sir J. Deane	April 28, 1886.
Law Officers	March 30, 1887.
" "	February 29, 1888.
" "	November 11, 1899.
Mr. Godden	June 28, 1901.

Report.

We do not think the situation is altered by the further materials which Mr. Godden has now laid before His Majesty's Government. On the whole the opinion of M. de Ranitz, so far as it is possible to follow it without the numerous documents to which he refers, appears to confirm the view taken in the Report of the Law Officers of the 11th November, 1899, as to the legal right to the phosphate of lime, and the claim of Mr. Godden appears to be mainly rested on his title to equitable consideration as having discovered the phosphate of lime. We cannot advise His Majesty's Government to take any further action in the matter.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 22, 1901.

PACIFIC ISLANDS.

No. 25 A.

[Colonial Office.]

[January 7, 1901.]

Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, January 7, 1901.

Sir,

Cook Islands: proposed incorporation in New Zealand.

WE were honoured with your commands signified in Mr. H. Bertram Cox' letter of the 21st ultimo, stating that he was directed by you to inform us that Her Majesty's Government had approved of the Cook group and certain other islands in the Western Pacific being incorporated in New Zealand, and that from the accompanying copy of a telegram from the Governor of the Colony we should observe that the Colonial Legislature had assented to the requisite extension of boundaries, and that the Government desired that the necessary steps might be taken by the issue of an Order in Council, or Letters Patent, for such extension under the provisions of "The Colonial Boundaries Act, 1895."

That the existing boundaries of New Zealand, as defined by 26 Vict., cap. 23, section 2, comprised all territories, islands, and countries lying between the 162nd degree of east longitude and the 173rd degree of west longitude, and between the 33rd and 55th parallels of south latitude; and that it was now desired to include within the boundaries of the Colony all the islands and territories within an area defined as follows:—

From a position south latitude 23°, west longitude 156°, due north to south latitude 8°, west longitude 156°, thence due west to south latitude 8°, west longitude 164°, thence due west to south latitude 17°, west longitude 170°, thence due south to south latitude 23°, west longitude 170°, and finally due east to starting-point south latitude 23°, west longitude 156°. That the present boundaries and the proposed addition were indicated by blue and red pencil lines on the accompanying chart.

That in the Law Officers' Report of the 31st October, 1896, regarding the proposed annexation of Norfolk Island to the Colony of New South Wales, it was stated that "the general powers of Her Majesty to alter the boundaries of Colonies referred to in 'The Colonial Boundaries Act, 1895,' could not be relied on to justify the annexation even with the consent of the Colony. The boundaries of New South Wales rest on a statutory basis. Even if the annexation of Norfolk Island could be deemed a question

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of boundary, we do not think that, in view of the Statute 18 and 19 Vict., cap. 54, it could be safely effected by Order in Council."

That it was not clear whether that opinion merely intended to imply that the power conferred by the Colonial Boundaries Act could not override the special provision made for the Government of Norfolk Island by 18 and 19 Vict., cap. 54, or generally, that the powers conferred by the Colonial Boundaries Act to vary the boundaries of a self-governing Colony, with the consent of its Legislature, could not be exercised in cases where the boundaries of the Colony had been fixed by Imperial Statute.

That in the present case there had been no Imperial legislation in regard to Cook Islands, which had only recently been included in Her Majesty's dominions, but that the boundaries of New Zealand rested on a statutory basis, viz., section 2 of the Imperial Act 26 Vict., cap. 23.

That the records of the Colonial Office showed that the Colonial Boundaries Act was laid before, and passed by, Parliament with the express object of enabling that which was now desired to be done, viz., the extension by Order in Council, or Letters Patent, of the boundaries of a Colony notwithstanding the fact that they were fixed by Imperial Statute, as was the case in regard to all the Australian Colonies referred to in the schedule to "The Colonial Boundaries Act, 1895."

That under the circumstances, Mr. Bertram Cox was to request that we would take the matter into our consideration and report whether the desired extension of the boundaries of New Zealand could be effected by Order in Council, or Letters Patent, under the provisions of "The Colonial Boundaries Act, 1895," or whether it must be done by means of Acts of the Imperial and Colonial Parliaments.

We have taken this matter into our consideration, and, in obedience to your commands, have the honour to

Report—

That we are of opinion that the extension of the boundaries of New Zealand, as proposed by an alteration of the longitude and latitude as fixed by the Act of 1863, can be effected by an Order in Council under the Colonial Boundaries Act of 1895.

We have &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

No. 26.

[February 4, 1901.]

Foreign Office to the Law Officers of the Crown.

(A.)

Gentlemen,

Foreign Office, January 19, 1901.

Maltreatment of J. Cranstoun during rising in Hawaii in 1895: As to compensation.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list, which relate to the case of Mr. J. Cranstoun, a British subject, who, during the rising in Hawaii in 1895, together with other British subjects, whose claims were referred to your predecessors at that time, and now form the subject of a separate letter, suffered arrest, detention, and deportation under the powers conferred on the Executive by the Proclamation of martial law, without having been brought to trial.

Copies of the reports furnished by the Law Officers on the cases above referred to are sent herewith for convenience of reference (Papers Z, ZA, ZB).

Mr. Cranstoun, who carried on a retail business in forage at Honolulu, was arrested in connection with the Royalist conspiracy of the 7th January of that year, although he asserts that he took no part in local politics, was detained in the common prison, under very insanitary conditions, and with insufficient food, and was eventually deported on board the steam-ship "Warrimoo" in mid-winter from the tropical climate of Hawaii to the cold climate of British Columbia without money and without suitable clothing.

Mr. Cranstoun states that he suffered in consequence severely both mentally and physically, and that, as the result of the harsh treatment to which he was subjected, his health has been seriously affected and his means of earning a livelihood prejudiced.

He therefore claims compensation. Some delay occurred in the first instance with regard to the presentation of this claim to the Government of Hawaii, as doubt was felt as to whether Mr. Cranstoun was a British subject or an American citizen, but it was eventually ascertained that his claim to British nationality was well founded, and that he had been registered as a British subject at Her Majesty's Consulate at Honolulu.

Mr. Hawes, then Her Majesty's Consul-General at that port, duly reported (Paper F) the result of his inquiries, but owing to his illness and his consequent absence from Hawaii was unable at that time to take up Mr. Cranstoun's case.

On the 9th November, 1896, however, Mr. Hawes wrote to the Hawaiian Minister for Foreign Affairs, inclosing an extract from Mr. Cranstoun's Petition (Paper A), and stating that Mr. Cranstoun had furnished him with satisfactory proofs of his British nationality. He at the same time asked to be informed of the contention of the Hawaiian Government in the matter. The Foreign Minister replied on the following day, saying that a statement of the Government's case would be prepared as soon as possible. Not having received the information promised, Mr. Hawes wrote to the Minister again on the 1st May, 1897, and received an answer to the effect that the case was in course of preparation, but that, owing to the length of time which had elapsed since Mr. Cranstoun's deportation, it was difficult to procure affidavits in support of the Government's position.

On the 29th May, 1897, a telegram (Paper I) was addressed to Mr. Hawes authorizing him to provide for the conduct of the claim put forward by Mr. Cranstoun, and to suggest to the latter gentleman that Mr. Neumann, who was counsel for the other claimants, should also take charge of his (Mr. Cranstoun's) interests. It appears, however, as the result of telegraphic inquiry subsequently made of Mr. Hoare, who was then Consul at Honolulu, that there is no record of the telegram referred to having been received, or of any action having been taken to include Mr. Cranstoun's amongst the other claims.

Mr. Hawes died on the 6th August, 1897. Mr. Hoare reported on the 16th February last (Paper K) that he had, at Mr. Cranstoun's request, recalled the attention of the Hawaiian Government to the claim, and asked to be furnished with the statement which they had previously promised. The reply of the Minister for Foreign Affairs was to the effect that the payment by the Hawaiian Government of the damages and costs awarded to Mr. Cranstoun in a suit against the Steamship Company which was instrumental in carrying out his deportation from Hawaii was regarded as a settlement of his claim against the Government.

Her Majesty's Ambassador at Washington was then instructed, in a despatch of which a copy is inclosed (Paper L), to present to the United States' Government the Petition originally received from Mr. Cranstoun (Paper A), and to explain what had happened with regard to it and the actual position of the case. His Excellency was also authorized to communicate to the United States' Government copies of the correspondence which had passed between Her Majesty's Consul-General and the Hawaiian Minister for Foreign Affairs.

With regard to the contention put forward by the Hawaiian Government, Lord Pauncefote was instructed to state that Mr. Cranstoun maintains that the Judgment of the British Columbian Court was only given in respect of his illegal detention outside the territorial waters and jurisdiction of Hawaii by the owners and master of the British steam-ship "Warrimoo." The action was brought against these persons as defendants, and the Judgment was against them personally. The Hawaiian Government's action in reimbursing the defendants could not concern Mr. Cranstoun in any way, unless he agreed to accept the Judgment of the Court as affording a full settlement of his claims, not only against the "Warrimoo," but also against the Government, for what had previously occurred while he was still within Hawaiian jurisdiction.

There is no evidence of any such arrangement, and as in all other respects the claim is analogous to those already presented, Lord Pauncefote was authorized to state that Her Majesty's Government trusted that it would be dealt with in a similar manner, and to add that, after consideration of the merits of the case, they were of opinion that the compensation might reasonably be assessed at 400*l*.

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A representation in this sense was accordingly addressed to the United States' Government by Lord Pauncefote on the 5th May last (Paper R).

The claim was then submitted by the United States' Government, "for consideration and appropriate action," to the Government of Hawaii (the islands having in the meantime been annexed and erected into a Territory of the United States), and the latter have now addressed to the Federal Government a letter justifying the action of the Hawaiian authorities in deporting Mr. Cranstoun, on the ground that he was engaged in conspiring to overthrow the Provisional Government of those islands, and transmitting, in support of this statement, a copy of the evidence taken in the case of Mueller *v.* Bird, *et al.*, in the Supreme Court of British Columbia.

This decision, which has been formally communicated by the Secretary of State to Her Majesty's Ambassador at Washington, may, it is assumed, be looked upon as that of the United States' Government, and the question arises how far it should be accepted as final by Her Majesty's Government, or whether there is ground for any further representation in support of Mr. Cranstoun's claim.

The Hawaiian Government, in support of their contention that Mr. Cranstoun's expulsion was justified, adduce considerable evidence of a kind tending to implicate him in the revolutionary movement, and as the appreciation of that evidence is more or less a matter of opinion on which, *primâ facie*, the views of the Government responsible for the maintenance of law and order are entitled to prevail, there seems reason to doubt whether Her Majesty's Government would be warranted in further contesting the justice of the expulsion.

With regard to the treatment of Mr. Cranstoun on board the "Warrimoo," and his forcible detention on board that vessel, it must be borne in mind that this part of his complaint has, as shown in the earlier portion of this letter, already formed the subject-matter of an action brought in the Colonial Courts of British Columbia, and he has, in respect of this, obtained a Judgment in his favour for 1,000 dollars and costs.

The cause of action, however, in that case, arose in respect of the wrong done to Mr. Cranstoun in holding him a prisoner on board a British vessel from the time that vessel got beyond the territorial jurisdiction of Hawaii until he was landed within the jurisdiction of the British Columbia Courts at Vancouver. It did not cover the original injury, viz., the arrest, ill-treatment, and detention which was committed within the jurisdiction of the Hawaiian Courts, and in respect of which a British Columbia Court could not entertain, and did not purport to entertain, an action.

It remains, therefore, to consider whether Mr. Cranstoun's claim on account of alleged harsh treatment, undue detention, and illegal and unjustifiable action on the part of the Hawaiian authorities, subsequently to his arrest and previously to his leaving the territorial jurisdiction of Hawaii on board the "Warrimoo," is well founded, and whether his expulsion was of such a character, and accompanied by such undue severity, harshness, or illegality as to call for remonstrance on the part of Her Majesty's Government and the renewed presentation of a claim for compensation on his behalf.

I am to request that you will take the papers transmitted herewith into your consideration, and favour Lord Lansdowne with your opinion on the questions submitted in this letter, and with any observations of a more general nature which you may be disposed to offer on the matter.

I have, &c.
(Signed) F. H. VILLIERS.

A further despatch from His Majesty's Ambassador at Washington inclosing copies of exhibits (A) and (B) which should have accompanied the evidence taken in the case of Mueller *versus* Bird *et al.* (contained in his Excellency's despatch No. 284 of the 27th November), is inclosed for the consideration of the Law Officers in connection with the papers relative to the claim of Mr. J. Cranstoun, already submitted for their opinion.

F. H. V.

List of Papers.

(A.)	Petition from Mr. Cranstoun		November	11, 1895
(B.)	To Mr. Hawes	(No. 30)	December	5, ,,
(C.)	To Sir J. Pauncefote	(No. 198)	December	6, ,,
(D.)	Sir J. Pauncefote	(No. 52)	February	12, ,,
(E.)	Mr. Hawes	(No. 2)	January	14, 1896.
(F.)	To Mr. Hawes	(No. 6)	March	10, ,,
(G.)	Mr. Hawes	(No. 9)	April	23, ,,
(H.)	Ditto	(No. 8)	May	3, 1897.
(I.)	To Mr. Hawes	(Telegraphic)	May	29, ,,
(K.)	Mr. Hoare	(No. 2)	February	16, 1900
(L.)	To Lord Pauncefote	(No. 83)	April	13, ,,
(M.)	To Mr. Hoare	(No. 1)	April	18, ,,
(N.)	Mr. Hoare	(No. 3)	March	28, ,,
(O.)	Ditto	(No. 4)	March	30, ,,
(P.)	To Lord Pauncefote	(No. 94)	April	25, ,,
(Q.)	Mr. Hoare	(No. 5)	April	21, ,,
(R.)	Lord Pauncefote	(No. 148)	May	8, ,,
(S.)	Ditto	(No. 150)	May	15, ,,
(T.)	Ditto	(No. 161)	May	24, ,,
(U.)	Mr. Hoare	(No. 7)	May	19, ,,
(V.)	Mr. Cranstoun		July	12, ,,
(W.)	To Mr. Cranstoun		July	31, ,,
(X.)	Lord Pauncefote	(No. 284)	November	27, ,,
(Z.)	Law Officers Reports of July 5, 1895, and March 4, 1896.			

Report.

I cannot on these materials recommend that His Majesty's Government should prosecute any claim on behalf of Mr. Cranstoun. The evidence taken on the Commission which is relied on by the United States' Government as justifying the imprisonment and expulsion of Mr. Cranstoun ought no doubt to be heavily discounted, but there appears to be a residuum of facts showing that Mr. Cranstoun was engaged in projects of a revolutionary nature.

It appears to be proved beyond doubt that the draft of the extraordinary Petition to the Government from the Scheutzner Club is in Mr. Cranstoun's handwriting. This is a very significant fact and coupled with the other evidence appears to lead to the inference that his arrest and expulsion were proper. It must, moreover, be borne in mind that the question is not of his actual guilt, but whether the Government acted unreasonably under the circumstances as they appeared to them at the time.

It is possible that Mr. Cranstoun may have explanations to offer which will put a different aspect on the case. This, however, does not appear to me to be very probable, and certainly on the materials before me I cannot recommend the prosecution of this claim.

(Signed) R. B. FINLAY.

Royal Courts of Justice,
February 4, 1901.

No. 27.

[February 6, 1901.]

Foreign Office to the Law Officers of the Crown.

(B.)
Foreign Office, January 19, 1901.

Gentlemen,

I HAVE the honour to transmit to you herewith, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list which relate to the cases of those British subjects whose claims to compensation on account of their detention and ill-treatment for alleged complicity in the Royalist insurrection in Hawaii formed the subject of Reports from your predecessors on the 5th July, 1895, and the 4th March, 1896.

Claims of British subjects for ill-treatment during rising in Hawaii in 1895.

Copies of those Reports, and of the references leading thereto, together with the correspondence therewith submitted are inclosed (Papers A, B, E and F).

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The then Law Officers were of opinion, in 1895 and 1896, that according to international law the Government of any country has the right to request and compel an alien to leave the country, but that the exercise of that right might form the ground of international remonstrance and demand for compensation if it had been employed in a high-handed or oppressive manner; they further stated that the perusal of the documents before them was calculated to leave on the mind the impression that martial law (the existence of, and necessity for, which had been cited by the Hawaiian Government in justification of their action) was used by that Government, in some at all events of these cases, not for the purpose of meeting immediate danger but for the purpose of harassing and compelling to leave the country residents who were known to hold pronounced Royalist views.

On these and other grounds your predecessors considered that compensation might properly be demanded on behalf of the sufferers, and indicated the amounts which in their opinion might be properly demanded by Her Majesty's Government in the several cases.

Instructions to this effect were accordingly sent to Mr. Hawes, Her Majesty's Consul-General in Hawaii (Paper G), and in making a representation, in the sense suggested, to the Hawaiian Government, on the 28th May of that year, he intimated that Her Majesty's Government felt justified in expecting that adequate compensation would be accorded.

Mr. Hawes was, however, prevented by ill-health and an enforced absence from Hawaii from further pressing these claims, at the time, and he died in the following autumn.

Informal negotiations with a view to a settlement were shortly afterwards commenced by his successor, Mr. Kenny, with the Hawaiian Minister for Foreign Affairs, but as these led to no satisfactory conclusion, and as it seemed evident that the Government only regarded these claims in the light of a political argument which they hoped to use in support of annexation to the United States (see Mr. Kenny's despatch No. 25 of the 24th December, 1897, Paper M), he was instructed to press for a formal written answer to the note addressed to the Hawaiian Government by Mr. Hawes on the 28th May, 1896.

The Hawaiian Government replied on the 2nd February, 1898 (see Mr. Kenny's No. 1 of that date, Paper N), that (except in the care of Dunwell which was separately dealt with, and to whom 650*l.* compensation was awarded), they were unable to admit that any of the persons in question were subjected to punishment and for that reason saw no grounds for any liability to compensate them for either loss of time, injury to business, or personal feelings during their confinement.

They added "that the same suggestion applied to those who were allowed to leave the country upon their own request as evidenced by the signing of stipulations by them previous to their leaving, which stipulations, it is fairly maintained, were not executed under any pressure or misapprehension other than their liability to be tried by a competent Tribunal for their alleged participation in the insurrection."

This answer having received due consideration, Mr. Kenny was instructed on the 31st May, 1898 (Paper P), to inform the Hawaiian Government that nothing which had been advanced by them had led Her Majesty's Government to change their opinion with regard to the fairness and equity of their demands. But as a proof of their wish to maintain friendly relations with the Government of Hawaii and of their desire to arrive at a satisfactory solution of the question Her Majesty's Government proposed that the cases which still remained unsettled should be referred to the arbitrament of an independent jurist of high standing, such jurist to be selected by agreement between the two Governments, or, in the event of their being unable to arrive at an agreement, to be designated by the King of Sweden and Norway, the President of the Swiss Confederation, or by some other neutral personage of high distinction.

On the 10th August following the reply of the Hawaiian Government (Paper Q) was received, in which the Minister for Foreign Affairs states that had the Hawaiian Government continued as a Sovereign State the proposal of Her Majesty's Government would undoubtedly have been accepted, but that the annexation of Hawaii to the United States having been consummated the Government felt that they had no authority to go further in the matter.

It was subsequently reported that the Hawaiian Government had notified to the United States' Government the existence of these claims and that Mr. Kenny had communicated to the United States' Minister at Honolulu copies of all the correspondence which he had had with the Hawaiian Government on the subject.

Her Majesty's Ambassador was then instructed in a despatch of which a copy is inclosed (Paper T) to bring these facts to the notice of the United States' Government, and to ascertain whether they were willing to agree to the proposal of Her Majesty's Government that the claims should be submitted to arbitration.

In reply (Paper U) the United States' Government expressed a hope that the claims might not be pressed until the relations of Hawaii with the United States were arranged by Congressional legislation: and in deference to this request the matter was dropped for the moment.

Six months later, however, an inquiry was addressed to the United States by Lord Pauncefote, asking whether, in view of the delay which must precede legislation by Congress, steps could not be taken at once for an examination of the claims with a view to their presentation to Congress on its next meeting.

Mr. Hay replied (Paper UU) that a copy of his Excellency's note had been sent to the Hawaiian Minister for Foreign Affairs with a request that he would draw up a Report upon the claims.

This Report was drawn up and a copy furnished to Her Majesty's Consul at Honolulu, who after careful examination was of opinion that it gave an incomplete and *ex parte* statement of the case and omitted some essential papers.

Her Majesty's Chargé d'Affaires at Washington accordingly communicated the missing documents to Mr. Hay, by whom they were referred back to Honolulu, as the United States' Attorney-General held that Hawaii was primarily responsible for the payment of valid claims of this character.

The ultimate result of these repeated references of the question from Washington to Honolulu is the Report of the Hawaiian Government (Paper Z Z) just received, which discusses the additional evidence placed before them, and concludes by justifying their action in every case (save that of Mr. Levey, whose death, they hold, makes it unnecessary to consider the matter further) and rejecting the claims for compensation.

In these circumstances the question arises whether any further reply should be made to the United States' Government with regard to all or any, and which of these cases, and, if so, to what points in the Hawaiian answer such reply may in each case as well as generally be most advantageously directed.

I am to request that you will take the papers transmitted herewith into your consideration and favour Lord Lansdowne with your opinion on the questions submitted in this letter and with any observations of a more general nature which you may be disposed to offer on the matter.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	To Law Officers		May	11,	1895.
(B.)	Law Officers		July	5,	,,
(C.)	Mr. Hawes, Honolulu	(No. 48)	December	9,	,,
(D.)	Ditto	(No. 49)	December	16,	,,
(E.)	To Law Officers		January	30,	1896.
(F.)	Law Officers		March	4,	,,
(G.)	To Mr Hawes	(No. 8. Confidential)	April	7,	,,
(H.)	Consul-General Hawes	(No. 4. Confidential)	March	23,	1897.
(I.)	Mr. Hawes	(No. 11. Confidential)	May	5,	,,
(J.)	To Mr. Hawes	(Telegraphic)	May	29,	,,
(K.)	Acting Consul-General Kenny	(Telegraphic)	November	18,	,,
(L.)	Ditto	(No. 23. Confidential)	November	18,	,,
(M.)	Ditto	(No. 25. Confidential)	December	24,	,,
(N.)	Ditto	(No. 1)	February	2,	1898.
(O.)	Ditto	(No. 6)	February	27,	,,
(P.)	To Acting Consul-General Kenny	(No. 1)	May	31,	,,
(Q.)	Acting Consul-General Kenny	(No. 20)	July	20,	,,
(R.)	Ditto	(No. 24)	August	4,	,,
(S.)	Ditto	(No. 28)	August	6,	,,
(T.)	To Sir J. Pauncefote	(No. 225)	September	9,	,,
(U.)	Sir J. Pauncefote	(No. 280)	October	10.	,,
(UU.)	Mr. Tower	(No. 133)	May	3,	1899.
(V.)	Consul Hoare	(No. 17)	October	12,	,,
(W.)	Mr. Tower	(No. 305)	October	28,	,,
(X.)	Ditto	(No. 312)	October	31,	,,
(Y.)	Ditto	(No. 320)	November	4,	,,
(Z.)	Lord Pauncefote	(No. 1)	January	5.	1900.
(ZZ.)	Ditto	(No. 305)	December	21,	,,

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Report.

There appears to be nothing in the Papers now before me to modify the view expressed in the Law Officers' Report of the 4th March, 1896, with regard to the cases of Thomas, McDowall, Ashford, Redward, Reynolds, Rawlins, Kenyon, Levy and Bailey, except so far as the death of Levy may be considered to affect the claim in respect of him.

With regard to Harrison's case there appears to be no additional material beyond the counter affidavits referred to in the Report from Hawaii to the United States' Government.

Under these circumstances, I see no reason to modify the opinions already expressed upon these several individual cases. How far these claims should be pressed depends upon considerations of policy.

(Signed) R. B. FINLAY.

Royal Courts of Justice,
February 6, 1901.

No. 28.

[May 14, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 20, 1901.

Case of H. M. Govt.: operations in Samoa.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit herewith, and to request that you will take into your consideration, the Case which has been drawn up by Mr. H. Erle Richards, on behalf of His Majesty's Government, for presentation to the Arbitrator appointed under Article II of the Convention of the 7th November, 1899, between the United Kingdom, Germany, and the United States, relating to the settlement of certain claims arising out of the military operations in Samoa in the early part of that year.

A copy of the Convention in question and of the principal documents referred to in support of the Case are annexed as Appendices thereto.

Copies of two explanatory Memoranda, also prepared by Mr. Richards, and volumes of the Confidential printed correspondence therein marginally referred to are likewise transmitted for the information of the Law Officers.

His Lordship would be glad to be favoured with your opinion as to whether the Case may properly be submitted to the Arbitrator in its present form, or whether any, and if so what, amendments or modifications should be made therein.

As it is necessary that the Case should be in the hands of the Arbitrator at an early date, Lord Lansdowne would be glad to be favoured with a reply so soon as may be found convenient.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Case (two copies). [Conf. 7515.]
Explanatory Memoranda.
Confidential Print, Parts IX, XXIII, and XXIV.

Report.

We think the Case as drawn up by Mr. Richards may properly be submitted to the Arbitrator in its present form, and that no amendments are necessary.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
May 14, 1901.

PERSIA.

No. 29.

[February 7, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 6, 1901.

Importation of arms, &c. Draft new Order in Council.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list, which relate to a proposed Order in Council to amend "The Persia Order in Council, 1889," and "The Persian Coast and Islands Order in Council, 1889."

In your Report of the 12th December last (Paper C) you expressed the opinion that the Persian Law of the 1st January, 1900 (inclosed in Mr. Spring-Rice's despatch No. 11, Commercial, of the 28th May, 1900, Paper D), prohibiting the importation of arms, ammunition, &c., into Persia should be made applicable to British subjects.

You pointed out that this might be effected by a Queen's Regulation under the Order in Council of the 13th December, 1889, as to Inland Persia (Article 290); but that as regards the Coast and Islands Order in Council of the same day, owing to the different wording of Article 49 the Persian Law could not be made applicable to British subjects by a Queen's Regulation under that Order.

In these circumstances, you advised the issue of an Order in Council dealing with the point as regards all parts of Persia.

The accompanying draft of an Order in Council (Paper E) for the purpose has accordingly been prepared by Mr. A. Gray, and I am to request that you will take it into your consideration and favour Lord Lansdowne with your opinion whether its terms are right and proper for submission to the King in Council for His Majesty's approval.

The opportunity has been taken of amending and amplifying the language of Article 49 of the Persian Coast Order so as to bring it into exact accord with the terms of the corresponding Article (Article 290) of "The Persia (Inland) Order, 1889," and thus to enable for the future King's Regulations enforcing the observance by British subjects of any native or local law or custom, &c., to be made for the Persian littoral as well as for Inland Persia.

The fine which may be imposed for a breach of King's Regulations is at present 100*l.* in the case of places within the limits of the Persia (Inland) Order in Council, and 1,500 rupees in the case of places within the limits of the Persian Coast Order. Under section 67 of "The Imperial Customs Consolidation Act, 1876" (39 & 40 Vict., cap. 36), the fine for evasion of customs duties or for importing goods which are prohibited is 100*l.*, or treble the value of the goods, at the election of the Commissioners of Customs.

A fine of 100*l.* would appear to be an insufficient penalty in the case of a whole cargo of illegal goods, and a provision similar to that of the Imperial Act has accordingly been inserted in the draft Order in Council.

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The draft contains the usual clause providing that, in cases of urgency declared in such King's Regulations, they shall take effect before they have been allowed by the Secretary of State.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.) Persia Order in Council, 1889.			
(B.) Persian Coast Order in Council, 1889.			
(C.) Law Officers ..	..	.. .. ..	December 12, 1900.
(D.) Mr. Spring-Rice	..	(No. 11. Commercial)	May 28, „
(E.) Draft Order in Council.			

Report.

In my opinion, the draft Order in Council, as altered and initialled by me, is right and proper in its terms for submission for the approval of the King in Council.

(Signed) ROBERT B. FINLAY.

Royal Courts of Justice,
February 7, 1901.

Annex.

PERSIA AND PERSIAN COAST AND ISLANDS.

Draft Order in Council.

WHEREAS by Treaty, capitulation, grant, usage, sufferance, and other lawful means, His Majesty the King has jurisdiction in the territories and places within the limits of "The Persia Order in Council, 1889," and "The Persian Coast and Islands Order, 1889," respectively referred to in this Order as the "Persia Order," and the "Persian Coast Order:"

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered as follows, that is to say:—

1. This Order may be cited as "The Persia (Regulations) Order in Council, 1901."

2. This Order shall apply to all places within the limits of the Persia Order and the Persian Coast Order respectively, and the expressions "the Order" and the "Consul-General" shall be construed as applying to each of the said Orders as the case may require.

3. The Consul-General may make and alter Regulations (to be called King's Regulations) for the following purposes, that is to say:

(1.) For securing the observance of any Treaty for the time being in force relating to any place within the limits of the Order, or of any native or local law or custom, whether relating to trade, commerce, revenue, or any other matter.

(2.) For the peace, order, and good government of British subjects or British-protected persons (so far as subject to the Order) within the said limits, in relation to matters not provided for by the Order.

(3.) For requiring Returns to be made of the nature, quantity, and value of articles exported from or imported into places within those limits by or on account of British subjects or British-protected persons, and for prescribing the times and manner at, or in which, and the persons by whom such Returns are to be made.

(4.) For the governance, visitation, care, and superintendence of prisons.

4. King's Regulations may provide for forfeiture of any goods, receptacles, or things in relation to which, or to the contents of which, any breach of the Regulations is committed.

5. King's Regulations shall not take effect until they are allowed by a Secretary of State: provided that in case of urgency declared in any such Regulations, the same shall take effect before such allowance, and shall continue to have effect unless and until they are disallowed by the Secretary of State, and until notification of such disallowance is received and published by the Consul-General, and such disallowance shall be without prejudice to anything done or suffered under such Regulations in the meantime.

All King's Regulations shall be published by the Consul-General in such manner and at such places as he may think proper.

6. Any person committing any breach of the Regulations shall, in addition to any forfeiture prescribed thereby, be punishable with imprisonment, which may extend to three months, or to a fine, or to both.

7. Any fine imposed for a breach of the Regulations shall not exceed 100*l.* in the case of places within the limits of the Persia Order, or 1,500 rupees in the case of places within the limits of the Persian Coast Order: provided that, in the case of any breach of any native or local law relating to the Customs, or under which the exportation or importation of any goods is prohibited or restricted, the fine may extend to a sum equivalent to treble the value of the goods in relation to which the breach is committed.

8. In this Order "breach of the Regulations" includes the breach of any native or local law or custom, the observance of which is required by any King's Regulations.

9. Article 290 of the Persia Order, and Article 49 of the Persian Coast Order, are hereby repealed; but nothing in this Order shall affect the validity of any Regulations made under those Articles *until superseded or replaced by Regulations made hereunder, or the enforcement of any penalty for any breach of such Regulations while in force.*

10. This Order shall come into operation on the day on which it is first publicly exhibited in the office of the Consul-General.

R. B. F.

PORTUGAL.

No. 30.

[February 16, 1901.]

Foreign Office to the Law Officers of the Crown.

Treaty between Transvaal and Portugal. As to lapse of on conquest of the Republic.

Gentlemen, *Foreign Office, February* 11, 1901.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the correspondence noted on the inclosed list, in which the question is raised by the High Commissioner for South Africa whether the Treaty of Friendship and Commerce of December 1875, between the late South African Republic and the King of Portugal, is to be regarded as *ipso facto* terminated by the conquest of the Republic.

In this, as in certain other cases of Treaties concluded subject to the stipulations of the Conventions of 1881 and 1884, a question arises whether the fact that her late Majesty Queen Victoria, as Suzerain, assented to the completion of a Treaty fetters His Majesty's Government in any way so as to prevent such Treaty from being regarded as having lapsed owing to the annexation of the South African Republic.

I am to request you to take the inclosed papers into your consideration, and to furnish his Lordship with your opinion on the point raised by Sir A. Milner in his telegram No. 42 of the 18th January last, together with any general remarks you may have to offer on the documents now submitted to you.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.) Colonial Office	.. ..	January 30, 1901.
(B.) To Treasury	.. ..	January 21, „

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Report.

In my opinion the fact that her late Majesty, as Suzerain, assented to the completion of a Treaty between the Transvaal Government and another Power in no way affects the question of the lapse of such Treaty owing to the annexation of the South African Republic.

The Treaty was one with the Government of the Transvaal as a separate Power, subject only to the restrictions imposed by the Conventions, and the consent of Her Majesty was given merely as Suzerain of the Transvaal. The fact of such assent can, in my opinion, in no way affect the question of the lapse of the Treaty when the Transvaal has become part of His Majesty's dominions. It may, however, have some bearing on the question of policy as to how far His Majesty's Government should be prepared to enter into new obligations containing provisions similar to those contained in any Treaties with the Transvaal which may have lapsed owing to annexation.

In the meantime it may possibly be considered expedient, pending the conclusion of any further Treaty with Portugal, to intimate that the same advantages will be granted provisionally as were enjoyed under the Treaty; the Portuguese Government, of course, conceding the like advantages to His Majesty's subjects in the Transvaal.

(Signed) R. B. FINLAY.

Royal Courts of Justice,
February 16, 1901.

SERVIA.

No. 31.

[May 31, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 14, 1901.

Gentlemen,

Anglo-Servian Extradition Treaty: Order in Council.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you herewith, for your consideration, the draft of an Order in Council, applying to Servia the Extradition Acts 1870 to 1895, in order to give effect to a Treaty of Extradition between Her late Majesty Queen Victoria and the King of Servia, signed at Belgrade on the 6th December, 1900, and ratified at that capital on the 13th March of the present year.

I am to inquire whether, in your opinion, this draft Order, which has been approved by the various Departments concerned, may properly be submitted to the King in Council for His Majesty's approval.

I am further to observe that the Treaty was also signed in the Servian character, and that the usual course is to insert both the texts in Orders in Council which give effect to Extradition Treaties. It has, however, been ascertained that there will be great difficulty in setting up the Servian character in this country owing to scarcity of type and other technicalities. On those grounds it is proposed to insert the English text only in the Order, and I am to inquire whether you see any objection to this course.

I have, &c.
(Signed) F. H. VILLIERS.

Report.

As initialled by us the draft Order in Council may, in our opinion, properly be submitted for the approval of His Majesty in Council, with the addition of the Servian text. We think the usual practice should be followed in this matter—what was agreed to was not the English text only.

(Signed) R. B. FINLAY.
E. CARSON.

Royal Courts of Justice,
May 31, 1901.

Annex.

WHEREAS by the Extradition Acts, 1870 to 1895, it is, amongst other things, enacted that where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, His Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that His Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in part of His Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

And whereas a Treaty was concluded on the 6th day of December, 1900, between Her late Majesty Queen Victoria and His Majesty the King of Servia for the mutual extradition of fugitive criminals, which Treaty is in the terms following:—

[Here follows the text of the Treaty.]

And whereas the ratifications of the said Treaty were exchanged at Belgrade on the 13th day of March, 1901.

Now, therefore, His Majesty, by and with the advice of his Privy Council, and in virtue of the authority committed to him by the said recited Acts, doth order, and it is hereby ordered, that from and after the * day of , 1901, the said Acts shall apply in the case of Servia, and of the said Treaty with Servia.

Provided always that the operation of the said Act shall be and remain suspended with the Dominion of Canada so long as an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," shall continue in force there, and no longer.

(Initialled) R. B. F.
E. C.

SPAIN.

No. 32.

[September 14, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 19, 1901.

Gentlemen,

Claims for losses of British subjects in Cuban insurrection.

I HAVE the honour, by direction of the Marquess of Lansdowne, to inform you that His Majesty's Ambassador at Madrid recently presented to the Spanish Government the claims of British subjects on account of their losses in Cuba arising out of the acts of the Spanish authorities during the insurrection in that island and the subsequent war between Spain and the United States.

Among the claims presented by his Excellency a considerable number were for the value of the ripe sugar-cane which was left standing in the fields by the claimants, and consequently destroyed, in obedience to the orders of the Spanish authorities

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* Date to be inserted by Council Office, and to be a date ten days after publication in "London Gazette."

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prohibiting planters from harvesting or grinding their cane. His Majesty's Consul-General at Havana in a Memorandum with regard to the claims explained that this measure had been very generally enforced in the districts exposed to the attacks of the insurgents, and that it had apparently been adopted in order to deprive the insurgents of the resources in money and supplies which they might have been able to extract from the planters had the latter been allowed to take in their crops.

A despatch has now been received from Sir M. Durand, a copy of which is inclosed,* reporting that he has been informed by the Spanish Government that they cannot admit the claims of British subjects for losses consequent on the Decree of the military authorities forbidding the harvesting of the sugar-cane.

In the note addressed to his Excellency on the subject, the Spanish Government state that the measure, being of a general nature, and taken only owing to the exceptional gravity of the circumstances, affected Spanish subjects and foreigners alike, and that the claim of neither the one nor the other to any sort of indemnity will be recognized.

I am to request that you will favour Lord Lansdowne with your opinion as to whether His Majesty's Government should accept this decision of the Spanish Government, and that if you consider that the decision should not be accepted, you will indicate the grounds on which His Majesty's Government should base their objections.

Lord Lansdowne will also be glad to be favoured with any observations which you may have to make on the general aspect of the question.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

We do not think His Majesty's Government could successfully combat the conclusions arrived at by the Spanish Government as set forth in the letter of Sir H. M. Durand of the 8th August, 1901.

As the action of the military authorities of the Spanish Government was taken in the course of the hostilities then pending, and was applied alike to Spanish subjects and those of neutrals, no claim for indemnity arises under the recognized principles of international law.

Any further claim, therefore, can only be in the nature of an appeal for consideration, based upon the hardships to the individuals whose property was lost. No claim can be put forward as a matter of right.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
September 14, 1901.

TURKEY.

No. 33.

[July 29, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 11, 1900.

Gentlemen,

Marriage of P. Attard in Malta with divorced Greek subject of Porte.

I AM directed by the Marquess of Salisbury to transmit to you the accompanying correspondence with Mr. Eyres, Her Majesty's Consul at Constantinople, together with Minutes thereon, relative to the proposed marriage between Pietro Attard, a Maltese British subject, and a "Rayah" who is the divorced wife of a Greek subject of the Porte.

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* Sir M. Durand, No. 66, August 8, 1901.

Mr. Stavrides, the legal adviser to the Consulate, describes the lady's divorce as "quite in order," meaning thereby that the decree of divorce obtained by her was valid according to the law of the matrimonial domicil of the parties, and was pronounced by a competent Court or authority of the country in which the parties were domiciled at the time of the commencement of the proceedings for divorce. The divorce being valid, the lady is consequently free to marry again, so far as English law is concerned.

As to the intending husband, Lord Salisbury was advised that his marriage would be valid wherever English law prevails, but that, if he were domiciled in Malta, the law of which island does not admit of marriage with a divorced person, his marriage would not be valid in Malta. It therefore appeared necessary to clear up the doubt as to Mr. Attard's domicil, and Mr. Eyres was instructed to make inquiries on this point. From his second despatch (Paper C), there seems to be little doubt that Mr. Attard's domicil is Maltese.

On this assumption I am to request you to favour Lord Salisbury with your opinion, 1, whether, in the circumstances, the Consul is bound to solemnize the marriage at Her Majesty's Consulate; and, 2, if your answer to that question should be in the affirmative, whether it is desirable that he should previously warn the parties with regard to their position, in contemplation of the law of Malta, and, if so, in what terms such warning should be expressed.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

(A.) Consul Eyres	(No. 23)	May 8, 1900.
(B.) To ditto	(No. 14)	„ 21, „
(C.) Consul Eyres	(No. 25)	„ 29, „

Report.

There is no objection to the celebration of this marriage.

The opinion of the Acting Crown Advocate of Malta does not show that the law of Malta imposes on a person domiciled there any incapacity to marry a divorced person in any other part of the world. We may add that it appears to us extremely unlikely that the law of any country should impose such incapacity.

The doubts entertained by the Acting Crown Advocate as to the validity in Malta of the proposed marriage rest on the opinion, which he appears to think probable, that the Maltese Courts would not recognize the divorce which has been obtained by the lady from the ecclesiastical authorities of her own Church in Turkey. This is, of course, a totally different question from the suggestion that Mr. Attard was under an incapacity by the law of Malta to marry a divorced person.

We are unable to share the doubts which the Acting Crown Advocate entertains as to the recognition in Malta of the validity of the Greek divorce. The question whether this lady is a married woman or single must depend on the law of her domicil. This is not a question of the local law of Malta, but of general international law. If, by the law of her domicil, she is a single woman, she must be recognized as such in all other countries.

We assume that Mr. Attard retains his Maltese domicil of origin, inasmuch as, though there is no impossibility in point of law, there is a strong presumption against the intention by a British Christian subject to acquire a domicil in such a country as Turkey.

(Signed) ROBERT B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 29, 1901.

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No. 34.

[June 20, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 14, 1901.

Gentlemen,

Supplementary Extradition Convention with the United States. Order in Council.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you herewith a draft of an Order in Council to give effect to a Convention signed at Washington on the 13th December last between the United Kingdom and the United States of America for the mutual extradition of fugitive criminals, the ratifications of which were exchanged at Washington on the 22nd April last.

The various Departments of His Majesty's Government concerned have concurred in this Order, and I am to request that you will inform the Marquess of Lansdowne whether, in your opinion, it may properly be submitted for the approval of the King in Council.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

The accompanying draft Order in Council which we have initialled may, in our opinion, properly be submitted for the approval of His Majesty in Council.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 20, 1901.

Annex.

WHEREAS by the Extradition Acts, 1870 to 1895, it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, His Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that His Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of His Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient;

And whereas a Convention was concluded on the 13th day of December, 1900, between Her late Majesty Queen Victoria and the President of the United States of America, for the mutual extradition of fugitive criminals, which Convention is in the terms following:—

[Here follows the text of the Treaty.]

And whereas the ratifications of the said Convention were exchanged at Washington on the 22nd day of April, 1901:

Now, therefore, His Majesty, by and with the advice of his Privy Council, and in virtue of the authority committed to him by the said recited Acts, doth order, and it is hereby ordered, that from and after the * day of , 1901, the said Acts shall apply in the case of the United States and of the said Convention with the President of the United States of America.

Provided always that the operation of the said Acts shall be and remain suspended within the Dominion of Canada so long as an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," shall continue in force there, and no longer.

R. B. F.
E. C

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* Date to be inserted by Council Office, and to be a date ten days after publication in "London Gazette."

No. 34A. [Colonial Office.]

[July 11, 1901.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, July 11, 1901.

Sir,

Real, &c., Property Convention with United States: Partial adherence of Canada.

WE were honoured with your commands signified in Sir M. F. Ommanney's letter of the 2nd instant, stating that he was directed by you to request us to report upon certain questions which had arisen with respect to the power of the Government of the Dominion of Canada to adhere to the Convention between the United Kingdom and the United States of America, relative to the disposal of real and personal property, which was ratified on the 28th July, 1900.

That Sir M. Ommanney was to transmit to us a copy of a telegram received from the Governor-General of Canada, from which it appeared that the Province of New Brunswick did not desire to adhere to the Convention, and that the Dominion Government were in doubt whether Canada could adhere without New Brunswick.

That it would be observed that by section 132 of "The British North America Act, 1867," power was given to the Parliament and Government of Canada to perform the obligations of Canada, or of any province of Canada arising under Treaties between the Empire and foreign countries, and that under section 91 of the same Act exclusive power was reserved to the Dominion Government to legislate in respect of aliens. That in that connection Sir M. Ommanney was to refer us to the case of the Union Colliery Company of British Columbia *v.* Bryden.

That it appeared, however, that the Dominion Government was doubtful as to the propriety of exercising any powers it might possess of adhering to the Convention and legislating to enable its provisions to be carried out in view of the objections of the Province of New Brunswick, and that Sir M. Ommanney was, therefore, to request us to report—

1. Whether the Dominion Government could adhere to the Convention without New Brunswick becoming bound by it?
2. Whether the Dominion Government had power—
    - (*a.*) To adhere on behalf of New Brunswick notwithstanding the refusal of New Brunswick to adhere; and
    - (*b.*) To legislate, if necessary, for that province so as to enable the provisions of the Convention to be carried out?
3. Generally.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

1. That we think the Dominion Government can only adhere to the Convention on the terms of New Brunswick being bound by it as well as the other provinces.

2. We are of opinion that the Dominion Government has power to adhere on behalf of New Brunswick, and to pass such legislation for the whole Dominion, including New Brunswick, as will enable the Convention to be carried out there. This can, we think, be done under the exclusive power to legislate as to aliens conferred by section 91 (25), though it touches on rights of property in the province. (See Tennant *v.* Union Bank of Canada—1894 A.C. 31 at p. 47).

3. Nothing further occurs to us. We, of course, do not enter into questions of policy which may arise on the course suggested in the second question.

(Signed) R. B. FINLAY.
EDWARD CARSON.

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No. 35.

[August 7, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 31, 1901.

Gentlemen,

Consular marriages in Illinois and Colorado. Measures proposed to ensure validity of.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list respecting the solemnization of marriages under "The Foreign Marriage Act and Order in Council, 1892," at His Majesty's Consulates in the States of Illinois and Colorado, United States of America.

A question having arisen as to the validity of such marriages, His Majesty's Consul at Chicago thought it right to obtain legal opinions on the point, which were forwarded to Lord Pauncefote and submitted by him to the Legal Adviser to His Majesty's Embassy. All the opinions given agree in the view that a marriage solemnized by a British Consul would not be valid in the States of Illinois or Colorado, and that valid marriages can only be solemnized in Illinois by a minister of a religious denomination, a Judge of a Court of Record, a Justice of the Peace, or the authorities of a Quaker congregation; in Colorado, by any Judge or Justice of the Peace, clergyman, or licensed preacher of the Gospel.

It is therefore suggested that marriages should be solemnized in His Majesty's Consulate at Chicago, or in the British Vice-Consulate at Denver, in the presence of the Consul or Vice-Consul (who are the only marriage officers in the Chicago Consular district, which includes the States of Illinois and Colorado) by a person duly empowered to perform marriages according to the local law. Such marriages would constitute valid marriages under the Foreign Marriage Act and the Order in Council of 1892, as well as under the *lex loci*, provided that the preliminary formalities as required by that Act had been observed by the parties, and that if the ceremony adopted were not that of the Church of England the words prescribed in section 8 (3) of the Foreign Marriage Act were duly introduced.

Lord Lansdowne is, however, advised that, in order to secure the validity of the marriage in English law, the Consul would have to satisfy himself, as in the case of all Consular marriages, that the parties were under no legal impediment so far as the law of England, and not the *lex loci*, was concerned.

The marriage would, in fact, not be a *lex loci* marriage, but a marriage under the Act of Parliament.

Lord Lansdowne proposes that the Consuls concerned should be instructed to act in accordance with this suggestion if there should be no impediment in practice, and to register marriages so solemnized at His Majesty's Consulates as Consular marriages.

I am to request that you will be so good as to take the papers transmitted herewith into your consideration, and to furnish his Lordship with your opinion on the points raised, and with any general observations which you may wish to offer.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Consul Wyndham	(No. 21.)	June 10, 1901.
(B.) Mr. Lowther	(No. 11. Consular.)	„ 24, „

Report.

We cannot advise that British Consuls in Illinois and Colorado should be instructed to endeavour to combine the two systems in the manner suggested. They should proceed in the ordinary manner with regard to Consular marriages.

If the mode of celebration is such as to render it a good marriage by the *lex loci*, the parties will have the advantage of this; but we think it would lead to confusion, as pointed out by Lord Pauncefote, if the Consuls were instructed to take any steps to have the marriage celebrated under the two systems.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 7, 1901.

No. 36.

[August 10, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 31, 1901.

Gentlemen,

Trial of G. E. Underwood for offence for which extradition was not asked.

I HAVE the honour, by direction of the Marquess of Lansdowne, to inclose, for your consideration, the correspondence, shown in the accompanying lists, relative to the case of a man named George Edward Underwood.

This case has formed the subject of correspondence between this Department, the Colonial Office, and His Majesty's Ambassador at Washington for a period dating back to 1897, and the facts may be briefly summarized as follows:—

In the autumn of 1896, an American citizen, named George Edward Underwood, was surrendered in extradition from the Dominion of Canada to the United States of America, charged with the murder on the 10th January, 1896, in Harris County, Texas, in the United States, of one A. A. Rabuck.

In December 1896 he was tried on this charge at the State Court of Houston, Texas, and acquitted. He was, however, rearrested before leaving the precincts of the Court, and it appears from a letter addressed to His Majesty's Ambassador at Washington on the 5th October, 1897, and signed "G. Underwood." that he was again placed on his trial on a charge of robbery with violence, alleged to have been committed on the 9th November, 1895.

On this latter charge he was found guilty and sentenced to death. Against this sentence he appealed, but for some reason, however, which is not explained in the papers, no effect was given to the sentence against which he had appealed, and the appeal was allowed to lapse. On the 12th April following he was again tried on what seemed to have been a separate and distinct charge of robbery committed on the 15th December, 1895, and for this crime was convicted and sentenced to a term of sixteen years' imprisonment in a penitentiary. This sentence, which was confirmed by the Court of Criminal Appeals in Texas, Underwood is now undergoing.

In the month of July 1897, the matter having been brought to his notice by the Governor-General of Canada, Mr. Adam, at that time Her late Majesty's Chargé d'Affaires at Washington, called the attention of the United States' Government to the case, and reminded them of the terms of Article III of the Extradition Treaty with the United States of the 12th July, 1889, which provide that "no person surrendered by or to either of the High Contracting Parties shall be triable or be tried for any crime or offence committed prior to his extradition, other than the offence for which he was surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered."

The United States' Government, in reply, undertook to inquire into the matter.

It will be seen, on reference to Lord (then Sir Julian) Pauncefote's despatch No. 13, Treaty, of the 17th March, 1899, that, down to that time, the Department of State, in reply to numerous representations made by the British Embassy at Washington, had contented itself with procuring reports on the case from the Governor of Texas, and copies of the Judgments of the Texan Courts in the appeals and other legal proceedings instituted on behalf of Underwood, but had abstained from active intervention on the ground that it was open to the prisoner to raise the question of the legality of his imprisonment by writ of *habeas corpus*. In the same despatch it is stated that while the prisoner's friends were anxious to bring the case before the Supreme Court by writ of error, or by writ of *habeas corpus*, they were unable to do so owing to lack of funds. As regards procedure by writ of *habeas corpus*, Her Majesty's Ambassador observed that doubts existed whether the application would succeed,

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since it was urged by the authorities in Texas, in vindication of their action, that the prisoner had waived his right under the Treaty by having submitted to be tried for the prior offence without protest. Be this, however, as it may, no Judgment has as yet been pronounced by any Court on the point whether there has been a violation of Article III of the Extradition Treaty above cited.

As Her Majesty's Ambassador remarks in the same despatch, "the only feature in the case which concerns Her Majesty's Government is the allegation that the prisoner having been acquitted of the charge of murder, on which his extradition was granted, was put upon his trial for another crime, committed prior to his surrender by Canada, without having had an opportunity of returning to that country."

Taking all these matters into consideration in consultation with the Legal Adviser of His Majesty's Embassy (Mr. Calderon Carlisle), Lord Pauncefote came to the conclusion that—while safeguarding the principle involved—a satisfactory solution of the problem might be effected by means of an exchange of diplomatic notes, setting forth that the fact of no proceedings having been taken, and no demand having been made by His Majesty's Government for the liberation of the prisoner, should not be treated as a precedent, or held to impair in any way the rights of His Majesty's Government under Article III of the Treaty. The right of the prisoner to pursue his legal remedy at any time would, of course, be reserved. It will be seen on reference to the letter from Mr. Griggs, the Attorney-General of the United States, a copy of which is inclosed in Lord Pauncefote's despatch of the 17th March, 1899, that he concurred in this course of action.

The matter was then referred to the Government of Canada, who, after a considerable delay, concurred in the terms of the proposed instructions to Lord Pauncefote. Those instructions were sent to his Lordship in the despatch No. 2, Treaty, of the 16th January last, the arrangement proposed with regard to the exchange of notes being approved.

The reply of the United States' Government is contained in Lord Pauncefote's despatch No. 23, Treaty, of the 21st April last, and I am to invite your particular consideration of its terms, as well as of the opinion expressed with regard to it by the Legal Adviser of His Majesty's Embassy. Stated shortly, the contention of the United States' Government amounts to this: that so long as legal remedies are still open to the prisoner, diplomatic intervention cannot properly be resorted to.

Lord Lansdowne is advised that, having regard to the extremely important question of principle involved, it is essential that His Majesty's Government should address a further representation to the United States' Government in the case, and the inclosed draft to His Majesty's Representative at Washington has accordingly been prepared with that object.

You will observe that other cases are mentioned in the correspondence as being more or less analogous in principle to that of Underwood. The cases of Platt and Hertz are cited as examples. The circumstances of these cases are set out in Lord Pauncefote's despatches Nos. 31 and 33 of the 23rd and 27th May last respectively. It appears, however, to Lord Lansdowne doubtful whether any useful purpose will be served by referring to them, and that, on the whole, it may be more expedient to confine their representation to the Underwood case alone.

As regards the case of Young, referred to in the correspondence, it presents perhaps a closer analogy than the two others above referred to. Young was surrendered in 1894, in extradition to the United States, on a charge of "assault with intent to commit murder." He was acquitted on that specific charge, but convicted of a crime known in the United States as "assault in the second degree," and sentenced to four and a-half years' imprisonment. The man, however, sued out a writ of *habeas corpus* before a Judge of the Federal Court, who quashed the conviction of the State Court, and ordered him to be liberated. On that occasion, as in the case of Underwood, the United States' Government contended that so long as a legal remedy was open to the convicted man, it was no part of the duty of the Executive to intervene.

I am to request that you will take this correspondence into your consideration, and that you will favour Lord Lansdowne with your opinion as to whether the inclosed draft instructions to His Majesty's Chargé d'Affaires at Washington are right and proper in the circumstances, and if not, that you will make any addition or alterations in the draft which may seem to you desirable.

I have, &c.
(Signed) F. H. VILLIERS.

Lists of Papers.

List (A).

To Lord Pauncefote	(No. 2. Treaty)	January	16, 1901.
Lord Pauncefote	(No. 3. Treaty)	February	8, „
Ditto	(No. 23. Treaty)	April	21, „
To ditto	(Telegraphic)	May	8, „
Lord Pauncefote	(Telegraphic)	May	14, „
Ditto	(No. 31. Treaty)	May	23, „
Ditto	(No. 33. Treaty)	May	27, „
Proposed draft to Mr. Lowther.			

List (B).

Mr. Adam	(No. 27. Treaty)	October	1, 1897.
Ditto	(No. 28. Treaty)	October	5, „
Ditto	(No. 33. Treaty)	October	8, „
Ditto	(Telegraphic)	October	11, „
To Colonial Office		October	13, „
Colonial Office		October	14, „
Mr. Adam	(No. 32. Treaty)	October	12, „
Ditto	(No. 34. Treaty)	October	15, „
Ditto	(No. 35. Treaty)	October	19, „
To Colonial Office		October	21, „
Ditto		October	21, „
Colonial Office		October	25, „
To Mr. Adam	(Telegraphic)	October	27, „
Colonial Office		January	3, 1898.
Sir J. Pauncefote	(No. 13. Treaty)	March	17, 1899.
To Colonial Office		April	8, „
Colonial Office		April	20, „
Ditto		January	9, 1901.

Report.

In our opinion the accompanying draft instructions to His Majesty's Chargé d'Affaires at Washington, as altered in red ink* and initialled by us, are, in the circumstances, right and proper.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 10, 1901.

Annex.

(No. 51. Treaty.)

Foreign Office. August 15, 1901.

Sir,

HIS Majesty's Government have considered, in communication with the Law Officers of the Crown, the reply of the United States' Government to the representation which was addressed to them by Lord Pauncefote on the 1st February last with regard to the case of George Edward Underwood.

As an alternative to pressing on the United States' Government the adoption of procedure under habeas corpus, His Majesty's Ambassador, in accordance with his instructions, had proposed to them that there should be an exchange of notes recording that no proceedings have been taken and no demand put forward by His Majesty's Government for the liberation of Underwood, but that this should not be treated as a precedent, or as in any way impairing the rights of His Majesty's Government under Article III of the Treaty of 1890. Before this proposal was officially put forward, it was understood that the United States' Attorney-General agreed, in principle, to that course.

His Majesty's Government regret to observe that Mr. Hay's reply deals with the matter from a different point of view, and treats it as being one of the category in regard to which it is not usual to invoke diplomatic intervention until legal remedies have been exhausted. The view of His Majesty's Government is, however, that inasmuch as Underwood was never afforded an opportunity of returning to the country from which he had been surrendered, upon his acquittal on the charge on which he was surrendered, *and was put upon his trial on a different charge relating to an offence alleged to have been committed prior to such surrender*, there has been a breach of Treaty obligation, and the object of the proposed exchange of notes was to place this on record, and to reaffirm the binding nature of the Treaty obligation. His Majesty's Government cannot admit the contention that the fact that Underwood is an American citizen has any bearing whatever on the principle involved; this point, however, although mentioned by the United States' Attorney-General, does not appear to be insisted on.

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* Printed in italics.

The case is not put forward by His Majesty's Government as one involving a denial of justice to a person who is not a British subject, and who has not exhausted his ordinary legal remedies, but as one involving a violation of the international compact by which the United States are under engagement to this country, in accordance with the IIIrd Article of the Extradition Treaty of 1890.

His Majesty's Government therefore trust that the United States' Government will consent to an exchange of notes on the basis proposed, and, further, that they will consider if steps can be taken to prevent the recurrence of incidents of this nature, which, owing to the action of the local Courts, cause difficulties in the due fulfilment of Treaty obligations.

(Initialled) R. B. F.
E. C.

No. 37.

[August 22, 1901.]

Foreign Office to Law Officers of the Crown.

Damage to Hoskyn and Co.'s property at Iloilo; claim on United States.

Foreign Office, August 9, 1901.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the accompanying letter from Messrs. Hoskyn and Co., in which they request the assistance of His Majesty's Government in recovering the amount of their claim against the United States' Government on account of the damage done to their property at Iloilo, Philippine Islands, at the time of the occupation of that town by the United States' forces on the 11th February, 1899.

In 1898–99 Spain and the United States were at war, and the inhabitants of the Philippines were at the same time in a state of insurrection against the Spanish Crown.

The Spanish troops evacuated Iloilo in December 1898, and the town was then occupied by the insurgents. When the United States' forces subsequently appeared before it the insurgents refused to surrender the place, and the damage to Messrs. Hoskyn and Co.'s property was caused when the United States' troops took forcible possession and drove out the insurgents.

Mr. George M. Saul's notes, exhibit 5 attached to Messrs. Hoskyn and Co.'s letter, contain a narrative of the events which occurred at Iloilo from the time of its evacuation by the Spaniards until its occupation by the Americans. In the firm's letter, and in exhibit 1 attached to it, you will find the grounds stated on which Messrs. Hoskyn and Co. base their claim. Their contention is that their losses were due to the negligence of the United States' authorities in not taking proper steps for the protection of property, and to the fact that the bombardment and assault of the town took place before the expiration of the notice issued by the United States' authorities to the foreign Consuls warning them to cause the persons under their protection to seek a place of safety.

A Report by the Captain of His Majesty's ship "Plover" is inclosed, which gives an account of the bombardment of Iloilo, and explains the circumstances in which the firing began before the notice issued to the foreign Consuls had expired.

In the course of 1899 a Board, consisting of Lieutenant-Colonel Chandler and three other officers, was appointed by the United States' Government to sit at Manila for the investigation of the claims arising out of the military operations in the Philippines. The decisions of the Board were not final, but were subject to revision by the United States' authorities at Washington.

A considerable number of the claims submitted to the Board, including that of Messrs. Hoskyn and Co., were for losses incurred at Iloilo, and they therefore selected one of these, that of Messrs. Hollmann and Co., Swiss citizens, as a "type" case, and determined that on its result should depend the other cases where the law and the facts were entirely similar.

The examination of this test case has recently been concluded, and the Board have recommended that Messrs. Hollmann and Co.'s claim should be disallowed. The finding of the Board with the reasons stated at length is given in Inclosure 2 of Messrs. Hoskyn and Co.'s letter.

In view of the decision thus arrived at in the case of Messrs. Hollmann and Co. it is probable that all claims for destruction of property at Iloilo will be disallowed by the Board, and Messrs. Hoskyn and Co. have therefore made their present appeal to His Majesty's Government for assistance.

I am to request that you will take the inclosed papers into your consideration, and will favour Lord Lansdowne with your opinion as to whether Messrs. Hoskyn and Co.'s claim is one that His Majesty's Government can properly undertake to present officially to the United States' Government through the Diplomatic channel, and that you will add any observations with regard to the case generally which may appear to you to be called for by the circumstances.

As at present advised his Lordship considers that it will be very difficult successfully to impeach the finding of the Board, which appears to be in accordance with strict law and precedent, and that it will perhaps be preferable to approach the United States' Government unofficially in the matter, in the hope that the President may be induced, in view of the hardship of the case, to move Congress to grant some compensation to the claimants out of the revenues of the Philippine Islands.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Messrs. Hoskyn and Co.	April 12, 1901.
Report of 11th February, 1899, from Lieutenant and Commander Cowper, inclosure in Admiralty letter of	March 24, 1899

Report.

We do not think that the claim of Messrs. Hoskyn and Co. could be successfully maintained on principles of international law.

The judgment of the Board of Officers on claims in Hollmann's case appears to us to state, with substantial accuracy, the principles of international law which are applicable, and which could not be impeached.

We think, therefore, that any claim on behalf of Messrs. Hoskyn and Co. ought to be made unofficially, and upon the grounds of the hardship resulting from the destruction of their property.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 22, 1901.

No. 38.

[October 3, 1901.]

Foreign Office to the Law Officers of the Crown.

Consular marriages in Illinois and Colorado. Draft instructions to Consuls.

Foreign Office, September 4, 1901.

Gentlemen,

WITH reference to your letter of the 7th ultimo, I have the honour to transmit to you, by the direction of the Marquess of Lansdowne, the draft of a despatch which his Lordship proposes to address to His Majesty's Chargé d'Affaires at Washington in regard to Consular marriages in the States of Illinois and Colorado.

The papers previously submitted to you are returned for convenience of reference, together with a Minute by Lord Pauncefote, to whom your Report was communicated.

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I am to request that you will favour Lord Lansdowne with your opinion as to whether the proposed instructions to Mr. Lowther are adequate, and with any general observations which you may wish to offer on the question.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Consul Wyndham	(No. 21)	June 10, 1901.
Mr. Lowther	(No. 11. Consular)	June 24, „
Law Officers		August 7, „
Lord Pauncefote	(Minute)	June 27, „
Draft despatch to Mr. Lowther.		

Report.

The proposed instructions, initialled by us, appear to us to be adequate. We have no further observations to offer.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 3, 1901.

Annex.

Draft of Despatch from the Marquess of Lansdowne to Mr. Lowther.

(No. 24. Consular.)

Foreign Office, October 9, 1901.

Sir,

I HAVE had under my consideration your despatch No. 11, Consular, of the 24th June, regarding the solemnization of marriages under "The Foreign Marriage Act, 1892," in the States of Illinois and Colorado.

In view of the Marriage Law of those States, His Majesty's Consul at Chicago and the British Vice-Consul at Denver should not solemnize marriages themselves; but there is no reason why they should not allow marriages to be solemnized in their official residences, in their presence, by some person authorised by the local law to do so, after the parties have completed the formalities prescribed by the Foreign Marriage Act and the Foreign Marriages Order in Council, and having regard to section 8 of the Act.

Such marriages will be valid by English law, and, if the parties have also fulfilled the requirements of the local law, will presumably be valid by that law.

It is not, however, any part of the Consul's duty to inquire whether the formalities prescribed by the local law have or have not been fulfilled; he will merely, as heretofore, take care that the parties comply with the requirements of English law, and warn them that the intended marriage will not necessarily be valid according to the local law.

You should issue instructions in this sense to His Majesty's Consul at Chicago, who will communicate them to the British Vice-Consul at Denver.

I am, &c.

R. B. F.
E. C.

VENEZUELA.

No. 39.

[May 2, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 15, 1901.

Gentlemen,

Draft Extradition Treaty with Venezuela.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you herewith the draft of a Treaty of Extradition between this country and the United States of Venezuela, which his Lordship proposes to instruct His Majesty's Chargé d'Affaires at Carácas to submit for the acceptance of the Venezuelan Government.

The draft is practically identical with the text of a Treaty concluded with Chile in 1897, of which a copy is inclosed. The only difference to which it seems necessary to direct your attention is the clause in Article II (1) which leaves it optional for Venezuela to surrender persons charged with a crime punishable with death. This is based, with the concurrence of the Home Office, on the precedent adopted in the Treaty with Roumania in 1893, of which a copy is also inclosed.

The offence of abandoning children, exposing, or unlawfully detaining them, which is not included in the Treaty with Chile, has been added, Article II (24), at the suggestion of the Chief Magistrate at Bow Street.

The circumstances which have suggested the negotiation of this Treaty, and the correspondence which has passed with the Departments concerned, will be found in the accompanying Confidential print.

The draft has been approved by the Colonial, Home, and India Offices, and I am to request that you will take it into your consideration, and favour Lord Lansdowne with your opinion as to whether it may properly be submitted for the acceptance of the Government of the United States of Venezuela.

I am to add that it is proposed to submit a similar draft, *mutatis mutandis*, for the consideration of the Government of Peru, with which State the United Kingdom has no Extradition Treaty, and where the law, in regard to capital offences, is understood to be similar to that of Venezuela.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Draft Treaty.	
Correspondence respecting a Treaty of Extradition with Venezuela	April 1901.
Extradition Treaty with Chile	January 26, 1897.
Extradition Treaty with Roumania	March 9 (21), 1893.

Report.

The only observation we have to make on the draft Treaty proposed to be entered into by His Majesty's Government and the President of the United States of Venezuela is that the English version of the IVth Article does not appear to be co-extensive with section 3 (3) of the Extradition Act of 1870. The case of a person under sentence, as well as an accused person, ought to be dealt with: the Spanish Article would appear to cover both. The phrase "under examination," moreover, does not appear the most appropriate for designating a person under accusation of crime.

Subject to these remarks, we approve the draft initialled by us.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
May 2, 1901.

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Annex.

Draft Treaty.

HIS Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India, and his Excellency the President of the United States of Venezuela, having determined, by common consent, to conclude a Treaty for the extradition of criminals, have accordingly named as their Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India,

And his Excellency the President of the United States of Venezuela,

Who, after having exhibited to each other their respective full powers, and found them in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE II.

Extradition shall be reciprocally granted for the following crimes or offences:—

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder. The Venezuelan Government may, however, in its absolute discretion, refuse to deliver up any person charged with a crime punishable with death.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Carnal knowledge or any attempt to have carnal knowledge of a girl under 14 years of age, if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties.
6. Indecent assault.
7. Kidnapping and false imprisonment, child stealing.
8. Abduction.
9. Bigamy.
10. Maliciously wounding or inflicting grievous bodily harm.
11. Assault occasioning actual bodily harm.

SU Majestad el Rey del Reino Unido de Gran Bretaña e Irlanda, Emperador de las Indias, i su Excelencia el Presidente de los Estados Unidos de Venezuela, habiendo resuelto, de comun acuerdo, ajustar un Tratado para la estradicion de los malhechores, han nombrado, a este efecto, Plenipotenciarios:

Su Majestad el Rey del Reino Unido de Gran Bretaña e Irlanda, Emperador de las Indias,

I su Excelencia el Presidente de los Estados Unidos de Venezuela,

Los cuales Plenipotenciarios, despues de haberse exhibido sus poderes, i de haberlos encontrado en buena i debida forma, han convenido en los Artículos siguientes:—

ARTICULO I.

Las Altas Partes Contratantes se comprometan a entregarse reciprocamente, en las circunstancias i condiciones espuestas en el presente Tratado, aquellas personas que, acusadas o convictas de cualquiera de los crímenes o delitos enumerados en el Artículo II, cometidos en el territorio de una de las Partes, fueran halladas dentro del territorio de la otra.

ARTICULO II.

La estradicion se concederá reciprocamente por los siguientes crímenes o delitos:—

1. Asesinato (incluso el asesinato con violencia, parricidio, infanticidio, o envenenamiento), o la tentativa o conspiracion para asesinar. Sin embargo, el Gobierno de los Estados Unidos de Venezuela puede negar la entrega, segun lo juzgue conveniente, de cualquier individuo acusado de un crímen que tenga pena de muerte.
2. Homicidio.
3. La administracion de drogas o el empleo de instrumentos con el propósito de procurar el aborto.
4. Estupro.
5. Conocimiento carnal o las tentativas de tenerlo con una niña menor de catorce años, siempre que el testimonio aducido justifique el enjuiciamiento por esos crímenes segun las leyes de las dos Altas Partes Contratantes.
6. Atentado contra el pudor.
7. Robo i secuestro de un ser humano, sustraccion de niño.
8. Rapto.
9. Bigamia.
10. Lesiones o daño corporal grave hecho intencionalmente.
11. Ataque a las personas del que resulte daño corporal.

12. Threats, by letter or otherwise, with intent to extort money or other things of value.
13. Perjury, or subornation of perjury.
14. Arson.
15. Burglary or housebreaking, robbery with violence, larceny, or embezzlement.
16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, punishable with imprisonment for not less than one year by any law for the time being in force.
17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
18.—(*a.*) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

    (*b.*) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.

    (*c.*) Forgery, or uttering what is forged.
19. Crimes against bankruptcy law.
20. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
21. Malicious injury to property, if such offence be indictable.
22. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition offences, and are punishable by more than one year's imprisonment.
23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.
24. Abandoning children, exposing, or unlawfully detaining them.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the Contracting parties for the time being in force, the grant can be made.

ARTICLE III.

Each Party reserves the right to refuse or grant the surrender of its own subjects or citizens to the other Party.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of His

12. Amenazas, ya sea por medio de cartas o de otra manera, con la intencion de sacar dinero u otros objetos de valor.
13. Perjurio, o tentativas de conseguirlo.
14. Incendio voluntario.
15. Robo, u otros crímenes, o sus tentativas, cometidos con fractura, robo con violencia, hurto i malversacion de valores públicos o particulares.
16. Fraude cometido por un depositario, banquero, ajente, comisionado, fideicomisario, director, miembro, o empleado público de cualquiera compañia, siempre que sea considerado como crímen con pena no menor de un año de prision por una lei que esté en vijencia.
17. El obtener dinero, garantias de valor, o mercaderías, con pretestos falsos; el recibir dinero, garantias de valor, u otros bienes, sabiendo que han sido robados o habidos indebidamente.
18.—(*a.*) Falsificacion o alteracion de moneda, circulacion de moneda falsificada o alterada.

    (*b.*) Fabricacion a sabiendas i sin autorizacion legal de cualquier instrumento, herramiento, o aparato adaptado i destinado a la falsificacion de la moneda nacional.

    (*c.*) Falsificacion o alteracion de firmas o valores, o circulacion de lo falsificado o alterado.
19. Crímenes contra las leyes de bancarrota.
20. Cualquier acto hecho con intencion criminal. i que tenga por objeto poner en peligro la seguridad de una persona que se encuentre viajando en un ferrocarril o que se halle en él.
21. Daño a la propiedad hecho con intencion criminal, siempre que la ofensa sea procesable.
22. Pirateria, i otros crímenes ó delitos cometidos en el mar sobre las personas o sobre las cosas, i que, segun las leyes respectivas de las dos Altas Partes Contratantes, sean delitos de estradicion i tengan mas de un año de pena.
23. Trata de esclavos, de manera tal que constituya una ofensa criminal contra las leyes de ambos Estados.
24. Abandono de niños, el exponerlos ó detenerlos indebidamente.

Debe tambien concederse la estradicion por la participacion en cualesquier de los precitados crímenes, siempre que esa participacion sea punible por las leyes de ambas Partes Contratantes.

Puede tambien concederse la estradicion segun lo juzgue conveniente el Estado al que se hiciere el pedido con motivo de cualquier otro crímen que, segun las leyes que estén vijentes a la sazon, dé lugar a ella.

ARTICULO III.

Cada una de las dos Altas Partes Contratantes se reserva el derecho de negar ó conceder la entrega de sus propios súbditos o ciudadanos.

ARTICULO IV.

La estradicion no tendrá lugar si el individuo reclamado por el Gobierno de Su Majestad, o

Majesty's Government, or the person claimed on the part of the Government of Venezuela, has already been tried and discharged or punished, or is still under trial in the territory of the United States of Venezuela or in the United Kingdom respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of His Majesty's Government, or on the part of the Government of Venezuela, should be under examination for any other crime in the territory of the United States of Venezuela or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

It shall likewise not take place when, according to the law of either country, the maximum punishment for the offence is imprisonment for less than one year.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political haracter.

ARTICLE VII.

A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the

el individuo reclamado por el Gobierno de Venezuela, ya hubiese sido enjuiciado i puesto en libertad o castigado, o continuará procesado en el territorio de los Estados Unidos de Venezuela o en el Reino Unido respectivamente, por el crímen por el que se demande su estradicion.

Si el individuo reclamado por el Gobierno de Su Majestad, o por el Gobierno de Venezuela, estuviera detenido por cualquier otro crímen en el territorio de las Estados Unidos de Venezuela o en el Reino Unido respectivamente, su estradicion será aplazada hasta la terminacion del juicio i la completa ejecucion del castigo que le fué impuesto.

ARTICULO V.

La estradicion no tendrá lugar si, despues de cometido el crímen o de instituida la acusacion criminal o de condenado el reó, surjierá la prescripcion, segun las leyes del Estado requerido ó requiriente.

No tendrá igualmente lugar cuando, segun la lei de cada pais, la mas alta pena del delito sea menor de un año de prision.

ARTICULO VI.

Un criminal fugado no será entregado si el delito por el cual se solicita su estradicion es de carácter político, o si dicho criminal prueba que el pedido estradicion se ha hecho en realidad con la mira de enjuiciarlo por un delito de carácter político.

ARTICULO VII.

Un individuo entregado no puede en caso alguno ser detenido ni enjuiciado en el Estado al que se haga la entrega, por otro crímen o por otros asuntos que no sean aquellos que hayan motivado la estradicion, hasta tanto que haya sido devuelto, o haya tenido una oportunidad de regresar el Estado que lo entregare.

Esta estipulacion no es aplicable a crímenes cometidos despues de la estradicion.

ARTICULO VIII.

La requisitoria para la estradicion se hará por los Ajentes Diplomáticos de las Altas Partes Contratantes respectivamente.

La requisitoria para la estradicion de un individuo acusado ha de ser acompañada de órden de prision, dada por autoridad competente del Estado que requiera la estradicion, i de aquellas pruebas que, segun las leyes del lugar donde sea hallado el acusado, justificarían su prision si el crímen hubiese sido cometido allí.

Si la requisitoria se relaciona con persona ya condenada, deberá venir acompañada de la

sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X.

A criminal fugitive may be apprehended under a warrant issued by any Police Magistrate, Justice of Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of Peace, or other competent authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in the United States of Venezuela as in the United Kingdom, if within the term of ninety days a requisition for extradition shall not have been made by the Diplomatic Agent of the demanding country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XI.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII.

In the examinations which they may have to make in accordance with the foregoing stipulations, the authorities of the State applied to

sentencia condenatoria dictada contra la persona condenada por el Tribunal competente del Estado que haya la requisitoria para la estradicion.

Una sentencia dictada en rebeldia no ha de reputarse condenatoria, pero a una persona asi sentenciada puede trátarsele como a persona acusada.

ARTICULO IX.

Si la requisitoria para la estradicion está de acuerdo con las precedentes estipulaciones, las autoridades competentes del Estado requerido procederán a la prision del fujitivo.

ARTICULO X.

Puede prenderse a un criminal fujitivo en virtud de un mandato de prision, dictado por cualquier Juez de Instruccion o de Paz u otra autoridad competente en cualquiera de los dos paises, mediante aquellas pruebas, informes o denuncias, i aquellos procedimientos, que en la opinion de la autoridad que dé el mandato justificarían análogo mandato si el crímen se hubiera cometido o la persona hubiera sido condenada en aquella parte de los dominios de las dos Partes Contratantes donde ejerza jurisdiccion el Juez de Instruccion o de Paz u otra autoridad competente; bajo la condicion, sin embargo, que en el Reino Unido el acusado a de ser remitido en tal caso, a la mayor brevedad, a Lóndres, a disposicion de algun Juez de Instruccion. De conformidad con este Artículo, el acusado será puesto en libertad, tanto en los Estados Unidos de Venezuela como en el Reino Unido, si dentro del plazo de noventa dias no hubiera hecho una requisitoria para la estradicion el Ajente Diplomático del pais que la requiera de acuerdo con las estipulaciones de este Tratado. La misma regla se aplicará a los casos de personas acusadas o condenadas por cualquiera de los crímenes o delitos especificados en el presente Tratado, i que se hubieran cometido en alta mar a bordo de un buque de cualquiera de los dos paises que entrase en un puerto del otro.

ARTICULO XI.

Solo tendrá lugar la estradicion en el caso de hallarse suficiente el testimonio, segun las leyes del pais requerido, ya sea para justificar el enjuiciamiento en el caso de se que hubiera cometido el crímen en el territorio del mismo Estado, ya sea para comprobar la identidad del preso como la persona condenada por los Tribunales del Estado que hace la requisitoria, i que el crímen por el que se le haya condenado es de aquellos con motivo de los cuales podria, en la época de dicha condenacion, haberse concedido la estradicion por el Estado requerido; i ningun criminal será entregado hasta despues de pasados quince dias, contados desde la fecha de su encarcelacion para esperar la órden de su entrega.

ARTICULO XII.

En los exámenes que deben practicar de conformidad con las precedentes estipulaciones, las autoridades del Estado requerido aceráptan

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hall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:—

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.

2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

3. A certificate of, or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by the law of the country where the examination is taken may be substituted for the foregoing.

como testimonio válido las deposiciones juramentadas o las afirmaciones de testigos tomadas en el otro Estado, o copia de ellas, i tambien las órdenes de prision i sentencias allí dictadas i certificadas del hecho de una condena o documentos judiciales que lo declaren, con tal que estén autenticados como sigue:—

1. Una órden de prision debe aparecer firmada por algun Juez, Majistrado, o empleado del otro Estado.

2. Las deposiciones o afirmaciones, o las copias de éstas, deben demostrar que certifican, mediante la firma de algun Juez, Majistrado, o empleado del otro Estado, ser las deposiciones o afirmaciones orijinales, o copias fieles de ellas, segun lo requiera el caso.

3. Un certificado del hecho de una condena o documento judicial que la declare, debe demostrar que está otorgada por algun Juez, Majistrado, o empleado del otro Estado.

4. En todos los casos dicha órden, deposicion, afirmacion, copia, certificado, o documento judicial debe autenticarse, ya sea mediante juramento de algun testigo, ya sea mediante el sello oficial del Ministro de Justicia, o de algun otro Ministro del otro Estado; pero cualquiera otra manera de autenticar que esté permitida a la sazon por la lei del pais donde se practique el exámen puede sustituirse a las precedentes.

ARTICLE XIII.

If the individual claimed by one of the High Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date.

ARTICULO XIII.

Si el individuo reclamado por una de las Altas Partes Contratantes, conforme al presente Tratado, tambien lo fuera por otra u otras Potencias con motivo de otros crímenes o delitos cometidos en sus respectivos territorios, se concederá la estradicion al Estado cuya requisicion fuere de fecha mas antigua.

ARTICLE XIV.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof shall direct, the fugitive shall be set at liberty.

ARTICULO XIV.

Si no se exhibiera testimonio bastante para la estradicion dentro de los dos meses despues de la fecha en que se prendió al fujitivo, o dentro del nuevo plazo que designe el Estado requerido o el correspondiente Tribunal del mismo, el fujitivo será puesto en libertad.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICULO XV.

Todo objeto que esté en posesion del individuo que haya de entregarse i que se le tome al tiempo de prenderlo, será entregado al efectuarse la estradicion si la autoridad competente del Estado requerido para la estradicion ha ordenado la entrega de dichos objetos; i dicha entrega se hará estensiva no solo a los objetos robados, sino a cualquier otro que pueda servir de comprobante del crímen.

ARTICLE XVI.

All expenses connected with extradition shall be borne by the demanding State.

ARTICULO XVI.

Todos los gastos que ocasione la estradicion estarán a cargo del Estado que la requiera.

ARTICLE XVII.

The stipulation of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty, so far as the laws in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular officer of the United States of Venezuela in such Colony or possession.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Venezuelan criminals who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of His Britannic Majesty shall be governed by Rules laid down in the preceding Articles of the present Treaty.

ARTICULO XVII.

Las estipulaciones del presente Tratado se aplicarán a las Colonias i posesiones esteriores de Su Majestad Británica, en cuanto lo permitan las leyes de dichas Colonias i posesiones esteriores.

La requisitoria para la entrega de un criminal fujitivo, refujiado en dichas Colonias o posesiones esteriores, será hecha al Gobernador o autoridad principal de dicha Colònia o posesion por el Ajente principal Consular de los Estados Unidos de Venezuela en dicha Colonia o posesion.

Conocerá de dicha requisitoria, sujetándose siempre, en cuanto le sea dado, i en cuanto lo permitan las leyes de dicha Colonia o posesion esterior, a las prescripciones de este Tratado, dicho Gobernador o autoridad principal, el cual tendrá, sin embargo, la facultad o bien de conceder la entrega o de referir el asunto a su Gobierno.

Su Majestad Británica tendrá, no obstante, la facultad de hacer arreglos especiales en las Colonias i posesiones esteriores Británicas para la entrega de criminales Venezolanos que se refujien en dichas Colonias i posesiones esterioros, sobre la base, en cuanto lo permita la lei de dicha Colonia o posesion esterior, de las estipulaciones del presente Tratado.

Las requisitorias para la entrega de un criminal fujitivo que emanen de alguna Colonia o posesion esterior de Su Majestad Británica serán rejidas por las reglas sentadas en los precedentes Artículos del presente Tratado.

ARTICLE XVIII.

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year, and not less than six months.

It shall be ratified, after receiving the approval of the Congress of the United States of Venezuela, and the ratifications shall be exchanged at as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and affixed thereto their respective seals.

Done at , in the year .

ARTICULO XVIII.

El presente Tratado entrará en vigor diez dias despues de publicado, conforme a las formas prescritas por las leyes de las Altas Partes Contratantes. Podrá darlo por terminado cualquiera de las Altas Partes Contratantes prévio aviso que no pase de un año i no baje de seis meses.

El Tratado, despues de aprobado por el Congreso de los Estados Unidos de Venezuela, será ratificado, i las ratificaciones serán canjeadas en a la brevedad posible.

En fe de lo cual los respectivos Plenipotenciarios lo han firmado, i le han puesto sus sellos respectivos.

Hecho en , del año .

(Initialled) R. B. F.
E. C.

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No. 40.

[June 8, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 31, 1901.

Gentlemen,

Draft Extradition Treaty with Venezuela, Article IV.

I HAVE the honour, by direction of the Marquess of Lansdowne, to inclose, for your consideration, the accompanying correspondence which has passed with the Home Office relative to the IVth Article of the proposed Treaty of Extradition between this country and the Republic of Venezuela. This matter formed the subject of your Report of the 2nd instant, a printed copy of which is also inclosed for convenience of reference.

The additional words relating to sentence under a conviction which you considered necessary in order to make the Article coextensive with section 3 (3) of "The Extradition Act, 1870," have been inserted in the draft, and, subject to your concurrence, the amended phraseology proposed by the Chief Magistrate will be adopted for the final portion of the Article.

In view, however, of Sir Franklin Lushington's observations, Lord Lansdowne would be glad to be favoured with your opinion as to whether the expression "under examination" should be retained, or whether the alternative expression "under process" should preferably be adopted.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

To Home Office (Inclosure.)	May 9, 1901.
Home Office	May 23, „
Law Officers' Report	May 2, „

Report.

We think the expression "under process" instead of "under examination" would be an improvement, and we would advise its insertion in Article IV of the proposed Treaty. We see no objection to the amended phraseology proposed by the Chief Magistrate for the final portion of the Article.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 8, 1901.

ZANZIBAR.

No. 41.

[December 31, 1901.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, December 12, 1901.

Gentlemen,

Germany-Zanzibar Treaty: date of expiration.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers, as marked on the accompanying list, relative to the proposed revision of the Treaty of Commerce between Germany and Zanzibar, signed on the 20th December, 1885, and ratified on the 5th July of the following year.

The XXIVth Article of the above Treaty (Document 1) contains the following provisions:—

"After the expiration of fifteen years, to commence from the day of ratification of this Treaty, it shall be competent for the High Contracting Parties to move for a revision of the present Treaty in order to allow of such alterations, additions, and amendments being made as experience may have shown to be necessary or desirable.

"Such a motion must, however, be notified one year previous to the expiration of the present Treaty, otherwise the Treaty will be considered as tacitly prolonged for a further term of ten years."

You reported to the Marquess of Salisbury on the 28th June, 1900 (Document 2) that the notification of a motion for a revision of the Treaty under Article XXIV would, if no agreement were come to, operate so as to prevent the Treaty from being tacitly prolonged for the further term of ten years, and that, although there is no express provision that the Treaty was only to last for fifteen years, it is provided by implication.

On the 3rd July, 1900, Lord Salisbury accordingly instructed Her Majesty's Ambassador at Berlin to move the German Government for a revision of the Treaty. The German Government then inquired (see Lord Gough, No. 110, Africa, of the 26th July, 1900, Document 3) as to the points on which the Government of Zanzibar desired a revision of the Treaty of 1885, and on the 5th June last (see to Sir F. Lascelles, No. 101, Africa, of the 5th June, 1901, Document 4) Lord Lansdowne instructed Sir F. Lascelles to communicate to the German Government a draft Agreement to take the place of the Treaty of 1885. This Agreement was intended to place Germany on the same commercial and judicial footing as the Protecting Power. The German Government replied (see Lord Gough's No. 79, of the 20th July, 1901, Document 5) that the Treaty of 1885 is still in force, notwithstanding the notification made by Her Majesty's Government on the 3rd July, 1900, that the Treaty was made for twenty-five years, and that Article XXIV gives to both parties only the right to propose a revision after the first fifteen years.

To this despatch Lord Lansdowne answered (see his despatch to Sir F. Lascelles, No. 140, of the 31st July, 1901, Document 6) that His Majesty's Government were quite unable to admit that Article XXIV of the Treaty could be so interpreted.

According to the view of His Majesty's Government, the motion or notice under the Article referred to having been given, it cannot be contended that the Treaty has been "tacitly prolonged for a further term of ten years," and the contingency contemplated by the Article, viz., "expiration," has therefore, in fact, occurred. His Majesty's Government, however, in order to give to the German Government full opportunity for considering the terms of the draft Agreement, had previously offered to prolong the Treaty of 1885 for three months from the 5th July, 1901. The German Government had, however, stated that this term was hardly sufficient for even obtaining a concurrence of opinion between the Departments of the Empire concerned, and expressed a doubt whether "the replacement of the old Treaty by an entirely new one could be regarded as a revision in the sense of Article XXIV of the Treaty of 1885." His Majesty's Government informed the German Government that they were quite willing to allow sufficient time within reasonable limits for the consideration by the German Government of their proposals. His Majesty's Ambassador at Berlin was also instructed to point out to the German Government, with reference to their reading of Article XXIV, that power to revise a Treaty without power to terminate it if revision fails is a nugatory and useless provision. If both parties wish to revise a Treaty in a certain sense they can so revise it at any time, and in such case it is not necessary to make provision, as was done in the Treaty of 1885, for such revision.

In their reply (see Sir F. Lascelles' No. 114, of the 11th October, 1901, Document 7) the German Government contend that—

1. The Treaty of 1885 with Zanzibar was concluded for twenty-five years.

2. That the Treaty remains in force at any rate until the Treaty in its new form agreed upon on the basis of the negotiations for its revision has come into operation.

3. That revision clauses frequently occur in Treaties with non-Christian States, even though the termination of the Treaty is not attached to its revision.

4. That in Great Britain's Treaties with Morocco and Tunis it is explicitly provided that the old Treaty continues to exist in full force until the revision has been

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concluded with the consent of both, and a new Convention has been negotiated and has entered into operation. In the opinion of the German Government the use of the expression occurring in Article XXIV paragraph 6, of the Treaty, "expiration of the present Treaty," does not affect the question. As there is no mention in the whole Treaty of a right of denunciation on the part of the Contracting Parties, and as paragraph 6 of Article XXIV has reference to the preceding paragraph, the words "expiration of the present Treaty," should rather be regarded as another rendering of the expression used in the preceding paragraph, viz., expiration of fifteen years.

A Memorandum with regard to the intention of the Treaty by Sir John Kirk, by whom it was negotiated on behalf of the German Government, formerly His Majesty's Agent and Consul-General at Zanzibar, is inclosed for convenience of reference (see Sir J. Kirk's Memorandum of the 28th October, 1901, Document 8); as also a Memorandum by the Librarian to this Department on the precedents cited in the German reply (see Mr. Oakes' Memorandum of the 18th October, 1901, put up with Sir F. Lascelles' No. 114, of the 11th October, 1901, Document 7).

I have the honour to request you to take this letter and the papers sent therewith into your consideration, and to favour the Secretary of State with your opinion as to the validity of the contentions of the German Government as regards the Treaty with Zanzibar of 1885, and also with any other observations which you may desire to offer.

The reference of the 14th June, 1900 (printed with Document 2), in reply to which you made your Report of the 28th June, 1900, is inclosed, as are also (in a separate bundle) the papers which were submitted to you with that reference.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

1.	German-Zanzibar Treaty, 1885.		June 28, 1900.
2.	Law Officers	(No. 110)	July 26, ,,
3.	Viscount Gough	(No. 101)	June 5, 1901.
4.	To Sir F. Lascelles	(No. 70)	July 20, ,,
5.	Lord Gough	(No. 140)	July 31, ,,
6.	To Sir F. Lascelles	(No. 114)	October 11, ,,
7.	Sir F. Lascelles		October 28, ,,
8.	Sir J. Kirk		

Report.

In our opinion the contention of the German Government on the construction of Article XXIV of the Treaty with Zanzibar is not valid.

The question is as to the effect of the wording of this Article, and this is not affected by the fact that Articles in other Treaties are differently worded. The precedents cited by the German Government have no relevance beyond showing that, as clauses with the effect for which they contend have often been entered into, their construction cannot be said to render the Article nugatory and idle.

But the question remains, what is the effect of this Article? Upon this point we adhere to the view which we have already expressed. We think that the Article expresses what—according to Sir John Kirk—was the intention of those who settled the Treaty. We have only to add that this conclusion seems to follow from the view put forward in the last sentence of the German despatch of the 10th October last that the words, "expiration of the present Treaty," are to be regarded as a mere paraphrase ("Umschreibung") of the words "expiration of fifteen years" occurring in the previous sentence. If these expressions can be regarded in this light, it follows that the Treaty contemplates the expiration of the Treaty at the end of fifteen years, and the two expressions are different ways of saying the same thing.

The plain meaning of the Article seems to us to be that contended for by His Majesty's Government.

(Signed) R. B. FINLAY.
E. CARSON.

Royal Courts of Justice,
December 31, 1901.

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[This Document is the Property of His Britannic Majesty's Government.]

Printed for the use of the Foreign Office. October 1903.

CONFIDENTIAL.

(8022.)

REPORTS

BY THE

LAW OFFICERS OF THE CROWN, &c.

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5	Law Officers	June 5,	Draft British Central Africa Orders in Council. Approving, subject to observations. Other Orders should be assimilated thereto	11
6	Law Officers	June 7,	Draft East Africa Protectorates Order in Council [Courts of Appeal]. Approving	17
7	Law Officers	June 10,	French prisoners of war in Ceylon. Not desirable that foreign prisoners should be allowed to return to South Africa. No liability to Portugal for maintenance of Boers interned in Portuguese territory	19
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CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.: 1902.

ABYSSINIA.

No. 1.

[November 17, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, September 10, 1902.

Jibuti–Harrar Railway: Validity of its Concession.

WITH reference to your letter of the 31st August, 1900, I have the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list in regard to the Agreement of the 9th March, 1897, by which the Emperor Menelik of Abyssinia gave permission to M. Ilg, a Swiss engineer and His Majesty's principal adviser, to form a Company for the construction of a railway from the port of Jibuti, in the French Somaliland Protectorate, to Harrar in Abyssinia, and thence to Antoto and the White Nile.

A copy of your Report, referred to above, is inclosed for convenience of reference, and the map and other papers which you had before you when drawing it up are also forwarded herewith.

On the 6th February last, the Compagnie Impériale des Chemins de fer Ethiopiens, the Company formed in accordance with the permission given by the Emperor, concluded a Convention (see Paper H), with the Government of French Somaliland, by which the latter granted to the Company, on certain conditions, an annual subvention of 500,000 francs (20,000*l.*) for 50 years. The Convention contains, *inter alia*, the following stipulations:—

Article V provides that in future all members of the Council of Administration shall be Frenchmen, except in special cases sanctioned by the Ministers of the Colonies and of Foreign Affairs.

By Article VI the Company is forbidden to modify the course of the railway or to authorize the construction of any branch lines without the consent of the aforesaid Ministers.

Article XIV provides that at the end of 99 years from the opening of the line to Addis Harrar, the French Somali Coast Protectorate shall succeed to all the rights of the Company over the section of the railway between Jibuti and Addis Harrar.

By Article XV the Protectorate has the right of acquiring by purchase the portion of the line between Jibuti and the course of the Hawash at any time after the 1st January, 1920.

These two latter provisions are, however, by Article XVIII made subject to an agreement between the French and Abyssinian Governments in regard to those portions of the line which are outside French territory.

On the 7th February the French Government submitted a Bill to the Chamber of

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Deputies (Paper H), approving the Convention, guaranteeing on behalf of the French Republic the payment of the annual subvention of 500,000 francs to the Railway Company, and enacting that the subvention should be applied as specified in the Convention, viz., to the repayment of the advances obtained by the Company, to expenses of construction and improvement, and to covering deficit on working expenses.

The Bill was adopted by the French Legislature, approved by the President on the 6th April last, and the arrangement was accepted soon afterwards at a general meeting of the Company. It will be observed that the provisions for the acquisition of the railway by the French Protectorate are inconsistent with the rights which were secured to the Abyssinian Government by the Agreement of the 9th March, 1897 (Paper B). In accordance with the terms of that Agreement, the portion of the line running through Abyssinian territory would become the property of the Abyssinian Government at the end of 99 years from its completion.

The arrangements between the Railway Company and the Government of the French Protectorate were made without the cognizance of the Emperor Menelik. His Majesty disapproves of them, and has informed the French Minister in Abyssinia that he cannot accept them.

It becomes matter for consideration whether in concluding the Convention with the French Protectorate and in accepting from the French Government a guarantee for the funds necessary for the construction of the railway, the Company have not so far transgressed the conditions of the Concession granted by the Emperor as to render that Concession liable to be cancelled or materially modified.

The Emperor appears, moreover, to have grounds for complaint against the Company in other matters in which the terms of the original Agreement have been disregarded or set aside.

Article 2 and the following Articles provide for the construction of a railway from Jibuti to Harrar. In view of the engineering difficulties which would be caused by the mountainous character of the country round Harrar, the Company have decided not to carry the line to that town, but to make the terminus at Addis Harrar, a locality situated about 60 miles to the north-west of Harrar. This decision appears clearly from the wording of the Bill submitted by the French Government to the Chamber of Deputies (see Inclosure in Paper H, page 2 and *passim*).

Further, Article 6 of the Agreement with the Emperor provides for the construction of a telegraph line to Harrar, to be placed at the disposal of the Abyssinian Government, but the telegraph is being taken as far as the terminus only.

In these circumstances the Emperor is considering whether, if it should be decided to construct a railway from a port in British Somaliland to the Abyssinian frontier, he would be justified in allowing it to be extended to Harrar, or in himself constructing the extension.

His Majesty has discussed the matter with Lieutenant-Colonel Harrington, His Majesty's Agent and Consul-General in Abyssinia, and has informed him that he would be glad to obtain legal advice in regard to it.

I am to transmit to you a Memorandum by Colonel Harrington (Paper P) stating the principal points on which the Emperor desires to be advised, and I am to request that you will favour Lord Lansdowne with your opinion upon them, and generally with any observations which you may have to make on the matters referred to in this letter.

In your letter of the 31st August, 1900, you stated, with reference to Article 3 of the Agreement of the 9th March, 1897, that in your opinion it appeared clear that any line running from the coast to British Somaliland to Harrar would be both "competing" with the railway from Jibuti and "near" it.

Colonel Harrington, in his Memorandum, raises the question whether, now that the terminus of the Jibuti Railway will be at Addis Harrar and not at Harrar, a line from the British port of Berbera to Harrar, which at its nearest point to the French Railway would be 60 miles distant, could be considered as "near" or "competing."

I am to observe that, as Lord Lansdowne is now informed by Colonel Harrington that the Agreement was signed in the Amharic version only, and that version is therefore the only binding one, the question whether the line would be "competing," the expression used in the French translation need only be considered in so far as the general intention of the Article is concerned.

It seems, however, to Lord Lansdowne somewhat doubtful whether it could be successfully contended that a railway from the British Somali Coast to Harrar would be otherwise than "near" to the Jibuti-Addis Harrar line, and that the more material question is whether the arrangements made by the Railway Company with the Government of the French Protectorate, and the failure of the Company to carry out all the provisions of the Agreement of the 9th March, 1897, are sufficient grounds to justify the Emperor Menelik in giving his sanction to the construction of a railway from Harrar to join a line from the coast at a point on the frontier of the British Protectorate.

I have, &c.
(Signed) FRANCIS BERTIE

List of Papers.

(A.)	Map of Africa			
(B.)	Sir E. Monson	(No. 498)	July	22, 1897.
(C.)	Ditto	(No. 500)	July	23, ,,
(D.)	Captain Harrington	(No. 40)	May	30, 1900.
(E.)	Ditto	(No. 48)	June	25, ,,
(F.)	Treaty between Great Britain and Ethiopia	(Library No. 1023)	May	14, 1897.
(G.)	Law Officers		August	31, 1900.
(H.)	Sir E. Monson	(No. 52)	February	14, 1902.
(I.)	To Lieutenant-Colonel Harrington	(No. 22)	March	14, ,,
(J.)	Sir E. Monson	(No. 93)	March	20, ,,
(K.)	Ditto	(No. 106)	March	29, ,,
(L.)	Ditto	(No. 111)	April	10, ,,
(M.)	The Earl of Cromer	(No. 57. Telegraphic)	May	19, ,,
(N.)	Sir E. Monson	(No. 173)	May	25, ,,
(O.)	Mr. Baird	(No. 11)	June	10, ,,
(P)	Memorandum by Lieutenant-Colonel Harrington		August	30, ,,
(Q.)	To Law Officers		September	10, ,,

Report.

We are of opinion that the Emperor Menelik could not be advised to grant a Concession or make a line of railway from the coast to Harrar so long as the monopoly under the existing Concession is in force. Whether proper grounds exist for cancelling this monopoly is a different question. We do not think that the fact that the concessionnaire has formed a French Company, with the assistance of the French Government, could, on the facts before us, safely be relied on as a ground for cancellation, as there is no such limitation or prohibition in the Concession. If, however, the concessionnaire fails to carry out the Agreement in any material particular, we think it might afford grounds for cancellation, and we think that if the concessionnaire fails to make the line to Harrar as provided by the Concession, that would be a good ground for putting an end to the monopoly granted by the Concession.

We do not think that any of the other grounds suggested by Colonel Harrington would entitle the Emperor to set aside the Concession.

(Signed) R. B. FINLAY,
EDWARD CARSON.

Royal Courts of Justice,
November, 17, 1902.

Annex.

Memorandum by Lieutenant-Colonel Harrington.

REGARDING the situation created by the Railway Company making a Convention with the French Government without the Emperor's consent, the points which I want legal opinion on are—

1. Does not the Company's making a Convention with a third Party invalidate the Concession, or at any rate give the Emperor the power of honourably altering the terms of the original Concession? So far as I remember, nothing in the Concession allows of its transfer to a third Party. The Company has accepted the Convention with a third Party, viz., the French Government, even though certain clauses are subject to approval by the Emperor.

2. The Concession was granted to private individuals, and gave them the right to form a Company. Are they not exceeding the powers granted them under the Concession in allowing

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the French Government to guarantee the money necessary for the completion of the line? Does not this action invalidate the Concession?

3. The Concession was granted, so the Emperor states, on the distinct understanding that the Railway was to be built by a private Company, and that no Government was to have any share in it. Does not the Company's action in allowing the French Government to have an interest in the line invalidate the Concession as being beyond the Company's powers under the Concession?

4. Whether the Railway Company's action, if not forfeiting the Concession, entitles the Emperor to allow another Government to make a line to Harrar from the coast.

In fact, my contention is that the Company, having even negotiated, not to mention having made and approved a Convention with the French Government, which action is outside the powers conferred on them by the Concession, have thereby entitled the Emperor to honourably consider the terms of the Concession as having been exceeded and as no longer binding on him.

Am I right in my opinion that the Concession may be regarded as a contract between two parties, and that the fact of the concessionnaire not having kept his part of the contract entitles the grantor to repudiate it, or, at any rate, to alter the existing terms of the Concession?

Regarding the Concession irrespective of the situation at present created by the Railway Company's action, I would like legal opinion on the following points:—

1. Would a line from Berbera to Harrar, which at its nearest point to the French Railway would be 60 miles distant, be considered as near or competing?

2. Would not the Emperor be entitled under the existing terms of the Railway Concession to grant a Concession for a line from Harrar to a point on the British Somaliland frontier to a private individual or to a Government?

This would not be a line to the Red Sea or Indian Ocean.

3. Is there any clause in the Concession which would prevent—

(*a.*) The Emperor building such a line as described in (2) himself, or

(*b.*) Allowing another Government to build it?

4. Is there any clause in the Concession which prevents a foreign Government from building a line from the coast to Harrar?

5. Whether the engagement to establish telegraphic communication forthwith between Jibuti and Harrar in return for permission to undertake the Jibuti–Harrar section of the line not having been observed does not empower the Emperor to alter the terms of the Concession.

6. Whether the Concession having been granted for a line to Harrar, the fact that the Company have openly admitted that they have no intention of continuing the line to Harrar does not honourably admit of an alteration of the Concession by the Emperor.

7. Whether the provisions or part provisions of Articles I, III, and IV of the Treaty of the 14th May, 1897, between Her Majesty's Government and the Government of Abyssinia (Paper F) as regards trade are not in conflict with Articles 9 and 10 of the Railway Concession, and, being of later date, do not affect the putting into force of these clauses on behalf of the Railway.

AFRICA.

No. 2.

[January 6, 1902.]

Foreign Office to Law Officers of the Crown.

Gentlemen,

Foreign Office, December 14, 1901.

M. van Beijnum, Dutchman, aiding Boers, made a Prisoner of War.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted on the accompanying list, which relate to the case of M. van Beijnum.

The facts of the case are, briefly, as follows:—

M. van Beijnum is a Netherland subject by origin.

He was a teacher in a State-subsidized school at Ermelo (Transvaal), which was closed at the outbreak of the war, when he acted as Assistant-Postmaster for about two months. The school was open again from December 1899 to July 1901. On the 12th to 13th August, General Buller marched through Ermelo and gave him a pass to remain. The town was subsequently reoccupied by Boers, and he gave private lessons until the 18th October, when he was made a prisoner of war by General French, and taken successively to Heidelberg, Johannesburg, and Cape Town, where, after several requests from the Netherland Consul-General for his release, he was given a third-class passage in the steam-ship "Warrical," and, arriving at London, was given a ticket for Utrecht. M. Adank, when he returned to Ermelo in January 1900, found M. van Beijnum employed in the post-office, doing the work of the First Assistant-Postmaster, who had been commandeered, and also some of the work of Adank's son, who was also on commando.

The facts of the case are stated somewhat more fully in the Memorandum of the 19th September by Sir J. Ardagh, late Director of Military Intelligence, who has acted as British Agent before the Deportations Commission, and whose great knowledge of the laws and customs of war has on many occasions been utilized by this Department. The views expressed in the Memorandum are to be considered as Sir J. Ardagh's personal views, and, though they would probably command the general assent of His Majesty's Government, might not be accepted by them in all particulars.

Should you desire to know whether, and how far, any of them have in practice been adopted, information on such points as you may indicate will be procured.

I have the honour to request you to take these papers into your consideration, and to favour the Secretary of State with your opinion—

1. Whether the treatment accorded to M. van Beijnum by the British authorities, and especially whether his being made a prisoner of war, was justifiable in view of his actions and the circumstances in which they were committed;

2. Whether any compensation should be made to him, *ex gratiâ* or otherwise, on account of the treatment which he received from those authorities; and

3. With any observations which you may be good enough to offer on the case generally.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Baron Gericke		January	30,	1901.
To War Office		February	4,	,,
War Office		June	25,	,,
To Baron Gericke		July	5,	,,
Sir H. Howard	(No. 31. Africa)	August	8,	,,
To Baron Gericke		August	14,	,,
Sir J. Ardagh (Memorandum)		September	19,	,,
To Sir H. Howard	(No. 31)	October	8,	,,
Sir H. Howard	(No. 49)	November	13,	,,

Report.

In our opinion the treatment accorded to M. van Beijnum was justifiable. Apart from the question of nationality, upon which we are not in a position to advise, it is clear from the statements of M. van Beijnum himself and of Mr. Adank that the former accepted employment under the Transvaal authorities during the progress of the war, and thereby enabled those whose office he took over to join commando on active service, and he cannot, in such circumstances, be considered as a neutral.

2. We do not see any reason why compensation, *ex gratiâ* or otherwise, should be awarded to M. van Beijnum.

3. We agree with Mr. Davidson and Sir John Ardagh that the question of nationality should not be abandoned, but it is unnecessary to determine it in consequence of the acts of M. van Beijnum as above indicated.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
January 6, 1902.

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No. 3.

[March 31, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, March* 24, 1902.

Opening of letters in transit through British South African Colonies.

I HAVE the honour, by direction of the Marquess of Lansdowne, to inclose, for your consideration, a copy of a Memorandum communicated to his Lordship by the German Ambassador at this Court relative to the opening in Cape Colony of letters in transit through the Colony to German South-West Africa.

It will be seen that the Memorandum draws a distinction between the right to exercise censorship over correspondence posted in the Colony, or addressed to persons in the Colony, and that which passes in transit, to a neutral country, through British territory. With regard to the latter category, reference is made to the provisions of the International Postal Convention.

Article IV (1) of that Convention provides that "the right of *transit* is guaranteed throughout the entire territory of the Union." The same Article (2) goes on to say: "Consequently the several Postal Administrations of the Union may send reciprocally through the medium of one or of several of them, either closed mails or correspondence 'à découvert,' according to the needs of the traffic and the requirements of the postal service."

You will, however, observe from the Martial Law Regulations, which have been published and are in force in Cape Colony, and of which a copy is inclosed, that "all letters, telegrams, and the like, arriving or leaving by post or otherwise, are, if other than official, liable to be censored."

In pursuance of this Regulation, the military authorities have been in the habit of opening correspondence in transit to German South-West Africa, and of labelling those letters "opened under martial law." Steps have, however, been taken to discontinue this practice, and arrangements have been made which will, it is hoped, have the practical result of preventing further complaints.

Lord Lansdowne would, however, be glad if you will take the German Memorandum into your consideration and favour him with your opinion (1) whether, having regard to the provisions of the Postal Convention above cited, His Majesty's Government can properly maintain that the existence of martial law in the Cape Colony warrants the examination of correspondence passing *in transit* through that Colony; and (2) whether, in the event of your considering such a course justifiable, letters which may be found to contain dangerous matter may properly be detained by the military authorities, or whether, in the case of letters which in course of transit come within a theatre of war or an ambit wherein martial law has been proclaimed, the provisions of the Convention apply, or there is any obligation thereunder to forward them to their destination.

A note on the same subject has been received from the Netherland Minister. This note reiterates the contentions advanced in the German Memorandum, and is also inclosed.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Memorandum (German Embassy)	March 5, 1902.
Baron Gericke	March 18, ,,
Martial Law Regulations.	

Report.

1. We are of opinion that the provisions of the Postal Convention must be regarded as applicable to a state of peace, and that, in the event of war raging in an adjoining territory, letters transmitted under the Postal Convention are liable to examination in the same way as other letters. This right, however, is one which should, we think, be exercised with great forbearance, and, as it may be doubtful whether any information or supplies of money are likely to be transmitted to the enemy indirectly by means of such letters, it is a matter for consideration whether the right should be exercised.

2. Letters which may be found to contain dangerous matter may properly be detained.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
March 31, 1902.

No. 3A. [Colonial Office.]

[May 30, 1902.]

The Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, May* 30, 1902.

Martial law in South African war. As to mode of legalizing.

WE were honoured with your commands, signified to us in Mr. Bertram Cox' letter of the 10th instant, stating that he was directed by you to request our consideration of certain matters arising out of the establishment of martial law in South Africa and elsewhere, as the result of the present war, upon which, in view of the possible early restoration of peace, it was desirable that you should have the favour of our Report at as early a date as possible.

That martial law had been proclaimed throughout Natal and throughout Cape Colony. That it had also been proclaimed in Southern Rhodesia and in the areas occupied by the camps of confinement in those British Colonies in which prisoners of war and penal servitude prisoners have been detained.

That Mr. Bertram Cox was to transmit to us copies of certain Reports and documents relating to martial law during the present war, and to draw our attention in particular to our Reports of the 25th January, 6th February, 16th March, 18th May, 1st June, and 17th July, 1900; 6th July, 1901; and 14th March, 1902.

That you assumed it to be a matter beyond all question that the proceedings taken under martial law would require the cover of legislative enactments to prevent action at law being taken against persons who administered martial law, and that Mr. Bertram Cox was to transmit to us copies of Act No. 6, 1900, passed by the Legislature of the Cape Colony, Ordinance No. 1 of 1901 of Southern Rhodesia, and Acts No. 15 of 1900 and No. 41 of 1901, passed by the Legislature of Natal, and of a Bill intended to be introduced in the present Session of the Natal Parliament.

That the Acts of the Cape Colony and Southern Rhodesia legalized retrospectively all proceedings taken under martial law up to the date of Act, but the Natal Act No. 41 of 1901, and the Bill shortly to be introduced, legalized not only what might have been done before the passing of the Act, but all Acts properly done, whether before, during, or after the existence of martial law.

That you presumed that sentences passed by Courts administering martial law would expire on the termination of martial law, unless legislation was passed to provide for their continuance, although the Judge Advocate-General and other legal advisers of the War Office, as we should observe, had advised to the contrary effect, and that in that connection Mr. Cox was to call our attention to our Report of the 6th July, 1901.

That another question which arose related to certain sentences passed by Courts administering martial law upon rebels taken in arms by His Majesty's forces. That a number of those had been sentenced to terms of penal servitude in Bermuda, and that legislation would be passed in Bermuda to legalize their detention in that island until they could be removed to the Seychelles, where similar legislation would be passed. That in that connection Mr. Cox was to call our attention to our Report of the 14th March, 1902.

That there would be no difficulty in legislating, either in Natal, Ceylon, Seychelles, Southern Rhodesia, or in any Crown Colony in which persons sentenced by Courts administering martial law might be confined, and probably no difficulty in Bermuda.

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But that difficulty would probably arise, should the war come to an early conclusion, in obtaining legislative authority for the detention of martial law prisoners in the Cape Colony, inasmuch as, apart from the fact that the Cape Parliament was not expected to meet until August, it was not certain that there would be a majority sufficient to pass legislation of this kind.

That it had accordingly been proposed to continue martial law in Cape Colony after the conclusion of the war, and the disaffected condition of that Colony would probably afford ample justification for that step being taken; but that you feared that, should that be done, it was possible that an undesirable conflict might arise between the Civil Courts of the Cape Colony and the authorities administering martial law.

That in the case *ex parte* D. A. Marais, reported in Law Reports, 1902, Appeal Cases, at p. 109, the Judicial Committee of the Privy Council decided that where war actually prevailed the ordinary Courts had no jurisdiction over the action of the military authorities; but that, assuming the South African War to have terminated, it might be doubted whether the Civil Courts would not have jurisdiction to call in question the propriety of the action of the military authorities, on the ground that no state of war existed, but only a state of more or less disturbance, and that those Courts had jurisdiction to inquire whether any sufficient danger to the public safety actually existed, and whether any measures taken under martial law were in fact justifiable. That in those circumstances a conflict between the military authorities and the Civil Courts on questions which it would be most undesirable to raise would be extremely probable, and might become inevitable.

That with regard to the sanction by local Legislatures of proceedings taken under martial law another difficulty arose. That prisoners sentenced to penal servitude in Bermuda were conveyed on the high seas from South Africa to that Colony, and that other prisoners sentenced to penal servitude, without stating the special place of confinement, had been conveyed to Bermuda and St. Helena, and that it was conceived that no Act passed either by the Cape Legislature or by the Legislatures of Bermuda or St. Helena could give legislative authority to acts done outside the territorial waters of those Colonies, and that technically the captain of the ship who conveyed the prisoners from South Africa to Bermuda or St. Helena might be liable to an action for illegally detaining them on board ship.

That you were aware that an Act of the Imperial Parliament could give protection under those circumstances, but that it was essential to avoid, if possible, inviting the Imperial Parliament to legislate, and that you considered that the risk of action being taken against the captain in the manner and for the reason described might, perhaps, be neglected.

That a further question arose as to prisoners of war. That it would not be possible or desirable to return them to South Africa immediately, and that it was proposed to return them by degrees, and in small numbers, and possibly, in some cases, to prohibit the return of certain notoriously disaffected prisoners altogether.

That it would be remembered that, besides burghers of the late Republics, there were among the prisoners of war an appreciable number of Germans, Hollanders, and other foreigners.

That the question therefore arose whether any, and what, legislative authority was necessary to carry out that policy, and by what legislative authority any enactment which might be found necessary should be passed.

That Mr. Bertram Cox was accordingly to request us to take the above matters into our consideration, and to advise you—

1. Whether any—and what—legislation was necessary to legalize the proceedings taken under martial law in the Colonies referred to? Whether the legislation already passed by those Colonies, and in particular by Natal, was sufficient, and if not, what further legislation was necessary, and what form such legislation should take?

2. What course should be taken with regard to prisoners sentenced either to penal servitude in Bermuda or to penal servitude, without stating the place of confinement, who had been conveyed to Bermuda or St. Helena? Whether any legislation was necessary, and, if so, of what nature, and by what legislative authority, any necessary enactment should be passed?

3. Whether, if martial law was continued in the Cape Colony after the conclusion of peace, the Civil Courts might discuss the question of the necessity for its continuance, and whether it was possible that a conflict of authority might arise in that case between the military authorities and the Civil Courts, and, if so, what legal means could be taken to avoid such conflict?

4. Whether the course proposed to be taken with regard to prisoners of war could be justified on grounds of international law, and whether any municipal legislation was necessary to carry out such a policy, and, if so, by what legislative authority the necessary enactments should be passed?

5. That you would be glad to be further favoured with any general observations as to the matters above referred to, which, in the consideration of those most important matters, might occur to us.

We have considered the questions which have been submitted to us, and, in obedience to your commands, have the honour to

Report—

1. That we are of opinion that legislation is necessary for this purpose.

Although acts done *bonâ fide* in the administration of martial law during the existence of a state of war are, in our opinion, lawful at common law, there is an absence of authority on the subject, and it is certain that a number of actions would, in the absence of an act of indemnity, be brought against those who have been concerned in the administration of martial law. The sentences passed by courts martial would, in our opinion, cease to be of effect when martial law comes to an end. We therefore think that legislation giving an indemnity to those who have been concerned in the administration of martial law, and confirming the sentences passed by Courts administering martial law, is proper and necessary.

2. In the case of prisoners in penal servitude in Bermuda or St. Helena, under sentence passed by Courts administering martial law, we think complete protection can be afforded only by an Act of the Imperial Parliament. Acts of the local Legislatures would not cover what has been done on the high seas in the course of the transmission of these prisoners. We observe that it is considered that the danger of actions in respect of what was done upon the high seas may be neglected, and Acts of the Legislatures of Bermuda and St. Helena would cover what has been done there; but there remains the difficulty which apparently exists in passing an Act, at a sufficiently early date, through the Legislature of the Cape of Good Hope.

3. In the case supposed, the Civil Courts might discuss the necessity for the continuance of martial law, and very awkward complications might ensue. The danger of such a conflict can be avoided only by legislation.

4. The course proposed with reference to the return of the prisoners of war to South Africa may be justified by the right of the Brisish Government to exclude from its own territory persons whose presence might endanger its peace. When the war ceases the prisoners of war are, subject to any special terms of peace, entitled to their freedom within a reasonable time, but it is open to His Majesty's Government to take steps to prevent their return to South Africa except under conditions demanded by the public safety, and they should not be permitted to return in such numbers, or at such times, as would menace the public tranquillity. For this purpose we think that legislation may be desirable. Local legislation would be sufficient, but if it is desired to exclude these prisoners from the Cape, an Act of the Imperial Parliament may be desirable in the present circumstances of that Colony.

5. Under all the circumstances, we think that Imperial legislation is expedient. It might have unfortunate effects if prisoners—under sentence by Courts administering martial law—were set at liberty on writs of *habeas corpus* issued by the Civil Tribunals on the restoration of peace, while actions were brought to recover damages from Lord Kitchener and the officers by whom martial law had been enforced, and there appears to be no likelihood that the necessary legislation can, so far as the Cape Colony is concerned, be carried through locally in time to avoid these results. If it were possible, local legislation would be much preferable, and liability for acts done on the high seas might perhaps be neglected, but such legislation does not appear to be possible in the Cape Colony.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

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No. 4.

[June 4, 1902.]

Foreign Office to the Law Officers of the Crown.

Mr. van Beijnum, serving in Boer Post-office: right to detain as prisoner of war.

Gentlemen,

Foreign Office, May 20, 1902.

I HAVE the honour to inform you, by direction of the Marquess of Lansdowne, that on the receipt of your Report of the 6th January last (Paper C), respecting the case of Mr. van Beijnum, his Lordship addressed a note (Paper A) on the subject to the Netherlands Minister embodying the conclusions at which you had arrived.

Baron Gericke has now replied in the accompanying note (Paper B), in which he adduces various reasons for dissenting from the views entertained by His Majesty's Government.

Baron Gericke maintains in the first place that the sense which His Majesty's Government attach to the Netherlands Law of Nationality is not one it can properly be made to bear; and in the second he contends that, putting aside the question of nationality altogether, and considering the case from the point of view of the duties of a neutral as defined by international law, Mr. van Beijnum's arrest was illegal.

In his opinion only such subjects of neutral Powers as have actually taken part in the operations of war, or have been attached to one or other of the belligerent armies, can properly be detained as prisoners of war,—a condition which cannot be said to have been fulfilled by Mr. van Beijnum, even if, as His Majesty's Government have asserted, he fulfilled the duties of an Assistant Postmaster and so "enabled those whose offices he took over and whose duties he fulfilled to join commandos on active service." In Baron Gericke's view these men were compelled by law to perform military service, and would have been bound to serve even if Mr. van Beijnum had not taken up their civil employment. Mr. van Beijnum's action merely assisted in fulfilling the "eminently peaceful" service of the Post-office, which would otherwise have remained without staff.

Lord Lansdowne does not think it worth while to press further the point that Van Beijnum had forfeited his Netherland nationality; but he would be obliged if you would favour him with your opinion as to whether Baron Gericke is correct in asserting that Van Beijnum's conduct was not such as to justify his arrest as a prisoner of war so long as he was the subject of a neutral Power, and generally with any further observations which you may desire to make on the case.

I am specially to draw your attention to Herr Holtzendorff's views respecting "persons liable to be made prisoners of war" as given in his "Handbuch des Völkerrechts," vol. iv, p. 429 (Paper E); as also to a Report dated the 27th February, 1854, of the then Queen's Advocate, respecting the position of British subjects in Russia during the Crimean War (Paper D).

The papers which accompanied Mr. Bertie's letter of the 14th December are returned for convenience of reference, as also your Report (Paper C) of the 6th January last.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	To Baron Gericke	February 5, 1902.
(B.)	Baron Gericke	April 18, „
(C.)	Law Officers .. .. (Together with the papers therein mentioned.)	January 6, „
(D.)	Law Officers	February 2, „
(E.)	Extract from Holtzendorff's "Handbuch des Völkerrechts."	

Report.

We are unable to agree with the view put forward in the despatch of Baron Gericke of the 18th April, 1902, that only those associated with the enemy's forces can be made prisoners. There is no doubt that reasons of military necessity may justify the arrest, detention, and removal of any person identified with the enemy, even though he has not been attached to the army. Whether persons so arrested are properly speaking to be described as prisoners of war is immaterial.

It is quite clear that Mr. van Beijnum had assumed the character of an enemy subject. He had not only resided for some years in the Transvaal, but had been in the employment of the State as a schoolmaster, and, after the war had broken out, he entered the service of the South African Republic as a postal official. The British Commander was therefore justified in dealing with him exactly as if he had been a burgher in every sense.

General French states that he was arrested and removed because his presence at Ermelo was undesirable for military reasons. The statement of what these reasons were is extremely meagre and unsatisfactory; but we do not feel justified in assuming that there was anything oppressive or contrary to the laws of war in what was done. In any case it appears to us that His Majesty's Government cannot admit any claim on behalf of a person who had identified himself with the enemy Government by entering into their service, under such circumstances, in respect of any hardship incurred by him by the action of His Majesty's troops any more than it could admit such a claim on behalf of a burgher of the South African Republic.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 4, 1902.

No. 5.

[June 5, 1902.]

Foreign Office to the Law Officers of the Crown.

Orders in Council for African Protectorates: Papers and drafts.

Gentlemen,

Foreign Office, March 19, 1902.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list relating to the preparation of an Order in Council for the Uganda Protectorate, together with the drafts of two Orders prepared by Mr. A. Gray in execution of the instructions given him by his Lordship.

The Order in Council at present in force in Uganda is the Africa Order in Council, 1889 (Paper A). After the East Africa Orders in Council, 1897 and 1899 (Papers B and C) had been applied to the East Africa Protectorate it was considered that it would be convenient to assimilate as closely as possible the legislation of the two Protectorates, and the views of the Commissioners and legal advisers of those Protectorates were obtained. The result has been the preparation of the two draft Orders now submitted to you. The Memorandum by Mr. A. Gray (Paper D) which accompanies them explains their scope and purport, and I am to request that you will take them into your consideration, and favour the Marquess of Lansdowne with your opinion as to whether they may properly be laid in their present shape before His Majesty in Council, or whether they require any, and if so what, alterations or modifications.

Revised Orders in Council for the East Africa Protectorate on the lines of those now sent to you are in course of preparation.

The draft of that relating to East Africa is sent so as to show its nature. The Appeals Order will be suspended until it is passed.

I have, &c.
(Signed) CLEMENT Ll. HILL.

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List of Papers.

(A.)	Africa Order in Council, 1889 (5846**, Confidential).	
(B.)	East Africa Order in Council, 1897 (6933, Confidential).	
(C.)	East Africa Order in Council, 1899 (7189*, Confidential).	
(D.)	Mr. Gray (Memorandum)	February 10, 1902.
	To ditto	March 12, 1900.
	Mr. Gray	August 9, 1901.
	To ditto	December 2, „
	Mr. Gray	February 24, 1902.
	Ditto	March 5, „
	Two draft Orders in Council.	

Foreign Office to the Law Officers of the Crown.

Draft East Africa Order in Council.

Gentlemen,

Foreign Office, March 31, 1902.

WITH reference to my letter of the 19th instant, forwarding for your consideration drafts of the proposed Uganda and East Africa and Uganda Appeal Orders in Council, I have now the honour, by direction of the Marquess of Lansdowne, to transmit to you the draft of the East Africa Order in Council, 1902,* and to request that you will favour his Lordship with your opinion as to whether it may, in its present shape, properly be submitted with the other draft Orders to the King in Council for His Majesty's approval, or whether its terms require modification in any, and if so what, respects.

I have, &c.

(Signed) CLEMENT Ll. HILL.

Foreign Office to the Law Officers of the Crown.

Draft British Central Africa Order in Council.

Gentlemen,

Foreign Office, May 27, 1902.

WITH reference to my letter of the 31st March last, forwarding for your consideration a draft of the proposed East Africa Order in Council, 1902, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you two copies of the draft of the British Central Africa Order in Council, 1902, and to request that you will favour his Lordship with your opinion as to whether it may in its present shape properly be submitted with the other draft Orders now before you, viz., the East Africa Order in Council, 1902, the Uganda Order in Council, 1902, and the Protectorates (Appeal) Order in Council, 1902, to the King in Council for His Majesty's approval, or whether its terms require modification in any, and if so in what, respects.

I have, &c.

(Signed) CLEMENT Ll. HILL.

Report.

As altered in red ink† and initialled by us the draft of the British Central Africa Order in Council, 1902, may, in our opinion, properly be submitted to the King in Council for His Majesty's approval. We do not think it necessary to insert a saving of the Royal prerogative of mercy, and think that the power of deportation is wide enough as drafted.

The East Africa and Uganda Orders in Council should be harmonized with the British Central Africa Order in Council, and it would be as well that the numbering should be uniform.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 5, 1902.

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* Not printed here.

† Printed in italics.

Annex.

Draft British Central Africa Order in Council.

(February 1902.)

WHEREAS the territories of Africa situate within the limits of this Order are under the protection of His Majesty the King, and are known as the British Central Africa Protectorate:

And whereas by Treaty, grant, usage, sufferance, and other lawful means, His Majesty has power and jurisdiction in the said territories:

Now therefore, His Majesty, by virtue, and in exercise of the powers on this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise, in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:—

Preliminary.

1. This Order may be cited as "The British Central Africa Order in Council, 1901."

The limits of this Order are the territories of Africa bounded on the north by German East Africa and Lake Nyassa, on the east by German East Africa and the Portuguese territories, on the south and south-west by the Portuguese territories, and on the west by North-Eastern Rhodesia.

The said territories are in this Order referred to as British Central Africa and "the Protectorate."

If His Majesty is pleased to direct that any other territories, for the time being under the protection of His Majesty, shall form part of the Protectorate, those territories shall, from and after a date to be fixed by an order of the Secretary of State, be deemed to be within the limits of this Order. In like manner, if His Majesty is pleased to direct that any territories for the time being forming part of the Protectorate shall cease to form part thereof, those territories shall, from and after a date to be fixed by an order of the Secretary of State, cease to be within the limits of this Order.

2. In this Order—

"Secretary of State" means one of His Majesty's Principal Secretaries of State;

"Crown Lands" means all public lands in the Protectorate which are subject to the control of His Majesty by virtue of any Treaty, Convention, or Agreement, or of His Majesty's Protectorate, and all lands which shall have been acquired by His Majesty for the public service or otherwise howsoever;

"Gazette" means the Gazette of the Protectorate;

"Person" includes Corporation.

Words importing the plural or the singular may be construed as referring to one person or thing, or to more than one person or thing, and words importing the masculine as referring to females (as the case may require).

3.—(1.) Where this Order or any Ordinance confers a power or imposes a duty, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2.) Where this Order or any Ordinance confers a power or imposes a duty on the holder of an office, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by the holder of the office for the time being, or by a person duly appointed to act for him.

(3.) Where this Order or any Ordinance confers a power to make Rules, Regulations, or Orders, then, unless a contrary intention appears, the power shall be construed as including a power, exercisable in the like manner and subject to the like approval and conditions (if any) to rescind, revoke, amend, or vary the Rules, Regulations, or Orders.

(4.) Expressions defined in this Order shall have the same respective meanings in any Ordinances, Rules, or Regulations made under this Order, unless a contrary intention appears.

Administration.

4.—(1.) His Majesty may by Commission under his Sign Manual and Signet appoint a fit person to administer the Government of British Central Africa under the designation of Commissioner or such other designation as His Majesty thinks fit, and the person so appointed is hereinafter referred to as the Commissioner.

(2.) In the event of the death, incapacity, removal, or absence from the Protectorate of the Commissioner for the time being, all and every the powers and authorities by this Order granted to him shall, until His Majesty's further pleasure is signified through the Secretary of State, be vested in the Deputy Commissioner or other principal officer of the Protectorate Government for the time being in the Protectorate.

(3.) The Commissioner shall administer the Government of the Protectorate in the name and on behalf of His Majesty, and shall do and execute in due manner all things that shall belong to his said command and to the trust thereby reposed in him, according to the several powers and

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authorities granted or appointed to him by virtue of this Order and of his Commission, and according to such instructions as may from time to time be given to him under His Majesty's Sign Manual and Signet, or by order of His Majesty in Council, or by His Majesty through a Secretary of State, and according to such laws as are or shall hereafter be in force in the Protectorate.

5. The Commissioner shall have an official seal, bearing the style of his office, and such device as a Secretary of State from time to time approves, and such seal shall be deemed the public seal of British Central Africa, and may be kept and used by the Commissioner for the sealing of all things whatsoever that shall pass the public seal. And, until a public seal shall be provided, the seal of the Commissioner may be used as the public seal.

6.—(1.) The Commissioner may, with the approval of the Secretary of State, by Proclamation, define any boundaries of the territories for the time being within the limits of this Order, and divide those territories into provinces or districts in such manner and with such subdivisions as may be convenient for purposes of administration, describing the boundaries thereof and assigning names thereto.

(2.) If a question arises whether any place is or is not within the Protectorate, or within any province, and such question does not appear to be determined by any such Proclamation or other evidence, it shall be referred to the Commissioner, and a certificate under his hand and seal shall be conclusive on the question, and judicial notice shall be taken thereof.

7.—(1.) All rights of His Majesty in or in relation to any Crown lands shall vest in and may be exercised by the Commissioner for the time being in trust for His Majesty, or if the Secretary of State at any time with respect to all or any such lands, by order under his hand so directs, in such other trustee or trustees for His Majesty as the Secretary of State may appoint.

(2.) The Secretary of State may, when he thinks fit, by a like order remove any trustee so appointed, and may appoint any new or additional trustee or trustees.

(3.) The Commissioner, or such other trustee or trustees, may make grants or leases of any Crown lands, or may permit them to be temporarily occupied, on such terms and conditions as he or they may think fit, and to the provisions of any Ordinance.

(4.) All mines and minerals being in, under, or upon any lands in the occupation of any native tribe, or any members thereof, or of any person not possessed of the right to work such mines and minerals, shall vest in the Commissioner, or such trustee or trustees, in like manner as the mines and minerals being in, under, or upon any Crown lands.

8. The Commissioner may, as he shall see occasion, in His Majesty's name and on his behalf, grant to any offender convicted of any offence in any Court in the Protectorate, a free and unconditional pardon, or a pardon subject to such conditions as may be lawfully thereunto annexed, or remit or commute any sentence in whole or in part.

9. The Commissioner may, as he shall see occasion, in His Majesty's name and on his behalf, remit any fines, penalties, or forfeitures which may accrue or become payable to His Majesty.

10.—(1.) A Secretary of State, or the Commissioner, subject to the directions of a Secretary of State, may, on behalf of His Majesty, appoint, or authorize the appointment of, such public officers for the administration of the Protectorate, under such designations as he may think fit, and may prescribe their duties.

(2.) The Commissioner may, upon sufficient cause to him appearing, suspend from the exercise of his office any such public officer, which suspension shall continue and have effect only until His Majesty's pleasure therein shall be made known and signified to the Commissioner.

(3.) Subject to the provisions of any Ordinance, the Commissioner may appoint, or authorize Heads of Departments to appoint, such clerks and other subordinate officers as may be required; and unless other provision is made, all subordinate officers shall be removable by the respective officers by whom they were appointed.

11. All Ordinances, Proclamations, Regulations, Rules, or other public Notifications shall be published in the Gazette, and also in such other manner, if any, as the Commissioner may direct in the case of any particular Notification.

Legislation.

12.—(1.) The Commissioner may make Ordinances for the administration of justice, the raising of revenue, and generally for the peace, order, and good government of all persons in British Central Africa.

(2.) The Commissioner shall observe any general or special instructions of the Secretary of State with respect to the previous submission to the Secretary of State of draft Ordinances, to the making of Ordinances for particular purposes, to the amendment of Ordinances or draft Ordinances, and to other matters in relation thereto; but nothing in this provision shall affect the validity of any Ordinance.

(3.) In making Ordinances, the Commissioner shall respect existing native laws and customs except so far as the same may be opposed to justice or morality.

(4.) The Commissioner shall sign every Ordinance made by him, and shall at the first available opportunity transmit an authenticated copy thereof to the Secretary of State.

(5.) The Secretary of State may disallow any Ordinance, wholly or in part, and upon such disallowance being publicly notified in the Gazette, the provisions so disallowed shall thereupon cease to have effect, but without prejudice to anything lawfully done or suffered thereunder.

(6.) The Ordinances of each year shall be numbered consecutively, and each may be cited by its number and year, or by its short title, if any.

(7.) Where a date for the commencement of an Ordinance is not fixed in the Ordinance, it shall come into force on the day on which it is promulgated by the Commissioner,

(8.) An Ordinance may apply to the Protectorate any Act or Law of any Legislature of India or of any Colony, subject to any exceptions and modifications.

(9.) The Commissioner shall, at the first available opportunity after any Rules or Regulations are made under the provisions of any Ordinance, transmit an authenticated copy thereof to the Secretary of State.

(10.) An Ordinance shall not be repealable by any Rules or Regulations made under an Ordinance.

(11.) An Ordinance varying or affecting any Order in Council relating to the Protectorate, which is not repealed by this Order, shall not come into force unless it has been previously approved by the Secretary of State, and such approval shall be recited therein.

Application of Law.

13. The enactments described in the First Schedule to "The Foreign Jurisdiction Act, 1890," shall apply to British Central Africa as if it were a British Colony or possession, but subject to the provisions of this Order and to the exceptions, adaptations, and modifications following, that is to say:—

(i.) The Commissioner is hereby substituted for the Governor of a Colony or British possession and the High Court is hereby substituted for a Superior Court or Supreme Court, and for a Magistrate or Justice of the Peace of a Colony or British possession.

(ii.) For the portions of the Merchant Shipping Acts, 1854 and 1867, referred to in the said Schedule, shall be substituted Part XIII of "The Merchant Shipping Act, 1894."

(iii.) In section 51 of "The Conveyancing (Scotland) Act, 1874," and any enactment for the time being in force amending the same, the High Court is substituted for a Court of Probate in a Colony.

(iv.) With respect to "The Fugitive Offenders Act, 1881":—

(*a.*) So much of the 4th and 5th sections of the said Act as relates to sending a report of the issue of a warrant, together with the information, or a copy thereof, or to the sending of a certificate of committal and report of a case or to the information to be given by a Magistrate to a fugitive, shall be excepted, and in lieu of such information the person acting as the Magistrate shall inform the fugitive that in the British possession or Protectorate to which he may be conveyed he has the right to apply for a writ of *habeas corpus* or other like process.

(*b.*) So much of the 6th section of the said Act as requires the expiration of fifteen days before issue of warrant shall be excepted.

(*c.*) The Commissioner shall not be bound to return a fugitive offender to a British possession unless satisfied that the proceedings to obtain his return are taken with the consent of the Governor of that possession.

(*d,*) For the purposes of Part II of the said Act, Uganda, Zanzibar, the East Africa Protectorate, and all British possessions and Protectorates in Africa south of the Equator shall be deemed to be one group of British possessions.

14. Where, under the Merchant Shipping Act, 1894, or any amending Act, anything is authorized to be done by, to, or before a British Consular officer, such thing may be done in any place in the Protectorate, at which there is no Consular officer, by such officer of the Protectorate Government as the Commissoner may appoint.

Courts of Justice.

15.—(1.) There shall be a Court of Record styled "His Majesty's High Court of British Central Africa" (in this Order referred to as "the High Court") with full jurisdiction, civil and criminal, over all persons and over all matters in the Protectorate.

(2.) Such civil and criminal jurisdiction shall, so far as circumstances admit, be exercised in conformity with the substance of the law for the time being in force in England, and with the powers vested in and according to the procedure and practice observed by and before Courts of Justice and Justices of the Peace in England according to their respective jurisdictions and authorities, except so far as may be otherwise provided by law.

(3.) The High Court shall sit at such place or places as the Commissioner may appoint.

(4.) The High Court shall have a seal bearing the style of the Court and a device approved by the Secretary of State; but until such a seal is provided, a stamp bearing the words "High Court of British Central Africa" may be used instead thereof.

16.—(1.) The High Court shall be a Court of Admiralty, and shall exercise Admiralty jurisdiction in all matters arising upon any lake or other navigable inland waters or otherwise relating to ships and shipping.

(2.) The following enactments of "The Colonial Courts of Admiralty Act, 1890," that is to say, section 2, sub-sections (2) to (4), sections 5 and 6, section 16, sub-section (3), shall apply to the High Court as if in the said sections the said Court were mentioned in lieu of a Colonial Court of Admiralty, and the Protectorate were referred to in lieu of a British possession.

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(3.) Admiralty jurisdiction may be conferred by Ordinance on any Court subordinate to the High Court.

(4.) Any Ordinance varying or affecting the Admiralty jurisdiction of any Court or conferring Admiralty jurisdiction on any Court shall not come into force unless it has been previously approved by the Secretary of State, and such approval shall be recited therein.

17.—(1.) There shall be as many Judges of the High Court as may from time to time be required.

(2.) Every Judge shall be appointed by His Majesty and shall hold office during pleasure.

(3.) When there are more Judges than one, the principal Judge shall have such distinguishing title as the Secretary of State may approve.

(4.) In any case of death, illness or absence, or in any other emergency, the Commissioner may appoint an Acting Judge.

18.—(1.) Courts subordinate to the High Court or any Courts of special jurisdiction may be constituted by or under the provisions of any Ordinance as occasion requires.

(2.) Provision may be made by Ordinance for the hearing and determining of appeals from any such Court by the High Court or otherwise.

19. Article 10 of this Order shall apply to the appointment of all Judges and Magistrates (other than Judges of the High Court), and to Registrars and other principal officers of the High Court, in like manner as it applies to public officers; and the provisions of that Article relating to clerks and subordinate officers shall apply to all Courts.

20 In all cases, civil and criminal, to which natives are parties, every Court (*a*) shall be guided by native law so far as it is applicable and is not repugnant to justice and morality or inconsistent with any Order in Council or Ordinance, or any Regulation or Rule made under any Order in Council or Ordinance; and (*b*) shall decide all such cases according to substantial justice without ~~excessive~~ *undue* regard to technicalities of procedure and without undue delay.

21. If any sentence of death is pronounced by the High Court, a copy of the evidence shall be transmitted to the Commissioner, and the sentence shall not be carried into effect until confirmed by him.

22. Subject to the provisions of any Ordinance, the High Court may, with the approval of the Commissioner, make Rules for regulating the practice and procedure of the High Court and of all other Courts which may be established in the Protectorate.

The power to make Rules under this Article shall include (*a*) a power to fix fees and scales of remuneration, and (*b*) a power to regulate the conditions on which persons may be admitted to practise as advocates or solicitors in the Courts of the Protectorate.

At the first available opportunity after any such Rules are made, the Commissioner shall transmit an authenticated copy thereof to the Secretary of State.

23.—(1.) A Court under this Order shall not exercise any jurisdiction in any proceeding whatsoever over the Commissioner or his official or other residences, or his official or other property.

(2.) This Article shall not operate in bar of any proceeding against the Commissioner in his official capacity, where it is sought to establish any liability of the Government of the Protectorate.

Removal and Deportation.

24. Where an offender convicted before any Court is sentenced to imprisonment, and the Commissioner, proceeding under section 7 of "The Foreign Jurisdiction Act, 1890," authority in that behalf being hereby given to him, considers it expedient that the sentence should be carried into effect ~~within His Majesty's dominions~~, *outside of the Protectorate*, he may order the offender to be removed to a place in some part of His Majesty's dominions out of the United Kingdom, the Government whereof consents that offenders may be sent thither under this Article.

25.—(1.) Where it is shown by evidence on oath, to the satisfaction of the Commissioner, that any person is conducting himself so as to be dangerous to peace and good order in British Central Africa, or is endeavouring to excite enmity between the people of the Protectorate and His Majesty, or is intriguing against His Majesty's power and authority in the Protectorate, the Commissioner may, if he thinks fit, by writing under his hand and official seal, order that person to be deported from the Protectorate, to such place as the Commissioner may direct.

(2.) The place shall be a place in some part (if any) of His Majesty's dominions to which the person belongs, or the Government of which consents to the reception of persons deported under this Order.

(3.) An appeal shall not lie against an order of deportation made under this Article.

(4.) If any person deported under this Order returns to the Protectorate without the permission, in writing, of the Secretary of State (which permission the Secretary of State may give), he shall be deemed guilty of an offence, and liable on conviction to imprisonment for any period not exceeding three months, with or without a fine not exceeding 50*l.*; and he shall also be liable to be forthwith again deported.

(5,) The Commissioner, by order under his hand and official seal, may vary or rescind any order of deportation under this Article.

(6.) The Commissioner shall forthwith report to the Secretary of State every order made by him under this Article, and the grounds thereof, and the proceedings thereunder.

26.—(*a.*) Where, under this Order, a person is to be removed or deported from the Protectorate, he shall, by warrant of the Commissioner under his hand and seal, be detained, if necessary,

in custody, or in prison, until a fit opportunity for his removal or deportation occurs, and then if he is to be deported beyond sea, be put on board one of His Majesty's vessels of war, or, if none is available, then on board some other British or other fit vessel.

(*b.*) The warrant of the Commissioner shall be sufficient authority to the person to whom it is directed or delivered for execution, and to the Commander or master of the vessel, to receive and detain the person therein named, in the manner therein prescribed, and to remove, and carry him to the place therein named, according to the warrant.

(*c.*) In case of removal for any purpose other than deportation, the warrant of the Commissioner shall be issued in duplicate, and the person executing it shall, as soon as practicable after his arrival at the place therein named, deliver, according to the warrant, with one of the duplicates of the warrant, to a constable, or proper officer of police or keeper of a prison, or other proper authority or person there, the person named in the warrant, to be produced on the order of the proper Court or authority there, or to be otherwise dealt with according to law.

27. Subject to the other provisions of this Order, all expenses of removal of prisoners and others, and the expenses of deportation, and of the sending of any person to any part of His Majesty's dominions or Protectorates, including expenses of maintenance, shall be defrayed in such manner as the Secretary of State directs.

Supplementary.

28. On the commencement of this Order, the following Orders in Council, in this Order referred to as the Africa Orders, shall cease to apply to British Central Africa, that is to say:—

"The Africa Order in Council, 1889."
"The Africa Order in Council, 1892."
'The Africa Order in Council, 1893."
"The Africa (Acquisition of Lands) Order in Council, 1898," and
"The Africa Protectorate (Capital Sentences) Order in Council, 1898."

Provided as follows:—

(1.) Where other provision is not made by Ordinance, any law, practice, or procedure, established by or under the Africa Orders, shall remain in force until such other provision is made.

(2.) All legal proceedings begun under the Africa Orders and pending at the commencement of this Order shall be continued as if this Order had not been passed.

(3.) All Regulations and Rules made under the Africa Orders shall remain in force until otherwise provided by Ordinance.

29. This Order shall commence and have effect as follows:—

(1.) As to the making of any warrant or appointment, the framing of Ordinances and Rules of Procedure, the issue of instructions, and as to any other provisions necessary for bringing this Order into effect, immediately from and after the date of this Order.

(2.) As to all other matters and provisions comprised and contained in this Order, immediately after this Order is first published in the Gazette, and the time of such publication shall be deemed to be the time of the commencement of this Order.

And the Most Honourable the Marquess of Lansdowne, K.G., one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein.

R. B. F.
E. C.

No. 6.

[June 7, 1902.]

Foreign Office to the Law Officers of the Crown.

Draft East African Protectorates (Court of Appeal) Order in Council.

Gentlemen, *Foreign Office, June* 3, 1902.

WITH reference to my letters of the 19th and 31st March last and the 27th ultimo, forwarding drafts of the proposed Uganda, East Africa, and British Central Africa Orders in Council, I have the honour, by direction of the Marquess of Lansdowne, to forward to you a draft of the Eastern African Protectorates (Court of Appeal) Order in Council, which has been framed with a view to establish a Court for the hearing and determining of appeals from His Majesty's Courts in the Protectorates of East Africa, Uganda, and British Central Africa.

I am to request that you will favour his Lordship with your opinion as to whether the draft may in its present shape properly be submitted with the other draft Orders to the King in Council, for His Majesty's approval, or whether its terms require modification in any, and if so in what, respects.

I have, &c.
(Signed) CLEMENT Ll. HILL.

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Report.

In our opinion the draft Order, as initialled by us, may properly be submitted to His Majesty in Council for approval.

(Signed) EDWARD CARSON.
R. B. FINDLAY.

Royal Courts of Justice,
June 7, 1902.

Annex.

Eastern African Protectorates.

Court of Appeal.

Draft Order in Council.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means His Majesty has power and jurisdiction within the territories of Africa known as the East Africa, Uganda, and British Central Africa Protectorates (in this Order referred to as "the said Protectorates"):

And whereas it is expedient that a Court should be established for the hearing and determining of appeals from His Majesty's Courts in the said Protectorates:

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "Eastern African Protectorates (Court of Appeal) Order in Council, 1902."

2. A Court shall be constituted, called His Britannic Majesty's Court of Appeal for Eastern Africa (in this Order referred to as "The Court of Appeal"), which shall exercise such appellate jurisdiction and such other powers in relation to the High Courts and other Courts in the said Protectorates as may from time to time be conferred by Ordinances passed under the provisions of the Orders in Council relating to the said Protectorates respectively.

3. The members of the Court of Appeal shall be the Judge or Judges for the time being of His Majesty's Court for Zanzibar, and the Judge or Judges for the time being of the High Courts of the said Protectorates respectively, and such other competent person or persons, if any, each being a member of the Bar of England, Scotlaed, or Ireland, of not less than five years' standing, as the Secretary of State may from time to time appoint.

4. The precedence of the Judges of the Court of Appeal shall be determined according to instructions to be given from time to time by the Secretary of State.

5. For the hearing and determining of appeals, three Judges of the Court of Appeal shall sit together; but provision may be made by Rules of Court for the hearing of any specified classes of cases by less than three Judges.

6. The Court of Appeal may sit at such places in Zanzibar, or in any of the said Protectorates as may be fixed by Rules of Court.

7. The Secretary of State may appoint a Registrar and such other officers of the Court of Appeal as may be necessary.

8.—(1.) The Court of Appeal may make Rules of Court with respect to all matters of procedure relating to the exercise of its jurisdiction.

(2.) Rules of Court when allowed by the Secretary of State shall have effect as if contained in this Order: Provided that in case of urgency declared in the Rules, the same shall take effect before such allowance, and shall continue to have effect unless and until they are modified or altered by the Secretary of State, and are published by the Court of Appeal as so modified or altered.

9.—(1.) When a final judgment or order of the Court of Appeal made in a civil action involves the amount or value of 10,000 rupees or upwards any party aggrieved thereby may, within such time as may be prescribed by Rules of Court, or if no time is prescribed, within three months after the same is made or given, apply by petition to the Court of Appeal for leave to appeal to His Majesty the King in Council.

(2.) The applicant shall give security to the satisfaction of the Court of Appeal to an amount not exceeding the amount or value of 5,000 rupees for prosecution of the appeal, and for such costs in the event of the dismissal of the appeal for want of prosecution as the Court of Appeal may award, and for payment of all such costs as may be awarded to any respondent by His Majesty in Council, or by the Lords of the Judicial Committee of His Majesty's Privy Council.

(3.) He shall also pay into the Court of Appeal a sum estimated by that Court to be the amount of the expense of the making up and transmission to England of the transcript of the record.

(4.) If security and payment are so given and made within such time as may be prescribed by Rules of Court, then, and not otherwise, the Court of Appeal shell give leave to appeal, and the appellant shall be at liberty to prefer and prosecute his appeal to His Majesty in Council according to the Rules for the time being in force respecting appeals to His Majesty in Council from his Colonies, or such other Rules as His Majesty in Council from time to time thinks fit to make concerning appeals from the Court of Appeal.

(5.) In any case the Court of Appeal, if it considers it just or expedient to do so, may give leave to appeal on the terms and in the manner aforesaid.

10.—(1.) Where leave to appeal to His Majesty in Council is applied for by a person ordered to pay money, or do any other act, the Court of Appeal shall direct either that the order appealed from be carried into execution, or that the execution thereof be suspended pending the appeal, as the Court thinks just.

(2.) If the Court of Appeal directs the order to be carried into execution, the person in whose favour it is made shall, before the execution of it, give security to the satisfaction of the Court for performance of such order as His Majesty in Council may think fit to make.

(3.) If the Court of Appeal directs the execution of the order to be suspended, the party against whom it is given shall, before an order for suspension is made, give security to the satisfaction of the Court for performance of such order as His Majesty in Council may think fit to make.

11. This Order shall not affect the right of His Majesty at any time, on the humble petition of any person aggrieved by a decision of the Court of Appeal, to admit his appeal on such terms and in such manner as His Majesty in Council may think fit, and to deal with the decision appealed from in such manner as may be just.

And the Most Honourable the Marquess of Lansdowne, K.G., one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein.

R. B. F.
E. C.

No. 7.

[June 10, 1902.]

Sir H. MacDonell to the Marquess of Lansdowne.—(Received June 4.)

(No. 9. Africa.)
(Telegraphic.) *Lisbon, June* 4, 1902.

War in South Africa. Boers interned in Portugal, and French prisoners in Ceylon. Also as to Oath of Allegiance.

MINISTER for Foreign Affairs has called to inform me that as His Majesty's Government have officially announced surrender of Boers, he is of opinion that Portuguese cannot rightly continue to exercise same supervision, and that as British subjects the prisoners are now freed by the law of nations.

Those who claim foreign nationality will be handed over to their respective Consuls, and the Portuguese Government will continue, until some arrangement is come to, to provide for the women and children.

As the same appears to be urgent, I requested Minister for Foreign Affairs, in the name of His Majesty's Government, to leave question *in statu quo* for forty-eight hours until I received your Lordship's instructions.

If liberated, these prisoners will be on my and the Consul's hands.

Memorandum (A) by Lord Lansdowne.

Sir H. MacDonell's telegram No. 9.

We shall have to confer with the Colonial Office and War Office as to this.

I do not see how we can prevent the Portuguese Government from handing over the prisoners who have been interned in Portugal to their respective Consuls; and our Consul must be responsible for those delivered to him until we have found some means of disposing of them. Up to the present time they have been provided for by the Portuguese Government, although I am told there is some possibility that a demand will be made upon us to refund the expenses incurred. I think we might tell Sir H. MacDonell that we are ready to make arrangements for repatriating the Boer prisoners, provided they will take the oath of allegiance in such form as the Colonial Office may determine. If they refuse to do so, I do not see why we should take any responsibility for them. In that case they would be thrown upon the hands of the Portuguese Government. I do not know if there is any poor law in Portugal, but

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the Portuguese Government could probably be trusted to make them so uncomfortable that they would either make the necessary declaration, or find some means of getting out of the country.

We ought to ascertain how it is intended to deal with the foreign prisoners, who ought to be prevented, if possible, from returning to South Africa.

Mr. Davidson should see and advise before we apply to the Colonial Office.

L.

Foreign Office, June 5, 1902.

Memorandum (B) by Lord Lansdowne.

M. Cambon has asked us to make early arrangements for the repatriation of the French prisoners now detained in Ceylon.

A [I think he should be told that if the French Government will make arrangements at its own expense for removing them we shall raise no objection, but unless this is done these prisoners must take their chance with the rest.] We have intimated that the prisoners are to be released at such time and in such order as we may find convenient, and we cannot be expected to go out of our way in order to give priority to these men, who had less excuse than any one for taking the field against us.

We ought, also, I think, to stipulate that the French Government should take whatever precautions may be possible in order to prevent them from returning to South Africa. Mr. Davidson should see.

L.

Foreign Office, June 5, 1902.

Memorandum by Sir M. Ommanney.

Boers interned in Portugal.

A. *Foreigners* will be handed over to their Consuls. We cannot prevent their leaving Portugal; but they must be told that they will not be allowed to return to the Transvaal or the Orange River Colony, and the existing system of permits will prevent them from landing in any part of British South Africa. His Majesty's Minister should be instructed to obtain a list of the names and the descriptions of these persons for communication to Lord Milner and the military authorities in the Cape and Natal.

B. *Burghers* of the late Republics. It does not seem possible to ask Portugal to retain these men. Those who have means will be granted a permit to return to the two Colonies on their duly making such a declaration of allegiance to the King as we shall prescribe; and those who can prove to the satisfaction of our Consul that they are necessitous will be given free passages back on the same condition.

M. F. O.

June 5, 1902.

High Commissioner Lord Milner to Mr. Chamberlain.

(Telegraphic.) *June* 4, 1902.

I think that it would be well that the formal oath of allegiance adopted in South Africa be applied to the prisoners of war camps before a person qualified to administer oaths, with whom a Dutch minister of religion should be associated, if possible. The form should be in triplicate, one copy retained by the person taking the oath, one sent to the Secretary to the Administration of the Transvaal or Orange River Colony respectively, and the third retained and sent to High Commissioner when each camp is finally closed. The form of oath is as follows:—

Begins: Whereas at the time of the outbreak of hostilities between the Government of Her late Majesty Queen Victoria and the Governments of the late South African Republic and the late Orange Free State, I, the Undersigned (here insert full name of the burgher taking the oath), of (here insert the name of farm, or town, ward, and district) now residing at   was a burgher of the Transvaal (or Orange River Colony); and whereas the said Transvaal (or Orange River Colony) has been annexed to and become part of the Empire of His Majesty King Edward the VIIth; and whereas I am desirous of formally claiming and securing all and sundry the rights and privileges of a British subject, to which, by reason of the fact of annexation, I am now justly entitled; I do now, therefore, hereby formally declare that I acknowledge myself to be a subject of His Majesty King Edward the VIIth, and I do sincerely promise that I will be true and faithful and bear true allegiance to His Most Gracious Majesty King Edward the VIIth, his heirs and successors, according to law. Signature of applicant, sworn and declared before me at   , this   day of   , 190 . Signature of Special Commissioner. *Ends.*

Memorandum by Mr. Davidson.

(*a.*) *Interned Prisoners in Portugal.*

The position of the interned prisoners appears to be this: Portugal, having allowed them to take asylum in her territory during the continuance of hostilities, was bound to take effective measures to prevent their return to the seat of war, or resumption of the position of combatants, so long as the war continued. It was technically open to Portugal to decline to allow these combatants to enter Portuguese neutral territory, and to prevent them, if necessary by force, from so doing. But the *mitior usus* of modern civilized warfare recognizes that in such cases internment in the neutral country until the conclusion of the war is the reasonable course. *Primâ facie*, the expenses of such internment should be borne by the Government of the interned combatants, and it is to such Government that the interning Government would, in normal circumstances, look for reimbursement in respect of the maintenance, lodging, and subsistence of those interned. For instance, in the case of the troops of General Bourbaki's army, who crossed the Franco-Swiss frontier into Switzerland, and were subsequently interned for a long period in Geneva and other towns of the Confederation, the French Government in 1872 paid *direct* to the Government of the Swiss Confederation a sum of over 12,000,000 fr.

It is true that an Agreement or Convention was entered into between General Clinchant on behalf of the French and General Herzog on behalf of the Confederation before the French troops crossed the frontier of the neutral State; but I think that, in the absence of any such Agreement, the French Government would have come under an equitable obligation to reimburse that of the Confederation.

In the present case, the then Governments of the Boer Republics have ceased to exist, and the British Government has become their representative in title and estate. It is therefore, in the absence of any special Agreement on the matter, to the British Government that Portugal may probably look for reimbursement in respect of the interned combatants.

Technically, I think that all these interned combatants became, on the formal conclusion of conditions of peace (or, I should rather say, terms of surrender), free men, at liberty—subject to their having the necessary funds to do so—to go where they listed subject to the laws of the land to which they choose to go, and to any conditions made binding on them by the Boer Representatives when they signed the terms of surrender.

Having regard to the circumstances in which Portugal undertook their custody, I do not think that we can allow Portugal to be at any charges respecting them. Our Consuls should do all they properly can do in the matter; but I do not think that we can compel the interned Boers to place themselves under the direction or control of our Consuls. Nor, I think, could we impose, in Portugal, conditions as to their quitting that country, except with the acquiescence of the Portuguese Government and the consent of the men themselves. Nor, on the other hand, could we object to Portugal, if their general law allows of the ejection of aliens, turning them out of that country.

The proper time and place to impose condition either *in esse* or *in posse* will either be on their attempting to land, or in contemplation of their avowed intention of landing, in British South Africa. We can prevent their returning to South Africa unless they comply with these conditions; and we can make the grant of free passages or other

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assistance enabling them to return to South Africa contingent on their taking the oath of allegiance, and giving other guarantees for their future good behaviour if allowed to return.

(β.) *French Prisoners detained in Ceylon.*

I agree that French prisoners of war are not entitled to special consideration at our hands, but rather the reverse—if there should be any difference of treatment. They embroiled themselves, for whatever reason, in a quarrel which was not their own, and are entitled to none of the sympathy which is naturally to be extended to a vanquished opponent who has been fighting in defence of his own country and his own fireside.

I think, however, that everyone, of whatever actual nationality, who has hitherto been in custody as a prisoner of war, is legally in precisely the same position. On the conclusion of the war by formal Agreement or Declaration, every prisoner of war becomes *ipso facto* of the conclusion of peace a free man. "Cessante ratione cessat et ipsa lex" (captivitatis). I do not think that we have, strictly speaking, any right to keep prisoners of war in captivity after war has ceased—though the general principle is subject to the qualification that "their return to their own country (*i.e.*, the late belligerent country) may be subordinated to such rules, and they may so far be kept under military surveillance as may be dictated by reasonable precaution against misconduct or even by reasonable regard for the convenience of the State by which they have been captured." (Hall, "International Law," 4th Ed., p. 580.)

I do not think that we can detain French prisoners of war who wish and have the means to return to France, although we may put conditions on them as to their return to British South Africa.

It might be desirable, if Lord Lansdowne thinks well, that, before we write officially to the Colonial Office, I should see Mr. Cox privately, and ascertain whether these views have his general concurrence. Possibly, also, it might be useful if he and I were to see the Attorney-General and the Solicitor-General and discuss these points with them.

W. E. D.

June 8, 1902.

Mr. Davidson,

I should be glad if you would do this. The sooner we can give an answer the better (*vide* Sir H. MacDonell's telegram).

I should like to be able to speak to M. Cambon on Wednesday in the sense of my Minute (*vide* passage marked "A"), reserving the right to impose whatever conditions the Colonial Office may desire to insist upon.

L.

Opinion of the Law Officers.

We agree generally with the terms of Lord Lansdowne's Memoranda as to the Boers in Portuguese territory and as to the French prisoners.

It does not seem desirable that the foreign prisoners should be allowed to return to South Africa, and the British Consul at Delagoa Bay should act with regard to the persons interned only under definite instructions from home.

No liability to the Portuguese Government should be admitted in respect of the cost of maintenance of those interned.

R. B. F.
E. C.

June 10, 1902.

Lord Lansdowne,

The Law Officers say:—

"No liability to the Portuguese Government should be admitted in respect of the cost of maintenance of those interned."

As a matter of equity and policy, we ought to pay for the keep of those interned. It would have a very bad effect if, standing as we do in the shoes of the Transvaal ex-Government, we treated the Portuguese less well than the French did the Swiss.

There can be little doubt that when the Boer refugee combatants crossed into Portuguese territory we should have been quite ready to undertake to pay the Portuguese for their safe keeping during the remainder of the war if we had been asked to do so. We have had the benefit of these Boer refugees having been removed far from the theatre of the war, and we ought not to make use of any technical plea to ride out of what really is an honourable liability.

It is quite possible that the Portuguese Government will not accept payment; but we ought to make the offer to our ancient ally, who has behaved well.

F. B.

June 11, 1902.

Mr. Bertie,

I do not differ, but this point is not raised distinctly in these papers. Will you go over to Colonial Office and find out whether they agree to my Minutes marked "*A*" and "*B*"?

L.

No. 7A. **[Colonial Office.]**

[June 30, 1902.]

The Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, June* 30, 1902.

Return to South Africa of prisoners of war and other burghers.

WE were honoured with your commands signified to us by Mr. Bertram Cox in his letter of the 25th instant, stating that he had been directed by you to transmit to us a copy of a Memorandum* prepared in your Department, dealing with various questions connected with the release and repatriation of prisoners of war and other burghers.

That Mr. Cox was to inquire whether we saw any legal objection to His Majesty's Government proceeding on the lines laid down in that Memorandum.

We have taken the matter into our consideration, and, in obedience to your command, have the honour to

Report—

That there are only two points on which we have any observations to offer on this Memorandum from the legal point of view.

The first relates to allowing foreigners to go to their own country "on the understanding that they will not go to South Africa." There might be some difficulty in exacting from these persons an undertaking not to return to South Africa, but they might very well be informed that they will not be permitted to land there. If an undertaking were exacted questions might arise as to there being any right to detain any such persons who refused to give it.

The second point relates to the treatment of burghers who have not lost their German or other nationality of origin. We think that on the terms of surrender difficulties might arise as to asserting a right on the part of His Majesty's Government to refuse return on taking the oath of allegiance in the case, at all events, of those who have been domiciled in South Africa for a long period, as they may be said to be not the less burghers because they also retain their old nationality, just as the 7th section of our own Naturalization Act, 1870, contemplates that a naturalized alien may retain his old nationality.

It is possible that special cases may arise in which special treatment in this respect might be equitable, and we do not desire to express any opinion on this except in view of all the circumstances of any such case if it arises.

We are, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

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* African No. 696 (Colonial Office Paper).

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No. 8.

[October 10, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, September* 13, 1902.

Claim of Oost Afrikaansche Compagnie for rent for premises occupied by troops.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the Papers noted in the accompanying list, respecting a claim which was put forward, on the 21st September last, by the Netherlands Chargé d'Affaires on behalf of the Oost Afrikaansche Compagnie for rent for the occupation of their store at Machadodorp by British troops. (Paper A.)

The claim was referred in due course to the General Officer Commanding-in-chief in South Africa, and, on his report in regard to it (Paper B) being received, it appeared that no claims for rent for the use of buildings necessarily occupied by the military in South Africa were being admitted by the Local Compensation Boards.

The attention of the Secretary of State for War was accordingly drawn to the fact (Paper C) that the principle followed in the Egyptian War in regard to such questions (see Sir J. Ardagh's Memorandum of the 7th January, 1883), (Paper D), had been that the owner of private property in a country invaded or occupied in time of war has an equitable claim to be indemnified by the invading or occupying Power if his house is temporarily used for the accommodation of that Power's troops; and the inquiry was made whether Mr. Brodrick had approved of the principle laid down in the matter by Lord Kitchener, and, if so, what were the grounds on which he had decided to depart from the course followed in assessing the Egyptian War claims.

The War Office, in their reply (Paper E), maintained that the theory as to compensation laid down in Sir J. Ardagh's Memorandum was conclusively disproved by the opinion of the Law Officers of the Crown, which he himself quoted in § 10, p. 4, of his Memorandum (Paper D), and they further pointed out that the cases cited in support of that officer's argument seem hardly conclusive. For example, the French Government voted 106,000,000 fr. after the Franco-German War of 1870–71 to indemnify its own citizens, but the compensation was for damage or destruction of real or moveable property—not for the temporary occupation of private buildings for public purposes The German Government, moreover, did not pay rent to French citizens or residents in Alsace and Lorraine on account of the temporary occupation of their houses by the German troops. Nor did the German Government pay rent to Frenchmen or others for houses temporarily occupied in other parts of France.

The War Office concluded by saying that, while there were precedents for compensation on account of loss, damage, or destruction of private property, they could find no precedent, except that of Egypt, for the payment of rent on account of the temporary occupation by troops of private buildings during war, and that it therefore seemed possible that there had been special circumstances attending the occupation of Egypt in 1882, which rendered it advisable to make the unusual concession recommended in 1883 by Sir J. Ardagh, and approved by Her late Majesty's Government. They were not, however, prepared to accept the action taken in Egypt as a precedent, all the less as it did not appear to have been based on authoritative legal opinion.

The opinion of the Law Officers to which reference is made in Sir J. Ardagh's Memorandum (Paper D) seems to relate not so much to the payment of rent as to the existence of a legal right on the part of neutrals to exemption from military contributions; it is agreed that no such right exists. (See Law Officers of the 26th August, 1870, and the 28th February, 1871.) (Paper F.) But in view of the fact that in this war requisitions are to be paid for as an act of grace, the question arises whether the forced occupation of a building for purposes in connection with the war comes within the term "requisition." A further question arises whether payment for the use of buildings so occupied is rendered necessary by the terms of any of the Proclamations (Paper G) issued by the Commanders-in-chief in South Africa. Lord Roberts' Proclamation of February 1900 (p. 1 of Paper G) states that persons who do not join in the contest shall not suffer in their persons or property, and that requisitions for food, forage, fuel, or shelter will be paid for on the spot. This promise to pay for requisitions, though the date of payment was postponed until the end of hostilities, has been repeated (see the Proclamation of May 1900, p. 7 of the collection, Paper G, above referred to, and the Proclamation, Paper I), and in these circumstances

the question arises whether His Majesty's Government have contracted themselves out of their legal right to requisition without payment.

When the German armies entered France the inhabitants were at once informed that they would have to meet requisitions for the sustenance of the German forces (Paper H). The German Government subsequently referred persons who claimed payment for requisitions to the French Government, on whom the expenses of the war were to fall, and who were at liberty to compensate persons living on French territory for the losses they had sustained. If, therefore, the use of premises comes within the term "requisition," the fact to which the War Office letter (Paper E) draws attention—viz., that the Germans did not pay rent—is hardly conclusive; on the contrary, the German Government had expressly declared that they intended to avail themselves of their legal right to make the invaded territory meet requisitions without payment. There is, moreover, a further reason which appears to render the German precedent inapplicable: the fact, namely, that His Majesty's Government have annexed the Transvaal. The appropriate German precedent would, therefore, have to be looked for in Alsace and Lorraine and it is understood that in those countries compensation was given for losses, though no doubt only as an act of grace. The award of compensation being an act of grace, the German Government were free not to include rent among the subjects on account of which compensation would be given.

The War Office further remark that the French Government did not give compensation for the occupation of private buildings; but it was within the competence of the French Government also to say for which classes of losses they would, as an act of grace, give compensation; whereas it seems possible that, considering the Proclamations, His Majesty's Government are not in a like condition of freedom.

It is urged, however, by the War Office, in a further letter (Paper M) dealing with this point, that neither of the Proclamations referred to above can be said to deprive His Majesty's Government of the legal right to occupy private buildings without payment.

Since the preparation of this reference was commenced, terms of surrender have been arranged with the Boer forces in the field. The terms will be found at p. 12 of the accompanying Parliamentary Paper (Paper K). Article 10 of the terms provides for the liquidation of sums secured by receipts given by officers in the field of the late Republics, in those cases in which it is found that the receipts were issued in return for valuable consideration. It will in practice be necessary to treat receipts issued by British officers not less favourably than those issued by the officers of the enemy's forces. But although it is thought right to call your attention to this stipulation, it is improbable that it will affect the main question on which your advice is sought.

I am to request you to take these observations and the above-mentioned Papers into your consideration, and to favour Lord Lansdowne with your opinion as to whether any payments strictly in the nature of rent, as opposed to compensation for actual damage done to the tenement, ought to be made for the occupation of buildings used for military purposes during the course of the present war, either on account of the various Proclamations which were issued in South Africa or upon any other ground; and, generally, with any observations on the case which you may see fit to offer.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Baron Schimmelpenninck	September 21, 1901.
(B.)	War Office	March 5, 1902.
(C.)	To War Office	March 17, „
(D.)	Sir J. Ardagh (Memorandum)	January 7, 1883.
(E.)	War Office	April 11, 1902.
(F.)	War Office (with Law Officers' Reports of August 26, 1870 and February 28, 1871)	April 24, „
(G.)	Collection of Proclamations during Boer War.	
(H.)	German Proclamations on entering France.	
(I.)	Army Order of December 17 1900 (postponing payment till end of hostilities).	

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(K.) Correspondence respecting the terms of surrender of Boer forces still in the field (Parliamentary, 4105) [C. 1096].		
(L.) Colonial Office	May	20, 1902.
(M.) War Office	August	16, „

Report.

We are of opinion that there is no obligation on His Majesty's Government to make payments in the nature of rent for the occupation of buildings for military purposes during the war.

Where an occupant has been expropriated and has thereby suffered actual damage it is a question of policy whether he should be compensated, but in such cases any compensation should be estimated on the basis of actual loss, and not on that of rent, and should be paid *ex gratiâ* only.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 10, 1902.

No. 9.

[November 18, 1902.]

Foreign Office to the Law Officers of the Crown.

Bishops in Uganda, Mombasa, and Zanzibar: Limits of Jurisdiction.

Gentlemen, *Foreign Office, November* 6, 1902.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list on the subject of a proposal made by His Grace the Archbishop of Canterbury for the rearrangement of the areas of Episcopal authority exercised by the Bishops of Uganda, Mombasa, and Zanzibar respectively.

In this connection I am to invite your attention to the Reports furnished by the then Law Officers of the Crown, dated the 7th February, the 6th May, and the 19th August, 1890, on a somewhat similar question of the jurisdiction of Bishops of the Church of England in China, Japan, and Corea.

I am to inclose the drafts of Warrants which have been prepared by His Grace's directions, assigning new limits for the Bishops of Uganda, Mombasa, and Zanzibar. These drafts have been approved by and on behalf of the Bishops concerned, the Church Missionary Society, and the Universities' Mission to Central Africa; and I am to request that, in taking these papers into your consideration, you will favour Lord Lansdowne with your opinion as to whether the terms of the Warrants are such as may properly be submitted to the King for His Majesty's approval and signature.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Law Officers' Reports of February 6, May 6, and August 19, 1890.		
(B.) Mr. H. W. Lee	September	, 1899.
(C.) To Archbishop of Canterbury	October	2, „
(D.) Mr. F. H. Lee	October	28, 1902.
(E.) Drafts of Warrants proposed to be issued in the cases of the Bishops of Uganda, Mombasa, and Zanzibar.		

Report.

We see no reason why the Warrant should be addressed to the Archbishop of Canterbury, and it does not appear to have been so framed in the form approved by our predecessors in 1890.

We also think that it would be advisable to have one Warrant only defining the limits in the several cases. The form settled by our predecessors should be adhered to.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 18, 1902.

No. 10.

[December 8, 1902.]

Foreign Office to the Law Officers of the Crown.

D. O. Galmore Greene's spurious letters about Somaliland

Gentlemen, *Foreign Office, November* 17, 1902.

I HAVE the honour, by direction of the Marquess of Lansdowne, to bring to your notice the following facts:—

On the 20th and 23rd ultimo there appeared in the public press certain letters, which are inclosed herein, as marked in the accompanying list, purporting to have been addressed to a person calling himself D. O. Galmore-Greene by an individual in Somaliland.

These letters profess to give an account of the state of affairs existing in that country as regards the military expedition against the Mullah, and caused no little stir and uneasiness in the public mind at the time they appeared.

On the 22nd ultimo the accompanying letter was addressed by Major Close, R.E., to the Superintendent of African Protectorates, administered under the Foreign Office, stating that Captain Crosthwait, R.E., had allowed him to see a letter from the person styling himself Galmore-Greene, in which the latter admitted that the letters above referred to were invented and written by himself.

Lord Lansdowne is extremely anxious that the gravity of his offence should, if possible, be brought home to the author of these spurious letters.

There appears to his Lordship to be some room for doubt whether an offence has been committed, even if the facts are established. There is very little authority on the subject, and the text-book writers do not seem to be agreed.

In Starkie on "Libel" (Folkard, 1869), page 660, it is said that probably the fabrication and publication of false news, producing any serious public detriment, would be regarded as criminal and punishable.

This is slightly extended in "Russell on Crimes" (Vol. II, page 458, 6th edition), in the chapter on Cheats and Frauds at Common Law, where it is said that probably the fabrication and publication of news *likely to produce any public detriment* would be considered as criminal.

The authority advanced in favour of these statements is very meagre, and consists chiefly of the summing up of L. C. J. Scroggs, in the case of R. *v.* Harris, 32 Car. II, 7 State Trials (Howell), page 926.

In the 3rd and 4th editions of the "Digest of the Criminal Law," by the late Mr. Justice Stephen, spreading false news was stated, but with some hesitation, to be a misdemeanour, and was attributed, not to the Common Law but to the Statute 3 Edw. I, cap. 34, the "Statute of Newes," part of the Statute of Westminster I, and the words of that Statute appear to have been wide enough to cover this case. Unfortunately the Statute was repealed by "The Statute Law Revision Act (1887)" (50 & 51 Vict., cap. 59), and in the 5th edition of Stephen's "Digest," all reference to this misdemeanour is omitted.

The position, therefore, appears to be that if the suggested misdemeanour of publishing false news, &c., was of statutory origin, the Statute to which it must be attributed is no longer in force; if of Common Law origin there is room for doubt whether the offence is complete unless serious public detriment has been produced.

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A copy of a letter which appeared in the "Morning Post" over the initials "A. K. S." and which is conjectured to have been written by the well-known King's Counsel, who until recently filled the offices of Treasury Solicitor and Director of Public Prosecutions, is also inclosed.

I am to request that you will take the matter into your consideration, and will favour Lord Lansdowne with your opinion as to—

1. Whether the fabrication and publication of false news calculated to alarm the public mind is an offence punishable under the Criminal Law irrespective of the effect that may be produced upon the public by such publication.

2. Whether the fabrication and publication of false news is an offence where serious public detriment is actually caused.

3. Whether any steps can be taken against a newspaper publishing, without a reasonable effort having been made to determine its authenticity, news of this character fabricated by a third person.

If, in your opinion, the answers to any of these questions should be in the affirmative, his Lordship proposes to send the papers to the Director of Public Prosecutions with a view to possible further action in the particular case.

Lord Lansdowne would also be glad to be furnished, at the same time, with any general observations you may have to offer on the case.

I have, &c.
(Signed) CLEMENT Ll. HILL.

List of Papers.

Extract from the "Daily News"	October 20, 1902.
Extract from the "Daily Chronicle"	October 23, "
Major Close	October 22, "
Extract from the "Morning Post"	October 25, "

Report.

1. In our opinion the answer to this question is in the negative unless such fabrication and publication amounts to a seditious libel.

2. We think there is authority for contending that when serious public detriment ensues by the fabrication and publication of false news, and the intent to cause such detriment may be reasonably inferred, an indictment could be maintained.

3. Unless it can be inferred that those responsible for the newspaper contemplated the public detriment which ensued we do not think the prosecution could be maintained.

Generally, we do not advise a prosecution in this case.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
December 8, 1902.

AUSTRIA-HUNGARY.

No. 11.

[July 19, 1902.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 8, 1902.

Gentlemen,

Austrian protest against Indian sugar duties.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list, which relate to an Act recently passed in India for imposing on sugar imported from Germany and Austria-Hungary certain duties additional to the countervailing duties provided for by the Indian Act of 1899. The Act remains in force only until the 1st September, 1903—the date fixed for the Brussels Sugar Bounty Convention to come into operation—and is thus intended merely to tide over the interval.

It should be explained that at the Conference for the suppression of sugar bounties the British, Belgian, and French Delegates maintained that bounties additional to direct bounties arose on exportation from some countries owing to the operation of trusts or cartels. These trusts or cartels are a combination of sugar-producing and refining interests, which take advantage of the protection afforded by the surtax, or excess of import duty over excise, so to raise the price to the home consumer as to enable sugar to be exported at a price considerably below the price of the world's market, the large profits gained at home amply compensating for the losses incurred by selling below cost price abroad. The result is a bounty upon all sugar exported abroad.

After prolonged discussion it was ultimately agreed at the Conference and laid down in the Convention (Article IV) that the bounty derived from any given surtax should be taken as amounting to half the excess of such surtax beyond 6 fr. per 100 kilog. The recent Indian Act, in assessing the additional duties, adopts the same basis of calculation.

As you will perceive, the Austro-Hungarian Ambassador at this Court has made a formal protest against the imposition of the additional duties, as being inconsistent with the terms of the Treaty of Commerce between the United Kingdom and Austria-Hungary of 1876, and contrary to the spirit of the arrangements come to by the recent Conference at Brussels.

It is proposed to reply to his Excellency in the terms of the accompanying draft, and I shall be obliged if you would state whether you concur in its terms or whether you have any suggestions to offer by way of amendment.

In connection with this question I have the honour to refer to the Report of the Solicitor-General of the 23rd June, 1899, when countervailing duties on bounty-fed sugar were first enacted in India.

I shall at the same time be glad if you will favour me with any general observations which you may wish to offer on the subject.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

Treaty of Commerce with Austria-Hungary	(Treaty. No. 601)	December 5, 1876.
To Lord Chancellor		June 20, 1899.
To Solicitor-General		" 20, "
Solicitor-General		" 23, "
The Lord Chancellor		July 5, "
To Austrian Ambassador		" 14, "
Procès-verbaux of Brussels Sugar Conference		1901–1902.
Brussels Sugar Convention	(Parliamentary. No. 4098)	March 5, 1902.
Indian Tariff Act. No. 8 of 1902.		
Austrian Ambassador		June 3, "
Sir H. Bergne	(Memorandum)	" 6, "
To India Office		" 9, "
India Office		" 23, "
Draft note to Austrian Ambassador.		

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Report.

We concur in the terms of the proposed draft initialled by us.

The only suggestion we have to make is that a paragraph* should be added just before the last paragraph of the draft, pointing out that it was never suggested that the Indian Act of 1899 was an infraction of the most-favoured-nation clause, and that the present Act is merely the application of the same principle to another form of bounty.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 19, 1902.

The Attorney-General to Mr. Davidson.

My dear Davidson.
House of Commons, July 22, 1902.

IN view of the unofficial protest in 1899, the addition we proposed should simply refer to the Act of 1899, and point out that the present Act is merely the application of the same principle to another form of bounty.

Though we cannot put it as strongly as we had hoped, I think the reference to the 1899 Act useful.

Yours sincerely,
(Signed) R. B. FINLAY.

Annex.

Draft of Letter from the Marquess of Lansdowne to Count Deym.

Your Excellency,
Foreign Office, July 28, 1902.

I HAVE the honour to state that His Majesty's Government have considered with the most serious attention your Excellency's note of the 3rd ultimo on the subject of the Indian Act increasing the customs duties on sugar imported from countries where a surtax in excess of 6 fr. per 100 kilog. exists.

In this communication your Excellency informs me that the Austrian and Hungarian Governments have decided to make a formal protest against the measure in question, and that you have been directed to address an urgent request to His Majesty's Government to prevent its application to consignments from Austria-Hungary.

Your Excellency's representation is based apparently upon two grounds:—

1. That it is not open to the Government of India to increase the duties on Austrian and Hungarian sugars (*a*) because there was some implied understanding at the Brussels Conference that no action of the kind would be resorted to in the interval before the Convention should come into force, and (*b*) because the Brussels Convention is not yet in operation;

2. That such action is inconsistent with the Treaty of Commerce between the United Kingdom and Austria-Hungary of 1876.

In regard to the appeal to the proceedings in Conference, His Majesty's Government are unable to find in the records any vestige of such an implied understanding; the records of the Conference show, on the contrary, that at its termination each Power had reserved to itself the most complete liberty of action during the interval before the Convention should come into force. More especially was this necessary for Great Britain when in opposition to the wishes of the British Government the date of operation of the Convention was deferred until the 1st September, 1903; the Declaration made by the British Delegates at earlier stages were, in consequence, expressly and formally renewed at the 15th sitting.

Mr. Phipps on that occasion (see p. 201 of the *procès-verbaux*) expressly confirmed the previous Declarations by which the British delegation had formally reserved the right of their Government to take in the interval the measures which might be necessary for the protection of British interests if the date of operation of the Convention were fixed at a date later than September 1902. His Majesty's Government are not aware of any statements made or pledges given by the British Delegates which could lead to a contrary conclusion, and I should be happy to learn if the Austro-Hungarian Government can point to anything which could give colour to such a contention.

In the absence of any such evidence, His Majesty's Government must assume that their

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* Printed in italics.

entire freedom to take during the interval any steps which may become necessary for the protection of British interests, and which at the same time are not incompatible with existing Treaty engagements, cannot seriously be questioned.

I pass on therefore to the contention that the exact method which has been adopted by the Indian Government for the computation of the amount of the bounties arising under the operation of the surtax ought not to have been adopted, because the Brussels Convention is not yet in force.

It is quite true that this method of computation is not yet obligatory as between the Contracting States; but His Majesty's Government must claim that the Indian Government have shown in this respect a due regard for international comity, inasmuch as, for the assessment of the new duties, they have adopted a method of computation which was considered by the Representatives of all the Powers at Brussels to be the most equitable that could be devised, and which was fully accepted by the Austro-Hungarian Delegates and embodied in Article IV of the Convention.

It remains for me to examine the contention that the action of the Indian Government is inconsistent with the terms of the Treaty of 1876 between Great Britain and Austria-Hungary. British India is undoubtedly a party to that Treaty, but His Majesty's Government cannot admit that their action in countervailing the bounty arising from the operation of the surtax is a violation of its stipulations.

In my predecessor's note of the 14th July, 1899, when explaining to your Excellency the reasons which had led the Indian Government to resort in the first instance to countervailing duties, the Marquess of Salisbury made the following statement: "Her Majesty's Government are not disposed to admit that any Government has the right by such means (*i.e.*, by a system of bounties) to override the clear intention of the most-favoured-nation clause, which is, that goods shall enjoy equality of treatment, but not preferential advantages, as compared with goods of the most favoured nation. When an artificial preference of such a character is produced by the direct legislative Act of a foreign Government which is a party to a most-favoured-nation stipulation, Her Majesty's Government consider that it should be open to the other Contracting Party, if such action should seem expedient, to redress the balance of trade which has thus been artificially disturbed. The remedy in such a case lies in the hands of the Government which grants the bounty, the discontinuance of which would cause the counteracting measures to disappear."

The argument thus quoted applies with exactitude to the present case; for the surtax, by means of which the cartels flourish and produce heavy bounties, is produced by the direct legislative Act of the Austro-Hungarian Government, which also has the power to discontinue it, in which case the extra duty imposed in India would no longer apply to Austro-Hungarian sugars.

The Act now passed by the Indian Government is, in fact, merely the application to another form of bounty of the principle contained in the Indian Act of 1899.*

In conclusion, I may state that the Indian Government have been impelled to the imposition of these duties by no motives of a nature unfriendly to Austria-Hungary, but solely by the imperative necessity of safeguarding an important native industry, which might otherwise have suffered irretrievable injury before the Brussels Convention could come into force; I trust that I may have convinced your Excellency that the action of the Indian Government, far from having been incorrect or opposed to existing Treaty engagements, has been necessitated by the circumstances of the case, and has been strictly consistent with the international obligations of this country.

(Initialled) R. B. F.
E. C.

No. 12.

[September 5, 1902.]

Foreign Office to the Law Officers of the Crown.

Declaration amending Extradition Treaty with Austria-Hungary.

Gentlemen,
Foreign Office, August 19, 1902.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the draft of an Order in Council, carrying into effect a Declaration between the United Kingdom and Austria-Hungary which was signed at London on the 26th June, 1901. This Declaration amends Article XI of the Treaty of Extradition of the 3rd December, 1873, and the ratifications were exchanged at London on the 25th June last.

I am to inclose the accompanying letters from the Home, Colonial, and India Offices, expressing concurrence in the terms of the draft Order in Council; and I have

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* Wording suggested by the Attorney-General.

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the honour to request that you will favour Lord Lansdowne with your opinion as to whether it may, in its present form, be laid before the King in Council for His Majesty's approval.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

Draft Order in Council ..	July 28, 1902.
Home Office	July 31, „
Colonial Office	August 14, „
India Office	

Report.

We approve of the draft Order in Council as altered and initialled by us, and are of opinion that it may be laid before His Majesty in Council for His Majesty's approval.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
September 5, 1902.

Annex.

WHEREAS by the Extradition Acts, 1870 to 1895, it was amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, His Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that His Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in, or suspected of being in, the part of His Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient;

And whereas a Treaty was concluded on the 3rd day of December, 1873, *between Her late Majesty Queen Victoria and His Majesty the Emperor of Austria and King of Hungary, for the mutual extradition of fugitive criminals, in the case of which Treaty "The Extradition Act,* 1870," *was applied by Order in Council of the* 17*th March,* 1874;

And whereas a Declaration was concluded on the 26th day of June, 1901, between His Majesty and His Majesty the Emperor of Austria, King of Hungary, amending Article XI of the *said* Treaty of the 3rd December, 1873, for the mutual extradition of fugitive criminals, which Declaration is in the terms following:—

[Here follows the text of the Declaration.]

And whereas the ratifications of the said Declaration were exchanged at London on the 25th day of June, 1902:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and in virtue of the authority committed to him by the said recited Acts, doth order, and it is hereby ordered, that from and after the * day of , 1902, the said Acts shall apply in the case of Austria and Hungary, ~~and of~~ *under and in accordance with the said Treaty as amended by* the said Declaration ~~with His Majesty the Emperor of Austria, King of Hungary~~ *above set forth.*

Provided always that the operation of the said Acts shall be and remain suspended within the Dominion of Canada so long as an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," shall continue in force there, and no longer.

R. B. F.
E. C

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* Date to be inserted by Council Office, and to be a date ten days after publication in "London Gazette."

No. 13.

[November 13, 1902.]

Foreign Office to Law Officers of the Crown.

(Secret.)

Foreign Office, November 8, 1902.

Gentlemen,

Sir H. Rumbold's Article in "National Review." As to prosecution under "Official Secrets Act."

I HAVE the honour, by direction of the Marquess of Lansdowne, to call your attention to an article on the Emperor of Austria, of which copy is herewith inclosed, published in the "National Review," and written by the Right Honourable Sir Horace Rumbold, who held the appointment of British Ambassador at Vienna from October 1896 to September 1900, when he retired on pension, and who continues to be a Member of His Majesty's Privy Council.

The article contains some strong expressions of opinion as to the feelings and disposition of the German nation towards Great Britain, which are inconvenient and embarrassing as coming from a gentleman who so recently held so high and confidential a diplomatic appointment, and are especially unwelcome at the moment when the German Emperor is coming on a visit to this country.

Sir Horace Rumbold further quotes an observation made to him as Ambassador by the Emperor of Austria, which could scarcely have been intended to be published in the press, and he gives an account of communications which passed between him and the Austrian Government, and which were at the time regarded as strictly confidential, as to the means of preventing the publication of caricatures of the late Queen.

It appears to Lord Lansdowne to be important to maintain the principle that revelations of this kind should not be made by retired Diplomatic servants of the Crown without their first obtaining the consent of the Secretary of State who is the proper judge whether the publication will or will not be injurious to the public interest.

It would appear from the opinion given in March 1888, by the then Law Officers of the Crown, of which copy is inclosed for convenience of reference, that there would be considerable difficulty in making such indiscretions, however objectionable, a ground for withholding a pension granted under "The Diplomatic Salaries, &c., Act, 1869," but Lord Lansdowne would be glad to be informed whether, in your opinion, the publication of official information by a retired Diplomatic Officer, if clearly contrary to the public interests, would be an offence under section 2 (i) of "The Official Secrets Act, 1889" (52 & 53 Vic. cap. 52), as being "contrary to the writer's official duty" even though he should no longer be holding any active appointment. It will be observed that the section refers to information acquired by any person "by means of his holding or having held an office," and it may presumably be considered that the official duty of secrecy in regard to confidential information continues after retirement.

Lord Lansdowne would wish also to be favoured with your opinion how far the point is affected by Sir H. Rumbold's position and duties as a Privy Councillor and with any observations which may occur to you on the question generally.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

In our opinion the publication of official information by a retired Diplomatic Officer—if clearly contrary to the public interests—might be an offence under section 2 (i) of "The Official Secrets Act, 1889," and the fact that he no longer held any active appointment would not constitute any defence.

We do not, however, on the information before us, regard the present case as one in which it would be proper to institute a prosecution.

The position of the writer as a Member of the Privy Council does not, in our opinion, affect this question. Of course, the name of any Privy Councillor may, for adequate reason, be removed from the list.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 13, 1902.

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BELGIUM.

No. 14.

[January 24, 1902.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 15, 1902.

Gentlemen,

Extradition Treaty with Belgium. Draft Order in Council.

I HAVE the honour to inclose the draft of an Order in Council for giving effect to a Treaty of Extradition recently concluded between the United Kingdom and Belgium, of which the ratifications were exchanged at Brussels on the 6th ultimo.

The various Departments of His Majesty's Government which are interested in the matter have concurred in the terms of this draft, and I am now to inquire whether, in your opinion, it may properly be submitted to the King in Council for His Majesty's approval.

I have, &c.
(Signed) F. H. VILLIERS.

Report.

In our opinion the draft Order in Council, as initialled by us, may properly be submitted to the King in Council.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
January 24, 1902.

(Annex.)

Whereas by the Extradition Acts, 1870 to 1895, it is amongst other things enacted that, where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, His Majesty may, by Order in Council, direct that the said Acts shall apply in the case of such foreign State; and that His Majesty may, by the same or any subsequent Order, limit the operation of the Order, and restrict the same to fugitive criminals who are in or suspected of being in the part of His Majesty's dominions specified in the Order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient;

And whereas a Treaty was concluded on the 29th day of October, 1901, between His Majesty and His Majesty the King of the Belgians for the mutual extradition of fugitive criminals, which Treaty is in the terms following:—

[Treaty follows.]

And whereas the ratifications of the said Treaty were exchanged at Brussels on the 6th day of December, 1901:

Now, therefore, His Majesty, by and with the advice of his Privy Council, and in virtue of the authority committed to him by the said recited Acts, doth order, and it is hereby ordered, that from and after the * day of , 1901, the said Acts shall apply in the case of Belgium, and of the said Treaty with Belgium.

Provided always that the operation of the said Acts shall be and remain suspended within the Dominion of Canada so long as an Act of the Parliament of Canada passed in 1886, and entitled "An Act respecting the Extradition of Fugitive Criminals," shall continue in force there, and no longer.

(Initialled) R. B. F.
E. C.

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* Date to be inserted by Council Office, and to be a date ten days after publication in "London Gazette."

BORNEO.

No. 14A. [Colonial Office.]

[August 11, 1902.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, August 11, 1902.

Sir,

Sarawak Government vessels to be considered public ships.

WE were honoured with your commands, signified in Mr. C. P. Lucas' letter of the 30th July last, stating that, with reference to our Report of the 1st August, 1901, upon the question whether the "Lorna Doone," a vessel belonging to the Rajah of Sarawak, and used partially for trading purposes, was entitled to the privileges of a "public vessel," he was directed by you to submit for our consideration the further correspondence noted in the margin* which had passed upon the subject.

That from that correspondence it would be seen that the Rajah possessed a number of steamers of small tonnage, all of which, with one exception, were habitually employed for the purposes of trade, though they were stated to be "primarily employed as despatch vessels to keep up communication with coast stations, and as transports."

That for all those vessels the Rajah claimed the rights and privileges enjoyed by public ships, and that Mr. Lucas was accordingly to request us to take the further papers into our consideration and to report—

1. Whether the facts now brought before us were such as to lead to any modification of our Report of the 1st August, 1901, as to the status of the "Lorna Doone";

2. Whether any of the vessels in question (other than the armed yacht "Zahora") was entitled to the privileged character of a public ship;

3. How such vessels should be treated in future if not so entitled.

We have taken the further papers into our consideration, and, in obedience to your commands, have the honour to

Report—

1 and 2. That we see no reason to modify our Report of the 1st August, 1901, as to the status of the "Lorna Doone" upon the facts now brought before us.

We think that, upon the statements made by Sir Charles Brooke, all the ships mentioned should be treated as public vessels. It appears that all the ships are public property of the State and in their possession, that the officers hold Commissions from the State, and that they are used by the State for public purposes.

Although the vessels are engaged in trading, we think that, upon the facts here stated, this trading is merely subsidiary to their employment as despatch vessels and as transports, and the ancillary use for trading purposes does not deprive them of the character of public vessels. (See the "Parlement Belge," L.R. 5 P.D. 192.)

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

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* Colonial Office to British North Borneo Company, August 29; British North Borneo Company to Colonial Office, October 17; Colonial Office to Rajah Brooke, October 24; Rajah Brooke to Colonial Office, October 25; Foreign Office to Colonial Office, November 11; Colonial Office to Rajah Brooke, December 5, 1901; Rajah Brooke to Colonial Office, February 1; Colonial Office to Foreign Office, February 11; Foreign Office to Colonial Office, March 1; Rajah Brooke to Colonial Office, May 22; Colonial Office to Foreign Office, July 4; Foreign Office to Colonial Office, July 14, 1902.

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CHINA.

No. 15.

[January 24, 1902.]

Foreign Office to Law Officers of the Crown.

Foreign Office, January 17, 1902.

Gentlemen,

Whangpoo Conservancy Order in Council.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list with regard to a draft Order in Council (Paper A) which has been prepared by Mr. Albert Gray for the purpose of making binding upon British subjects the Regulations (which are to be found in the Schedule to that Order) respecting the constitution, powers, and revenues of a Conservancy Board for the improvement and control of the navigation of the River Whangpoo.

This Board has been established by Article XI of the Final Protocol (Paper B) which was signed by the Representatives of the Powers and the Chinese Plenipotentiaries at Peking on the 7th September last, and the Regulations are contained in Annex 17 to that instrument.

I have the honour to request that you will take the draft Order into your consideration and favour his Lordship with your opinion as to whether it may be submitted to the King in Council.

His Lordship would be glad to be furnished at the same time with any general observations which you may be good enough to offer on the subject.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)—Letter from Mr. A. Gray, November 29, 1901, inclosing draft Order in Council.
(B.)—Article XI of the Final Protocol. ("China No. 1 (1902)," pp. 244 and 245.)

Report.

The draft Order in Council, as initialled by us, may properly be submitted to the King in Council for His Majesty's approval.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
January 24, 1902.

Annex.

The China (Whangpoo River Conservancy) Draft Order in Council, 1902.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, His Majesty the King has jurisdiction within the dominions of the Emperor of China;

And whereas by Article XI of the Final Protocol, signed at Peking on the 7th day of September, 1901, by the Envoys and Plenipotentiaries of China and of certain other Powers, including His Majesty the King, provision is made for the establishment of a Conservancy Board for the improvement and control of the navigation of the River Whangpoo;

And whereas the detailed Regulations with respect to the constitution, powers, and revenues of the said Conservancy Board are contained in Annex No. 17, appended to the said Protocol, a translation of which Annex appears in the Schedule to this Order;

And whereas it is expedient that the said Regulations should be made binding upon British subjects:

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in His Majesty vested, is pleased, by and with the advice of the Privy Council, to order, and it is hereby ordered, as follows:—

1. The Regulations contained in the said Annex No. 17, a translation of which appears in the Schedule to this Order, are hereby declared to be binding upon all British subjects.

2. In like manner, any modifications of the said Regulations, and any Ordinances or Regulations of the said Conservancy Board enacted in pursuance thereof, shall, when brought into force in accordance with the provisions of those Regulations, be binding upon, and be observed by, all British subjects.

3. Any proceedings by the said Conservancy Board, or by any Consul or Municipality against any British subject in respect of any tax or duty payable, or any dispute or matter arising, under the said Regulations, or under any such Ordinances or Regulations of the said Board, shall be taken in the proper British Court, in accordance with the provisions of the Orders in Council for the time being in force relating to the exercise of His Majesty's jurisdiction in China.

4. All fines imposed by a Court under any Ordinances or Regulations to which effect is given by this Order shall, when recovered, be disposed of in such manner as may be prescribed by such Ordinances or Regulations, or, if the disposal thereof is not so prescribed, in such manner as the Secretary of State may direct.

5. This Order shall come into force on such day as His Majesty's Minister in China shall by public notification appoint.

6. This Order may be cited as "The China (Whangpoo River Conservancy) Order in Council, 1902."

And the Most Honourable the Marquess of Lansdowne, K.G., one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein.

Schedule.

[Translation of Annex No. 17 to the Final Protocol.*]

(Initialled) R. B. F.
E. C.

No. 16.

[March 26, 1902.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 21, 1902.

Gentlemen,

"Kowshing" Arbitration: Modification of Protocol.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the correspondence noted in the accompanying list, which has passed respecting the case of the steam-ship "Kowshing," since the receipt of your last report on the subject, dated the 8th June, 1901.

The Chinese Minister was informed on the 8th August last (see Paper C) that, unless the Chinese Government would accept the draft Protocol for submitting the question to arbitration which was inclosed in Lord Lansdowne's note of the 1st April, 1901, His Majesty's Government would have to seek reparation by other means.

No reply was received to this communication, and His Majesty's Minister at Peking was instructed by telegram on the 12th December (Paper D) to remind the Chinese Government of the reservation made by His Majesty's Government, in the event of arbitration not taking place.

In the meantime, the Indo-China Steam Navigation Company have again urged (Paper E) that some steps should be taken to procure a settlement of the case.

It has been privately suggested to Lord Lansdowne that the Chinese Government might possibly agree to waive the inclusion, on which they have hitherto strenuously insisted, in the submission to arbitration of any reference to the action of the "Naniwa" as a violation of the law of nations, for the consequences of which they

* "China No. 1 (1902)," pp. 270 to 272.

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(the Chinese Government) could not be held responsible, if His Majesty's Government, on their side, would consent to omit the recital alleging in terms that the conduct of the Chinese officers and troops on board the "Kowshing" was the cause which led to her destruction.

The draft Protocol as approved by the Law Officers on the 21st March last year with the addition in brackets and underlined in black ink of the sentence respecting the action of the "Naniwa," the insertion of which is desired by Chinese Minister and objected to by His Majesty's Government, is transmitted herewith (Paper F).

If the suggestion now made were adopted the result would involve the omission of all the words (from "it is alleged" to "for the consequences thereof") which are underlined in red and in black ink respectively on Paper F.

I am to request that you will take this suggested modification of the terms of the Protocol into your consideration and will favour Lord Lansdowne with your opinion whether the terms of reference so modified would effectively exclude all possibility of any question of the legality or otherwise of the action of the "Naniwa" being entertained by the Arbitrator, if the Chinese Government should attempt to raise it before him, and whether you consider that His Majesty's Government may having regard to the statement made to the Chinese Minister at this Court on the 8th August last, and repeated to His Majesty's Minister at Peking in the despatch of that date (Paper C), and in the telegram of the 12th December last (Paper D), properly propose them for the acceptance of the Chinese Government.

His Lordship would be glad to receive, at the same time, any general observations which you may have to offer on the subject.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	To Sir C. Lofêngluh	July 2, 1901.
(B.)	Sir C. Lofêngluh	July 31, „
(C.)	To Sir E. Satow .. ..(No. 184)	August 8, „
(D.)	Ditto .. .. .. (No. 353. Telegraphic)	December 12, „
(E.)	Indo-China Steam Navigation Company	March 4, 1902.
(F.)	Draft reference.	
(G.)	Law Officers' Report	June 13, 1885.
(H.)	Ditto	August 2, 1894.
(I.)	Ditto	August 3, „
(J.)	To Law Officers	September 28, „
(K.)	Ditto	January 25, 1895.
(L.)	Ditto	May 22, 1896.
(M.)	Ditto	September 22, 1898.
(N.)	Ditto	April 3, 1900.
(O.)	Ditto	August 13, „ September 5, „
(P.)	Ditto	March 14, 1901.
(Q.)	Ditto	June 3, „

Report.

We are of opinion that the modification suggested may be conceded without detriment to the British case, and with a view to terminating this matter.

It would be impossible to say, whether the words proposed to be omitted were retained or struck out, that the question of the legality of the action of the "Naniwa" can be entirely excluded from the arbitration, but we do not think that the striking out of the words underlined in red ink will make any serious difference in that respect.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
March 26, 1902.

No. 17.

[June 3, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May 21, 1902.*

A. F. Bott and Co.'s claims for damage during Boxer rising.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list which relate to a claim put forward by Messrs. A. F. Bott and Co. for an indemnity for losses incurred in connection with the disturbances which took place in North China in the summer of 1900.

By the Protocol signed at Peking on the 7th September, 1901, between the Representatives of the Powers and the Chinese Plenipotentiaries, the Chinese Government undertook to pay a sum of 450,000,000 taels, which the Powers agreed to accept in satisfaction of all claims, both public and private.

Previous to this date, the Diplomatic Body at Peking had entrusted to a Committee composed of the Representatives of Belgium, Germany, the Netherlands, and the United States the task of laying down principles to serve as a common basis on which the claims of Societies, Companies, and private individuals should be examined and assessed by the different Legations. Their Report was considered by the Diplomatic Body, and certain amendments having been introduced, it was finally adopted. An English translation of the Report is inclosed in Sir E. Satow's despatch of the 19th March, 1901, which is printed at page 45 of Parliamentary Paper, China, No. 1, 1902 (Paper A). It will be seen that all claims of an indirect or consequential character are excluded.

In consequence of the large number of British claimants, and the legal points involved in dealing with the claims, His Majesty's Minister, in April 1901, applied for the services of Mr. H. P. Wilkinson, Crown Advocate at Shanghae, who was then on leave of absence in this country, to assist in examining and adjudicating upon the British private claims. A copy of a letter addressed to Mr. Wilkinson by Lord Lansdowne's direction instructing him to proceed to Peking for this purpose is annexed (Paper B). On his arrival at Peking he was furnished by His Majesty's Minister with a letter appointing him Commissioner "for the examination of all private British claims arising out of the disturbances of the summer of 1900." (Sir E. Satow's telegram No. 108 of the 11th May last (Paper C).) Mr. Wilkinson accordingly examined the claims, and decided the amounts to be awarded in each case, and Sir E. Satow observes that he has always held and stated in answer to inquiries that he had no power to revise Mr. Wilkinson's decisions.

Messrs. Bott and Co. entered into a contract on the 30th April, 1900, with the Chinese Engineering and Mining Company for the construction of certain harbour works at Chingwantao, North China. Work thereon was begun on the 3rd May and proceeded until the 17th June, when the state of affairs in North China rendered the then continuance of operations impossible. In the autumn work was gradually resumed, and has since been completed. A claim for compensation for losses incurred in consequence of the enforced stoppage of work was forwarded by Messrs. Bott and Co. through His Majesty's Consul-General at Tien-tsin to His Majesty's Legation at Peking. The claim as originally filed amounted to 145,277 dollars, and included an item of 62,500 dollars for "reasonable profit to be expected out of capital for the working season of 1900."

This item was subsequently withdrawn, but in its place the following additional claim was put in by the Company, and considered by Mr. Wilkinson at the hearing:—

	Dollars
On difference in cost of labour	72,448
On difference in local material and freight	9,231
On loss through extra cost of Jarrah timber from Australia, 1,500*l.*	15,000

Mr. Wilkinson's decision was given on the 25th September, 1901, and forms Inclosure 4 in Sir E. Satow's despatch No. 49 of the 24th February last (Paper D). The items for increased cost of labour and materials (72,448 dollars and 15,000 dollars), were disallowed as being "indirect, and not the necessary natural result and con-

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sequence of Boxer rising." The decision further states that "all damages suffered up to and during hostilities have been allowed for; no contract in regard to materials other than those dealt with already has been proved as existence" [*sic*] "at the beginning of the trouble, no goods other than those above dealt with were ordered before the trouble at a certain rate could not be delivered, and have since been purchased at a higher rate. On the 'Rules' (Paper A) and on 'Hadley *v.* Baxendale,' the claim for increased cost of materials and labour is disallowed."

Messrs. Bott and Co., being dissatisfied with the decision, referred the matter to their solicitors, Messrs. Knapp, Fisher, and Sons, who, in their letter of the 5th December, 1901 (Paper E) forwarded a copy of an opinion taken by them from Mr. C. A. Cripps, K.C., M.P. Mr. Cripps considers that the Rules laid down in "Hadley *v.* Baxendale" are not applicable to the case, and that the claim is one which should have been allowed. Further letters on the subject from Messrs. Knapp, Fisher, and Sons are also inclosed (Papers F and G). A copy of Mr. Cripps' opinion was at the same time transmitted to His Majesty's Minister at Peking, and referred to Mr. Wilkinson, who has furnished a Memorandum on the subject (see Paper D) explaining the reasons for which he is unable to adopt the view taken by Mr. Cripps, and adhering to his decision.

It appears to Lord Lansdowne that having regard to the Agreement between the Powers to demand from China a lump sum as an indemnity, and for the examination by the Legations of the private claims of their nationals, as well as to the appointment by His Majesty's Minister of a duly qualified lawyer for the purpose of examining the claims of British subjects, the Awards of Mr. Wilkinson must be regarded as final, subject only to revision by the Secretary of State, in the event of his being of opinion that sufficient grounds have been shown to necessitate a reconsideration of the case.

I am to accordingly request that you will take the papers submitted herewith into your consideration and that you will favour Lord Lansdowne with your opinion as to whether, in the circumstances, Mr. Wilkinson's decision on the claim of Messrs. Bott and Co. is right and proper. In the contrary event, his Lordship would be glad to know in what manner and to what extent it should be revised.

His Lordship would also be glad to be furnished with any general observations you may desire to offer in connection with the case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	"China No. 1 (1902)." (Parliamentary, 4088.)		
(B.)	To Mr. Wilkinson	..	May 12, 1901.
(C.)	Sir E. Satow	(No. 108. Telegraphic)	May 11, 1902.
(D.)	Ditto	(No. 49)	February 24, ,,
(E.)	Messrs. Knapp, Fisher, and Sons	..	December 5, 1901.
(F.)	,, ,,	..	November 25, ,,
(G.)	,, ,,	..	April 14, 1902.

Report.

We have not before us the materials for revising Mr. Wilkinson's conclusions, even if it were desirable that such a task should be undertaken.

His conclusions may depend largely upon questions of fact, as to which he had evidence and local knowledge, which are not at our disposal.

The case cannot be treated as if it depended merely on a question of law. We do not feel justified in assuming that it was established in point of fact that, owing to the suspension of the works caused by the Boxer rising, this additional cost was incurred by reason of the rise in market prices in the interval. The latter part of Mr. Wilkinson's Memorandum seems to indicate the contrary. A vast number of circumstances would have to be taken into account in arriving at a decision on such a question.

If it were established as a matter of fact that the loss had been so occasioned, we do not think it would be too remote on the principles of English law or the rules laid down in the "Rapport."

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 3, 1902.

No. 18.

[June 3, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, May 26, 1902.

J. A. Hay's property destroyed at Peking during riots: claims for.

WITH reference to my letter of the 21st instant respecting the indemnity claims of British subjects and societies for losses incurred in connection with the disturbances in North China in 1900, I have the honour to transmit to you, by direction of the Marquess of Lansdowne, a despatch from His Majesty's Minister at Peking, forwarding a Report by Mr. H. P. Wilkinson on the claim of Mr. John A. Hay, for property destroyed at Peking.

Mr. Hay, a mining engineer, in the employ of the Eastern Pioneer Company, claimed 14,619 dollars as compensation for the contents of a house in his occupation at Peking, which was totally destroyed during the disturbances. Of this amount 2,861 dollars were disallowed by Mr. Wilkinson.

On the 5th February last Mr. Hay's solicitors, Messrs. Lawrence, Webster, Messer, and Taylor, addressed a communication to this Department (Paper B) protesting against these reductions. They forwarded at the same time a copy of a document received by Mr. Hay from Mr. Wilkinson, in which the various headings are enumerated under which the above-named sum has been disallowed; but the particular items rejected are not stated.

A copy of Messrs. Lawrence and Co.'s letter was forwarded to His Majesty's Minister at Peking for his observations, but no reply has yet been received.

In the meantime a claim has been put before Mr. Wilkinson on behalf of the Eastern Pioneer Company, the employers of Mr. Hay, which includes a great part of the items claimed for by Mr. Hay, and it will be seen that in the Company's claim the value of the property destroyed is put at much less than the amount in respect thereof already allowed to Mr. Hay.

Mr. Wilkinson now asks that Mr. Hay may be informed that the allowance of 11,758 dollars on his claim has been cancelled, and states that he is issuing a new certificate for the amount allowed on his personal belongings only, viz., 2,855 dollars.

He also states that he intends to deal with the claim for furniture and fittings of the house referred to as part of the claim of the Eastern Pioneer Company, and that he will issue a separate certificate to Mr. Bassitt Watts, Mr. Hay's clerk, for the amount allowed in respect of his effects, which had originally been included in Mr. Hay's claim.

Lord Lansdowne, as at present advised, is inclined to think that the procedure above indicated is incorrect, and should be disallowed.

There appears to be no allegation that the original Award was obtained by fraud or misrepresentation on the part of Mr. Hay, and if the goods claimed for by him should turn out to have been in reality the property of his employers, the latter can recover the amount allowed in respect of them from him. The claim of the Eastern Pioneer Company can be rejected so far as already covered by the previous Award.

A telegram has been sent to His Majesty's Minister at Peking instructing him to inform Mr. Wilkinson that if he has not already cancelled his original Award on Mr. Hay's claim and issued the new certificates, he should not, pending further instructions, do so.

I am to request that you will take the papers submitted into your consideration,

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and that you will favour Lord Lansdowne with your opinion as to the instructions which should be sent to Mr. Wilkinson on the subject, and also with your view as to the course which should be followed in the event of his having already acted in the manner proposed by him.

In the absence of further information it is presumed that you will not be in a position to express an opinion on the deductions made by Mr. Wilkinson on the original claim.

His Lordship will also be glad to receive any observations of a general character which you may wish to offer on the papers.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

1.	Sir E. Satow	(No. 69)	March 20, 1902.
2.	Messrs. Lawrence, Webster, Messer, and Taylor		February 5, „

Report.

We think that the proper course is to suspend any action on the certificate given to Mr. Hay until all the facts as to his claim and that of the Company have been ascertained by Mr. Wilkinson. Mr. Hay and the Company should both have the opportunity of being heard. On Mr. Wilkinson's final Report the Secretary of State can direct what should be done.

There is no occasion to cancel Mr. Hay's certificate, it has no binding effect, but he will, of course, be informed that no action can be taken upon it until the whole matter has been investigated.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 3, 1902.

[War Office.]

No. 18A.

[June 30, 1902.]

The Attorney-General's Opinion.

Jurisdiction of Consular Courts over military forces.

I AM of opinion that, in the case of members of a British force in military occupation of a foreign country, there would be an answer to any proceedings in the Consular Court in respect of any acts done in the discharge of military duty in the course of such occupation. In respect of such acts the Consular Courts cannot exercise jurisdiction.

This does *not* apply to offences committed, or acts done which have no connection with the military occupation.

(Signed) R. B. FINLAY.

The Solicitor-General's Opinion.

I AGREE with the first portion of the opinion of the Attorney-General.

I am, however, of opinion that the Consular Courts have *no* jurisdiction over members of a British force in military occupation for any offences committed by them.

(Signed) EDWARD CARSON.

Law Officers' Department,
June 30, 1902.

No. 19.

[July 3, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, June 28, 1902.

A. F. Bott and Co.'s claim in connection with Boxer Rising. Knapp, Fisher and Sons' views.

I HAVE the honour to state, by direction of the Marquess of Lansdowne, that, on the receipt of your opinion of the 3rd instant (Paper A), Messrs. Knapp, Fisher and Sons were informed (Paper B) that his Lordship could not intervene in the matter of the disallowance by the British Claims Commissioner of a part of Messrs. A. F. Bott and Co.'s claim on account of losses incurred owing to the disturbances in North China in 1900.

Messrs. Knapp, Fisher and Sons have replied (Paper C), inquiring the grounds on which this decision has been arrived at, and whether it is suggested that Mr. Cripps' opinion (Paper D), that the rules laid down in Hadley *v.* Baxendale, are not applicable to the case, and that the claim is one which should have been allowed, is wrong in law.

They repeat, in a further letter (Paper E), that if there is any doubt as to the opinion given by Mr. Cripps, they would be glad to know the reasons for such doubt, and state that they are prepared to have that opinion submitted to the Law Officers of the Crown.

I am to request that you will take these papers into your consideration, and that you will favour Lord Lansdowne with your opinion as to the answer which should be returned to Messrs. Knapp, Fisher and Sons.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Law Officers' Report	June 3, 1902.
(B.)	To Messrs. Knapp, Fisher and Sons	June 16, „
(C.)	Messrs. Knapp, Fisher and Sons	June 17, „
(D.)	„ „ „	December 5, 1901.
(E.)	„ „ „	June 18, 1902.

Report.

We have nothing to add to our previous report in this matter. If it is considered advisable to do so, we see no objection to the reasons stated in our opinion being communicated to Messrs. Knapp, Fisher and Sons.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 3, 1902.

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COLOMBIA.

No. 20.

[March 19, 1902.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 18, 1902.

Gentlemen,

Liability as to fitting out of "Ban Righ" for use against Venezuela.

I HAVE the honour to transmit to you herewith, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list which relate to the case of the steam-ship "Ban Righ."

The facts of this case briefly stated are as follows:—

In consequence of information having been furnished to the Commissioners of Customs and the Lords Commissioners of the Admiralty that a steamer named the "Ban Righ" was being fitted out in the Thames apparently for warlike purposes, The Lords Commissioners of the Admiralty gave orders on the 9th November last that the vessel should be detained, and she was detained accordingly by the Commissioners of Customs, as it was considered that there was a *primâ facie* case for the detention of the vessel pending satisfactory explanations, on the ground that there was reasonable cause to suspect a breach of "The Foreign Enlistment Act, 1870" (Papers A, B, and C).

On the 14th November the Customs communicated to this Department a letter (Paper D) from the Consul-General for Colombia in London stating that the "Ban Righ" was "for the Colombian Government, and consigned to Colon;" and on the same day the Board of Admiralty informed the Foreign Office that, as the further steps to be taken in the matter must be determined by such facts as might be known to the Foreign Office, and by considerations of general policy, they trusted that the future conduct of the case would be undertaken by this Department (Paper E).

The matter was then informally referred to His Majesty's Attorney-General, who was of opinion that the vessel might be permitted to sail, provided assurances were obtained—

1. From the Colombian Minister at the Court that the vessel had actually been purchased by the Colombian Government.

2. From the Governments of Colombia and Venezuela respectively that each Government held that no state of war existed between the two Republics.

Lord Lansdowne consequently addressed a formal inquiry to the Colombian Minister on the first point, and received a note in reply stating, on the authority of an Agent of his Government who had just arrived in London, that the vessel was intended for the service of the Colombian Government, and requesting that she might be permitted to depart. He added that he was informed by the then registered owner (M. Rudolph de Paula), that his Agreement contemplated the delivery of the vessel at Colon, that she would sail under the British flag and under his ownership until the contract should be completed (Papers F and G).

With regard to the second point, telegraphic instructions were addressed to His Majesty's Ministers at Carácas and Bogotà (Paper H), from whom replies were received, in the case of the former, to the effect that no state of war existed between Venezuela and Colombia, and in that of the latter, that the Colombian Government did not consider that a state of war existed with Venezuela (Papers I and J).

On receipt from Carácas of the explicit reply above recorded, as it was known that communications with Bogotà were much retarded, and as the views of Venezuela, the country exposed to injury by the contemplated proceedings of the "Ban Righ," were deemed to be of chief importance, it was decided to inform the Customs, and they were informed (Paper K) that the vessel might be released, and she accordingly was released on the 22nd November (Paper L).

Subsequent intelligence was received from His Majesty's Consul-General at Antwerp, and from the British Vice-Consul at Flushing (Papers M and N), to the effect that the "Ban Righ" had proceeded direct to Antwerp, where she took in a

large supply of arms, ammunition and coal, and sailed out of the Scheldt on the 30th November bound, according to the master's statement, for the West Indies.

No information to which reliance can be attached is available as to the movements of the "Ban Righ" after she left European waters; but a telegram was received from His Majesty's Minister at Carácas on the 1st instant reporting that she was stated to be at Martinique, and that the Venezuelan Government had issued a Proclamation declaring her to be a pirate, and purporting to authorize any public ship or any private ship bearing Venezuelan letters of marque to capture her, and had offered the vessel and her cargo as a prize to the captor, together with a reward of 2,000*l.* (Paper O). From information subsequently received from His Majesty's Minister, and from the Commander-in-Chief on the North America and West Indies Station, it appears probable that this action on the part of the Venezuelan Government was based on a suspicion or conviction that the "Ban Righ" was intended to be used against them by one of the parties now in a state of rebellion against the *de jure* Government of the Republic under General Castro's Presidency, and was about to land arms, and possibly men, on some point of the Venezuelan coast (Papers P, Q, and R). His Majesty's Consul at Martinique, who was requested to telegraph information relative to the proceedings of the vessel during her stay at that island and her subsequent movements, reported that she had cleared under the British flag for Colon. The master and three British subjects were on board, the rest of the crew having returned to Southampton on the 2nd instant (Papers T and U).

The register of the "Ban Righ," a copy of which (Paper V) has been obtained through the Board of Trade, shows that the vessel was built at Govan in 1870, was registered at Aberdeen in 1888, was bought by Mr. Rudolph de Paula on the 26th October, 1901, and registered in his name as sole owner on the 29th of that month. It has further been ascertained, by inquiry at the Home Office, that M. R de Paula is a Prussian by birth, and became a naturalized British subject in 1876. The "Ban Righ" has not, so far as His Majesty's Government are aware, been handed over either to the Colombian Government or to any private Colombian citizen, nor is there any evidence to show that she has ceased to be on the British Register and entitled to fly the British flag. She was last seen, according to a recent telegram from His Majesty's Minister at Carácas, some 450 miles off the coast of Venezuela, and was stated to have been engaged in smuggling arms, but under what flag was not known (Papers R and S).

A further and separate reference will ultimately be made to you as to whether proceedings should be instituted against the registered owner, or any other persons, for an infraction of the provisions of "The Foreign Enlistment Act, 1870." The scope of the present reference is confined to the consideration of the immediate aspects of the case, and of the action which may be necessary for dealing with it. With this object, I am directed to invite your special attention to the following points:—

It has been suggested that the "Ban Righ" (which, according to the public prints, has been renamed the "Libertador") may probably commit depredations on the coasts of Venezuela while still under the British flag. His Majesty's ship "Tribune" is now at La Guaira, and the Lords Commissioners of the Admiralty have been requested by the Captain to furnish him, by telegraph, with instructions as to what action, if any, should be taken in the event of the "Ban Righ" being attacked by Venezuelan vessels of war (Paper W)—(α) on the high seas; or, (β) in the territorial waters of Venezuela. The Captain has been given temporary instructions to the effect that no protection is to be given to the "Ban Righ" either inside or outside Venezuelan waters, but that British life and property should be protected if disturbances arise; and that further instructions will be sent if found necessary (Paper X).

It seems clear that, in these circumstances, a British man-of-war would have no legal justification for proceeding into Venezuelan territorial waters for the purpose of capturing or restraining the "Ban Righ" (even if she were otherwise justified in so doing) except at the invitation or on the appeal of the Venezuelan Government.

But the further questions arise—

1. Whether, if such an appeal be made, it is either justifiable or desirable that the "Tribune" should accede to it.

2. Whether, in the event of depredations being committed by the "Ban Righ" while she is still under the British flag, any liability on the part of His Majesty's Government to compensate persons injured thereby would arise.

3. If a British man-of-war should fall in with the "Ban Righ" sailing under the British flag on the high seas, after she had committed acts of violence within

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the territory of Venezuela, or if, in such circumstances, she should visit, for the purpose of revictualling or otherwise, a British Colonial port—what action, if any, is desirable.

Search has been made in the archives of this Office for precedents which might be of assistance in dealing with these questions, but none precisely in point have been discovered.

The Admiralty have also been requested to furnish details as to any cases which appear to be relevant, but they have hitherto not been able to supply further information on the subject.

I am to request that you will take these papers into your consideration and favour Lord Lansdowne with your opinion on the questions submitted in this letter, and with any observations of a more general nature which you may be disposed to offer on the matter.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Customs		November 8, 1901.
(B.)	Admiralty		„ 9, „
(C.)	„		„ 12, „
(D.)	Customs		„ 14, „
(E.)	Admiralty		„ 14, „
(F.)	To Señor Ponce		„ 15, „
(G.)	Señor Ponce		„ 15, „
(H.)	To Messrs. Haggard and Welby	(Telegraphic)	„ 15, „
(I.)	Mr. Haggard	(Telegraphic)	„ 21, „
(J.)	Mr. Welby	(Telegraphic)	„ 23, „
(K.)	To Customs		„ 21, „
(L.)	Customs		„ 22, „
(M.)	Consul-General Perry	(No. 22)	„ 28, „
(N.)	Mr. Leveson Gower	(Telegraphic)	„ 30, „
(O.)	Mr. Haggard	(No. 14. Telegraphic)	January 1, 1902.
(P.)	„ „	(No. 178. Confidential)	November 26, 1901.
(Q.)	Admiralty		January 9, 1902.
(R.)	Mr. Haggard	(No. 1. Telegraphic)	„ 12, „
(S.)	„ „	(No. 2. Telegraphic)	„ 12, „
(T.)	To Consul Japp	(Telegraphic)	„ 10, „
(U.)	Consul Japp	(Telegraphic)	„ 11, „
(V.)	Register of "Ban Righ."		
(W.)	Admiralty		„ 10, „
(X.)	Admiralty to British Naval Officer, La Guaira		„ 11, „

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, February 8, 1902.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, further papers, as noted in the accompanying list, which I am to request you will take into your consideration in connection with my letter of the 18th ultimo, relative to the case of the steam-ship "Ban Righ."

From the telegrams which have been received, subsequent to the information already supplied to you, it will be perceived (Paper A) that the steam-ship "Libertador," formerly the "Ban Righ," flying the British merchant flag, has visited Savanilla, having on board the Venezuelan Insurgent leader, General Matos, who declares himself the owner of the vessel.

In these circumstances Mr. Hudson, the Acting British Consul at Panamá, has inquired (Paper D) whether a protest should be made to the master of the "Ban Righ" against the use of the British flag, and whether the local authorities at Savanilla should be informed officially that the "Libertador" is not a British vessel, in order to avoid responsibility, in the event of complications between Venezuela and Colombia, arising out of an abuse of the British flag.

There being, however, no information to show that the steamer has changed hands or ceased to be a British vessel, Mr. Hudson has been instructed (Paper E) to endeavour to ascertain—

1. Whether she has been purchased by General Matos or any one else; if so, by whom, when, and where, and if transferred by bill of sale? and

2. Whether she is under charter to General Matos or any one else, and if so, what are the terms of charter?

Mr. Hudson reports (Paper F) that His Majesty's ship "Psyche" has proceeded to Savanilla for the purpose of investigating the matter, and the result will be duly communicated to you.

I am at the same time to transmit to you a letter from the Colonial Office (Paper G) inclosing copies of correspondence from the Governor of Trinidad on the subject of the "Ban Righ." His Excellency inquires what action should be taken in the event of that vessel arriving in the Colony.

This being one of the questions raised in my previous letter, Lord Lansdowne awaits your reply thereto before returning an answer to the Secretary of State for the Colonies on this point.

Mr. Chamberlain has, in the meantime, been informed of the inquiries which have been addressed to the Acting Consul at Panamá, and a copy of your Report, when received, will be forwarded to the Colonial Office for his confidential information.

I have, &c.
(Signed) F. H. VILLIERS.

P.S.—Since the above letter was written, the accompanying telegram (Paper H) has been received from the Acting Consul at Panamá.

A further telegram, copy of which is also inclosed (Paper I), has since been sent to Panamá, and a copy of the reply will be communicated to you as soon as it is received.

F. H. V.

List of Papers.

(A.)	Telegram from Acting British Consul, Panamá	January 27, 1902.
(B.)	„ „ „ „	„ 27, „
(C.)	„ to „ „ „	„ 29, „
(D.)	„ from „ „ „	„ 30, „
(E.)	„ to „ „ „	February 1, „
(F.)	„ from „ „ „	„ 3, „
(G.)	Colonial Office	January 31, „
(H.)	Telegram from Acting British Consul, Panamá	February 7, „
(I.)	„ to „ „ „	„ 8, „

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, March 6, 1902.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, further papers,* which I am to request that you will take into consideration with those already before you, relative to the proceedings of the steam-ship "Ban Righ."

You will observe from the last paragraph of the Colonial Office letter of the 5th March, that the contingency of the vessel's arriving in British waters may now arise at any moment, and I am therefore to request that you will be good enough to favour Lord Lansdowne with your opinion on the various points involved at your earliest possible convenience.

I have, &c.
(Signed) F. H. VILLIERS.

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* Colonial Office, March 5, 1902. Mr. Haggard, No. 13, Telegraphic, March 5, 1902.

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List of Papers submitted separately.

Telegram from Acting British Consul, Panamá	February	11, 1902.
Board of Trade	"	11, "
" "	"	14, "
Mr. Haggard, No. 10	January	24, "
" " No. 12	"	25, "
Acting British Consul, Panamá, No. 2, Political	February	3, "
Admiralty	"	18, "
Colonial Office	"	19, "
Telegram to Mr. Haggard, No. 12	March	6, "
Telegram from Mr. Haggard, No. 15	"	9, "
Colonial Office	"	11, "
" "	"	12, "
Telegram from Mr. Haggard, No. 16	"	11, "
Mr. Haggard, No. 26	February	18, "
Telegram from Mr. Haggard, No. 20	March	14, "

Report.

We have delayed answering your letter as additional instructions have from time to time been sent to us until within the last few days. The information received in the last batch of documents puts an entirely new aspect on the case. It now appears that the "Pan Righ," under the name of the "Bolivar" is flying the Colombian national flag, and is ostensibly at least a Colombian man-of-war. Under these circumstances His Majesty's Government ought not to direct any action against this vessel even if the Venezuelan Government request that such action should be taken. If she is a Colombian public vessel any such action would be an act of war against Colombia.

There is no liability on the part of His Majesty's Government for any depredation committed by this vessel. The circumstances under which she was permitted to leave this country are such that no charge of negligence can properly be put forward by the Venezuelan Government against His Majesty's Government; and any use which has been made of the British flag since her arrival at Martinique, and the transfer there effected, has been merely a wrongful act for which His Majesty's Government is not responsible. The use of the British flag would render the vessel liable to seizure, but as she is now stated to be a Colombian public vessel no attempt should be made to enforce this liability.

It would appear that this vessel is carrying on hostile operations against the Venezuelan Government. Under these circumstances she ought not to be allowed to coal, or in any way fit out, in British ports, or in any way to use any British port as a base for her operations. If a state of formal war existed between Venezuela and Colombia, a Colombian man-of-war would be allowed to coal at a British port only for the purpose of proceeding home,* and would not be allowed to coal repeatedly except after adequate intervals. The fact that, although no formal war exists, she is engaged in hostilities of an irregular description seems to us to be sufficient ground for excluding her from British ports altogether unless she were in actual distress. His Majesty's Government cannot permit the British Colonies to be made a base for operations of this description.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
March 19, 1902.

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* *i.e.*, to the nearest port of her own nation.—W. E. D.

EGYPT.

No. 21.

[December 16, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, November* 17, 1902.

Customs arrangements between Egypt and Persia: Bearing of Turkish Treaties on.

I HAVE the honour to transmit, by direction of the Marquess of Lansdowne, the accompanying papers relating to Customs arrangements between Egypt and Persia.

It will be seen that your predecessors were consulted in 1890 in regard to the position in which Egypt was placed by the termination of all hitherto existing Commercial Treaties between the Porte and certain foreign Powers, and that, with the concurrence of the then Law Officers, a despatch was addressed to His Majesty's Agency at Cairo, Paper (C), stating the views of His Majesty's Government as to the position of Egypt in regard to commercial arrangements with foreign Powers.

I am to draw your particular attention to the following passages in that despatch:—

"In the view of Her Majesty's Government, the result of the Firmans from which I have quoted is that Egypt acquired by them commercial liberty so far as the Porte could grant it. The Sultan could not, by arrangement with a vassal, abolish the rights of foreign States under Treaties then existing, but by the Firman of 1873 His Majesty divested himself of any right in the future to conclude commercial arrangements for Egypt, and only stipulated that the commercial arrangements to be made by the Khedive with foreign Powers should not affect the Sultan's political rights.

"Foreign Powers not having made protest against the Firmans should, in the opinion of His Majesty's Government, be held to have accepted their effect on their own position whenever their then existing Treaty rights should lapse, and no foreign Power has ground for setting up as against Egypt the stipulations in commercial matters of a Treaty with the Porte of a date subsequent to the Firman of 1873."

* * * * * *

"No Power can claim the application in Egypt of a Tariff agreed upon since 1873 between such Power and the Porte. Such Tariff might be accepted by agreement between any Power and the Egyptian Government, but it would then come into force as a Commercial Convention made by Egypt, and the right to claim the benefit of stipulations contained in other Commercial Conventions made by Egypt would depend upon the terms of the Agreement itself."

It appears to Lord Lansdowne, to follow from the principle thus laid down, that it is not in the power of the Turkish Government, in conjunction with another Power having Treaties with Turkey of earlier date than 1873, to enter into any arrangement, whether revising, adding to, prolonging, or abrogating them, which could in any way affect the Treaty relations between that other Power and Egypt.

The commercial relations between Turkey and Persia before the issue of the Firman of 1873, were governed principally by the Treaties of Erzeroum of 1823 and 1847, and by an Arrangement of 1870,* which fixed the import duties of each country on the goods of the other at 6 per cent.

Persia now wishes to increase her revenue by raising her customs duties. She has on the one hand the above arrangement with Turkey, on the other hand she is bound towards Russia by the Treaty of Commerce, signed at Turkmanchai in 1828, providing for the levy of an import duty not exceeding 5 per cent. on Russian goods imported into Persia.

The latter country has negotiated a new Tariff with Russia which, as in some classes the rate is higher than 6 per cent., she cannot enforce without the consent of Turkey, Turkey having a Commercial Agreement with Persia, in which that rate of duty is stipulated.

She has accordingly concluded with Turkey a new arrangement, Paper (D),

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* The actual wording of this Arrangement is contained in Lord Cromer's despatch No. 91, Commercial, of October 24, 1902.

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which, as she believes (though there is doubt on the point), releases her from her Tariff obligations towards Turkey, so far as any specific rate is concerned. If this belief is correct, the question arises whether she is also relieved of her engagements towards Egypt in this respect.

The proposed Russo-Persian Tariff is in some respects unfavourable to British, and especially Indian, trade, and British goods imported into Persia will be subject to the rates specified in that Tariff—this country having only a most-favoured-nation arrangement with Persia—unless His Majesty's Government are able to claim that the former Treaties between Turkey and Persia are still in force as regards Egypt.

Persia cannot plead ignorance of the position created by the Firman of 1873, for discussions on the subject took place in the years 1887 and 1894 when she signed with Egypt two separate Conventions regarding tobacco, the first for ten years; the second, which replaced it, for twenty-two years. It appears to Lord Lansdowne that, by entering into these arrangements, she admitted that Egypt was a separate country for customs purposes.

When Venezuela broke off her connection with the United States of Colombia she was still held bound by the Treaty of Commerce with the United Kingdom, concluded by the parent State; and the United Kingdom, the other party to the bargain, continued to incur, as regards Venezuela, the responsibilities as well as to enjoy the rights involved in the mutual undertaking.

Similarly, it would seem that Egypt is bound by the old Turkish Treaties, and that Persia is also bound by them as regards both Egypt and the Porte.

It may be argued that, though Egypt continued to be subject to the old Treaties between Turkey and Persia, Persia on her side may at any time repudiate them, as regards Egypt, on the ground that her original contracts were with a single State, that it is an intolerable inconvenience to her, amounting to a complete change in the condition of those contracts, to have to deal with two separate States instead of one; and that she is entitled to maintain that her contracts were with Turkey, and that she can recognize no other party to them. The answer to this contention seems to be that it was open to Persia to make a declaration to that effect when the Firman was first brought to her notice, and to have maintained that position by steadily declining to negotiate with Egypt, but that it is not competent for her to revert to an attitude of protest after concluding separate Conventions with Egypt in regard to tobacco.

I am to draw your attention to the Memorandum (Paper T) relating to the action taken by Egypt, on her own account and without reference to the Sultan, to terminate the Turkish Treaty of Commerce with Great Britain of 1861 and similar Treaties with other foreign Powers. These Treaties were limited in their duration, that is to say, they ran for successive terms of seven years; option being reserved to either party to terminate their Treaty at the end of the first or any other period by giving one year's notice. Negotiations subsequently took place between this country and Egypt, and they resulted in a Commercial Convention signed on the 3rd March, 1884, which, however, by common agreement, will not come into operation until all the other Powers have concluded similar arrangements.

The old Treaties between Turkey and Persia are not limited as to time and are essentially reciprocal engagements, and it is difficult to see how one party can remain bound under such an arrangement and the other can be free.

If the view that the position of Egypt and Persia towards one another under the old Treaties cannot be affected by any arrangement between Turkey and Persia subsequent to the Firman of 1873 be sound, then Egypt will apparently be entitled to the continuance for her goods of the existing Persian Tariff, and His Majesty's Government, under the most-favoured-nation stipulation in the Treaty between this country and Persia of 1857, will be able to insist on receiving the same treatment.

I am to request that you will favour Lord Lansdowne with your opinion as to whether this view be correct, and I am to add that his Lordship would also be glad if you would at the same time favour him with any observations of a general nature which you may have to offer on the subject.

As the matter is somewhat urgent, he will be much obliged if you will give it your attention at the earliest convenient moment.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.)	Law Officers' Report		June	11, 1890.
(B.)	Ditto		July	22, „
(C.)	Lord Salisbury to Mr. Portal		July	29, „
(D.)	Arrangement between Persia and Turkey, September 5, 1902. (In Sir N. O'Conor's No. 145, Commercial, September 19.)			
(E.)	Memorandum on Tombac Convention by Mr. Ball		October	22, 1902.
(F.)	Memorandum on position of Egypt as regards Turkish Commercial Treaties by Mr. Ball		October	13, „
(G.)	To Lord Cromer	(No. 5. Commercial. Telegraphic)	October	8, „
(H.)	Lord Cromer ..	(No 13. Commercial. Telegraphic)	October	11, „
(I.)	To Lord Cromer	(No. 6 Commercial. Telegraphic)	October	16, „
(K.)	Ditto	(No. 7. Commercial. Telegraphic)	October	17, „
(L.)	Lord Cromer ..	(No. 15. Commercial. Telegraphic)	October	22, „
(M.)	Ditto ..	(No. 16. Commercial. Telegraphic)	October	22, „
(N.)	To Lord Cromer	(No. 8. Commercial. Telegraphic)	October	22, „
(O.)	Ditto	(No. 9. Commercial. Telegraphic)	October	30, „
(P.)	Lord Cromer ..	(No. 17. Commercial. Telegraphic)	October	31, „
(Q.)	To Lord Cromer	(No. 10. Commercial. Telegraphic)	October	31, „
(R.)	Lord Cromer ..	(No. 18. Commercial. Telegraphic)	November	4, „
(S.)	Ditto ..	(No. 19. Commercial. Telegraphic)	November	6, „
(T.)	Memorandum by Mr. de Bernhardt		November	10, „
(V.)	Lord Cromer	(No. 97. Commercial)	November	6, „
(W.)	Treaty between Turkey and Persia	("State Papers," Vol. 11, p 836)	July	28, 1823.
(X.)	Ditto	(Ditto, Vol. 45, p. 874)	May	31, 1847.
(Y.)	Convention between Turkey and Persia	(Ditto, Vol. 67, p. 542)	December	20, 1875.

Attorney-General's Opinion.

1. I am of opinion that after the Firmans of 1867, 1873, and 1879 Turkey could not, in the case of a Power which, like Persia, had recognized and acted upon these Firmans, put an end so far as Egypt is concerned to an anterior Treaty as to commercial relations. To abrogate a Treaty requires a new Treaty or Convention, which *ex hypothesi* must affect commercial relations, and Turkey by these Firmans renounced the right of entering into any such Treaty or Convention in relation to Egypt.

2. But further, the note of the 5th September, 1902, stipulates for most-favoured-nation treatment. This is clearly a new Convention as to commercial relations, which Turkey could not enter into on behalf of Egypt, and which neither Turkey nor Persia could in face of the Firmans have intended to apply to Egypt. The ancillary stipulation annulling all previous dispositions inconsistent with the new arrangement cannot, I think, be fairly read as applying to Egypt, to which the main arrangement for most-favoured-nation treatment did not and could not apply, whatever effect the exclusion of Egypt might have upon the most-favoured-nation arrangement between Turkey and Persia.

I, therefore, think that the Tariff provided by the anterior Treaties is still in force as regards Egypt.

(Signed) R. B. FINLAY.

Solicitor-General's Opinion.

In my opinion, the granting of the Firmans of 1867, 1873, and 1879 by the Porte did not affect the existing Treaty with Persia, and although after the Firmans it would have been impossible for the Porte to impose a new Treaty affecting commercial relations upon Egypt, I am of opinion that the right of Persia to terminate the existing Treaty by agreement with Turkey still existed, as the Parties to the Treaty were not changed by the granting of the Firmans and the notice thereof given to Persia. I think to hold otherwise would be to place Persia, through no act of her own, in the position of not being able to terminate the Treaty without the consent of a party with whom Persia had never contracted. I am inclined to agree that the note of the 5th September, 1902, might be construed in strictness as only altering the Tariffs between Persia and Turkey and still leaving the Treaty in operation in all other respects, including the Tariffs as then applicable to Egypt, but I think that cannot

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have been the intention of Turkey and Persia as the result of conceding a most-favoured-nation clause would be to set up again as between these countries the Tariffs applicable to Egypt, which was the very thing they were attempting to get rid of.

I am therefore of opinion that the effect of the Arrangement of the 5th September, 1902, was to put an end to the existing Treaties so far as Tariffs were concerned as well for Egypt and Turkey, and that after this Arrangement Egypt was free to enter into such a Commercial Treaty with Persia as might be agreed upon.

(Signed) EDWARD CARSON.

Royal Courts of Justice,
December 16, 1902.

FRANCE.

No. 22.

[January 13, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, December 24, 1901.

Waima Arbitration: British Reply to French Answer.

WITH reference to your Report of the 7th ultimo I have the honour, by direction of the Marquess of Lansdowne, to transmit to you a copy (A) of the Mémoire on the subject of the collision at Waima which the French Government have submitted to the Arbitrator, together with the draft (B) of the reply of His Majesty's Government, which has been prepared under the terms of Article III of the Arbitration Convention of the 3rd April last.

I have the honour to request you to take the draft reply into your consideration, and to favour Lord Lansdowne with your opinion whether it adequately sets forth the arguments which can be advanced on behalf of His Majesty's Government in the matter.

His Lordship will at the same time be glad to be favoured with any further observations of a general nature which you may have to offer on the subject.

A copy (C) of the original British Case in regard to the collision at Waima, as also the papers (D) in the case which have already been before you, are annexed for convenience of reference.

Lord Lansdowne would be glad to be favoured with your reply to the present reference at as early a date as possible.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) French Waima Case.
(B.) Draft reply.
(C.) British Waima Case.
(D.) Papers previously submitted.

Report.

We approve of the draft reply (as initialled by us) of the British Government to the answer of the French Government. We see no necessity to add anything to it.

(Signed) R. B. FINLAY.
E. CARSON.

Royal Courts of Justice,
January 13, 1902.

Annex.

Reply of the British Government to the Answer of the French Government in connection with the Collision at Waima in 1893.

THE answer of the French Government, excluding the introduction and the conclusion, is divided into two chapters, of which the first is directed, as stated in the Introduction (p. 2), to answering certain statements ("diverses assertions") in the British Case, and the second to an estimate of the figure at which the indemnity should be fixed.

1. The first point made in the first chapter is that, at the moment when the collision took place, the adjustment of boundaries between the British and French territories in the region in question could not be considered as complete, and that the understanding recorded in M. Ribot's note of the 4th March, 1892, did no more than furnish the germ of a delimitation to follow ("le germe d'une délimitation ultérieure").

British Case, Appendix, pp. 59, 60.

It is submitted that this is not the effect of the language of the note in question. That note recorded a precise and definite understanding to the effect that, while to the north of Tembikunda the line of demarcation should be deflected so as to give to France possession of both banks of the Niger and its principal affluents, it should to the south of Tembikunda follow the 13th* meridian west of Paris. In fact, as the note itself shows, the very point which the understanding was designed to set at rest was whether the 15th meridian should be exactly followed or not. That meridian, moreover, is referred to as the Anglo-French frontier in Article II of the Franco-Liberian Arrangement of the 8th December, 1892, by which France abandoned to Liberia the country to the east of such meridian and south of the parallel of Tembikunda. This Arrangement was ratified on the 10th August, 1894.

In the French answer (p. 7) it appears to be suggested that the 13th meridian was not definitely agreed on as the boundary between the British and French possessions until the declarations exchanged between the Marquess of Dufferin and Ava and M. Hanotaux on the 22nd January, 1895. But it is clear, from the terms of the Arrangement with Liberia, that the French Government considered itself in a position to dispose of the country to the east of the 13th meridian by virtue of the understanding embodied in the note of the 4th March, 1892, and it follows that it must have considered the territory to the west of it as, in an equal degree, at the disposal of Great Britain.

It cannot but be assumed that if the scene of the collision had been to the east of the 13th meridian the Government of the Republic would have repudiated any responsibility; and it is, in fact, so stated in their answer now under reply (p. 11).

2. The next point made by the French answer is that the Government of the Republic were under no obligation to inform their officers of the arrangement embodied in M. Ribot's note, and, further, that, even had they done so, the collision, owing to the difficulty of ascertaining the longitude on the spot, might not have been prevented. His Majesty's Government submit that this is not an admissible argument.

The French officers in this territory were left by their Government under the impression that France possessed a liberty of action in these regions wider than was consistent with the observation of the terms of the note of the 4th March, 1892. In these circumstances, it is not to the purpose to contend that Lieutenant Maritz had not the means of knowing when he arrived at the 13th meridian. The point is that, even if he had known, he would not have paused. It is for the French Government to explain the presence of French troops outside the French sphere, and all that appears is that the one step which might have prevented it was not taken.

His Majesty's Government, further, do not admit that Lieutenant Maritz, had he been informed of the necessity for so doing, could not have formed a correct idea of his whereabouts. It is to be observed that Colonel Ellis, judging the situation by reference to the neighbouring rivers and to the hills which could be seen from Waima, was confident from the first that Waima was well within his sphere,† of the limits of which he was obviously informed. It is true, as stated in the French Case, that this was disputed after the collision, and that the point stood over for scientific verification. But Colonel Ellis' opinion was ultimately found to be correct. It must further be pointed out that Lieutenant Maritz came to Waima directly from Tembikunda; and he could hardly have failed to ascertain the compass bearing of that place from Waima, had he been aware of any circumstance that made it desirable to do so. Now, Tembikunda was known at that time to be west of the 13th meridian. It is so shown on M. Desbuissons' map appended to the French answer; and it is clear that in March 1892, the date of M. Ribot's note, it was assumed on all hands that a frontier following the 13th meridian would lie further to the east than one following the meridian of Tembikunda itself.

For the reasons above given His Majesty's Government submit that, had proper information been given him, Lieutenant Maritz would have been able to avoid carrying his forces beyond his own sphere, and that, as in that case no collision would have taken place, its occurrence cannot be regarded as a misadventure which could not have been avoided. That Lieutenant Maritz had no reason to anticipate that a British force was in the neighbourhood, and that the collision itself was the result of a pure mistake is not, and never has been, disputed by His Majesty's Government.

3. The last portion of the first chapter of the French answer deals with the incidents of the conflict itself. His Majesty's Government do not consider that these have any importance, either as increasing or decreasing the responsibility of the French Government. When once the French

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* In the Appendix to the British Case, pp. 19 and 59, this is misprinted 12.

† See his telegram, British Case, pp. 21, 61; and his despatch, French Case, pp. 58, 62.

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troops moved to the attack on Waima the mischief was, in the view of His Majesty's Government, done. How the casualties occurred is not material. It is not suggested that either party continued the combat after the mistake had been discovered. It was not discovered on the British side until the first of the wounded was found. The British were the party attacked, and, necessarily, continued firing till the attack ceased. No complaint is made in the British Case of anything that occurred after the attack was once delivered. The only reference to the details of the conflict was with regard to the statement that it was a sentinel on the British side that fired the first shot; and it was submitted that, under the circumstances, that was immaterial.

The French answer deals at some length with a sentence in Colonel Ellis' telegram, in which he attributes the death of three British officers to Lieutenant Maritz personally. No reference whatever was made in the British Case to that surmise of Colonel Ellis. It was natural that Colonel Ellis, in reporting to his superior, should state what he believed had led to the disproportionate loss of officers in the conflict. The telegram had obviously to be printed in the British Appendix, and could only be printed in its entirety. But neither Colonel Ellis, in framing, nor His Majesty's Government in printing that telegram, should be suspected of desiring to throw any slur on Lieutenant Maritz. Imagining he was attacking Sofas, Lieutenant Maritz would be quite right (assuming he did so) in endeavouring to kill those whom he believed to be their leaders. So far as Colonel Ellis is concerned, it can hardly be denied that he acted with perfect chivalry towards Lieutenant Maritz on a somewhat trying occasion; and His Majesty's Government desire to be distinctly understood as making no complaint whatever with reference to the particular part, whatever it may have been, which the French Commander personally took in the conflict.

4. The second chapter of the French answer deals with the figure at which the compensation should be assessed. It is contended by the Government of the Republic that the Arbitrator ought merely to award such annual payment, or its capitalized value, as will reimburse to His Majesty's Government the expense incurred, and to be incurred, by them in the payment of such pensions, gratuities, or allowances as the rules of His Majesty's Service enjoin or permit. Nothing, according to the French contention, is payable for the benefit of the wounded, and nothing in respect of native soldiers killed. The further point is also made that, in respect of the death of Lieutenant Wroughton and two men of the Constabulary, no compensation ought to be awarded on the ground that (as Colonel Ellis thought) they fell in the confusion of the conflict by the hands of their comrades.

His Majesty's Government have read these contentions with some surprise. The payments made out of public funds in the case of casualties occurring among the forces of the Crown are partly exigible as matter of right and partly allowed as matter of bounty at the discretion, subject to strict limits, of the War Office authorities. In any case, they are estimated on the footing that the casualty has occurred in the ordinary course of duty, and that no grievance exists. His Majesty's Government are at a loss to understand on what principle such a scale is to be regarded as measuring the compensation due from those whose acts have produced the injury.

The Convention was not made with reference to the Regulations as to pensions and allowances obtaining in the British army. If the only object had been to ascertain the amount of the payments made by the British Government, in order that the burden of them might be assumed by the French Government, there would have been no need for arbitration. It was obviously proper to insert in the Appendix to the British Case the circumstances affecting the cases of the officers and men killed; but it was not anticipated that the French Government would seek to treat the pensions and allowances thus disclosed as the sole measure of their liability.

With regard to the contention that no compensation is to be made for the death of Lieutenant Wroughton and two men of the Constabulary, His Majesty's Government submit that this is not the fair effect of the Convention. Whether the bullets which killed them proceeded from British or from French rifles, it is clear that they were "victimes de l'affaire de Waima" within the meaning of Article I of the Convention.

It is urged in the French Case that the British Government is not itself entitled to compensation in respect of the conflict at Waima. In answer to this His Majesty's Government say that none is claimed on their behalf. What is claimed is a lump sum, such as the Arbitrator shall think reasonable, for the casualties, fatal or otherwise, which occurred on the British side under the circumstances which are now before the Arbitrator. His Majesty's Government will distribute the fund among the sufferers and their families.

(Initialled) R. B. F.
E. C.

No. 23.

[February 13, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, December 25, 1901.

Holt and Co. in French Congo. Judgment of Libreville Court.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers mentioned in the inclosed list, which relate to the complaints made by British firms trading in the French Colony of the Congo.

It does not appear necessary to trouble you with a repetition of the facts of this case, as they were fully stated in my letter of the 19th February last, which will be found among the inclosed papers (Paper 56).

The several papers mentioned in that letter have been retained in the same numerical series for greater facility of reference.

You reported on the 22nd May last (Report of that date, Paper 66) that you could not see any ground of legal right for representations to the French Government as regarded territory outside of the free-trade zone, though Messrs. Holt and Co. had no doubt been very hardly treated. Any representation on their behalf in this respect could, you stated, be based only on the moral claim to equitable consideration which their past dealings might be considered to have established.

Messrs Holt and Co.'s letter of the 4th instant (Paper 111) inclosed a copy of an important Judgment delivered by the Court of Appeal at Libreville in a suit between Messrs. Holt and Co. and the "Société Commerciale, Industrielle, et Agricole du Haut-Ogowé," one of the Companies to which a Concession of a usual type has been granted. The land, the subject of the Company's Concession, is situated outside of the Conventional Basin of the Congo, to which alone the provisions of the Berlin Act apply. The 15th paragraph of the Judgment (marked with a "X" in the margin) appears to be of especial importance, as the Court seems to suggest that the firm has an equitable claim on the French Government, although it has none in law.

The Judgment of the Court of First Instance in the suit under consideration will be found in Messrs. Holt and Co.'s letter of the 21st June, 1899 (Paper 4).

I have the honour to request you to take the inclosed papers into your consideration, and to favour Lord Lansdowne with your opinion whether the Judgment of the Court of Appeal furnishes material for any further or more pressing representation to the French Government in the matter of the rights of British trading firms in territories outside the Conventional Basin of the Congo than were suggested in your Report of the 22nd May last (Paper 66).

And, generally, with any observations which will, in your opinion, be of assistance to his Lordship in dealing with this case.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Nos.				
1 to 55.	Papers previously submitted.			
56.	To Law Officers		February	19, 1901.
57.	"Liverpool Courier"		April	16, "
58.	Holt and Co.		April	23, "
59.	Ditto		April	23, "
60.	To Holt and Co.		April	28, "
61.	Holt and Co.		April	30, "
62.	To Law Officers		May	3, "
63.	To Holt and Co.		May	4, "
64.	To ditto		May	4, "
65.	To Law Officers		May	4, "
66.	Law Officers		May	22, "
67.	Nil.			
68.	To Sir E. Monson	(No. 73)	June	13, "
69.	To ditto	(No. 74)	June	13, "
70.	Holt and Co.		June	15, "
71.	Sir E. Monson	(No 50)	June	22, "
72.	Ditto	(No. 51)	June	22, "
73.	Holt and Co.		July	12, "
74.	Holt and Co. to Mr. Farnall		July	12, "
75.	Ditto		July	17, "

Nos.			July 29, 1901.
76.	To Holt and Co.		July 29, „
77.	To ditto	(No. 79)	August 6, „
78.	Sir E. Monson	(No. 84)	August 22, „
79.	Ditto		August 31, „
80.	Holt and Co.		September 2, „
81.	To ditto		September 7, „
82.	Aborigines Protection Society	(No. 131)	September 11, „
83.	To Sir E. Monson	(No. 133)	September 12, „
84.	To ditto	(No. 95)	September 13, „
85.	Sir E. Monson		September 16, „
86.	To Holt and Co.	(No. 101)	September 25, „
87.	Sir E. Monson		October 1, „
88	Liverpool Chamber of Commerce		October 3, „
89.	Holt and Co.		October 11, „
90.	Ditto		October 14, „
91.	Ditto		October 14, „
92.	To Liverpool Chamber of Commerce	(No. 160)	October 23, „
93.	To Sir E. Monson		
94.	Nil.		
95.	Nil.		
96.	Nil.		October 24, „
97.	To Holt and Co.		October 24, „
98.	From ditto	(No. 117)	October 29, „
99.	Sir E. Monson		October 30, „
100.	Holt and Co.		October 30, „
101.	Ditto	(No. 119)	November 1, „
102.	Sir E. Monson	(No. 172)	November 8, „
103.	To ditto		November 11, „
104.	To Holt and Co.		November 11, „
105	Memorandum (Mr. Farnall)		November 14, „
106.	Memorandum (Sir M. Gosselin)		November 19, „
107.	Liverpool Chamber of Commerce		November 25, „
108.	To ditto	(No. 184)	November 26, „
109.	To Sir E. Monson	(No. 130)	November 28, „
110.	Sir E. Monson		December 4, „
111.	Holt and Co.	(No. 134)	December 5, „
112.	Sir E. Monson		December 6, „
113.	Extract, "Journal of Commerce"		December 7, „
114.	Ditto	(No. 193)	December 11, „
115.	To Sir E. Monson	(No. 139)	December 13, „
116.	Sir E. Monson	(No. 206)	December 20, „
117.	To ditto	(No. 210)	December 24, „
118.	To ditto		December 24, „
119.	To Holt and Co.		

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, January 16, 1902.

WITH reference to my letter of the 25th ultimo, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you a letter from Messrs. Holt and Co.,* inclosing the text of the Judgment delivered by the Libreville Appeal Court on the 27th November, 1901, in an action brought by the firm in question against the Compagnie Française du Congo Occidental for having seized rubber belonging to the firm.

This Judgment, unlike that which was delivered by the same Court on the 27th October, 1901, in a suit between Messrs. Holt and the Société du Haut Ogowe, which is now under your consideration, deals with incidents arising admittedly within the Congo free-trade zone, and it discusses at length the two questions: (1) "whether the rights of third parties can be exercised adversely to the rights of the concessionnaires," and (2) "whether the terms of the Decree of the 26th May, 1899" (*i.e.*, the Decree according the Company its Concession) "are irreconcilable with the provisions of the Berlin General Act."

On the first point, the Court holds that the fact of Messrs. Holt having traded in rubber with the natives during the past twenty years does not confer upon them any "droits acquis" within the meaning of Article 1 of the Decree of Concession and Article 2 of the "Cahier des Charges," entitling them to continue such trade for an indefinite time.

On the second point, the Court holds that the exclusive right of "exploitation" given to the Company does not constitute a commercial monopoly such as is contemplated by Article V of the Berlin Act. The right to collect the rubber through the instrumentality of the natives is not, the Judgment says, a commercial privilege: for the rubber is the property of the Company, having been ceded to it by the State, which had the right of reserving such property to itself, and the collection of the rubber through the instrumentality of the natives is, therefore, not a "commercial transaction." No commercial transaction, in fact, takes place until the Company eventually exchanges the rubber in the way of trade.

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* Messrs. Holt, January 7, 1902.

On these grounds the Court decides that the rubber seized is the property of the concessionnaire Company, and orders that it shall be handed over to the Company on their paying Messrs. Holt the amount of remuneration ordinarily given to the natives for collecting it.

The Court forbids Messrs. Holt for the future to gather, or cause to be gathered, any of the natural products of the land included in the Concession, and orders them to pay all the costs of the action.

I am to request you to take Messrs. Holt's letter into your consideration in connection with the papers already before you on the subject of their treatment by the authorities of the French Congo, and to favour Lord Lansdowne with your opinion whether there is anything in the copy of the Judgment of the Libreville Appeal Court which can properly form the subject of representation to the French Government.

Lord Lansdowne would also be glad to be furnished with any observations of a general nature which you may have to offer on the case.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

1. In reply to your Lordship's letter of the 25th December, 1901, we do not think we can add anything to our Report of the 22nd May, 1901. The Judgment of the Court of Appeal at Libreville of the 24th October, 1901, is, so far as the legal questions are concerned, in accordance with the opinion we expressed in that Report.

We think a further representation might be made to the French Government urging the claim of Messrs. Holt to equitable consideration in respect of the hardship upon them. The Judgment itself seems to indicate this as the proper course.

2. In reply to your Lordship's letter of the 16th January: that we see no reason to modify our opinion of the 22nd May, 1901, as regards territories within the free-trade zone.

We think that the effect of the Judgment of the same Court of Appeal of the 27th November, 1901, should be brought to the notice of the French Government, and that the representation should be pressed that the result is to deprive, in contravention of the Act of Berlin, Messrs. Holt of rights of trading.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 13, 1902.

No. 24.

[February 14, 1902.]

Foreign Office to Law Officers of the Crown.

Gentlemen,

Foreign Office, October 22, 1901.

French fishing-boats at Seven Stones and in British ports.

I HAVE the honour to transmit herewith, by direction of the Marquess of Lansdowne, the accompanying papers, as marked in the accompanying list, relating to the right of French fishing-vessels to fish at the Seven Stones, a group of rocks lying between Scilly and the mainland, and described as being about 9 miles distant from the nearest land, and uncovered at low water only.

I am to request that you will favour his Lordship with your opinion as to—

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1. Whether the right of French fishing-boats to fish at the rocks above mentioned can be questioned;

2. Whether you concur in the opinion expressed by the Legal Advisers of the Board of Trade (see letter from that Department of the 23rd September), that the statutory power to enforce Article 86, amongst others, of the Regulations of 1843 has been expressly repealed by section 30 and Part I of the Second Schedule to the Sea Fisheries Act of 1883; and

3. Whether the annexed draft of a letter to Mr. Dorrien Smith meets with your concurrence.

His Lordship would also be glad to receive any other observations of a general nature which you may have to offer on the subject.

I have, &c.
(Signed) MARTIN GOSSELIN.

Report.

1. We are of opinion that French fishing-vessels have the right to fish at the Seven Stones.

2. French fishing-vessels cannot, in our opinion, be prevented from coming into British ports to sell their fish. The enactment preventing them was contained in Articles 85 and 86 of the Schedule to "The Sea Fisheries Act, 1843." Section 19 of "The Sea Fisheries Act, 1868," abolished all restrictions in England on the sale of sea fish, not being unfit for food.

Notwithstanding this enactment, the provisions of "The Sea Fisheries Act, 1843," were, so far as regards French fishermen, revived by section 15 of "The Fisheries (Oyster, Crab, and Lobster) Act, 1877," but this section 15 was repealed by section 30 and Schedule II of "The Sea Fisheries Act, 1883," so that the provisions of section 19 of "The Sea Fisheries Act, 1868," again became operative. Moreover, by section 30 and Schedule II of "The Sea Fisheries Act, 1883," so much of the Schedule to "The Sea Fisheries Act, 1843," as prohibits French fishing-boats from approaching the coast of the United Kingdom within the limit of 3 miles, and so much of the rest of the Act as relates to that portion of the Schedule, were repealed. We think that this repeal, when read by the light of section 24 of the same Act, extends to the last paragraph of Article 86 of the Schedule to "The Sea Fisheries Act, 1843," which is closely connected with Article 85, directly forbidding approach within the limit of 3 miles, and this paragraph is, we think, comprised under the general description of the repeal.

3. We approve the terms of the draft letter to Mr. Dorrien Smith.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 14, 1902.

List of Papers.

Fishery Convention with France		August 2, 1839.
Sea Fisheries Act of 1843 (6 and 7 Vic., c. 79).		
Law Officers to Colonial Office	(Jurisdiction in Pacific)	March 25, 1875,
North Sea Fisheries Convention	(Treaty, No. 727)	May 6, 1882.
Memorandum	(Mosquito Keys)	October 16, 1886.
Law Officers to Board of Trade	(Goodwin Sands)	June 7, 1888.
Board of Trade		August 9, 1901.
Ditto		September 6, ,,
To Board of Trade		September 16, ,,
To Admiralty		September 16, ,,
Board of Trade		September 23, ,,
To Board of Trade		September 28, ,,
Admiralty		October 7, ,,
Board of Trade		October 15, ,,
Draft reply to Mr. D. Smith.		

Annex.

Draft of Letter to Mr. Dorrien Smith.

Sir,

WITH reference to previous correspondence on the subject of French boats fishing off the Seven Stones Rocks, I am directed by the Board of Trade to state that they are unable to find that foreign boats are precluded from fishing at that locality.

I am to add that there is no power to prevent foreign boats visiting British ports in the intervals of fishing outside British jurisdiction.

I am, &c.

No. 25.

[April 7, 1902.]

M. Geoffray to the Marquess of Lansdowne.—(Received April 3.)

Ambassade de France en Angleterre,
Londres, le 1$^{\text{er}}$ *Avril*, 1902.

M. le Marquis,

Murderers of Captain Keyes: As to mode of trial.

POUR répondre au désir exprimé par votre Seigneurie à M. Cambon au cours de ses récents entretiens sur l'affaire des trois Français détenus à Jebba pour le meurtre d'un officier Anglais à Argoungou, je suis chargé de lui donner les indications suivantes sur la situation dans laquelle ils se trouveront placés aux yeux de l'Administration Française après qu'ils lui auront été restitués conformément à sa demande:—

Ces inculpés ayant été livrés aux autorités de la Nigeria par un fonctionnaire non qualifié et contrairement aux prescriptions de la Convention conclue à cet effet entre les deux pays, l'extradition doit être considérée comme nulle. Par voie de conséquence, cette annulation rend nul également l'ensemble de la procédure suivie contre les accusés en territoire Britannique et les condamnations prononcées contre eux. Dans ces conditions, si le Gouvernement Britannique veut bien déclarer que lui aussi considère comme nulles l'extradition et les condamnations qui s'en sont suivies, et maintenir la plainte qu'il a déposée contre eux pour le meurtre d'Argoungou, les nommés Bendart, Buret, et Desamblanc, tombant sous le coup de l'Article 5 du Code d'Instruction Criminelle Français comme accusés d'un crime commis hors du territoire et pour lequel ils n'auront pas encore été définitivement jugés, seront poursuivis de ce chef devant nos Tribunaux. L'affaire serait alors déférée à la juridiction compétente par le Ministère Public, et c'est dans ce sens que des instructions seraient données à M. le Gouverneur-Général de l'Afrique Occidentale Française.

J'ajoute que, dans le cas présent, la juridiction compétente sera la juridiction militaire, car les inculpés sont déserteurs de l'armée, et bien qu'ils soient appelés à bénéficier de la loi d'amnistie pour le fait de désertion, ils auront, dès leur rentrée sur le territoire Français, à être réintégrés au régiment pour compléter le temps de service qu'ils avaient à faire au moment où ils ont déserté.

En me chargeant de porter à la connaissance de votre Seigneurie les informations ci-dessus, mon Gouvernement m'exprime le désir d'être avisé le plus promptement possible de la décision qu'aura prise le Gouvernement de Sa Majesté. Il est tout disposé, pour sa part, et afin d'éviter les conséquences que pourrait avoir pour les accusés, en raison du climat local, la prolongation de leur détention à Jebba, à donner par câble toutes les instructions nécessaires aux autorités Françaises dans l'Afrique Occidentale.

Veuillez, &c.
(Signé) GEOFFRAY.

Opinion.[*]

We think that before these men are given up explicit assurances ought to be obtained from the French Government on two points:—

1. That these men will be tried by the French in West Africa at some place

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[*] Mr. Cox and I went to a conference with the Law Officers at the House of Commons on this matter this afternoon (the 7th April, 1902), when, after discussing the terms of M. Geoffray's note of the 1st April, the Law Officers wrote this Opinion.—W. E. D.

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convenient for the necessary witnesses. If the trial took place in France or at some remote spot in French West Africa there might be a failure of justice from want of evidence.

2. There ought further to be an assurance that the French Government are advised by their legal experts that to sentence in British territory will be no bar to a prosecution in French territory, *i.e.*, that no plea of what here would be called autrefois convict would be admissible.

If these conditions be complied with, we think that the men may be given up and an Ordinance passed reciting that their surrender was the result of mistake, and that the French Government have undertaken that they shall be tried before the proper French Tribunal, and enacting that the proceedings shall be annulled.

(Initialled) R. B. F.
E. C.

Royal Courts of Justice,
April 7, 1902.

No. 26.

[May 27, 1902.]

Foreign Office to the Law Officers of the Crown.

Murderers of Captain Keyes. Further as to handing over to French authorities.

Gentlemen,
Foreign Office, May 16, 1902.

I HAVE the honour, by direction of the Marquess of Lansdowne, and with reference to the opinion which you were good enough to furnish on the 7th ultimo, to transmit to you herewith the papers noted in the accompanying list relative to the method of dealing with the men who have been convicted of the murder of Captain Keyes, one of whom, as will be seen from the Colonial Office letter of the 1st instant, has since died.

I am to request that you will take these papers into your early consideration, and that you will favour Lord Lansdowne with your opinion on the following points:—

1. Whether the statements contained in M. Cambon's note of the 19th ultimo may be regarded as a sufficient assurance that the previous proceedings against the prisoners will not be held to be a bar to their conviction in a French Court, and may be safely accepted by His Majesty's Government.

2. Whether the provisions of the draft Proclamation inclosed in the Colonial Office letter of the 10th instant are apt and proper for the purpose for which they are intended.

3. Whether, in view of the difficulties that will ensue from the trial of the prisoners at so great a distance from Northern Nigeria as St. Louis, in Senegal, an undertaking should be obtained from the French Government before the prisoners are handed over that they will be tried at Porto Novo, in Dahomey, or at some other suitable place to be agreed upon with His Majesty's Government; and whether, if French legislation should be necessary in order to carry out this object, His Majesty's Government would be justified in requiring from the French Government, as a condition precedent to the surrender of the prisoners, a guarantee that such legislation would be obtained.

4. Whether the proposal to take the evidence of the witnesses for the prosecution by means of "Commissions Rogatoires" addressed by the French Court to the Tribunals of Northern Nigeria is one that can or should be agreed to by His Majesty's Government, and, if not, what are the special grounds on which the proposal may most appropriately be declined.

His Lordship will at the same time be glad to be favoured with any general observations which you may desire to offer in connection with the case.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

M. Geoffray	April 1, 1902
Law Officers	April 7, "
To M. Geoffray	April 9, "
To Colonial Office	April 9, "
M. Cambon..	April 19, "
To Sir E. Monson	April 23, "
To Colonial Office	April 30, "
Colonial Office	May 1, "
To Colonial Office	May 8, "
Colonial Office	May 10, "

Report.

1. We think M. Cambon's assurances on this point satisfactory.

2. Subject to the alterations which we have made, we think the terms of the draft Proclamation apt and proper.

3 and 4. If it is established to the satisfaction of His Majesty's Government that evidence taken on "Commissions Rogatoires" will be as available for use in the prosecution in the French Court as if the witnesses attended, we think that His Majesty's Government may concur in the course proposed in this respect. Arrangements should also be suggested for the taking of the evidence while the prisoners are still in British territory that they may have the opportunity of attending and cross-examining.

It would, we think, be difficult for His Majesty's Government to refuse the surrender unless the French pass a law providing for trial at Porto Novo, as there may be circumstances which make this impracticable, and it is clear that the original surrender of the prisoners was without authority.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
May 27, 1902.

Annex.

Draft Proclamation (as altered and amended by Law Officers).

WHEREAS certain prisoners of French nationality, now confined at , by name respectively Desamblanc and Buret, together with one Bendard, since deceased, did, on the 21st day of June, 1901, at Argungou, within Northern Nigeria, ~~feloniously, wilfully, and of malice aforethought,~~ kill and murder certain persons, by name C. V. Keyes, Madugo, and Lawani;

And whereas the said prisoners were, together with the said Bendard, arrested by the French authorities in , and surrendered by them to the High Commissioner for trial ~~in due form of law,~~ and were, in the month of October 1901, duly brought to trial before the Supreme Court of Northern Nigeria, and being found guilty of murder were ~~lawfully~~ sentenced to death;

And whereas the Government of the French Republic have represented, *and have established to the satisfaction of His Majesty's Government,* that the surrender of the prisoners aforesaid to the High Commissioner was made without due authority, and have requested that they may be delivered over to the French authorities in order that they may be tried by the proper French Tribunals for the murder aforesaid, and for any other offences committed by them;

And whereas the Government of the French Republic have given full and complete assurances to His Majesty's Government that the aforesaid prisoners, if delivered up, will be duly brought to justice and tried ~~at~~ for the murder aforesaid, and that all proper facilities will be afforded for the ~~attendance of the witnesses~~ *production of evidence* at such trial, and that upon the enactment of this Proclamation it will not be competent for the prisoners to rely on the defence that they have already been tried and convicted for the aforesaid murder, and that under the provisions of French law no impediment will exist to prevent the due trial and conviction of the said prisoners for the murder of the said C. V. Keyes, Madugo, and Lawani, if upon the evidence produced at such trial they shall be found to have been guilty of the said crime;

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And whereas His Majesty's Government is satisfied with the aforesaid assurances of the French Government, and it is expedient that provision should be made for the surrender of the aforesaid prisoners to the French authorities for trial;

Be it therefore enacted by the High Commissioner of Northern Nigeria as follows:—

1. The conviction of the said prisoners Desamblanc, Buret, and Bendard is hereby annulled and made void, and for the purposes of this Proclamation the said Desamblanc and Buret (hereafter referred to as "the prisoners") shall be deemed to be, and shall be, in all respects in the position of prisoners duly arrested upon the charge of murder and awaiting trial for the said offence.

2. The prisoners shall, as soon as satisfactory arrangements have been made by the High Commissioner in that behalf, be surrendered to any officer appointed by the Governor of Dahomey authorized to receive them, and until such surrender shall be detained in custody as prisoners awaiting trial.

3. A warrant under the hand of the High Commissioner addressed to the master of any ship or to any other person shall be sufficient authority to the person named therein to convey the prisoners, or either of them, to the place named therein, and to deliver them, or either of them, into such custody as may be named in the warrant.

4. No writ of *habeas corpus* or other process calling in question the legality of the arrest, detention, trial, conviction, or surrender of the said Desamblanc, Buret, and Bendard, or any of them, or of any other matter connected therewith respectively, shall have any effect within Northern Nigeria.

5. If any person aids, or attempts to aid, the prisoners, or either of them, to escape, or to attempt to escape, from custody, he shall be guilty of an offence, and shall be liable, on conviction thereof, to imprisonment with hard labour for any term not exceeding two years.

6. No action, indictment, or legal proceeding, civil or criminal, shall lie or be brought against the High Commissioner or against any Judge, ~~authority,~~ officer, or other person heretofore or hereafter concerned in the arrest, detention, trial, conviction, or surrender of the said Desamblanc, Buret, and Bendard, or any of them, *for any act done in respect thereof, and they are hereby indemnified against all liability in respect of any such acts.*

7. The High Commissioner may make Regulations not being inconsistent with this Proclamation for the carrying out of the provisions thereof, *or for taking by the Courts of Northern Nigeria of any evidence required for the prosecution of the prisoners before a French Court*, and any Regulations so made and published shall have effect as if they had been enacted in this Proclamation.

8. This Proclamation may be cited as "The French Prisoners ~~Surrender~~ Proclamation, 1902."

R. B. F.
E. C.

No. 27.

[June 7, 1902.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 2, 1902.

Claims of Niger Company on French Government, and counter-claims.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list respecting certain claims and counter-claims of the Niger Company and the French Government.

The points actually in dispute are as follows:—

1. The amount owing by the French Government for services rendered and goods supplied by the Niger Company in 1894 and 1895 to the "Ardent," a French Government vessel, in the total of which amount the French Government wish to make a reduction.

2. The responsibility of the Niger Company for the consequences of the raid on Akassa by the Brassmen in 1895.

3. The propriety of the treatment of the "Faji," a vessel belonging to the French Government, by the authorities of the Niger Company.

Lord Lansdowne proposes to instruct His Majesty's Ambassador at Paris to address a note to the French Government in the terms of the accompanying Memorandum (Paper V), which deals *seriatim* with these points, and his Lordship would be glad to know whether, in your opinion, the arguments therein set forth deal efficiently with the contentions raised by the French Government.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Niger Company		October	19,	1896.
(B.)	To Niger Company		October	23,	„
(C.)	Niger Company		October	23,	„
(D.)	To Mr. Gosselin	(No. 260. Africa)	November	9,	„
(E.)	Mr. Gosselin	(No. 197. Africa)	November	14,	„
(F.)	Sir E. Monson	(No. 35. Africa)	January	30,	1897.
(G.)	Ditto	(No. 112. Africa)	April	10,	„
(H.)	Colonial Office		October	17,	1900.
(I.)	Sir E. Monson	(No. 112. Africa)	October	18,	1901.
(J.)	Memorandum by Mr. de Bernhardt		October	23,	1900.
(K.)	Memorandum by Mr. Hertslet		October	28,	1901.
(L.)	To Sir E. Monson	(No. 166. Africa)	October	30,	„
(M.)	To Niger Company		November	13,	„
(N.)	Niger Company		November	27,	„
(O.)	Ditto		January	17,	1902.
(P.)	Minute on above		January	31,	„
(Q.)	Memorandum by Mr. Farnall		January	19,	„
(R.)	Mr. Barclay		January	25,	„
(S.)	Memorandum by Mr. Barclay		February	1,	„
(T.)	To Colonial Office		March	8,	„
(U.)	Colonial Office		April	14.	„
(V.)	Draft Memorandum to French Government		June	14,	„

Report.

In our opinion, the arguments set forth in the Memorandum (Paper V) accompanying Mr. Bertie's letter deal efficiently with the contentions raised by the French Government, and are proper to be submitted to them.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 7, 1902.

Annex.

Draft Memorandum of Communication to be made to the French Government.

HIS Majesty's Government regret that the cost of the telegram transmitted to the Minister for the Colonies at Paris by Commander Decœur should have remained among the items of claim mentioned in the note of the 8th November, 1900, and subsequent communications from the British Embassy. The history of the repayment of this particular item is as follows:—

On the 3rd February, 1897, his Excellency M. Hanotaux promised to call the attention of the Minister for the Colonies to the matter, and, on the 12th of the following October, the Royal Niger Company was asked by the Minister for vouchers supporting the request for repayment. On the 13th the Company furnished the required documents. On the 29th the Embassy was informed verbally that the amount would be repaid. It thus appears that the cost of the telegram was repaid quite apart from the rest of the Company's claim, and when the French Government was reminded of the whole claim on the 8th November, 1900, in continuation of the many communications from the Company and from the Embassy, the settlement of this one item, withou reference to the rest of the claim, was unfortunately overlooked.

As regards the amount due to the Royal Niger Company on account of the French gun-boa "Ardent," M. Delcassé's note of the 15th October last contains the first intimation that the amoun claimed by the Company as far back as the 11th October, 1895, was disputed.

A second application was addressed to the French Ministry for the Colonies on the 2nd January, 1896; the Company then expressed a fear that their first letter had miscarried. On the 22nd May, 1896, Sir George Goldie, the Governor of the Company, addressed a personal communication to the Minister. To this letter, as to the two previous letters, no reply was received, nor were these several communications even acknowledged.

In these circumstances, the Company could but appeal to Her late Majesty's Government for assistance, and, on the 14th November, 1896, Mr. (now Sir Martin) Gosselin called the attention of the French Minister for Foreign Affairs to the Company's claims. No reply having been received, the French Government were reminded of the matter in January and April 1897, and again in November 1900, and in May 1901.

If, in reply to the earlier requests for repayment, the Royal Niger Company or Her late Majesty's Government had been furnished with copies of the communications from MM. d'Agoult, Guigues, and Weyer inclosed in M. Delcassé's note of the 15th October last, it would have been possible to establish the exact facts by the evidence of the Company's agents, and by documents which have since been destroyed in the usual course.

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The criticism of the French Government on the Company's account was not received for six years after the account was delivered. In so long a period great changes of staff occur, especially in a climate such as that of Nigeria, and two years ago the staff was entirely reorganized on the Company ceasing to administer the Niger territories on behalf of the Government of this country.

The documents on which are based the reductions which the French Government wish to make on the original account have been in existence for more than six years, and could therefore have been made use of for criticising the account at a time when it was still possible to check their accuracy. It is now no longer possible to do so, and it would be inequitable that the French Government should profit by delays of their own making, against which the Company and the British Government earnestly protested by their repeated but unavailing requests for attention to the claim.

In these circumstances, His Majesty's Government are unable to admit the proposed reductions.

The liability for the 220*l.* 7*s.* 5*d.*, for losses incurred during the attack on Akassa in 1895, has never been disputed by the Company.

The goods forming the subject of the claim were taken or destroyed by the Brassmen. The result of a careful inquiry was that the Niger Coast Protectorate was responsible for the raid; and the Protectorate indemnified the Niger Company, which, in its turn, indemnified others. M. Delcassé's note, however, makes the Niger Company's liability to flow from Article XXXV of the Act of Berlin, which is as follows:—

> "The Signatory Powers of the present Act recognize the obligation to insure the establishment of authority in regions occupied by them on the coasts of the African continent sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit under the conditions agreed upon."

But, in the opinion of His Majesty's Government, these words cannot be interpreted to mean that a Government established on the African coast is to be held responsible for what it cannot prevent, or is, in that respect, under any greater obligation than a Government established elsewhere.

M. Delcassé, in his note of the 15th October last, deprecates reopening the case of the "Faji;" but he states two positions with regard to it which His Majesty's Government cannot pass over in silence. His Excellency says that a vessel which was flying a regular commercial flag, and which had entered the British Protectorate of the Niger, without any formality having been asked of her at the first custom-house on the Forcados branch of the Niger, was arrested and detained by an "agency" established in the interior at the entrance of a territorial district created for private administrative convenience.

But, in the opinion of His Majesty's Government, it was clearly the duty of the "Faji" to ascertain what were the formalities required by the law of the territorial waters which she had entered. She was not entitled to pass Gana-Gana without calling, or to proceed up the river without a clearance.

The second point in M. Delcassé's note is that the Royal Niger Company's vessel which arrested the "Faji" did not fly the "English" flag, but only that of the Company, which flag did not carry with it the prerogatives of the "national" flag. His Majesty's Government consider that it was the duty of the "Faji" to ascertain what was the distinctive flag of the Administration placed by the protecting Power in charge of the administration of the waters which she had entered. The flag of the Royal Niger Company was, moreover, to be found in the collection of distinctive and officially-recognized flags issued by the Admiralty for the information of the public. There was no obligation to bring this flag to the notice of the French Government; but it had, as a fact, been communicated to them in the collection sent to Baron d'Estournelles on the 23rd August, 1890.

His Majesty's Government cannot admit that the arrest of the "Faji" was arbitrary, and they maintain the position taken up in the note addressed by the late Marquess of Dufferin to the French Minister for Foreign Affairs on the 16th July, 1895.

Foreign Office, June 14, 1902.

GENERAL.

No. 28.

[January 27, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 18, 1902.

Cowen *v.* "Truth." Production of Papers at trial of.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you herewith a letter from Messrs. Lewis and Lewis, asking for the production in Court of certain correspondence in the possession of this Department in connection with libel actions which have been brought by Mr. Laurence Cowen against the proprietor and editor of "Truth" newspaper.

A draft of the reply which Lord Lansdowne caused to be returned to this communication is inclosed.

The only correspondence received or sent by this Department of the nature referred to by Messrs. Lewis and Lewis is with the Lord Mayor of Manchester, and with the Chambers of Commerce of Manchester, Leeds, Oldham, and Halifax; and in these papers, which are annexed for your inspection, the only mention of the Article Club, of which Mr. Laurence Cowen (or Cowan) is the Honorary Secretary, occurs in the communication from the Manchester Chamber of Commerce of the 4th December, 1899, and its inclosures.

I am to request that you will favour Lord Lansdowne at your earliest convenience with your opinion as to whether the whole or any, and, if so, what portions of this correspondence may properly be produced by a gentleman from this Department at the trial of the action; and I am to add that his Lordship will, at the same time, be glad to be furnished with any observations of a general character which you may desire to offer on the subject.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

1.	Messrs. Lewis and Lewis	January 2, 1902.
2.	To ditto	January 17, „
3.	Manchester Chamber of Commerce	December 4, 1899.
4.	To ditto	December 8, „
5.	Manchester Chamber of Commerce	December 14, „
6.	Ditto	December 22, „
7.	Lord Mayor of Manchester	December 19, „
8.	To ditto	December 22, „
9.	Ditto	December 30, „
10.	Leeds Chamber of Commerce	July 10, „
11.	To ditto	July 19, „
12.	Leeds Chamber of Commerce	July 20, „
13.	Ditto	August 18, „
14.	Ditto	September 8, „
15.	Ditto	September 18, „
16.	To Leeds Chamber of Commerce	September 20, „
17.	Ditto	September 22, „
18.	Oldham Chamber of Commerce	December 2, „
19.	To ditto	December 13, „
20.	Halifax Chamber of Commerce	October 30, „
21.	To ditto	November 1, „
22.	Ditto	November 10, „

Report.

We see no objection to the production of the correspondence in this matter.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
January 27, 1902.

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[Colonial Office.] *No. 28A.*

[July 23, 1902.]

The Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, July* 23, 1902.

Australian "Immigration Restriction Act, 1901."

WE were honoured with your commands signified to us by Mr. Bertram Cox in his letter of the 14th instant, stating that he had been directed by you to request our consideration of a question which has arisen as to whether Treaties between Great Britain and foreign countries for the surrender of merchant seamen deserters exempt vessels of those countries from the provisions of "The Immigration Restriction Act, 1901," of the Commonwealth of Australia.

That from the telegraphic correspondence inclosed it would be seen that the Commonwealth Government considered that the Immigration Restriction Act was not in conflict with the provisions of the Treaties concluded by His Majesty's Government under section 238 of "The Merchant Shipping Act, 1894;" but that, as there was thought to be some doubt on the point, you would be glad to be favoured with our opinion.

That he was therefore to request that we would take into our consideration the papers noted in the margin of his letter and transmitted therewith, and report—

(*a.*) Whether "The Immigration Restriction Act, 1901" of the Commonwealth of Australia is in conflict with the Treaties concluded by His Majesty's Government under section 238 of "The Merchant Shipping Act, 1894."

(*b.*) If so, whether the stipulations of the Treaties referred to have been incorporated in any Imperial Act which would prevail over the Australian Act now in question.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to—

Report—

(*a.*) No.

There is nothing in "The Immigration Act, 1901" of the Commonwealth of Australia which interferes with the Treaties concluded by His Majesty's Government under section 238 of "The Merchant Shipping Act, 1894."

(*b.*) Does not arise.

We are, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

No. 29.

[September 4, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 19, 1902.

East Africa Protectorate Marriage Ordinance.

I HAVE the honour, by direction of the Marquess of Lansdowne, to refer you to your Report of the 31st December, 1901, and to transmit to you the papers noted in the accompanying list, dealing with the question of marriages in the African Protectorates administered by this Department. Since the receipt of your Report above referred to, the matter has formed the subject of most careful consideration, in consultation with the Colonial Office and Mr. Albert Gray, as a result of which the accompanying draft Marriage Ordinance has been prepared by Mr. Gray for the East Africa Protectorate upon a Colonial Office model.

Similar enactments, practically identical in every way, have been prepared for the Protectorates of Uganda, Somaliland, British Central Africa, and for North-Eastern Rhodesia, taking the form of Ordinances under the new Orders in Council for Uganda and British Central Africa and of King's Regulations in North-Eastern Rhodesia and Somaliland.

GENERAL.

No. 29A. [Home Office.]

[December 9, 1902.]

THE following is a copy of a letter from the Home Office:—

(B. 38521/2.)
My Lord, *Whitehall, November* 24, 1902.

Interpretation of section 10 (5) of Naturalization Act, 1870.

I am directed by the Secretary of State to transmit to your Lordship the inclosed case respecting the interpretation of section 10 (5) of the Naturalization Act of 1870, and I am to request that you will move the Law Officers to favour the Secretary of State with their opinion thereon.

I am, &c.
(Signed) CHARLES S. MURDOCH.

The Solicitor to the Treasury.

The case, transmitted with the foregoing letter, is annexed hereto.

The case, with the Opinion of the Law Officers, dated the 27th July, 1887, referred to in the annexed case, is sent herewith.

The Attorney- and Solicitor-General are requested to favour the Secretary of State with their opinion on the question raised in the annexed case, as asked in Mr. Murdoch's letter.

CASE FOR THE LAW OFFICERS.

The following semi-official correspondence on the interpretation of section 10 (5) of "The Naturalization Act, 1870," has recently taken place between the Home Office and the Foreign Office:—

Sir K. Digby to Mr. Davidson, K.C.

My dear Davidson, *Home Office.*

A curious question, and so far as I know a novel one, has arisen as to the interpretation of section 10 (5) of "The Naturalization Act, 1870." I feel rather strongly a doubt which the very experienced members of the Domestic Department do not share, and I should be glad to know whether you know of any Foreign Office decision on the point, and what your own view is. The facts are shortly these:

A. was naturalized by certificate in 1874.

B., his son, born abroad, became resident with him during infancy, and is consequently deemed to be "a naturalized British subject."

C., son of *B.*, is born abroad, but resides in England during infancy with his father.

Is *C.* to be "deemed a naturalized British subject?"

Primâ facie no, because naturalization under the last words of the section takes place only when the father has obtained a certificate of naturalization, and *B.* never obtained a certificate.

But my doubt is whether the words "deemed to be a naturalized British subject" must not be read as equivalent to "deemed to have the same rights and capacities as if he had received a certificate of naturalization," and consequently whether a child who, though born abroad, becomes resident with him may not be "deemed to be naturalized" within the meaning of the last words of the clause.

For if you turn to the third paragraph of section 7 you find no description or definition of the status conferred by naturalization or by being naturalized. In order that an alien may acquire the status of a British subject he must obtain "a certificate of naturalization." In the case of the wife different language is used. An alien marrying a British subject is not deemed to be naturalized, but deemed to be a British subject. Where, therefore, a man is said to be deemed to be naturalized, does not this in effect mean "deemed to have the same rights as if he had received a certificate of naturalization?" The Statute only confers the rights of a British subject upon the recipient of the certificate. Is there any distinction between the status of a person "naturalized" and the status of a person who has received a certificate of naturalization; and does not the power of transmitting his nationality to infant children who become resident with him attach to his status?

Do you think it worth while to consult the Law Officers?

Very truly yours,
(Signed) KENELM E. DIGBY.

P.S.—I inclose the Solicitor's letter, which please return.

Mr. Davidson, K.C., to Sir K. Digby.

My dear Digby,
Foreign Office, November 7.

The case was shortly this:—

A. was naturalized by certificate in 1874.

B., his son, became resident with him during infancy, and is, consequently, to be deemed to be a naturalized British subject.

C., the son of *B.*, was born abroad, but has resided during infancy with his father in the United Kingdom.

Is *C.* to be deemed a naturalized British subject?

The point has not come before me either since I have been Legal Adviser here or previously when I was in the Law Officers' Chambers, and, so far as I know, we have no precedents bearing exactly on it. However, to make sure, I consulted our Treaty Department and Library, but they are unable to produce anything to help us, and the matter must, therefore, be treated as one *primæ impressionis*.

On the whole, I incline to the view which appears to be taken by your Domestic Department—viz., that *C.* is not to be deemed a naturalized British subject, but, at the same time, I do not think the matter is by any means free from doubt, and it seems to me to be clearly a case in which it is very desirable to consult the Law Officers.

The following considerations have (amongst others) weighed with me in determining what was a somewhat doubtful view originally, in the direction of a negative answer to the question.

Originally, no man was a subject of the King unless he was born within the liegeance of the Crown, no doubt a deduction from the feudal idea of attachment to the soil. It required an Act of Parliament to convert the son born abroad of a natural-born British subject into a British subject.

It is hardly possible to imagine a stronger proof that the fundamental principle of our law on this point was that status as a British subject is derived not from blood, but from birth.

Under the Act of 1844, naturalization was a personal matter, it covered no children at all; if the children of a naturalized British subject were themselves British, this was because in the particular case they were born in the British dominions; thus British national status was not transmissible to them as a result of the naturalization of their parents.

The Act of 1870 goes a step further: the infant children resident in the United Kingdom with the naturalized parent acquire a British status.

Before considering exactly the limits of that status, it is well to bear in mind that a qualification for naturalization is intention to reside afterwards in the United Kingdom; consequently, the law contemplates that the descendants of a naturalized person will be British subjects by reason of birth in the United Kingdom. The words of section 10 (5), as the Law Officers point out, are wide enough to cover after-born children, but the hardship those words are meant to meet was the case of children born previously to the naturalization. It follows that if a naturalized British subject has children born abroad after naturalization, this can only take place because he is not doing what his naturalization contemplates he should do.

With regard to the limits of the British status conferred by section 10 (5), it would clearly be unjust if the children had been given a "natural-born" status, because, if so, the grandchildren of a naturalized person might be better off than the grandchildren of a natural-born subject, for the grandchild born abroad would be a natural-born subject, though both father and grandfather were born abroad, as he would be brought within the Act of George II if his father were "deemed a natural-born subject."

They are therefore limited to naturalized status, and are consequently altogether outside the Acts of George II and George III. Outside these Acts, however, the status of British subject is not a matter of inheritance from parents, but a consequence of the place of birth. Therefore, on *principle*, the descendants of naturalized persons must either be British subjects by birth in the British dominions or aliens. Nor does the Act of 1870 conflict with this: it specifically limits the naturalization of infant children to the children of those who have received a certificate of naturalization. If it were not so, the intermittent residence of a family in the United Kingdom might confer the status of British subject on the twentieth generation in descent from the original person naturalized, even if no one of them were born here.

On the pure question of the construction of the bare words of the Statute there is, I quite feel, very considerable doubt, and it is only by going rather below the surface perhaps that I have arrived at the opinion that *C.* is an alien.

Yours very truly,
(Signed) W. E. DAVIDSON.

The Secretary of State desires to be advised whether the person referred to in this correspondence as *C.* is to be "deemed to be a naturalized British subject" within the meaning of section 10 (5) of the Naturalization Act of 1870.

Opinion.

The answer to this question is, in our opinion, in the negative.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Law Officers' Department,
December 9, 1902.

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The Indian Divorce Act already applies to East Africa, except such parts as relate to divorce and nullity of marriage, and it has now been suggested that the remainder of the Act should be applied to that Protectorate. Should a Divorce Law be considered desirable in the other Protectorates, it will be made the subject of a separate reference.

I have the honour to request you to take the inclosed draft Ordinance into your consideration, and to favour his Lordship with your opinion as to whether it may properly be sent in its present form to His Majesty's Commissioner to be put into force, and with any observations of a general character which you may desire to make on the subject.

I have, &c.
(Signed) CLEMENT Ll. HILL

List of Papers.

To Law Officers	November 7, 1901.
Law Officers	December 31, ,,
Draft of East Africa Protectorate Marriage Ordinance.	

Report.

The inclosed draft Ordinance, as altered and initialled by us, is, in our opinion, proper to be put in force.*

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
September 4, 1902.

GREECE.

No. 30.

[May 5, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, January 5, 1901.

Whitfield–Preiswerk Marriage of Syra before clergyman.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list relative to the validity of a marriage between Mr. W. J. Whitfield, a British subject, and Miss E. Preiswerk, a Swiss citizen, which was solemnized, according to the rites of the Church of England, in St. Paul's Church, Syra, on the 17th March, 1888.

As far as Lord Lansdowne has been able to ascertain, the circumstances of the case are as follows:—

According to Mr. Whitfield's statement (see Inclosure E), he applied, in the first instance, to Mr. Quintana, then Acting British Consul at Syra, for advice. Mr. Quintana, not being himself a marriage officer, explained that he could not perform the marriage ceremony, and advised Mr. Whitfield to consult His Majesty's Chargé d'Affaires at Athens on the matter.

Acting upon this advice, Mr. Whitfield proceeded to Athens and called at the Legation, when His Majesty's Chargé d'Affaires declared he was unable to assist him, and suggested that he should consult the Swiss Consular authorities, adding that he thought a *lex loci* marriage might be possible. On his return to Syra Mr. Whitfield

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* This Ordinance, No. 30 of 1902, bears the date November 29, 1902 (see Confidential 7855).

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was informed that either the German or French Consul was in charge of Swiss interests; but, on application, both these officers declined to interfere unless Miss Preiswerk could produce the papers required by Swiss law, which she was unable to do.

It being of considerable importance to the parties that the marriage should take place without further delay, Mr. Whitfield, in the last resort, applied to the Rev. R. Quinet, British Chaplain in Syra, who expressed his willingness to solemnize the marriage, though he could not say whether the marriage would be considered as valid. To the best of Mr. Whitfield's recollection the marriage was solemnized a week or ten days after his interview with the Rev. R. Quinet, in the presence of two witnesses, both British subjects; but Mr. Quintana was not present. No register was signed by either party or by the witnesses present at the ceremony, nor had any banns been previously published or special licence obtained.

On receipt of this statement, Mr. Quinet was requested to explain the apparent irregularity of his proceedings. He states (see Inclosure J) that he consented to solemnize the marriage at the British Consulate in order to prevent a gross scandal; but that he took no steps in the matter on his own initiative, or without first consulting the authorities at His Majesty's Consulate, as was his invariable practice when questions of doubt or difficulty arose. On this occasion Mr. Quinet says he was told by the Acting Consul that the marriage ceremony would be legal provided the necessary forms were complied with at the Consulate, which Mr. Whitfield assured him had been done. Mr. Quinet further states that the marriage was entered in the one book, which was used for a register of births, deaths, and marriages, in St. Paul's Church. A copy of this entry is annexed (Inclosure G).

Mr. Quintana, having been asked for his explanation of the circumstances (see Inclosure N), declares that, in so far as he can call them to mind, the main facts are as stated by Mr. Whitfield. Mr. Quintana explains that he refused to perform the marriage ceremony because he doubted whether he was justified in acting upon the Marriage Warrant furnished to Consul Binney, during whose illness he was in charge of the Consulate. Mr. Quintana states that he cannot recollect ever having requested Mr. Quinet to marry the parties.

In order to ascertain whether the marriage will be considered valid in contemplation of Greek law, His Majesty's Minister at Athens was instructed to consult a Greek lawyer of high standing, whose opinion was that the marriage would be regarded as valid in Greece if it were valid in contemplation of English law (see Inclosure K).

No inquiries have yet been made as to the validity of the marriage in Switzerland, as it is conceived that the question whether it is valid or invalid in contemplation of English law can be in no way affected by this consideration.

I am to request that you will be so good as to take the papers transmitted herewith into your consideration, and to furnish his Lordship with your opinion—

1. Whether this marriage is valid in contemplation of English law; and
2. If not, whether any, and if so, what steps can and should be taken to validate it.

Lord Lansdowne will at the same time be glad to be favoured with any general observations which you may desire to offer in connection with the case.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Mr. Whitfield		February	15,	1900.
(B.) To ditto		March	10,	„
(C.) Mr. Whitfield		March	23,	„
(D.) To ditto		April	6,	„
(E.) Mr. St. John	(No. 44)	May	23,	„
(F.) To Acting Consul Bonavia	(No. 2)	June	14,	„
(G.) Acting Consul Bonavia	(No. 10)	June	23,	„
(H.) To Bishop of Gibraltar		July	14,	„
(I.) To Sir E. Egerton	(No. 4)	July	14,	„
(J.) Bishop of Gibraltar		July	23,	„
(K.) Mr. Stronge	(No. 5)	July	24,	„
(L.) Mr. St. John		November	23,	„
(M.) To Consul-General Cumberbatch	(No. 16)	November	24,	„
(N.) Consul-General Cumberbatch	(No 33)	December	19,	„

Report.

The ceremony of marriage in this case appears to me to be valid.

The Foreign Marriage Acts give additional means of celebrating marriage, but do not invalidate any other form of marriage by British subjects which would have been good before these Acts.

A marriage such as this would, of course, have been good by the English common law.

Lord Hardwicke's Act and the subsequent legislation on this subject do not apply to British subjects abroad; and such a marriage as this between British subjects is undoubtedly good wherever the English common law can be considered as applicable as in barbarous countries, or countries where British subjects enjoy extra-territoriality.

As regards civilized countries abroad, the general rule of English law is that the marriage must be celebrated according to the *lex loci*, and if the *lex loci* prescribes a form which can be adopted by British subjects, the marriage is not good unless this form has been followed, and the English law as to the form is inapplicable in such cases.

But if the *lex loci* of any country provides no form which can be adopted by British subjects in such country, British subjects may, I think, contract a marriage which will be good by English law if they follow the form prescribed by the English common law. The common law as to marriage must, so far as English Courts are concerned, be considered as applicable to such countries as regards British subjects, otherwise the result, prior to the Foreign Marriage Act, would have been that British subjects in such countries could not have married at all.

But, as regards Greece, the opinion of the Greek expert carries the case further.

According to that opinion, the law of Greece, while it fails to provide any local ceremony, according to which British subjects in Greece can marry, makes provision for their marriage by recognizing as good, according to the law of Greece, any marriage which is good according to the law of England. In other words, the Greek law concedes to British subjects the right to marry according to the form which is good in English law. Such a marriage as that now under consideration is good by the English law unless it is excluded by a local law applicable. The law of Greece, so far from excluding it, remits British subjects to their own law, which, apart from the Foreign Marriage Acts, must be the common law of England.

I may refer to the opinion expressed by Lord Eldon in Lord Cloncurry's case (Cruise on Dignities, p. 276, second edition,* and see 11 C. and F., p. 92). It is true, as pointed out by Lord Brougham, 11 C. and F., p. 92, that this was a divorce case, and that in the Sussex Peerage case itself no opinion was given on the point (*ibid*, p. 153). According to the evidence in the Sussex Peerage case, the law of Rome was incorrectly stated to Lord Eldon; but this, of course, does not affect his decision on the legal point, and it appears to me to be sound in principle.

For the reasons above stated, I think the marriage ceremony valid by English law.

(Signed) R. B. FINLAY.

Royal Courts of Justice,
January 31, 1901.

Dear Solicitor-General, *Foreign Office, June* 5, 1901.

The inclosed papers were under consideration by the Law Officers at the time when you were obliged to take sick leave, and the Attorney-General eventually reported on them before you had returned to work.

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* "*Cruise on Dignities,*" *2nd Edition*, 1823, *p.* 276.

Chap. VI. § 85. In the discussion of a late divorce Bill in the House of Lords, Lord Eldon intimated a doubt respecting the validity of the marriage, which was celebrated at Rome by a Protestant clergyman, both parties being Protestants, and said, that where persons were married abroad it was necessary to show that they were married according to the *lex loci*, or that they could not avail themselves of the *lex loci*, or that there was no *lex loci*. Some days after, a Roman Catholic clergyman was produced at the bar of the House, who swore that at Rome two Protestants could not be married according to the *lex loci*, because no Catholic clergyman would celebrate marriage between two Protestants. The marriage was held to be good.

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The point involved is a difficult and important one, on which eminent lawyers in the past have to some considerable extent differed; and Lord Lansdowne would, therefore, like to be fortified, in case of need, with the opinion of both the Law Officers upon it.

I ought to have sent you the papers before, but I have had such a mass of pressing work that I have got more than usually in arrear. I spoke to the Attorney-General on the matter some time ago, and he thought the papers ought to be sent back to you for your views, and suggested that if you agreed in his opinion as it stands you might add your signature and return it to me; but that if you differed from him on any material point, it might be well that you should discuss the matter further together.

Yours very sincerely,
(Signed) W. E. DAVIDSON.

I agree with the above opinion.
(Signed) EDWARD CARSON.

May 5, 1902.

JAPAN.

[Colonial Office.] No. 30A.

[March 11, 1902.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, March 11, 1902.

Sir,

Anglo-Japanese Treaty of July 16, 1894, and entry of Queensland into the Commonwealth of Australia.

WE were honoured with your commands signified to us by Mr. Antrobus in his letter of the 12th ultimo, stating that he was directed to request that we would favour you with our Report on certain questions which had arisen in connection with the Treaty of the 16th July, 1894, between this country and Japan, to which the Government of Queensland adhered subject to the provisions of the Protocol of the 16th March, 1897.

That on the 1st January, 1901, when the Commonwealth of Australia Constitution Act came into operation, the Commonwealth Parliament was invested, by section 51 (29), with power to legislate on the external affairs of Queensland as on those of the other Australian Colonies. That it appeared to you that, assuming that the Commonwealth Government took over the foreign relations of the States, it did so subject to existing obligations, and that the Treaty between Japan and Queensland was, therefore, still binding on His Majesty so far as Queensland was concerned; but that the Attorney-General of the Commonwealth had advised that the Treaty had been terminated as between Japan and Queensland by the change of the latter's status which took place when the Commonwealth of Australia was established.

That if the Treaty were still in force so far as Queensland was concerned, it might be desirable that twelve months' notice should be given by His Majesty's Government with a view to its termination, as provided in the Protocol of the 16th March, 1897. That the question therefore arose whether, if such notice had to be given, it should be given at the request of, and on behalf of, the Commonwealth Government, which now controlled the foreign relations of all Australia, or at the request, and on behalf, of the Government of Queensland.

That the Parliament of the Commonwealth had recently passed, and the Governor-General had assented to, an Act imposing certain restrictions on immigration into Australia. That that Act applied to Queensland among the other States of the Commonwealth, and that it was necessary to consider it in connection with the provisions of the Anglo-Japanese Treaty if the latter was still in force as regards Queensland That in your opinion the Act was in no way contrary to the terms of Articles I and III of the Treaty, as those Articles must, in accordance with established rule, be read as conferring no right to treatment other than that granted to native subjects or to citizens of the most favoured nation. That as the Act was general in its terms, and applied equally to citizens of every country, there would seem to be no conflict between it and the Treaty.

That in order, however, to set those questions at rest, Mr. Antrobus was to request that we should take the matter into our consideration and Report—

1. Whether the Treaty of the 16th July, 1894, between this country and Japan, to which Queensland adhered subject to the provisions of the Protocol of the 16th March, 1897, was terminated as regards Queensland by the change of the latter's status consequent on the coming into force of "The Commonwealth of Australia Constitution Act, 1900," or whether it was still binding as far as Queensland was concerned?

2. If the latter was the case—

(*a.*) Whether the notice required for the termination of the Treaty in relation to Queensland should be given at the request, and on behalf, of the Government of the Commonwealth, or of the Government of the State.

(*b.*) Whether the Immigration Restriction Act in any way conflicted with the provisions of the Treaty?

We have taken the subject into our consideration, and in obedience to your commands have the honour to

Report—

1. That we think the Treaty of the 16th July, 1894, was not affected as regards Queensland by the entry of Queensland into the Commonwealth of Australia. The Treaty was not between Queensland and Japan, but between His [Her late] Majesty and Japan. The case is not one in which an independent Power has become merged by conquest or cession in the territories of another Power. The portion of His Majesty's dominions known as Queensland has combined with other portions of His Majesty's dominions to form the Commonwealth of Australia which is itself a part of His Majesty's dominions. The Treaty seems to us to affect Queensland as a State of the Commonwealth just as much as it affected Queensland as a Colony.

2.—(*a.*) We think that the notice should be given by His Majesty's Government on behalf of the Government of the Commonwealth, *and* of the Government of Queensland.

(*b.*) We think that the Immigration Restriction Act does to some extent conflict with the provisions of the Treaty. Articles I and III of the Treaty provide for unrestricted entry, residence, and travel and trade. Section 4 (*a*) of the Immigration Restriction Act prohibits the immigration into the Commonwealth of any person who cannot write out to dictation a passage of fifty words in length in a European language. It cannot, we think, be successfully urged that this is a test which can be impartially applied to immigrants from whatever part of the world they may come. It is obviously selected because it will have the effect of excluding Asiatic immigrants, and the selection of a test which is calculated to exclude Japanese seems to us to be in conflict with the Treaty.

The importance of this conflict is, however, very much minimized by the terms of the Protocol of the 16th March, 1897, by which the adhesion is signified. By Article I of that Protocol any laws with regard to the immigration of labourers and artizans were not to be affected by Articles I and III of the Treaty. We presume that most of the immigrants from Japan who would be affected by section 4 (*a*) of the Act would be labourers or artizans. The other exception in the Protocol, as to laws with regard to trade, does not appear to be for the present purpose material, as the Immigration Act hardly falls under this description; but the effect of the Act with regard to traders proposing to settle in Queensland, and any other Japanese immigrants not being labourers or artizans, may be very much mitigated by the exercise of the power of exception conferred in section 4 (*h*).

It therefore appears that upon the whole the Immigration Act may be so administered as not to cause any sensible conflict with the Treaty.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

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[Colonial Office.]

No. 30^B.

[April 16, 1902.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, April 16, 1902.

Conflict of Australian Immigration Act and Treaty of 1894: Further as to.

Sir,

WE were honoured with your commands signified in Mr. H. Bertram Cox's letter of the 21st ultimo, stating that he was directed by you to acknowledge the receipt of our Report of the 11th March upon certain questions which had arisen in connection with the Treaty of the 16th July, 1894, between this country and Japan, to which the Government of Queensland adhered subject to the provisions of the Protocol of the 16th March, 1897.

That with reference to paragraph 2 (*b*) of our Report, Mr. Cox was to suggest the following considerations in regard to the apparent conflict between the Immigration Restriction Act of the Parliament of the Commonwealth of Australia and the provisions of the Treaty.

That it seemed to you that sections 1 and 3 of the Treaty might be construed in the light of its immediate purpose. That it was a Treaty of Commerce and Navigation, and that its provisions referred primarily to commercial dealings between British and Japanese subjects. That its title, the use of such phrases as the words "for purpose of residence or commerce" in Article IV, and the whole purport of Article III, and the stipulations of Articles V to XVII inclusive, might be taken to indicate that it had no reference to anything but the promotion of Anglo-Japanese commerce, and might support the contention that its scope was restricted to the facilitating and promoting trade, commerce and navigation between England and Japan, and to the objects immediately subsidiary and incidental to that purpose. That Article I of the Protocol of the 16th March, 1897, might be treated not as an exception to the provisions of the Treaty but as explanatory. That the rights of entry and residence which the Treaty conferred might, if that view were tenable, be held to be conditioned by the intention with which they were granted, and, in that case, could not be construed as extending to immigration, which was essentially the entering of a foreign country for the purpose of settling there and becoming a permanent member of the community.

That, on the other hand, it was precisely that kind of entry and residence unconnected with trade and contemplating permanent settlement which was the subject of the Immigration Restriction Act. That, for instance, the provision in section 5 (2) that an immigrant might, at any time within one year of his entry, be asked to comply with certain requirements of the Act, implied that the ordinary immigrant would or might remain more than a year, and in fact permanently; and that the same inference might be drawn from section 3 (*m*) which dealt with the case of the wife and children of an immigrant. That such entry and residence when the person entering was accompanied by his wife and family and proposed to remain for an indefinite period, was of a totally different nature from the entry and residence which was contemplated in the Treaty of 1894. That the right to entry and residence under the Treaty might, it was submitted, be held not to be a right to "immigrate" in the proper sense, and not therefore infringed by the Commonwealth Act.

That that view was to some extent supported by the fact that the Japanese Government themselves had not regarded the institution of the European language test as an infraction of the Treaty. That the Colony of Natal adhered to the Treaty at the end of 1895; but that, nevertheless, in 1897, after Natal had accepted the contingent obligation thereby imposed on it, the Colonial Legislature passed an Immigration Restriction Act which set up a test similar in principle to that embodied in the Commonwealth Act. That so far from protesting against the Natal law as an infraction of the Treaty, the Japanese Government urged His Majesty's Government to press it on the attention of the Australian Colonies as a model for their legislation, and that the Commonwealth Act was passed in its present form largely owing to the representations which His Majesty's Government had accordingly made at various times to the Colonial Governments.

That in that connecion Mr. Bertram Cox was to invite our attention to the fact that though by Article I of the Treaty of Commerce with the United States of 1815 a right to enter, remain, and reside, in the United States was given to British subjects, the existence of that provision had not been regarded as inconsistent with the subsequent United States' statutes under which stringent restrictions were placed on immigration, *e.g.*, the prohibition of any immigrant under contract of service with a resident in the United States.

That you would be glad to be favoured with our opinion on the question whether it might not be held, on the above or on other grounds that might occur to us, that there was not necessarily a conflict between the Anglo-Japanese Treaty of 1894 and the Immigration Restriction Act recently passed by the Parliament of the Commonwealth of Australia.

In obedience to your commands, we have the honour to

Report—

That upon consideration of the matters suggested in Mr. Bertram Cox's letter, we see no reason to modify the opinion expressed in our Report of the 11th March last.

With reference to the suggestions made in paragraph 3 of Mr. Cox's letter, we do not think that section 1 of the Treaty of the 16th July, 1894, can have the limited construction which is suggested. We would point out that there is nothing in the preamble nor in the said Article to limit the Treaty to mere purposes of commerce; and the fact that freedom of commerce is provided for by a separate stipulation in Article III, and that, by the Protocol, the Government of Queensland thought it necessary to reserve their right to legislate with reference to the immigration of labourers and artisans, seems to negative any such limited construction.

With reference to paragraph 6 of Mr. Cox's letter, we would point out that the Convention of Commerce of 1815 with the United States, both in its preamble and Article I, expressly relates to objects of commerce only.

The fact that the Japanese Government have approved of the form of Immigration Act adopted would seem to show, as we suggested in our Report, that the Immigration Act may be so administered as not to cause any sensible conflict with the Treaty, and may amount to a complete waiver of any objection to the immigration law, in which case no difficulty can possibly arise; but on this last point we have not the materials for expressing an opinion.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

PACIFIC ISLANDS.

No. 31.

[February 20, 1902.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 18, 1902.

Counter-Case of His Majesty's Government: Operations in Samoa.

Gentlemen,

WITH reference to my letter of the 20th March last, in regard to the presentation of the British Case in the matter of the arbitration of certain claims arising out of the military operations in Samoa in 1899, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you herewith, and to request you to take into your consideration, the Counter-Case which has been drawn up by Mr. H. Erle Richards on behalf of His Majesty's Government for presentation to the Arbitrator, in reply to the German Memorandum, of which a copy is inclosed together with its Appendices.

I am likewise to transmit, for your information, an explanatory Memorandum which has been prepared by Mr. Richards, together with a copy of the British Case,

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and the volumes of Confidential printed correspondence already referred to you in March last.

His Lordship would be glad to be favoured with your opinion as to whether the Counter-Case may properly be submitted to the Arbitrator in its present form, or whether any, and, if so, what amendments or modifications should be made therein.

As it is necessary that the Counter-Case should be in the hands of the Arbitrator on the 1st March next, Lord Lansdowne would be glad to be favoured with a reply at your earliest possible convenience.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

British Case. Confidential 7515.
British Counter-Case Confidential 7664.
Explanatory Memorandum.
German Memorandum and Appendices. Confidential 7621 and 7621.*
Navigators' Islands Print, Vols. IX, XXIII, and XXIV. Confidential 6251, 7233, 7234.

Report.

We approve of the draft Counter-Case prepared by Mr. H. Erle Richards.

We do not see how His Majesty's Government can now avoid using the Reports of His Majesty's Consul having regard to the course taken by the German Government in relying upon the Reports of Herr Rose.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 20, 1902.

RUSSIA.

No. 32.

[July 23, 1902.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 16, 1902.

Gentlemen,

Russian protest against application of penal clause to their sugar.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list which relate to a protest which has been received from the Russian Government in regard to the application to Russian sugars of the penal clauses contained in Article IV of the International Convention signed at Brussels on the 5th March last, which Convention is now awaiting ratification by the Contracting States.

In connection with this question, I have the honour to refer to a Confidential Memorandum by the Lord Chancellor, dated the 5th July, 1899, and also to a Report of the present Attorney- (at that time Solicitor-) General, of the 23rd June, 1899, written at the time when countervailing duties on sugar were first enacted in India.

It is proposed to reply to the Russian Ambassador in the terms of the accompanying draft, and I shall be obliged if you will state whether you concur in its

terms, or whether you have any suggestions to offer for its amendment or amplification.

I shall at the same time be glad if you will favour me with any general observations which you may have to offer on the subject.

I have, &c.
(Signed) MARTIN GOSSELIN.

List of Papers.

M. de Staal		July 8, 1902.
Draft reply.		
Sugar Convention	(Parliamentary No. 4098)	March 5, „
To M. Lessar		July 15, 1899.
Solicitor-General		June 23, „
Lord Chancellor		July 5, „

Report.

We concur in the terms of the accompanying draft initialled by us.

We have nothing to add.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 23, 1902.

Annex.

Draft of Letter from the Marquess of Lansdowne to M. de Staal.

Foreign Office, July 30, 1902.

Your Excellency,

I HAVE the honour to acknowledge the receipt of your Excellency's note of the 8th instant, in which you were good enough to inclose a note prepared by the Imperial Minister of Finance concerning the decisions arrived at by the recent Brussels Conference respecting sugar bounties.

The note explains the reasons why the Russian Government did not consider it necessary to be represented at that Conference, and whilst giving a detailed account of the system in force in Russia in regard to the sugar industry, proceeds to state that no bounties on the exportation of sugar are given in Russia, and that, even were such bounties given, the most-favoured-nation stipulation in existing Treaties would preclude the application to Russian sugar of the penal clause contained in Article IV of the International Convention concluded at Brussels on the 5th March last.

His Majesty's Government have given the most careful consideration to the representations thus made by your Excellency, and, in reply, I would beg leave in the first place to recall to your Excellency's attention the situation which existed in regard to the Russian sugar trade before the Brussels Conference was summoned.

In the year 1899, as your Excellency is aware, after the deliberations of the Sugar Conference of 1898, the Government of India imposed countervailing duties upon Russian sugar imported into India, and when representations were made by M. Lessar against that action of the Indian Government, my predecessor replied on the 15th July, 1899, to the effect that the Russian system did, in the opinion of Her Majesty's Government, create an artificial stimulus on the production of sugar which had practically the same effect as a bounty of a more direct character, and that the imposition of countervailing duties in such a case was not inconsistent with the provisions of the most-favoured-nation clause.

The grounds upon which Her Majesty's Government came to this conclusion are fully set forth in the note referred to, and no reply was received from the Russian Government contesting them.

The Indian countervailing duties continued thus in operation until the time when the invitations were given by the Belgian Government for the meeting of the recent Conference at Brussels.

His Majesty's Government greatly regret that the Russian Government did not see fit to be represented at that Conference, since, if the Russian Delegates had been present, the position and interests of Russia in connection with the sugar question might have been more authoritatively put forward.

In the circumstances, however, it became necessary, without the participation of Russia, once

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more to enter upon an elaborate examination of the various systems of sugar bounties, and the International Convention which has already been brought to the attention of your Government was eventually concluded.

Amongst other things, it was recognised in that Convention that a bounty could be created by a surtax, *i.e.*, by a disproportion betwixt the customs and the excise exceeding a certain figure, viz., 6 fr. for refined, and 5 fr. 50 c. for raw, sugar per 100 kilog. In Russia the existing customs duty on sugar is believed to be 97 fr. 60 c. per 100 kilog, whilst the excise duty is 28 fr. per 100 kilog., the surtax being thus 69 fr. 60 c. per 100 kilog.

Under the provisions of the Convention of the 5th March, 1902, Article VII, His Majesty's Government have agreed to the constitution of an International Commission, whose duty it will be, amongst other things, to determine the existence of bounties in non-signatory States and to assess their amount. His Majesty's Government still cherish the hope that, on reconsideration of the matter, the Russian Government may become a Party to the International Convention, full liberty having been given for non-signatory States to adhere to it. In the contrary case, should the Convention be ratified, and should the International Commission find that bounties result from the Russian system, His Majesty's Government would have no option but to apply the penal clause to Russian sugars, a course which, as previously stated, they would consider in no wise inconsistent with the stipulations of the Treaty of Commerce between Great Britain and Russia of the 12th January, 1859.

In regard to the suggestion contained in the penultimate paragraph of the Russian note inclosed by your Excellency, to the effect that the whole question should now be reopened by a fresh inquiry, not only into the conditions of the sugar industry, but also into those of all other industries affected by bounties or by the operation of syndicates tolerated or protected by the Government, I regret to say that His Majesty's Government could not, after all that has taken place, consent to participate in such an inquiry, which they do not consider would at present lead to any practical result.

(Initialled) R. B. F.
E. C.

No. 33.

[November 18, 1902.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, October 18, 1902.

Gentlemen,

Penalizing of sugar: Draft reply to Russian protest.

I HAVE the honour to transmit herewith to you, by direction of the Marquess of Lansdowne, a copy of a Memorandum communicated to me by the Russian Chargé d'Affaires in reply to the note which his Lordship, after consultation with you, addressed to the Russian Ambassador in July last on the subject of the protest of his Government against the decisions arrived at by the recent Conference at Brussels on the sugar question, together with the papers bearing on the correspondence, as noted in the accompanying list.

I have the honour likewise to inclose a draft of the answer which Lord Lansdowne proposes to return to the Russian Memorandum.

His Lordship will be obliged if you will take the accompanying papers into your consideration, and will state whether you concur in the terms of the proposed reply, or whether you have any suggestions to offer for its amendment or modification.

He will at the same time be glad if you will favour him with any general observations which you may have to offer on the subject.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

Memorandum communicated by Baron Graevenitz	..	September	24, 1902.
Solicitor-General	.. ..	June	23, 1899.
Lord Chancellor	.. ..	July	5, „
To M. Lessar	.. ..	July	15, „
Sugar Convention	.. .. (Parliamentary No. 4098)	March	5, 1902.
M. de Staal	.. ..	July	8, „
To Law Officers	.. ..	July	16, „
From ditto	.. ..	July	23, „
To M. de Staal	.. ..	July	30, „

Report.

We concur in the terms of the proposed reply to the Memorandum of the Russian Chargé d'Affaires as altered by us. We think the extract from Mr. (now Sir Alfred) Bateman's evidence before the Sugar Commission is hardly of sufficient clearness or importance to render its communication advisable.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 18, 1902.

Annex.

Draft of Letter from the Marquess of Lansdowne to Baron Graevenitz

Foreign Office, November 20, 1902.

Sir,

I HAVE the honour to state that His Majesty's Government have given their careful consideration to the Memorandum which you were good enough to communicate to me on the 24th September last in reply to my note to M. de Staal of the 30th July last regarding the decisions of the Brussels Conference respecting sugar bounties.

In this Memorandum it is maintained that the levying of higher import duties on Russian sugar than on that from other countries constitutes an indisputable infringement of Article II of the Treaty of Commerce of 1859; and that the encouragement of exportation by means of bounties, even if it existed, could not justify the imposition of additional duties. It is also contended that His Majesty's Government give to the most-favoured-nation clause an interpretation obviously open to question, because it would follow from that interpretation that goods arriving from a country which grants to its produce lower railway rates or reduced freights, or where natural conditions are more favourable than those in other States, might be subjected to higher customs duties than those imposed on similar goods of different origin; and that goods which pay export duty would be entitled to an equivalent rebate on importation. The Memorandum proceeds to dispute the right of the Powers who signed the Brussels Convention to levy a duty on sugar from countries where the surtax exceeds 6 fr. per 100 kilog., and it also declares that Russia declines to be bound by a Convention to which she is not a party, or to be subjected to a penalty in respect of her sugar because she has not adhered to that arrangement. In conclusion, the Memorandum states that the Russian Government are ready, if His Majesty's Government wish, to submit the matter to arbitration, and are of opinion that the question of the interpretation of the most-favoured-nation clause should be discussed in relation not only to sugar but to other descriptions of goods.

In reply to the arguments advanced in the Memorandum, it is necessary, first, to point out that there is no intention of placing Russian sugar in the British market in a less favourable position than other sugars, for if the exportation of such sugars be stimulated by the legislative action of the countries whence they are derived, they also would receive treatment corresponding to that accorded to the Russian product, which could equally escape such treatment on the withdrawal of the encouragement it now enjoys. The matter is therefore in the hands rather of the Russian than of the British Government.

As regards the action which might be taken in response to such forms of encouragement as the reduction of railway rates, &c., it will be the duty of the International Commission, to be established under the Brussels Convention, to decide whether the internal measures adopted by any particular State are or are not in effect equivalent to bounties. There would, however, be no justification for claiming from importing States a rebate of duty, or a bonus if no duty existed, in the case of sugar subject to an export duty in its country of origin, for the remedy in this instance also would obviously lie in the hands of the exporting State. It is precisely the fact that it is within the power of the Legislature in Russia to abolish the conditions which form the basis of the Russian system, *i.e.*, the high surtax and restriction of the amount of produce admitted to the home market, that deprives the Russian Government, notwithstanding the existence of a most-favoured-nation clause, of any ground of complaint against the action of any other Government in endeavouring to free its own home market from the intrusion of goods sold in that market at less than cost price.

As to the right of the Powers who were represented at the Brussels Conference to arrange among themselves what shall or shall not be held to constitute bounties, His Majesty's Government must once again remind the Russian Government that it is through no fault of His Majesty's Government that Russia did not participate in the deliberations which led to the signature of the Convention. His Majesty's Government have, notwithstanding the injury caused to British trade, for many years been seeking a solution of the question in which all other interested States might agree to join. The method devised by the Brussels Conference seems to them the most equitable which can be arrived at, and they believe that in its operation no injustice will be done either to Russian or to any other sugar. It should, however, be observed that the passage in the Memorandum which attributes to my note of the 30th July last the statement that, if Russia refused to adhere to the Convention His Majesty's Government would have no option but to apply the penal clause to Russian sugar, is inexact. It would only be in the case of the International Commission finding that bounties did result from the Russian system that the consequence indicated would follow.

His Majesty's Government note that the Russian Government, while mentioning arbitration, do not make any definite proposal in that direction, and the suggestion is put forward that the question should be considered in relation to all other kinds of goods. His Majesty's Government regret that they cannot agree that the case, even if restricted to the matter immediately at issue, is one proper to be submitted to the judgment of an Arbitral Tribunal. The course which they have at last taken after a long and patient delay has been dictated solely by a desire to secure equality of conditions for those engaged in the production and refining of sugar within the limits over which they have control. Other States do not hesitate to impose high and prohibitive tariffs for the protection of their trade in their own markets; and His Majesty's Government fail to see with what reason the Russian Government can complain of a measure not of favour but of simple and elementary justice to British trade.

They also feel that they are released from the obligation of engaging in any further controversy on the subject by the offer which was contained in my predecessor's note to M. Lessar of the 15th July, 1899, to denounce the Treaty of Commerce of 1859, an offer which they are willing to renew.

In the ante-penultimate paragraph of the Russian Memorandum a declaration is said to have been made on behalf of the Foreign Office to a Committee of the House of Commons in 1897, that it was impossible to introduce countervailing duties without infringing the Treaties of Commerce. If allusion is made to the proceedings of the West India Royal Commission in that year, ~~it may be observed that the evidence given by Mr. (now Sir) A. Bateman, an extract from which is inclosed, shows that it is improbable that any such opinion was at that time expressed by any official belonging to this Department.~~ *an examination of these proceedings discloses no such declaration by any official belonging to this Department, and, in fact, affords evidence to the contrary.*

(Initialled) R. B. F.
E. C.

SIAM.

[Colonial Office.]

No. 33A.

[April 9, 1902.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, April 9, 1902.

Sir,

Extradition between Federated Malay States and Siam.

WE were honoured with your commands signified to us in Mr. Lucas' letter of the 25th February last stating that he was directed to lay before us a letter, dated the 7th February, addressed to the Colonel Office by the Foreign Office, together with all the Inclosures therein referred to, and was to request the favour of our Report upon various questions in connection with the mutual surrender of fugitive criminals between the Federated Malay States and Siam.

That the printed copy of the "correspondence relative to the mutual surrender of fugitive criminals between the Federated States and Siam" sets out at length the various points which had arisen and had been discussed both between the Colonial Office and the Foreign Office, and departmentally in the Foreign Office.

That with regard to paragraph 4 of Mr. Villiers' letter dealing with the list of offences scheduled to the Pahang Enactment No. 12 of 1901, Mr. Lucas was to point out that the phraseology employed was that of the Penal Code of the Federated Malay States, section 435 of which, for example, provided for "Mischief by Fire," the offence of "Arson" being unknown to the Code, as also was "Larceny."

That Mr. Lucas was to request us to take these papers into our consideration and to Report—

1. Whether natives of the Federated Malay States should or should not be regarded as "British-protected persons" when within the dominions of His Majesty the King of Siam, and as such, subject to the jurisdiction of the British Consular Courts rather than to that of the Siamese Courts.

2. Whether we concurred in the terms of the draft Agreement as finally settled by the Foreign Office, and forwarded as a separate Inclosure with Mr. Villiers' letter, and if not, in what respects they should be amended.

3. Whether the Enactments (4 of 1900 of Perak, and 12 of 1901 of Pahang) might, subject to the substitution of the term "surrender" for "extradition," be approved, or whether they should be amended in any other, and if so, in what particulars.

We were also honoured with your further commands contained in Mr. Graham's letter of the 15th ultimo, transmitting to us in original a letter from the Foreign Office, and asking that we would take it into consideration with the correspondence inclosed in Mr. Lucas' letter of the 25th February.

In obedience to your commands, we have taken the papers into our consideration, and have the honour to—

Report—

1. That so far as we can gather from the information supplied to us, and especially from the telegram from Mr. Tower of the 31st January, 1902, and the documents referred to in his letter dated the 1st February, 1902, the natives of the Federated Malay States have not hitherto been regarded as British-protected persons when within the dominions of the King of Siam.

This result has no doubt arisen from the fact that no definite jurisdiction is exercised by His Majesty's Government in the Federated Malay States and from the peculiar relations of His Majesty's Government towards these States, which place them in a different position from other Protectorates.

We think that the policy hitherto observed of not regarding the natives of the Federated Malay States as British protected persons is right, and we see no reason why it should be altered.

2. We see no objection to the draft Agreement from a legal point of view, provided that the list of offences corresponds with the Penal Codes of the States.

Whether the Agreement should extend to natives of other States than Siam and the Malay States is a question of policy on which we have not the materials for expressing an opinion; if this is desirable, it might be rendered workable in practice if the Resident has a discretion as provided in the Enactments 4 of 1900 of Perak and 12 of 1901 of Pahang.

3. We think the crimes ought in each case to be set out in the Schedule, and the Enactments and the Agreement ought to correspond; at present, they differ in several respects. The request for surrender is, in the Enactments, to be made to the Resident, and not as in the Agreement to the Government, and the Resident has a discretion which is not given in the Agreement to the Government.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

No. 34.

[December 3, 1902.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 12, 1902.

Gentlemen,

Siam Order in Council: draft of.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list, with regard to a draft Order in Council which has been prepared by Mr. Albert Gray for the purpose of consolidating and amending the Siam Orders in Council of 1889 and subsequent years.

This change has been in contemplation for some time past, and has become of immediate necessity in consequence of the complete separation which has now been carried out of the Judicial and Consular establishments at Bangkok from each other.

I have the honour to request that you will take the draft Order into your

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consideration, and favour Lord Lansdowne with your opinion as to whether its terms are fit and proper for submission to the King in Council for His Majesty's approval, or whether they require any, and, if so, what, additions or amendments.

His Lordship would be glad to be furnished, at the same time, with any general observations which you may be good enough to offer on the papers.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Mr. Gray		April 23, 1902.
(B.)	To Mr. Gray		July 1, 1901.
(C.)	Siam Order in Council, 1889 (Conf. 5860*).		
(D.)	Ditto, 1898 (Conf. 6985*).		
(E.)	Ditto, 1900 (Conf. 7436*).		
(F.)	Ottoman Order in Council, 1899 (7171*).		
(G.)	Mr. Tower	(Telegraphic)	March 31,
(H.)	Ditto	(Telegraphic)	April 1,

Report.

We approve of the draft Order in Council herewith initialled by us.*

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
December 3, 1902.

VENEZUELA.

No. 35.

[April 1, 1902.]

Foreign Office to Attorney-General.

As to "Bolivar" ["Ban Righ"] refitting in Trinidad.

MR. VILLIERS presents his compliments to the Attorney-General, and has the honour, by direction of the Marquess of Lansdowne, to state that a telegram has been received at the Admiralty from the Commander-in-chief of the North American Station in the following terms:—

"'Indefatigable' reports 'Bolivar' machinery damaged; will be disabled probably two months."

Mr. Villiers is to inquire whether, in the Attorney-General's opinion, any instructions should be sent to the Commander-in-chief or to the Governor of Trinidad.

The general Report of the 19th instant on the case, and copies of the instructions already addressed to the Governors of the West Indian Colonies, are inclosed.

Foreign Office, March 31, 1902.

Memorandum by the Attorney-General respecting the "Bolivar."

(B.)

WITH reference to the inclosed telegram, I think that the Colombian Government should at once be communicated with, and that the "Bolivar" ought not to be

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* The draft of the Order in Council initialled by the Law Officers was returned to this Office in Mr. A. Gray's letter of December 12, 1902.

allowed to refit until satisfactory assurances have been received that the "Bolivar" is a Colombian public vessel, and that she will not in the future be permitted to engage in any irregular hostilities against Venezuela such as are alleged to have occurred.

(Signed) R. B. FINLAY.

Littlestone, April 1, 1902.

No. 36.

[April 3 to 5, 1902.]

Foreign Office to Attorney-General.

As to sending arms on "Bolivar" to Carthagena by British steamer. Towing of "Bolivar" to Colombian port.

MR. VILLIERS presents his compliments to the Attorney-General, and has the honour to send, by direction of the Marquess of Lansdowne, a letter from the Colonial Office transmitting paraphrase of a telegram from Sir A. Moloney, Governor of Trinidad, on the subject of the "Bolivar," late "Ban Righ."

With regard to the question of the "Bolivar" refitting at Trinidad, Mr. Villiers incloses copy of a telegram which has been sent to Mr. Welby, His Majesty's Minister at Bogotá, in the terms suggested by the Attorney-General in his note of the 1st instant. This note has been communicated to the Colonial Office, with a request that the Governor of Trinidad should be directed by telegraph not to allow the vessel to refit pending further instructions.

The Attorney-General will observe in the telegram from Sir A. Moloney that the Consul for Colombia asks that he may receive permission to send by British passenger-vessel to Cartagena 5,000 rifles and 3,000,000 cartridges, these being the remainder of war material with the exception of cannon. The arms and ammunition referred to are no doubt either on board the "Bolivar," or have been landed from that vessel.

Mr. Villiers is to inquire whether, considering all the circumstances of the case, permission should be given for the conveyance of the arms, &c., on board a British vessel to a Colombian port,

A copy of the Attorney-General's Report of the 1st instant is inclosed for convenience of reference.

Mr. Villiers presumes that the Governor should be informed that the suggestion made in the last paragraph of his telegram, respecting the removal of the "Bolivar," cannot be entertained.

Foreign Office, April 3, 1902.

Memorandum by Attorney-General.

WITH reference to the inclosed copy of telegram and the questions put therein, I think that—

(1.) Permission should *not* in the meantime be granted to send the rifles and ammunition from the "Bolivar" by British vessel to Cartagena. The result of the communications with the Colombian Government should be awaited.

(2.) The suggestion in the last sentence of the telegram, that the "Bolivar" should be towed to a Colombian port by a British man-of-war should *not* be acceded to.

(Signed) R. B. FINLAY.

April 4, 1902.

Colonial Office to Foreign Office.

Downing Street, April 2, 1902.

Sir,

WITH reference to my letter of the 1st instant and previous correspondence, I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquess of Lansdowne, a paraphrase of a telegram received from the Governor of Trinidad on the subject of the "Bolivar," or "Ban Righ."

2. It will be observed that the period necessary to repair the vessel is now stated

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to be at least one month, and Mr. Chamberlain would be glad to have the observations of Lord Lansdowne on the present position with respect to her at an early date in order to issue to the Governor the instructions for which he asks.

I am, &c.
(Signed) C. P. LUCAS.

Inclosure.

Governor Sir A. Moloney to Mr. Chamberlain.

(Telegraphic.) P. *April* 2, 1902.

WITH reference to your telegram of the 26th March, His Majesty's ship "Indefatigable" reports that "Bolivar" is unfit for sea; if repairs undertaken at all, will take a month at least.

What is to be done, if she does not undertake repairs, or if she refuses to leave port? She will probably, on leaving territorial waters, be seized at once by four Venezuelan ships of war, which are now in harbour with steam up for that purpose continually.

Length of stay of "Bolivar" indefinite. Her continued presence is most undesirable and awkward, and the same may be said of the Venezuelan ships of war. As long as "Bolivar" is here, "Indefatigable" should be here, in order to guard against any act of violence.

Consul for Colombia asks that he may receive permission to send by British passenger-vessel to Cartagena 5,000 rifles and 3,000,000 cartridges, these being remainder of war material with exception of cannon.

Beg that I may have instructions "Bolivar" could, perhaps, be towed to nearest Colombian port by one of His Majesty's ships.

Señor Ponce to the Marquess of Lansdowne.

(Translation.)

My Lord, *Colombian Legation, April* 3, 1902.

I HAVE the honour to inform your Excellency that I have just received a telegram from M. Becerra, Colombian Consul at Port of Spain, in which he asks this Legation to support a request that he has made to his Excellency the Governor of Trinidad, that certain arms, &c., destined for the Colombian port of Cartagena, may be dispatched from the Colony with the least possible delay.

While respectfully soliciting from His Majesty's Government a favourable consideration of Consul Becerra's request, I have, &c.

(Signed) IGNACIO GUITERREZ PONCE.

Memorandum by Attorney-General.

THE inclosed does not alter my view as expressed in yesterday's Memorandum.

(Signed) R. B. FINLAY.

April 5, 1902.

No. 37.

[April 15, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, April* 12, 1902.

"Ban Righ" or "Bolivar": Action of Governor of Trinidad, and proposal of Colombian authorities.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, a letter from the Colonial Office, inclosing a telegram and two despatches from the Governor of Trinidad relative to the recent proceedings of the steam-ship "Ban Righ" or "Bolivar."*

I am to request that you will take this letter and the inclosures into your consideration, and will favour Lord Lansdowne, at your earliest possible convenience, with your opinion on the following points:—

1. Whether the action of the Governor of Trinidad should be approved.

2. What instruction should be sent to the Governor in reply to his telegram of the 10th instant, stating that the Colombian Consul for the island has telegraphed for a Colombian man-of-war to tow the "Ban Righ" from Port of Spain, or to remove the arms from her, and asking whether there is any objection to either course, with or without assurance from the Colombian Government that neither vessel nor arms will be used against Venezuela.

His Lordship will be glad at the same time to be favoured with any observations of a general nature which you may have to offer on the papers.

I have, &c.
(Signed) F. H. VILLIERS.

Report.

1. We think that the action of the Governor may be approved.

2 We see no objection to permitting a Colombian man-of-war to remove the "Bolivar" in tow, or to take on board the arms and ammunition which are now on the "Bolivar." The first of these courses would be much preferable, but we do not think that assurances of any kind need be insisted on with regard to either.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
April 15, 1902.

No. 38.

[May 14, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 2, 1902.

Removal of "Bolivar" or her arms by Colombian man-of-war

WITH reference to your letter of the 15th ultimo, I have the honour to transmit to you, by direction of the Marquess of Lansdowne, a copy of a letter from the Admiralty relative to the proposal of the Colombian Government to send a man-of-war to remove the "Bolivar," late "Ban Righ," or her arms and ammunition, from Port of Spain.*

I am to request that you will take this letter into your consideration, and will favour Lord Lansdowne at your earliest convenience with your opinion as to the reply which should be made to the Admiralty on the following point, viz.:—

Whether on the Colombian man-of-war leaving Port of Spain, either with or without the "Bolivar," any steps should be taken to enforce the restrictions usually applied to neutrals towards belligerents, in which case the Colombian man-of-war would be given twenty-four hours' start before any Venezuelan man-of-war which may be at Port of Spain would be allowed to leave the port.

The Lords Commissioners raise this question in view of a possible application on the subject being made by the Colombian man-of-war to His Majesty's ship lying in Port of Spain.

Lord Lansdowne will be glad at the same time to be favoured with any observations of a general nature which you may have to offer in regard to the inquiry of the Admiralty.

I have, &c.
(Signed) F. H. VILLIERS.

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* Colonial Office, April 11. 1902, which is contained in the volume of Confidential print relating to the relations of His Majesty's Government with Venezuela, forwards reports from the Governor of Trinidad of steps taken owing to the presence of the "Bolivar" as well as of Venezuelan gun-boats in Port of Spain, where they threatened to come into collision.

* Admiralty, April 28, 1902.

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Report.

It would be very proper that twenty-four hours' start should be given by arrangement, and an endeavour should be made to bring this about.

We do not, however, think that His Majesty's Government would be justified in enforcing the observance of such a restriction by the Venezuelan men-of-war, as this might involve the use of force against the vessels of a friendly Power.

The case is not analogous to the case of vessels of belligerents, for they are, in effect, admitted only on the terms of submitting to the usual restriction.

His Majesty's Government would, of course, be justified in preventing any hostilities within the territorial waters of His Majesty.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
May 14, 1902.

No. 39.

[June 19, 1902.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 17, 1902.

Gentlemen,

"Libertador" ["Ban Righ"] refitting in British Colony.

WITH reference to previous correspondence respecting the proceedings of the steam-ship "Libertador," formerly "Ban Righ," I have the honour to inform you, by direction of the Marquess of Lansdowne, that on receipt of the letter of the 1st April from the Attorney-General (Paper B in accompanying list), His Majesty's Minister at Bogotá was instructed by telegram (Paper C) that unless and until certain assurances had been received from the Colombian Government, the vessel could not be allowed to refit in a British port.

These assurances were to be as follows:—

1. That the "Libertador" was a Colombian public vessel; and

2. That she would not in future be permitted to engage in any irregular hostilities against Venezuela, such as were alleged to have occurred.

I am to transmit to you copy of a telegram (Paper D) from Mr. Dickson, who was at the date of its dispatch in temporary charge of His Majesty's Legation at Bogotá, conveying the reply of the Colombian Government to the inquiry addressed to them on these points. You will perceive that the Minister for Foreign Affairs now states:—

1. That the Colombian Government regard the "Libertador" as their property.

2. That they will not authorize the vessel to be used for the purpose of committing hostile acts against Venezuela so long as no state of war exists between the two Republics; and that orders have been given that the vessel shall proceed to Colombian waters with the view of preventing invasion there.

On the strength of these assurances, his Excellency asks His Majesty's Government to allow the vessel to refit in Port of Spain and to leave Trinidad.

I am to request that you will take this letter and its inclosures into your consideration, and will favour Lord Lansdowne at your earliest convenience with your opinion as to whether the assurances given by the Colombian Government are sufficiently satisfactory to permit of the "Libertador" being allowed to refit in Port of Spain, and to proceed thence to Colombian waters so soon after the completion of her repairs as the Agents of the Republic of Colombia may decide.

His Lordship will be glad at the same time to be favoured with any observations of a general nature which you may have to offer on Mr. Dickson's telegram (Paper D).

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Telegram in Admiralty letter		March 29, 1902.
(B.) Attorney-General		April 1, "
(C.) Telegram to Mr. Welby	(No. 1)	April 2, "
(D.) Telegram from Mr. Dickson..		June 9, "

Report.

We think the assurances given may be accepted as satisfactory, and that the "Libertador" may be allowed to refit in Port of Spain and proceed thence to Colombian waters.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 19, 1902.

No. 40.

[July 16, 1902.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 12, 1902.

Gentlemen,

Navigation of Orinoco prohibited. Blockade of its mouths.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list, which relate to a notification of the prohibition of navigation of the River Orinoco and of a blockade of its mouths, of Guiria, Cano-Colorado, and Coro. This was formally communicated by the Venezuelan Government to Mr. Haggard, His Majesty's Minister at Carácas, on the 29th ultimo.

On the receipt of Mr. Haggard's telegram No. 27 (Paper A), some doubt arose as to the exact extent of coast to which the blockade applied, and whether it was intended to include the mouths of the Rivers Barima and Amacuru, which, although draining a different basin from that of the Orinoco, fall into the sea within what may reasonably be considered to be the embouchure or estuary of that river. That such was the intention was assumed from the fact that Mr. Haggard had called the attention of the Venezuelan Government to the decision of the Arbitral Tribunal appointed to determine the boundary-line between British Guiana and Venezuela, which prescribes that in time of peace these two rivers shall be open to navigation by the merchant-vessels of all nations. It was, however, pointed out to Mr. Haggard (Paper B) that the penultimate paragraph of the Award of that Tribunal (Paper H), above referred to, is applicable only to times of peace.

From Mr. Haggard's telegram No. 29 (Paper E) it will be seen that the blockade is intended by the Venezuelan Government to cover the delta of the River Orinoco, and to include therein the mouths of the Rivers Barima and Amacuru.

It appears to Lord Lansdowne that the declaration of blockade, issued in proper form by General Castro as head of the *de jure* Government of the Republic, is *primâ facie* binding, and that the actual extent of coast-line intended to be included in the notification cannot be disputed, as the declaration or notification of blockade appears to be clear and explicit in its terms. The course adopted by Mr. Haggard in not following up his unofficial representation with regard to the free navigation of the Rivers Barima and Amacuru, as reported in paragraph 2 of his telegram No. 29 (Paper E), would therefore appear to have been correct.

With regard to paragraphs 3 and 4 of the same telegram, Mr. Haggard would seem already to possess the materials for answering the inquiry of the Government of British Guiana as to the free navigation of these same rivers, as he has been informed that the British Conventional rights in question do not enure in time of war but are expressly confined to time of peace.

It was pointed out in Lord Lansdowne's telegram to Mr. Haggard of the 2nd July (Paper B), that it is within the competence of the *de jure* Government of Venezuela to declare a blockade against insurgents, but that by so doing the latter were

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given the status of belligerents; and Mr. Haggard now inquires whether, in view of possible eventualities, he should make a communication to the Venezuelan Minister for Foreign Affairs in this sense. Lord Lansdowne is disposed to think that Mr. Haggard would do well to inform the Minister for Foreign Affairs officially that this is the view taken by His Majesty's Government.

In this connection it must be remembered that according to the generally accepted principles of international law (embodied in Article 4 of the Declaration of Paris (Paper I))—to which Venezuela is not a party—but which was accepted as sound doctrine before that Declaration was made, in 1856, and is therefore observable by Venezuela quite independently of the Declaration—"*A blockade to be binding must be effective.*"

It is not apparent at present how far the Government of Venezuela are in a position effectively to blockade the coast-line in question, and if they do not blockade it effectively it is to be presumed that His Majesty's Government should decline to recognize the blockade.

It should be borne in mind, however, that Venezuela, in virtue of having refrained from adhering to the Declaration of Paris, is entitled to issue commissions to privateers, and in these circumstances the question arises whether it is desirable that Mr. Haggard should be instructed to draw the attention of the Venezuelan Government to the generally accepted principle above referred to, viz., that "a blockade to be binding must be effective," and to let it be understood that if they are unable to effectively blockade the coast-line in question, His Majesty's Government will decline to recognize the blockade.

I am accordingly to request that you will take these papers into your consideration, and favour Lord Lansdowne with your opinion on this point, and also with any further observations of a more general nature which you may be disposed to offer on the matter.

I have, &c.
(Signed) F. H. VILLIERS.

P.S.—The accompanying letter from the Colonial Office (Paper F), and telegram from His Majesty's Minister at Carácas (Paper G), are transmitted for the consideration of the Law Officers of the Crown in connection with the letter above referred to.

F. H. V.

Foreign Office, July 14, 1902.

List of Papers.

(A.)	Mr. Haggard	(No. 27.	Telegraphic)	July 2, 1902.
(B.)	To ditto	(No. 18.	Telegraphic)	July 2, ,,
(C.)	Ditto	(No. 28.	Telegraphic)	July 3, ,,
(D.)	To ditto	(No. 20.	Telegraphic)	July 4, ,,
(E.)	Ditto	(No. 29.	Telegraphic)	July 7, ,,
(F)	Colonial Office	..	.. ..	July 11, ,,
(G.)	Mr. Haggard	(No. 31.	Telegraphic)	July 11, ,,
(H.)	Award of British Guiana Boundary Tribunal. ["Venezuela No. 7: 1899."] (Parliamentary No. 3960.)			
(I.)	Declaration of Paris, April 16, 1856. (Treaty No. 403.)			

Report.

The blockade proclaimed may be good if the insurgents are in possession of the territory and rivers to which the blockade applies, and if the blockade is an effective one.

It does not appear in our instructions whether or not the insurgents are in such possession. The Venezuelan Government cannot effect a legal "blockade" of territory or rivers in their own control merely because they give access to territory or waters in the hands of the insurgents.

The Venezuelan Government might exercise the right of preventing access to their own territory or waters if such access might assist the enemy, but this, of course, would not have the incidents of a "blockade," and is not what they have done.

The blockade of the mouth of a river does not affect neutral parts higher up the river (see Calvo, 5th edition, section 2860, and Hall, 4th edition, p. 738) to which there is a right of access by the river.

Any right to interfere with the navigation of the lower portions of the Rivers Barima and Amacuru must depend not on the blockade but on the terms of the Award which confines the right of navigation to times of peace. The construction of these words in the Award is a matter of some difficulty, but it seems clear that the mere proclamation of a blockade by the Venezuelan Government, involving, as it does, a recognition of belligerency, cannot be conclusive on His Majesty's Government that such a state of war exists as to put an end to the rights of His Majesty's Government under the Award.

We cannot advise His Majesty's Government to acquiesce finally in the apparent contention of the Venezuelan Government that the rights of navigation in the lower reaches of the Barima and Amacuru are suspended, but we have not before us the materials to enable us to advise definitely on a point of so much importance. The question must be whether a state of things in fact exists which suspends these rights.

We do not think it desirable, in view of the doubt which exists on the facts as to the validity of the blockade, that the attention of the Venezuelan Government should be called to the rule of international law that a blockade must be effective; if it is not adequately enforced it may be disregarded, and the Venezuelan Government may be afterwards notified to this effect.

As regards the question raised as to privateers, it is enough at present to say that the ordinary terms of letters of marque do not extend to empowering privateers to enforce blockades, but any decision on this point had better be postponed until it arises in a practical form.

We think the presence of a British man-of-war on the spot very desirable.

(Signed) R. B. FINLAY.
E. CARSON.

Royal Courts of Justice,
July 16, 1902.

No. 41.

[October 1, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, September 15, 1902.

As to recognition of Venezuelan blockade and of insurgents as belligerents.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, copies of the correspondence noted in the accompanying list relative to the Venezuelan blockade.

Papers on this subject have already been laid before you; and in your Report, dated the 16th July last, you stated that if the blockade was not adequately enforced, it might be disregarded, and that the Venezuelan Government might be afterwards notified to that effect.

In view of the understood rule of international law that a declaration of blockade against insurgents confers upon them, if they do not already possess it, the status of belligerents, instructions had been telegraphed to His Majesty's Minister at Carácas in that sense with reference to the navigation of the Rivers Barima and Amacuru.

Information was subsequently received through Carácas and Trinidad and also through the Admiralty that no effective blockade of the stretch of coast comprised in the Decree of the 28th June was being maintained.

Meantime, His Majesty's Government were in communication with the Governments of France, Germany, and the United States of America to find out if the Governments named would act in concert with that of this country in connection with the blockade, and in view of these negotiations and the above information, instructions were, on the 5th ultimo, telegraphed by the Colonial Office, at the instance of this Department, to the Governor of Trinidad, in answer to inquiries made by him, directing him not to treat the Venezuelans as belligerents (Paper A).

France and Germany subsequently agreed to act with His Majesty's Government, and on the 12th ultimo the Representatives of the three Powers addressed notes to

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the Venezuelan Government refusing to recognize the blockade, as it was not effective, and this decision was communicated to the Governments of the Colonies concerned on the 18th ultimo (Paper B).

The question must now be settled whether the declaration of this blockade, which His Majesty's Government have declined to recognize, should be regarded as having conferred upon the insurgents the status of belligerents, and therefore imposing upon this country the position and duties of a neutral.

There appear to his Lordship to be two possible alternatives—(*a*) to take up the position that the status of belligerency flows as a legal consequence from the declaration of a blockade, irrespective of whether the force available for its maintenance is adequate for the purpose, and that consequently His Majesty's Government may now treat both the Venezuelans and the insurgents as belligerents, although the blockade is not recognized; or (*b*), to say that, as Venezuela attempted to declare a blockade, for which her naval resources were totally inadequate, His Majesty's Government are entitled to treat the declaration as a nullity and productive of no results.

Throughout the period that has elapsed since the blockade was declared the Venezuelan gun-boats have been making free use of the harbour of Port of Spain, where their presence has been a considerable annoyance to the authorities of the Colony.

This renders it possible that, should the insurgents be ultimately victorious in the present revolution, they might endeavour to set up a claim against His Majesty's Government on the ground that the present Venezuelan Government had been allowed free use of British ports after they had, in effect, recognized their opponents as belligerents.

The Colonial Office consider (Paper C) it would be preferable that the insurgents should be recognized as belligerents, as this course is more in accordance with precedent, more likely to avoid the danger of the insurgents, if successful preferring the claim suggested above, and likely somewhat to reduce the inconvenience the present state of affairs is causing to the neighbouring British Colonies, as, if both parties to the struggle are to be regarded as belligerents, the Venezuelan gun-boats would have to be limited to such use of these harbours as is accorded by neutrals to belligerents.

On the other hand, there appear to Lord Lansdowne to be very strong reasons against adopting this course, and in favour of regarding this declaration of blockade as entailing no results whatever.

It is now ten weeks since the Venezuelan Decree was published; if the insurgents were to have been treated as belligerents, steps should have been taken for that purpose at once by the immediate issue of a proclamation of neutrality; no adequate reason could be given for so long a delay, and a sudden reversal of our position and a limitation to the Venezuelan gun-boats of the use of Port of Spain to that ordinarily accorded to a belligerent might be construed as a leaning on the part of His Majesty's Government towards the insurgent party.

Even if it is possible in law to decline to recognize a blockade and yet treat it as good for conferring belligerency, the position is one that will not be readily understood, and will require explanation and justification, whereas if it is ignored for all purposes, there will be no appearance of inconsistency, and our attitude will be clear.

If the suggested claim is some day put forward by the present insurgents his Lordship feels that His Majesty's Government must rely upon their knowledge at the time of the declaration that the naval forces of Venezuela were totally insufficient to maintain such a blockade as sufficient ground for ignoring it.

Under the rules of international law, as at present understood, the use that a belligerent is allowed to make of a neutral harbour would still enable the Venezuelan vessels to hinder British commerce to a considerable extent, and his Lordship is disposed to doubt whether as belligerents they would prove less of an annoyance to the Colonial authorities than they have done up to the present.

Some weeks ago, after outrages committed upon the British vessel "In Time," the Venezuelan Government were warned that unless they could disprove the allegations in connection with that incident His Majesty's Government might be compelled to close the ports of Trinidad to their vessels, and, if the trouble they cause at Port of Spain increases, they can be excluded upon this or some similar ground; but if once this country is placed in the position of neutrals it will be more difficult to adopt strong measures against Venezuela without appearing to intervene in the struggle. These views were embodied in a letter to the Colonial Office dated the 9th September (Paper D).

So far as information has reached this Office, neither France, Germany, nor the United States of America (nor Holland, who has also declined to recognize the blockade) have recognized the insurgents as belligerents, and therefore it would appear that if they adopted this course His Majesty's Government would stand alone.

I am to request that you will take into your early consideration the accompanying papers, and favour his Lordship with your views as to whether there is any objection to regarding the declaration of blockade as inoperative, and as not conferring upon the insurgents the status of belligerents.

Lord Lansdowne will be glad, at the same time, to be favoured with any general observations upon the matters involved which you may be good enough to offer.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) In Colonial Office	August 6, 1902.
(B.) Ditto	August 22, „
(C.) Colonial Office	August 24, „
(D.) To ditto	September 9, „

Report.

The question whether a state of belligerency should be recognized appears to us to be purely one of policy. The fact that His Majesty's Government has declined to recognize the blockade as effective does not take away the right of the insurgents to argue that they have the status of belligerents as between them and the Government of Venezuela, by reason of the latter having issued a proclamation of blockade. But the implied recognition by the Venezuelan Government of a state of belligerency is not conclusive as regards His Majesty's Government.

There is great force in the contention that if His Majesty's Government now gives this effect to the proclamation, no adequate reason can be given for not having taken this line as soon as the proclamation was issued.

The fact, moreover, that other Powers have not recognized the insurgents as belligerents cannot be altogether disregarded.

If His Majesty's Government should determine to recognize the insurgents as belligerents, the fact that the Venezuelan Government formally declared and notified the blockade would no doubt afford a conclusive answer to any remonstrances by them against such recognition.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 1, 1902.

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ZANZIBAR.

No. 42.

[February 7, 1902.]

Foreign Office to the Law Officers of the Crown.

Termination of Zanzibar–Germany Treaty: draft instructions to Berlin.

Gentlemen,

Foreign Office, February 1, 1902.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you, for your consideration, and for such observations as you may be good enough to offer, a draft of instructions to His Majesty's Ambassador at Berlin, which has been prepared on the opinion expressed in your Report of the 31st December last.

His Lordship will be much obliged if you will be good enough to make any emendations or alterations in the draft which you may think advisable.

I have, &c.
(Signed) FRANCIS BERTIE.

Report.

We approve the accompanying draft instructions as altered and initialled by us.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 7, 1902.

Annex.

Draft of Despatch from the Marquess of Lansdowne to Sir F. Lascelles.

(No. . Africa.)
Sir,

Foreign Office, January , 1902.

I HAVE had under my consideration your Excellency's despatch No. 114, Africa, of the 11th October last, respecting the termination and revision of the Treaty of Commerce between Germany and Zanzibar.

His Majesty's Government note with satisfaction that the German Government hope very shortly to be able to submit proposals in regard to the revision of this Treaty. They still, however, find themselves unable to admit the validity of the German contention that the Treaty of 1885 is to be considered as remaining in force until a new Treaty, for which negotiations are now in progress, shall have come into operation.

In support of this view the German Government adduce the fact that revision clauses very frequently occur in Treaties with non-Christian States, although such Treaties do not terminate in the event of the parties failing to agree upon any scheme of revision; and they draw special attention to the use which Great Britain has made of such clauses in the Treaties with Siam of 1855, with Morocco of 1856, with Madagascar of 1865, with Corea of 1883, and with Tunis of 1875.

The real question at issue is, however, that of the meaning ~~of the wording~~ of Article XXIV of the Treaty of 1885 between Germany and Zanzibar. It does not appear to His Majesty's Government that the meaning of ~~the~~ that Article is affected by the fact that Articles in other Treaties, dealing with a similar subject matter, *which* are worded differently ~~from that Article, and~~ *have*, as might be expected, ~~have~~ a different meaning.

~~On this point~~ His Majesty's Government must adhere to the view which they have already expressed as to the proper interpretation of Article XXIV. The Article seems to them to convey the meaning which, according to Sir J. Kirk, ~~the original German Plenipotentiary,~~ was intended by those who settled its terms, namely, that the Treaty should be terminable by either Party after the expiration of fifteen years, subject to one year's previous notice, failing such notice the Treaty to run on for a further period of ten years.

His Majesty's Government consider *further* that this conclusion follows from the view put forward in the last sentence of Baron von Richthofen's note of the 10th October last, namely, that the words "expiration of the present Treaty" are to be regarded as a mere paraphrase ("Umschreibung") of the words "expiration of fifteen years" occurring in the previous sentence. In the opinion of His Majesty's Government the termination of the Treaty at the end of fifteen years is thus provided for specifically, and the two expressions are merely different ways of saying the same thing.

Your Excellency should address a note in this sense to the German Government.

I am, &c.
R. B. F.
E. C.

No. 43.

[March 11, 1902.]

Foreign Office to the Law Officers of the Crown.

Right to grant permits to search the houses of British subjects.

Gentlemen,

Foreign Office, February 10, 1902.

I HAVE the honour, by direction of the Marquess of Lansdowne, to request you to favour his Lordship with your opinion on the following point, which has recently been the subject of discussion between Mr. Cave, His Majesty's Acting Agent and Consul-General at Zanzibar, and Mr. Piggott, the Judge of His Britannic Majesty's Court at that place.

It appears that a dispute having arisen between a husband and his wife, both subjects of the Sultan of Zanzibar, General Raikes, His Highness' Acting First Minister, with a view to the settlement of the question, ordered the parties to attend before him; the wife, however, instead of doing so, took refuge in the house of her brother, a certain Suliman Dossa, who is a British subject. On being applied to by General Raikes, Mr. Cave gave that officer authority to enter and search Suliman Dossa's house, sending one of the Consular askaris to be present when the entrance was effected, and to report to him what occurred. In the course of preliminary correspondence between Mr. Cave and His Majesty's Judge, with which Lord Lansdowne does not consider it necessary to trouble you, Mr. Cave explained that his action in the matter had no connection with any judicial functions which he might exercise as a Consular officer, but was taken by him in his capacity as His Majesty's Representative in the absence on the mainland of Sir C. Eliot, His Majesty's Agent and Consul-General, in whom he considered the necessary powers were vested in virtue of Article 21 of the Treaty between Great Britain and Zanzibar of the 30th April, 1886 (see Document A).

In a letter addressed to His Majesty's Judge on the 4th December, 1901, Mr. Cave states his opinion as follows:—

"In considering the question at issue, I think that we should be careful to discriminate between cases in which a British subject is directly concerned and those in which his interests are affected indirectly and only so far as they conflict with the interests of the Sultan's Government as regulated by the Treaty between Great Britain and Zanzibar.

"In the event of my assistance being invoked by the Sultan's Government or by one of His Highness' subjects in a matter in which some advantage was sought as against a person enjoying His Majesty's protection, I should, if an amicable arrangement were found to be impossible, refer my applicant to the British Court.

"But a case in which only Sultan's subjects are involved, and in which a British subject, not directly concerned, is enabled by Treaty stipulations to interfere, whether wittingly or unwittingly, with the officials of His Highness' Administration in the proper execution of their duties, stands, in my opinion, on a very different footing. Article 21 of the Treaty between Great Britain and Zanzibar states that the house of a British subject 'shall not be entered or searched under any pretext by the officials of His Highness, without the consent of the occupier, unless with the cognizance and assistance of the British Consul or his substitute.' The British Consular Court was in existence at the time when the Treaty was framed, and I believe that these words were inserted with the express intention of enabling His Majesty's Consular Representative to assist the Sultan's authorities, where he properly could, in the administration of justice among His Highness' subjects. In the case of other Powers, moreover, having

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Treaty relations with Zanzibar, authority to enter the domicile of one of their protégés has always been given by the Consul, acting in his Consular capacity, and not by an order emanating from the Court.

"In the particular instance which is now under review there was a dispute between two of the Sultan's subjects, and His Highness' Acting First Minister, being anxious to settle it, ordered the parties to attend before him; instead of doing so, one of them took refuge in the house of a British subject, and General Raikes thereupon applied for my assistance. Having found the facts to be as above stated, and having satisfied myself that the matter was one which came within the competency of the Sultan's authorities to decide, and in which the British Court had no jurisdiction, I gave General Raikes authority to enter the house, and sent one of the Consular askaris to be present when the entrance was effected, and to subsequently report to me what had occurred.

"I am of opinion that my action in thus assisting the Sultan's First Minister to enforce an order given by him in respect of one of His Highness' subjects was absolutely correct, and, in similar circumstances, I should have no hesitation in adopting a similar course of procedure. I will, however, if you request me to do so, submit the point for the decision of the Secretary of State."

Mr. Piggott, however, contends that not only are the powers claimed by Mr. Cave not vested in His Majesty's Representative, but that his action would be unlawful even for His Majesty's Judges clothed with full judicial powers, and would be *ultra vires* of the provisions of "The Zanzibar Order in Council, 1897" (see Document B). In replying to Mr. Cave's above-mentioned arguments, His Majesty's Judge wrote as follows:—

"I am fully aware of Article XXI of the Treaty to which you allude, and this in itself shows the sacredness of the privacy of a man's house and the intention of the Legislature to preserve it.

"I would point out that the Treaty simply stipulates for certain rights as between the Contracting Parties, namely, the respective Governments who are parties to it, with regard to their own subjects; the powers to enforce those rights so reserved, and the officials who are authorized to enforce them, being defined from time to time by Orders in Council.

"As you are doubtless aware, before the present Order in Council such powers were vested in His Majesty's Consuls; by the Order in Council of 1897 a great alteration was made, the judicial power of His Majesty's Consuls was limited strictly to the extent of their being Justices of the Peace, and such other special powers as the Order in Council provides, the higher judicial powers under the Treaty being vested in His Majesty's Judges.

"If you were to carry your argument to a logical conclusion with regard to your powers under Article XVIII, you would contend that you had power to deal with all bankruptcy matters, and under Articles XV and XVI you would practically have power to deal with all judicial matters, both civil and criminal, for which the very existence of the Court is specially invoked. If one Article of the Treaty applies, as you suggest, why not all?

"That there was a dispute between two of His Highness the Sultan's subjects seems to me to have little bearing on searching a British subject's house without adopting the proper procedure.

"If the search was one that could be legally carried out against a British subject, then the Court has full power to grant the necessary process. If it has not the power, then the act is illegal.

"I fail to see how therefore the Consular authorities could, in the present instance, perform a judicial act which His Majesty's Court has no power to do without laying itself open to the suggestion of having exceeded its judicial powers.

"What may or may not be the custom with regard to other nations in this respect does not affect the law applying to British subjects."

When the legality of Mr. Cave's action was first questioned by Mr. Piggott, Sir C. Eliot, on the matter being referred to him, expressed the following opinion:—

"I think Mr. Cave is perfectly right. The principle of extra-territoriality is that a Christian community in a Mahommedan country has a right to settle its own disputes by its own law, British, Portuguese, or whatever it may be. But when there is a question of the relations of the Christian community and the Mahommedan Government an extra-judicial element enters on the scene. It is assumed that the Mahommedan Government cannot be unreservedly trusted with the right of searching Christian houses. It is also admitted that there are occasions when the

Mahommedan Government can properly exercise that right. It is for His Majesty's Representative on the spot to decide whether in a particular case the right should be exercised or not. His action is subject to no control but the instructions of the Secretary of State, and I should imagine that this control is not retrospective, and can only take the form of directions for his future guidance."

The legal adviser to the Secretary of State, on the matter being referred to him, has expressed the opinion that on the merits of the case the view taken by His Majesty's Judge is sound, and that Mr. Piggott's review of the position, as quoted in this letter, gives on the whole a fair judicial summary of the situation.

In consideration of the different views taken in this matter by His Majesty's Agent and Consul-General and by the Acting Consul-General on the one side and by the two Judges of His Britannic Majesty's Court on the other side, I have the honour to state that Lord Lansdowne would be glad if you would favour him with your opinion on the special point which has arisen, and with any general observations on the question which may occur to you.

I have, &c
(Signed) CLEMENT Ll. HILL.

List of Papers.

(A.) Treaty between Great Britain and Zanzibar. April 30, 1886. (Treaty No 782.)
(B.) "Zanzibar Order in Council, 1897." (Confidential No. 6934*.)

Report.

In our opinion, the duty imposed upon the British Consul or his substitute under Article XXI of the Treaty of the 20th April, 1886, still rests with the British Consul, notwithstanding "The Zanzibar Order in Council, 1897." The matter is not a judicial one over which the Courts established by that Order have any jurisdiction, and the provision of the Treaty is solely for the purpose of preventing any abuse of the powers of the Sultan when carrying out matters of administration under his authority.

In the conflict which has arisen between the Consul and the Judge, we are of opinion that the Consul is in the right.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
March 11, 1902.

No. 44.

[April 11, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, January 11, 1902.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted on the accompanying list, dealing with the question of the granting of leases of land to foreigners within the limits of the mainland dominions of His Highness the Sultan of Zanzibar, which form an integral part of the East Africa Protectorate.

Leases and Concessions of land to foreigners in Zanzibar mainland dominions.

The point at issue is raised in a despatch from His Majesty's Commissioner and Consul-General for the East Africa Protectorate (Paper A), who states that, in the case of leases recently granted to foreigners in the Sultan's mainland dominions, a clause has been inserted by which the foreign subject submits to British jurisdiction on behalf of himself, his servants and employés.

Sir C. Eliot inquires whether such a clause can legally be required in all sales or leases of land, and whether, in view of the Treaties entered into by foreign Powers

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with Zanzibar, His Majesty's Government have the right to insist on such a condition in the case of simple sales or leases of land.

This involves the question of whether the subject of a foreign Power possessing extra-territorial rights in the Zanzibar dominions has the power of waiving his country's jurisdiction, even should he desire to do so, in such a way as to debar the State of which he is a subject from exercising extra-territorial jurisdiction over him.

A Memorandum (Paper B) which has been prepared in the Librarian's Department of this Office is inclosed, together with a printed copy (Paper C) of the Law Officers' Report of the 22nd February, 1899, dealing, *inter alia*, with the case of a German clerk, Reich, in the employment of the Uganda Railway, who was fined in the British Consular Court for possessing fire-arms without a licence.

It is suggested by Sir C. Eliot that, should the subject of a Foreign Power desiring a lease of land agree to waive his extra-territoriality and consent to the insertion of the clause mentioned by him, and should the claim to extra-territoriality be afterwards put forward on his behalf by his Government, then the concessionnaire could be made to relinquish the property leased to him, and the lease be altogether annulled.

Lord Lansdowne, however, doubts whether a foreign subject can so waive his country's extra-territorial jurisdiction, except indirectly by surrendering his nationality, nor does he think that any subject of a foreign Power can, by any purely personal submission or admission, give jurisdiction to a Court which would not otherwise have possessed it, to the extent of ousting thereby the jurisdiction of his own Sovereign without the consent of that Sovereign.

With regard to questions involving real property, his Lordship considers that the natural line to take would be that they are governed by the *lex loci*, and that such cases are altogether outside the jurisdiction of the extra-territorial Courts, and within that of the Tribunals administering the local law, whether the individuals interested should be Zanzibaris, French citizens, or German nationals ("Reichsangehörigen"), and that as regards concessions not involving real property, should the concessionnaires wish to sue the Government which granted the concession, they would naturally bring their case before the local Court, and not before the extra-territorial Court of their own nation.

I have the honour to request you to take these papers into your consideration, and to favour his Lordship with your opinion whether, in the circumstances, it would be proper or advisable to insert in leases granted to foreigners within the Sultan's dominions a clause by which the foreign subject submits to British jurisdiction on behalf of himself, his servants, and employés; and, if so, what would be the legal effect of such a clause in the event of resort being subsequently had, in derogation therefrom, to the Tribunals of the foreigner's own nation.

Lord Lansdowne would also be glad to be furnished with any observations of a general nature which you may desire to offer in connection with the points raised in the inclosed correspondence.

I have, &c.
(Signed) CLEMENT Ll. HILL.

List of Papers.

(A.)	Sir C. Eliot	No. 230	August 17, 1901
(B.)	Memorandum by Mr. Brant		October 8, „
(C.)	Law Officers		February 22, 1899.

Report.

We do not think it would be proper or advisable to insert the proposed clause either in leases or concessions granted to foreigners within the Sultan's dominions, and if such a clause were inserted, we do not think it could debar a foreigner from having recourse to the Tribunals of his own nation.

It appears to us that it would be contrary to the Treaties of foreign Powers with Zanzibar to annex such conditions. The subjects of such Powers are entitled to buy land, or take it on lease, and to impose a condition of this sort, to the effect that they should abdicate the right of trial by their own Tribunals, seems to us to be inconsistent with the Treaty right to acquire land. This applies just as much in the case of leases or concessions by Government as in the case of leases by individuals.

We ought to point out that there is a great difference between a general waiver of the Treaty right as to mode of trial and such a case as that of Reich, where the defendant had elected to submit to the jurisdiction of the Courts of the country.

Any such general agreement might clearly be revoked, and the Government of the person entering into it might properly insist that it should not be enforced, while their right to object to the jurisdiction in a particular case in which the subject had submitted to it, and had taken his chance of a favourable decision, stands on a very different footing.

We desire also to point out that the question of what is the proper Court to decide cases arising with regard to real property must depend upon the terms of the Treaty. The general rule is, of course, that the law of the country where the real property is situate is that which determines the rights of the parties; but the question of the Court by which that law is to be administered and applied in any particular case must depend on the stipulations into which the respective Powers have chosen to enter. We do not find in the Zanzibar Treaties any exception in favour of the jurisdiction of the Tribunals of the country in cases affecting real property. Two cases in which such an exception has been made on the interpretation of the Treaties with Turkey and Morocco are referred to in the note to p. 147 of Hall's "Foreign Powers and Jurisdiction of the British Crown." We quite concur with the view expressed in Mr. Davidson's Minute that such exceptions may be very reasonable inasmuch as the law to be administered being that of the country, it may be said to be proper that the Courts of the country should enforce it; but, having regard to the terms of the Treaties, this principle seems hardly to admit of application in Zanzibar.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
April 11, 1902.

No. 45.

[June 4, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, May 28, 1902.

Revision and termination of German-Zanzibar Treaty.

ON the receipt of your Report of the 31st December last respecting the termination and revision of the Treaty of Commerce between Germany and Zanzibar, the Marquess of Lansdowne instructed His Majesty's Ambassador at Berlin to address a note to the German Government in the sense therein suggested (see to Sir F. Lascelles, No. 24, Paper A).

The German Government have now replied to the various arguments advanced by Sir F. Lascelles in compliance with these instructions, and, by direction of Lord Lansdowne, I have the honour to inclose a copy of the note which has been received from them (Sir F. Lascelles, No. 52, Paper B).

In this communication they contend that there is this objection to the view of the British Government, that the Treaties referred to in the German note of the 10th October last cannot be cited as examples, owing to the fact that they differ in text and intention from the German Treaty with Zanzibar, namely, that the word "revision," the meaning of which is the question at issue, is found in all these Treaties, except that with Madagascar, and has in each case the same signification. The German Government point out that the British Government appear to attach to this word the sense of the word "termination" ("Kündigung"); but "revision" and "Kündigung" have different meanings, the difference between these two expressions being shown by the fact that in the case of revision the original provisions of a Treaty remain in force until a new Convention has been approved by both parties; and they point to the terms of the Treaty between Great Britain and Muscat of the 19th March, 1891, as confirming this view. In that Treaty the consequences which would ensue in

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the case of revision are expressly provided against by the Additional Protocol of the 20th February, 1892, so that a demand for revision and termination are in this case practically synonymous. As no provision of the kind was inserted in the German Treaty with Zanzibar, it follows that the word "revision" must be considered to have its ordinary meaning.

As regards Sir J. Kirk's statement that the negotiators who settled the terms of the Treaty held the same opinion as that advanced by His Majesty's Government, it is stated that the German Government do not understand on what grounds he bases his view. The negotiators neither inserted the word "termination" nor made it clear in the Treaty that the word "revision" was not employed in its ordinary sense, as was done in the case of the British Treaty with Muscat.

It is further contended that, even if Sir J. Kirk's opinion could be considered correct by the Imperial Government, importance cannot be attached to it in view of the general legal principle that, in interpreting a Treaty, the text which has received the assent of the two parties can alone be appealed to.

I have the honour to request you to take this letter and the accompanying papers into your consideration, and to favour Lord Lansdowne with your opinion as to what reply should be returned to the note from the German Government.

Copies of my letter to you of the 12th December last, and of your reply of the 31st of that month, are annexed for convenience of reference, together with the papers which have already been before you in connection with this case.

A copy of the Treaty of the 19th March, 1891, between Great Britain and Muscat is also inclosed.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	To Sir F. Lascelles	(No. 24. Africa)	February	11, 1902.
(B.)	Sir F. Lascelles	(No. 52. Africa)	May	2, „
	German Zanzibar Treaty, 1885.			
	British Treaty with Muscat (Treaty 935)		March	19, 1891.
	To Law Officers (and papers then submitted) ..		December	12, 1901.
	Law Officers		December	31, „

Report.

There is nothing to add to our former opinions, to which we adhere. The error of the German Government lies in assuming that the meaning of the word "revision" is the sole matter at issue, whereas, to come to a proper conclusion as to the construction of Article XXIV of the Zanzibar Treaty, the whole Article must be considered, and especially the latter portion, which provides that, in the event of notice of revision not being given, as provided by the Article, the Treaty is to be "tacitly prolonged," which is only consistent with a termination of the Treaty in the event of such notice being given. If this consideration is kept in view, it will be seen that the Treaty is quite different from the Muscat Treaty, to which the German Government refers, and which contains no similar provision.

We think, however, that, subject to any questions of policy, the suggestion of the German Government is a reasonable and convenient one, that, by agreement, the old Treaty should remain in force pending the completion of the new one; but there should be a distinct reservation of the right of His Majesty's Government to treat the old Treaty as at an end in the event of the new one falling through.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 4, 1902.

No. 46.

[July 2, 1902.]

Foreign Office to the Law Officers of the Crown.

Status of children born on Zanzibar mainland after 1890.

Gentlemen,

Foreign Office, June 20, 1902.

I HAVE the honour, by the direction of the Marquess of Lansdowne, to transmit to you, together with the other papers noted on the accompanying list, a despatch from His Majesty's Commissioner in the East Africa Protectorate (Document A), stating that Mr. Cator, the Protectorate Judge, has raised doubts as to the sufficiency of a notification issued by Sir A. Hardinge, late His Majesty's Commissioner (Document B), on the 9th October, 1898, respecting the status of children born in the mainland dominions of the Sultan of Zanzibar subsequent to the 1st January, 1890.

Mr. Cator contends that the notification cannot be held to be more than the "declaration of an intention," and has therefore urged the advisability of issuing a King's Regulation under Article 45 of "The East Africa Order in Council (1897)" (Document C), for the purpose of confirming the notification.

On the other hand Lord Lansdowne is advised that under the Treaty of the 14th December, 1895, between Great Britain and Zanzibar (Document E), by which the administration of the Sultan's mainland dominions was intrusted to officers appointed by His Majesty's Government, this notification issued by the Commissioner, with the consent of the home authorities, was sufficient to put the Agreement of the 13th September, 1889 (see Document B), between the Sultan and Sir Gerald Portal (acting as the Representative of His Majesty's Government), in force within the mainland dominions of the Sultan, in which case it would appear unnecessary, and therefore undesirable, to embody the Agreement in a new King's Regulation.

I have the honour to request that you will take these papers into your consideration, and favour his Lordship with your opinion as to whether any further legislative measures are necessary to insure to all children born within the mainland dominions of the Sultan since the 1st January, 1890, the status of freeborn persons, together with any general observations on the subject which may occur to you.

I have, &c.
(Signed) CLEMENT Ll HILL.

List of Papers.

(A.)	Sir C. Eliot	(No. 180)	May	4, 1902.
(B.)	Notification as to freedom of children born since January 1, 1900 (issued by Sir A. Hardinge, October 9, 1898).			
(C.)	East Africa Order in Council, 1897 (Conf. 6933*).			
(D.)	Minute on Sir C. Eliot's despatch No. 180		May	4, „
(E.)	Treaty between Great Britain and Zanzibar	(Conf. 6827, p. 17)	December	14, 1895.

Report.

We do not think any further legislative measures are necessary to insure to children born within the mainland dominions of the Sultan of Zanzibar since the 1st January, 1890, the status of freeborn persons. We think the Agreement of the 13th September, 1889, coupled with the notification No. 19 of 1898, was sufficient to effect that object; and we further think that the notification No. 19 of 1898, may be construed as a Regulation under Article 45 of "The East Africa Order in Council (1897)," if such a Regulation be necessary. It is not the declaration of an intention but a legislative declaration of the freedom of the persons in question.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 2, 1902.

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ZANZIBAR.

No 47.

[December 19, 1902.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, December 13, 1902.

Draft supplementary Zanzibar Order in Council.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers marked in the accompanying list, relating to a new Zanzibar Order in Council supplementary to the Zanzibar Order in Council of 1897.

This new Order, of the draft of which copies accompany this letter, is required in order to provide for the appointment of a Third Judge, which has been rendered necessary by the growth of the work at Zanzibar and by the establishment of the new Court of Appeal.

Advantage has also been taken of the opportunity so afforded to make certain amendments in the Order in Council, 1897, which experience has shown to be desirable.

Articles III and IV deal with the appointment and position of the Second Assistant Judge (Packet A).

Article V has been inserted in view of doubts that have arisen as to the powers of the Senior Consular Officer at Zanzibar when acting for and on behalf of the Consul-General, during his frequent absence in East Africa, unless he has, on each separate occasion, been specifically directed to act by the Secretary of State.

This Article is taken from Article IV (2) of the East Africa Order in Council, 1902.

Article VI deals with the doubt whether certain classes of Hindoos under Indian legislation applied to Zanzibar are not entitled to escape probate duty altogether.

His Majesty's Judge at Zanzibar has reported that there was no reason to permit this exemption, the only result of which was a loss of revenue.

The papers dealing with this point, which are sent herewith (Packet B), were submitted to Mr. Gray, who recommended that the question should be dealt with whenever the passing of an Amending Order in Council should provide opportunity for effecting this alteration.

Article VII has been inserted in view of the fact that local experience shows from time to time that the provisions of the Indian Acts applied to Zanzibar do not altogether meet the local requirements. The powers of the Secretary of State to modify those provisions is very limited, and the validity of King's Regulations which conflicted with the provisions of these Acts might be called in question. The point has arisen in connection with the issue of certain Pawnbrokers Regulations in Zanzibar, the papers on which are sent herewith (Packet C).

The other amendments are of minor importance.

I have the honour to request you to take these papers into your consideration, and to favour his Lordship with your opinion as to whether the draft Zanzibar Order in Council, 1902, may properly be submitted for His Majesty's approval in the form in which it now stands, and generally with any remarks which you may wish to make on the subject.

I have, &c.
(Signed) CLEMENT Ll. HILL.

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List of Papers.

Draft Zanzibar Order in Council, 1902.

Packet A.	Sir C. Eliot	(No. 29 of 1902).	
	Mr. Piggott		July 16, 1902.
	Treasury		August 2, „
	To Mr. Jackson	(No. 430).	
Packet B.	Sir C. Eliot	(No. 233 of 1901).	
	To Mr. Gray		October 16, 1901.
	Mr. Gray		October 29, ,,
Packet C.	Mr. Cave	(No. 88, Zanzibar, of October 31).	

Report.

As altered in red ink* and initialled by us, we approve of the draft Order in Council, which may, we think, properly be submitted for His Majesty's approval. With reference to Clause 7, we are of opinion that the power given is too wide and indefinite, and we doubt whether, under Clause 47 of the Order in Council of 1897, it was ever contemplated that the Consul-General should have power to make Rules which would be inconsistent with Acts applied to Zanzibar, nor do we think that such a general power should be given.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
December 19, 1902.

Annex.

Draft " Zanzibar Order in Council, 1902.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means His Majesty the King has power and jurisdiction within the dominions of His Highness the Sultan of Zanzibar:

Now, therefore, His Majesty, by virtue and in exercise of the powers on this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Zanzibar Order in Council, 1902."

2. This Order shall be construed as one with "The Zanzibar Order in Council, 1897," hereinafter called the "Principal Order."

3.—(1.) Notwithstanding anything contained in the Principal Order, a Second Assistant Judge may be appointed for the Court for Zanzibar.

(2.) The Second Assistant Judge shall be appointed in like manner and upon the same conditions as, and shall possess the like qualifications as are required for, the Assistant Judge.

(3.) The Second Assistant Judge shall have the same powers as the Assistant Judge.

(4.) In case of the illness or temporary absence of the Second Assistant Judge, or of his temporary appointment as Judge or Assistant Judge, the Consul-General may appoint either a person qualified to be appointed Second Assistant Judge or a person appointed to hold a subordinate Court under the Principal Order, or a commissioned Consular officer to act as Second Assistant Judge.

4. The Assistant Judge and the Second Assistant Judge shall respectively undertake such part of the duties prescribed in the Principal Order for the Assistant Judge and such other duties of a judicial, magisterial, or legal nature as the Judge, with the approval of the Secretary of State, shall direct.

5. In the event of the death, incapacity, removal, or absence from Zanzibar of the Consul-General for the time being, all and every the powers and authorities by the Principal Order granted to him shall, until His Majesty's further pleasure is signified through the Secretary of State, be vested in the senior Consular officer in His Majesty's service for the time being in Zanzibar.

6. The production of a grant of probate or of letters of administration shall, notwithstanding any provision to the contrary contained in any Indian Act or Law in force in Zanzibar or in the Principal Order, be necessary to establish the right to recover or receive any part of the estate or effects of any deceased person situate in Zanzibar.

7. ~~Where the provisions of any King's Regulations conflict with the provisions of any Indian Act or Law applied to Zanzibar by the Principal Order or by order of the Secretary of State, the King's Regulations shall prevail.~~

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* Printed in erased type.

8. In Article 9 of the Principal Order the word "Judge" shall be substituted for the word "Consul-General."

9. The following provisions of the Principal Order are hereby repealed:—

Article 3 (iii). The words from "including" to "Consul-General."

Article 9. The word "Consul-General."

Article 11 (*e*) (iii). The words "relating to civil or criminal procedure or to procedure in bankruptcy."

Article 31 (2) and Article 32. The words "in Zanzibar."

And the Most Honourable the Marquess of Lansdowne, K.G., one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein.

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[This Document is the Property of His Britannic Majesty's Government.]

Printed for the use of the Foreign Office. April 1904.

CONFIDENTIAL.

(8168.)

REPORTS

BY THE

LAW OFFICERS OF THE CROWN, &c.

1903.

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Printed for the use of the Foreign Office. April 1904.

CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.: 1903.

ABYSSINIA.

No. 1.

[February 13, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December 5, 1902.*

Jibuti-Harrar Railway Concession: Further information.

WITH reference to your letter of the 17th ultimo relative to the Jibuti–Harrar Railway, I have the honour to transmit to you, by direction of the Marquess of Lansdowne, a Memorandum on the subject by His Majesty's Agent and Consul-General in Abyssinia, dated the 25th July, 1898 (Paper AA), which was overlooked in preparing the letter addressed to you by this Department on the 12th September last.

The papers which accompanied the letter from this Office are also again forwarded to you, together with your letter of the 17th ultimo (Paper BB), and a Minute upon it (Paper CC). A list of the papers now sent is also inclosed.

It appears from Colonel Harrington's Memorandum of the 25th July, 1898, that the date of the Agreement by which the Emperor Menelik gave permission for the construction of the Railway—and a copy of which accompanies the Memorandum—was the 9th March, 1894, and not the 9th March, 1897, as stated in the letter from this Office (see Inclosure 2 in Paper AA).

The Memorandum also incloses a further Agreement (second portion of Inclosure 3 in Paper AA), dated the 5th November, 1896, modifying that of the 9th March, 1894.

By the later Agreement permission is given to construct the first section of the railway only as far as "the foot of the Mountain of Harrar," a point which is believed to be practically identical with El-bah, mentioned in Sir E. Monson's despatch No. 498 of the 22nd July, 1897 (Paper B), and "Addis Harrar," mentioned in the previous letter from this Office. The railway line to Harrar is to be proceeded with as soon as the profits of the constructing Company are shown to be sufficient to allow of the continuation of the work.

As a consideration, in return for this alteration of the Agreement of 1894, the telegraph line from Jibuti to Harrar, stipulated for in Article 6 of that Agreement, is to be constructed immediately.

The Agreement of 1894 is not otherwise modified by the second Agreement.

Six years have now elapsed since the date of the Agreement of 1896, but it is believed that a telegraph line has only been constructed as far as the railway is completed.

Lord Lansdowne has requested Colonel Harrington to verify this, and as soon as his reply is received you will be informed of its tenour.

It would appear that if, as is believed, the telegraph line has not been completed

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to Harrar, the terms of the Agreement of 1896, which stipulated for its immediate construction have not been observed by the Company, and that the Emperor would be justified in declaring that he is no longer bound by that Agreement, thus leaving the Agreement of 1894 unmodified.

Article 4 of that Agreement provides that, unless the works on the Railway line from Jibuti to Harrar shall have been commenced within two years the Concession will be annulled.

It would appear that the Company interpreted this stipulation as meaning that work must be commenced throughout the section within two years, as otherwise it would not have been necessary for them to ask for the modification introduced by the Agreement of 1896, which authorized their not beginning to construct at first the portion of the line between the "foot of the Mountain of Harrar" and Harrar.

Work has certainly not been commenced throughout the section from Jibuti to Harrar, and the Company have decided to make the terminus at Addis Harrar.

In your letter of the 17th ultimo you stated your opinion that, if the concessionnaire should fail to make the railway line to Harrar, as provided by the Concession, that would be a good ground for putting an end to the monopoly granted by the Concession. I am to inquire whether, in view of the considerations put forward above, which are stated in greater detail in the Minute on your letter of the 17th ultimo (Paper CC), you are of opinion that the Emperor Menelik would be justified in cancelling now the monopoly granted by His Majesty.

I am also to request that Lord Lansdowne may be favoured with any further observations which you may have to make on the matters referred to in this letter.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Map of Africa.			
(B.)	Sir E. Monson	(No. 498.)	July	22, 1897.
(C.)	Ditto	(No. 500.)	July	23, „
(D.)	Captain Harrington	(No. 40.)	May	30, 1900.
(E.)	Ditto	(No. 48.)	June	25, „
(F.)	Treaty between Great Britain and Ethiopia (Library No. 1023)		May	14, 1897.
(G.)	Law Officers		August	31, 1900.
(H.)	Sir E. Monson	(No. 52.)	February	14, 1902
(I.)	To Lieutenant-Colonel Harrington.. ..	(No. 22.)	March	14, „
(J.)	Sir E. Monson	(No. 93.)	March	20, „
(K.)	Ditto	(No. 106.)	March	29, „
(L.)	Ditto	(No. 111.)	April	10, „
(M.)	Lord Cromer	(No. 57. Telegraphic)	May	19, „
(N.)	Sir E. Monson	(No. 173.)	May	25, „
(O.)	Mr. Baird	(No. 11.)	June	10, „
(P.)	Memorandum by Lieutenant-Colonel Harrington		August	30, „
(AA.)	Memorandum by Mr. Harrington..		July	25, 1898.
(BB.)	Law Officers		November	17, 1902.
(CC.)	Minute to ditto			

Report.

The supplemental Convention of the 5th November, 1896, appears to us materially to modify the situation as regards the Emperor Menelik's power of cancelling the Convention of the 9th March, 1894. This Supplementary Convention makes it impossible for the Emperor to cancel the Convention of 1894 on the ground of non-completion of the Railway to Harrar until the somewhat vague condition on which that completion is to depend has been fulfilled. There is at present nothing to show that the receipts of the Company are sufficient to make it incumbent on them, in terms of the Supplementary Convention, to carry the line on to Harrar.

The last clause of the Supplementary Convention requires the Company to bind itself at once to construct a telegraph line from Jibuti to Harrar. If the Company should definitely refuse or neglect to execute these telegraphic works it might furnish ground for cancellation. But we observe that this engagement was entered into on the 5th November, 1896, and we do not think it would be right to cancel on this ground, unless the Emperor has in the meantime been urging upon the Company the fulfilment of their undertaking in regard to the telegraphic line, or the Company should now, after a fresh demand and the lapse of a reasonable time, make default.

We do not think that the fulfilment of the last clause of the Convention of the 5th November, 1896 was a condition of the relaxation of the terms of the original Convention as regards the construction of the railway so as, *ipso facto*, to remit the Company to the original Convention in case they failed immediately to construct the telegraph line to Harrar.

The question does not appear to us to be affected by Colonel Harrington's telegram of the 21st December, 1902. The submission of the Convention for signature by the French Government does not afford any ground for cancelling the Railway Convention. If the Emperor signs this Convention with the French Government it will operate as a complete waiver of any breaches in the past which might justify cancellation, and, as regards breaches in the future, will bind him to cancel only with the consent of the French Government.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 13, 1903.

AFRICA.

No. 2.

[January 28, 1903.]

Foreign Office to Law Officers of the Crown.

Gentlemen,
Foreign Office, December 22, 1902.

Warrant altering areas of Episcopal authority in Uganda, &c.

WITH reference to your report of the 18th ultimo, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you a letter from Mr. F. H. Lee, one of the joint Legal Secretaries to his Grace the Archbishop of Canterbury, on the subject of the rearrangement of the areas of episcopal authority exercised by the Bishops of Uganda, Mombasa, and Zanzibar respectively. I have also the honour to inclose the draft of a consolidated warrant which has been drawn up to meet the views expressed in your report above referred to.

With regard to the suggestion that the warrant should not be addressed to the Archbishop of Canterbury personally, it will be observed that it is stated in Mr. Lee's letter that this form is in accordance with precedent. Her late Majesty's warrant of the 23rd February, 1894, assigning the limits of Bishop Bickersteth's jurisdiction in Japan having been so addressed.

The draft of the warrant issued in the latter case is inclosed for convenience of reference, and I am to state that, as at present advised, Lord Lansdowne is inclined, in the present instance, to follow the precedent created on that occasion, should you, upon reconsideration of the matter, be of opinion that such a course may properly be adopted.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

1.	Mr. F. H. Lee	December 8, 1902.
2.	Draft of Consolidated Warrant.	
3.	Draft of Warrant assigning limits of Bishop Bickersteth's jurisdiction	February 23, 1894.
4.	Previous papers in case returned for reference.	

Report.

The only doubt that occurs to us upon the operative part of this warrant, which otherwise appears to us to be in order, assuming that the boundaries are correctly set out, is as to the omission to mention the warrant of the 12th June, 1895, as to Zanzibar.

We would suggest that the recitals should be made clearer, but we have not the materials for doing this, and it does not fall within our province to do so.

The warrant should not, in strictness, be addressed to the Archbishop, but there seems to be a reason of convenience for doing so in the present case.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
January 28, 1903.

No. 3.

[February 18, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, February* 6, 1903.

Somaliland Draft Order in Council, 1903.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you a draft Order in Council for the Somaliland Protectorate. It has been considered advisable to withdraw the Consular attributes possessed by certain officers serving in the various Protectorates administered by this Department. In the case of the Somaliland Protectorate a new Order in Council is necessary to enable certain shipping and registration work to be performed by the public officers of the Protectorate without their being appointed to Consular posts. In the other Protectorates this has already been provided for by the Orders in Council of 1902.

I have the honour to request you to take this draft Order into your consideration, and to favour Lord Lansdowne with your opinion as to whether it can properly be submitted for the approval of His Majesty in Council.

A copy of "The Somaliland Order in Council, 1899," is inclosed for convenience of reference.

I have, &c.
(Signed) CLEMENT Ll. HILL.

Report.

In our opinion the draft Order in Council initialled by us may properly be submitted for the approval of His Majesty in Council.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 18, 1903.

Annex.

Draft Order in Council 1903.

Whereas by Treaty, grant, usage, sufferance, and other lawful means, His Majesty the King has power and jurisdiction within the Somaliland Protectorate:

Now, therefore, His Majesty, by virtue and in exercise of the powers on this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Somaliland Order in Council, 1903," and shall be construed as one with "The Somaliland Order in Council, 1899."

2. Where, under "The Merchant Shipping Act, 1894," or any amending Act, anything is authorized to be done by, to, or before a British Consular officer, such thing may be done in any place in the Protectorate at which there is no Consular officer by, to, or before such officer of the Protectorate as the Consul-General may appoint.

3. The Consul-General may make King's Regulations providing for the registration of births and deaths in the Protectorate.

And the Most Honourable the Marquess of Lansdowne, K.G., one of His Majesty's Principel Secretaries of State, is to give the necessary directions herein.

(Initialled) R. B. F.
E. C.

No. 4.

[March 30, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, March* 12, 1903.

German protest against East Africa Liquor Ordinance.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers, noted in the accompanying list, respecting a protest which has been made by the Acting German Consul at Zanzibar against the Ordinance recently issued on the subject of the importation of liquors into the East Africa Protectorate which raises the question whether, before issuing the Ordinance referred to, His Majesty's Government should have obtained the previous sanction of the Treaty Powers.

This question was not amongst those submitted in the reference which was addressed to you on the 12th January last on a cognate subject, and, consequently, your Report of the 9th ultimo does not cover the point whether the territorial Government has power under the Brussels Act to make laws dealing with liquor which are binding on the subject of Treaty Powers; that Report deals only with the question of jurisdiction to try offences committed against such laws.

A portion of the East Africa Protectorate is within the dominions of the Sultan of Zanzibar, and, consequently, subject to the Treaties administered by His Majesty's Government under the Agreement of the 14th December, 1895.

Under such provisions as Article XVI, section 1, of the British, and Article XVI, section 1, of the German Treaties with Zanzibar, no law made by the Sultan of Zanzibar directly, or by His Majesty's Government under his authority in his Highness' mainland dominions, applies to a subject of a Treaty Power without the consent of such Power.

The Brussels Act (Article XCI) prohibits within certain limits (which include Zanzibar) the manufacture and importation of distilled liquors except for "limited quantities destined for the consumption of the non-native population, and imported under the system and conditions determined by each Government."

It appears to Lord Lansdowne that the words "each Government" refer to the territorial Power, and as applied to Zanzibar mean, on the island, His Highness the Sultan, and, on the mainland, His Majesty's Government, and not each Treaty Power in respect of its own subjects, and that, therefore, the recently promulgated "East Africa Liquor Ordinance, 1902," so far as it is in conformity with the Brussels Act, is binding on German subjects within the Zanzibar mainland dominions, though, according to your Report of the 9th ultimo, they will be tried for breaches of the Ordinance in their own Consular Court. This, however, would seem to mean that the Sultan has jurisdiction over foreigners because he makes it part of the system and conditions (see Article XCI, last paragraph of the Brussels Act) under which alone liquor may be imported. But if this is the case the position would become somewhat anomalous, since the Sultan's legislative jurisdiction would cover only cases having reference to the minor provision of importation of liquor for non-natives; no corresponding provision occurs in the Act to give him jurisdiction to enforce the prohibition itself—which is undoubtedly the major provision.

It was pointed out in the reference to you of the 12th January last, that the Brussels Act did not give to the Sultan authority to override the rights of the Treaty Powers, either as regards legislation or judicial matters in the case of arms and ammunition. It is only necessary to refer with regard to this seeming anomaly to the explanation of it which was suggested in that reference.

In 1895-96-97 the foreign Governments were consulted with regard to the draft

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of a Zanzibar Ordinance regarding the importation and sale of liquor, and their concurrence was obtained before its promulgation; but the point whether an Ordinance enacted by the Sultan would not have been binding on the subjects of Treaty Powers does not appear to have been considered.

I inclose correspondence on this subject, as noted in the accompanying list.

I am to request you to take the above observations into your consideration, and to favour me with your opinion—

1. Whether the East Africa Liquor Ordinance, so far as it is in conformity with the Brussels Act, is binding on the subjects of Treaty Powers within the mainland dominions of the Sultan;

And generally with any remarks which the papers may suggest to you.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Brussels Act.	(Treaty Library No. 889.)	July 2, 1890.
German Treaty with Zanzibar	("State Papers," Vol. 76, pp. 247, *et seq.*)	Dec. 20, 1885.
British Treaty with Zanzibar ..	(Treaty Library No. 782.)	April 30, 1886.
East Africa Liquor Ordinance	(Confidential 7828)	
Correspondence regarding "The Zanzibar Liquor Ordinances, 1895–96–97"		
Law Officers' Report, February 9, and Papers submitted to them in Foreign Office letter of January 12, 1903. (See under "Zanzibar.")		

Report.

We answer this question in the affirmative.

In our opinion, under the provisions of the Brussels Act it was the duty of each Government which was a party to the Act to take any steps necessary to carry out the prohibitions agreed upon in Articles XC to XCII within its own possessions or Protectorate, and each Government was to be responsible for "the system and conditions" under which relaxations of the general prohibition might be granted.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
March 30, 1903.

[Colonial Office.] *No.* 4A.

[July 28, 1903.]

The Law Officers of the Crown to the Colonial Office.

Sir, *Royal Courts of Justice, July* 28, 1903.

Position of Naturalized Burghers of the late South African Republics.

WE were honoured with your commands, signified to us by Mr. Bertram Cox in his letter of the 26th June last, stating that he was directed by you to transmit to us a despatch received from Lord Milner, dated the 11th April, 1902, with its inclosure, containing a Report by Sir Richard Solomon on the position of naturalized Burghers of the late South African Republics. That it would be observed that Sir Richard Solomon contended that as a German or Russian on being naturalized in the Transvaal as a Burgher did not, under German or Russian Law, become divested of his nationality, and was only a Burgher while in the Transvaal, he became, on the extinction of the Transvaal as a Republic, simply a German or Russian in the Transvaal as well as elsewhere, and could become a British subject only on naturalization.

That with reference to this opinion, he was to observe that it seemed to ignore

the fact that in dealing with questions of nationality foreign law must be disregarded, and that the question of nationality was one which had to be determined by British law alone, and that under British law the inhabitants of a conquered country became British subjects on annexation. That, as we had advised in our Report of the 17th May, 1900,* Germans and Russians who were inhabitants of the Transvaal and who had been naturalized in that country before the outbreak of war became British subjects on annexation in the same manner as natural-born Burghers of the late Republic. That this question, however, became of considerable importance, inasmuch as, should Sir Richard Solomon's opinion be correct, it would become unnecessary to pass any law in the Transvaal to enable German subjects to retain their German nationality in that country, a step which had been contemplated in view of the representations of the German Government in the matter.

That he was to transmit to us correspondence which had passed between your Department and the Foreign Office and the Home Office upon this question, and that it would be observed that the opinion of the Secretary of State for the Home Department was to the effect that to deprive Germans and other foreigners who were naturalized Burghers of the late Republics of their status of British subjects acquired by annexation, it would be necessary to pass an Act of the Imperial Parliament.

That he was to request us to take these matters into our consideration, and to report—

(1) Whether we concurred in the opinion of Sir Richard Solomon above referred to;

(2) If not, what steps would be necessary to divest German subjects of their British nationality acquired by annexation;

(3) Whether, having regard to all the circumstances of the case, Ordinances passed in the Transvaal and Orange River Colony would be sufficient for the purpose, seeing that the question of the status of these persons may not arise elsewhere than in these Colonies.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

That (1) we do not agree with the opinion of Sir Richard Solomon, and we adhere to the view expressed by us in our Report to the Foreign Office of the 31st October, 1900,† that, "in our opinion, no distinction should be drawn between the case of a natural-born and a naturalized citizen."

(2 and 3.) We think that if it is desired to divest such persons of their British nationality, the best course would be to pass an Ordinance in the Transvaal. It is not clear that this Ordinance would affect the status of these persons in other parts of the British dominions, but it is apparently unlikely that the question will arise except in the Transvaal itself, and then such an Ordinance would be conclusive.

The same considerations will apply to the case of the Orange Free State.

We would suggest that the Ordinance, if it is decided to pass it, should require a definite election by those persons who desire to divest themselves of British nationality.

It is probably not practicable to obtain an Act of the Imperial Parliament on the subject, and we very much doubt whether it would be desirable to attempt legislation of this kind.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

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* No. 18A.

† No. 21

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AUSTRIA-HUNGARY.

[India Office.]

No. 4^B.

[November 2, 1903.]

Case for submission to the Law Officers in the matter of the Indian Countervailing Duties on Austrian and Hungarian Sugar.

UNDER powers conferred by "The Indian Tariff Amendment Act 14 of 1899," and "The Indian Tariff Amendment Act 8 of 1902" (Exhibit A (1) and (2)), which are enactments made by the Indian Legislature for the purpose of imposing countervailing duties on foreign sugar imported into India from countries where bounties on such produce are paid or bestowed, or arise out of an excessive "surtax" or protective duty, the Indian Government have for some time past levied the following countervailing duties on sugar, the produce of Austria-Hungary :—

—	—	Bounties bestowed.	Duties Levied in Addition to Import Duty of 5 per cent.			
			Rs.	a.	p.	
Additional duty under Act 14 of 1899	Sugar under 99·3 per cent., and of at least 90 per cent. polarization	3·20 krone per 100 kilog...	1	0	3	per cwt.
	Sugar of at least 99·3 per cent. polarization	4·60 krone per 100 kilog...	1	7	4	"
Special duty under Act 8 of 1902	.. .. ..	.. .. ..	3	3	9	"

The countervailing duties imposed on the sugars of other bounty-giving States under the aforesaid Acts are set out in Exhibit B.

It may be explained that the "additional" duties imposed under Act 14 of 1899 are the equivalent of the bounty on exportation which, up to the 31st August, 1903, was paid by the Austro-Hungarian Government on sugar exported from its territories, or placed for the purpose of export in export warehouses situated in those territories.

The "special" duty imposed under Act 8 of 1902 is computed according to the formula prescribed in that Act for countervailing sugar produced in a country where the surtax or protective duty exceeds 6 fr. per 100 kilog. in the case of refined sugar, or 5 fr. 50 c. per 100 kilog. in the case of other sugar. Up to the 31st August, 1903, the surtax in Austria-Hungary exceeded these limits.

In the International Conference, held at Brussels in 1901–1902, to devise measures for the suppression of the sugar bounties, the British Delegates made declarations to the effect that if a Convention for the suppression of bounties were concluded, the Indian Government was quite ready, as regards the Contracting States, to remove the countervailing duties at present in force. The first declaration on the subject was made by Mr. Phipps, the British Minister, on the 16th December, 1901, in the second sitting of the Conference, and in it the following words occur :—

> "Toutefois, les Délégués de la Grande-Bretagne sont en mesure d'affirmer que si une Convention pour la suppression des primes est conclue, le Gouvernement des Indes Orientales est tout prêt à supprimer, vis-à-vis des États contractants, les droits compensateurs actuellement en vigueur." (*Procès-verbaux*, p. 32.)

Following Mr. Phipps, Mr. Ozanne, the British Delegate specially representing India, made a similar statement of the Indian Government's intention.

On the 25th January, 1902, at the eleventh sitting, and on the 3rd March, 1902, at the twenty-third sitting, the British Delegates referred to and confirmed the declaration made at the second sitting. (*Procès-verbaux*, pp. 163 and 279, and Exhibit C.)

The Brussels Convention (Exhibit D) for the suppression of sugar bounties came into force from the 1st September, 1903. To this Convention the Governments of the United Kingdom and Austria-Hungary, among others, are parties. The Indian Government has not exercised the right of adhesion secured to it in the Final Protocol appended to the Convention. With effect from the 1st September, 1903, the Government of Austria-Hungary has ceased to grant a bounty on the exportation of sugar, and has reduced the protective duty or surtax to the limit specified in Article III of the Convention.

The Government of India has enacted a law, "The Indian Tariff Amendment Act 12 of 1903" (Exhibit E), for the purpose of continuing up to the 31st March, 1904, the additional and special duties imposed under Act 14 of 1899 and Act 8 of 1902. The considerations which have led to this legislation were stated as follows by Sir Edward Law, the Finance Minister of the Indian Government, in the Viceroy's Legislative Council :—

> "In view of the fact that the Act which at present regulates the question of countervailing duties upon sugar expires on the 31st August next, it has been held advisable to take fresh action in this matter in the way of legislation. Section 8 A of "The Indian Tariff Act, 1894," provides for the levy of an additional duty on articles on which a bounty is given directly or indirectly by a foreign State, and section 8 B provides for the levy of additional duties in certain cases in which high protective duties render possible the creation of bounties by private trade combinations or cartels. The majority of the chief sugar-producing countries of Europe have agreed to arrangements designed to secure the abolition of all bounties and high protective duties on sugar on the 1st September, 1903. Large stocks of sugar exist in those countries on which bounties have been paid, and which have been produced under the cartel system. The object of this Bill is to continue the present additional duties on sugar until the 31st March, 1904, when it is expected that the greater part of the stocks which have received bounties will have been consumed."

Accordingly, in virtue of this law, the "additional" and "special" duties set out in the first paragraph of this Memorandum will continue to be levied till the 31st March, 1904, on sugar produced in Austria-Hungary and imported into India. In like manner, the countervailing duties in force on the 31st August, 1903, against the sugars of other States, parties to the Brussels Convention, will continue to be levied until that date.

With reference to Sir Edward Law's statement quoted above, it may be mentioned that the stocks of sugar existing at the beginning of September in the several bounty-giving States, parties to the Convention, have been returned at upwards of 1,250,000 tons. The requirements of the Indian market for foreign sugar are met by an import from abroad of about 250,000 tons a-year.

The Government of Austria-Hungary has made representations respecting the action of the Indian Government to His Majesty's Government in an Ambassador's note dated the 12th September, 1903 (Exhibit F). The note calls attention to "the express assurance" given by the British Delegates at the second meeting of the Brussels Conference on the 16th December, 1901, to the effect that "the Government of India, should a Convention be concluded for the abolition of the bounties, were quite ready to remove the countervailing duties at present in force as regards the Treaty States." This declaration, it is urged in the note, placed an obligation on India to abolish its countervailing duties when the Convention came into force, if not from the date at which the Convention was concluded. The note refers in support of this contention to statements made in a note addressed by the Marquess of Salisbury, dated the 14th July, 1899, to Count Deym, and in a note addressed by the Marquess of Lansdowne, dated the 28th July, 1902, also to Count Deym (Exhibits G and H). These notes, it is urged, lay down the principle that the discontinuance of bounties by a Government, which has hitherto bestowed them, causes the counteracting measures to disappear. It is stated that all bounties, direct and indirect, on Austrian and Hungarian sugar ceased on the 31st August, 1903.

The contention of the Indian Government, in reference to these representations, is to the following effect :—

With regard to the declarations made in respect of India at the Brussels Conference, it is urged that these declarations did not bind the Indian Government to abolish countervailing duties from a specific date, but merely intimated the intention of the Government to abolish them, if and when the bounties which they counteracted should have ceased to operate. It is a question of fact whether bounties on Austrian

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and Hungarian sugar ceased to operate on the 1st September, 1903, and the Government of India holds that this question of fact is in no way prejudged or determined by the declarations of the British Delegates, or by the subsequent coming into force of a Convention to which the Indian Government is not a party. The view of the Government of India is that bounties cannot be said to have ceased to operate on and from the 1st September, 1903, in Austria-Hungary or in the other bounty-giving States, parties to the Convention. On that date there were in Austria-Hungary considerable stocks of sugar which had been produced under cartel conditions, a portion, at least, of which had been placed in export warehouses, and had received the export bounty. The sugar stocks existing on the 1st September, 1903, in Austria-Hungary were returned at 70,000 tons; while the fact that the export bounty was payable, under the Austro-Hungarian sugar laws in force up to the 31st August, 1903, as soon as the sugar was placed in a bonded warehouse, was admitted by the Austrian and Hungarian Delegates at the sittings of the Permanent Sugar Commission at Brussels this year (*Procès-verbaux* of Permanent Commission, pp. 20 and 21, and Exhibit I.)

The Indian Government, therefore, contends that in view of the existence of this stock of bounty-fed sugar, which may be decribed as sugar of the 1902–1903 campaign, the bounties of Austria-Hungary have not ceased to operate. So long as this sugar can be imported into India, the India Government holds that it is not debarred by the declarations of the British Delegates at the Brussels Conference from maintaining its countervailing duties.

As regards the sugar of the 1903–1904 campaign, that is to say, sugar which is at present being manufactured from this year's beet crop, it is admitted that this sugar will not receive in Austria-Hungary the direct and indirect bounties which were abolished on and from the 1st September, 1903. But it is urged by the Government of India that in the ordinary course of business this sugar would not go to India until some months after the 1st September. as old stocks are still in the market. For this reason (regard also being had to the stocks of bounty-fed sugar similarly existing in other continental countries, parties to the Convention) the countervailing duties are fixed to cease on and from the 1st April, 1904. If in the interval the sugar of the 1903–1904 campaign is subject to countervailing duties in India, this is an unavoidable circumstance arising out of the difficulty of discriminating, by means of certificates, between sugar of 1903–1904 and sugar of preceding years.

Leaving now the question of the effect of the declarations at the Brussels Conference, and turning to the statements in the note of the Marquess of Salisbury of 1899, and in that of the Marquess of Lansdowne of 1902, on which the Government of Austria-Hungary relies, it is submitted on behalf of the Indian Government that if these statements are read with their context, they will be found to bear out the view of the Indian Government that the most-favoured-nation stipulations of the Treaty subsisting between Austria-Hungary and the United Kingdom, in which India is included, are not broken by the maintenance of the countervailing duties unless and until the bounties which they countervail have actually ceased to operate. So long as there are bounty-fed goods in existence which are capable of being exported, the balance of trade which bounties have disturbed cannot be said to be redressed.

It may also be observed, on behalf of the Indian Government, that in maintaining the countervailing duties till the 31st March, 1904, against countries which have discontinued the grant of bounties from the 1st September, 1903, the Indian Government has not discriminated against Austrian and Hungarian sugar, as it has treated all the bounty-giving countries alike.

Reference is invited to the opinions given by the Lord Chancellor and the Solicitor-General in 1899 on a question referred by the Foreign Office, as to the bearing of the most-favoured-nation stipulations on the subject of bounties and duties to counteract them (Exhibit J).

The points on which the opinions of the Law Officers is sought are:—

1. Whether the declarations made by the British Delegates at the Brussels Conference impose on the Government of India—

(*a*.) An obligation in regard to sugar, the produce of countries which were parties to the Brussels Convention, to abolish, in respect of all such sugar imported into British India after the date when the Brussels Convention came into force, the additional or special duties imposed under Act 8 of 1894 as amended by Acts 14 of 1899, and 8 of 1902; or

(*b*.) An obligation to abolish the said duties only in respect of sugar imported after that date with regard to which it is certified that no bounty has been received; or

(*c*.) To abolish the said duties only from the date when the bounty-fed sugar will in the ordinary course of trade have been consumed or exported.

2. Whether, assuming that there exists in the countries, which are parties to the Brussels Convention, a stock of bounty-fed sugar which would not in the ordinary course be consumed or exported before the 31st March, 1904, the imposition of the said duties until that date, as provided for in Act 12 of 1903, is inconsistent with the above-mentioned declaration, and, if so, to what extent?

3. Apart from the declarations mentioned in (1), is a breach of the most-favoured-nation stipulations of the Treaty subsisting between Austria-Hungary and the United Kingdom occasioned by the continuance of the Indian countervailing duties against all bounty-fed sugar for a limited period, after the date from which bounties ceased to be paid or bestowed in the countries in which it was produced? Can such continuance be justified on the ground that during such period a stock of bounty-fed sugar exists, and will exist, in those countries?

4. If the answer to the first part of (3) be in the affirmative, would it be within the most-favoured-nation stipulations to maintain the duties, but to confine them to sugar in respect of which there is proof that a bounty has actually been paid or bestowed thereon, or no proof to the contrary?

Opinion of the Law Officers of the Crown.

In our opinion these declarations impose upon the Government of India an obligation to abolish the duties in respect of sugar with regard to which the Convention has been operative, or, in other words, on which no bounty has been received.

We do not think that either view (*a*) or view (*c*) is tenable.

Although the declarations were in general terms, we think they cannot fairly be read as covering the case of a large stock of sugar in bond on which the bounty had been paid.

On the other hand, the obligation attaches at once and cannot be postponed until the date suggested under (*c*).

2. Yes; the duties should be imposed only on the bounty-fed sugar.

3. We think that the existence of a large stock of bounty-fed sugar in any country might, provided it was practically impossible to distinguish the bounty-fed from the non-bounty-fed sugar, afford an answer to any claim based upon the most-favoured-nation clause apart from the declarations mentioned in question one.

4. The course proposed will not be a breach of the most-favoured nation clause.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Law Officers' Department,
November 2, 1903.

1903

BELGIUM.

No. 5.

[May 13, 1903.]

The Marquess of Lansdowne to the Lord Chancellor.

Collision × and Salvage Conference

THE Marquess of Lansdowne presents his compliments to the Lord Chancellor, and begs to transmit to his Lordship herewith the papers noted in the accompanying list respecting the proposal of the Belgian Government that an International Conference should be held to consider the question of establishing a uniform law of collision and of salvage.

The Lord Chancellor will observe that in accordance with well settled practice, His Majesty's Government have declined to be officially represented at the Conference on the ground that its decisions might, if they were represented thereon, to some extent place them under an obligation to alter or modify the existing maritime law of this country.

Since the Belgian Chargé d'Affaires was informed of the decision of His Majesty's Government, the Lord Chief Justice of England has expressed to Lord Lansdowne his personal hope that His Majesty's Government would agree to be represented at the Conference.

Lord Lansdowne will be much obliged if the Lord Chancellor will be so good as to take the papers transmitted herewith into his consideration, and to inform Lord Lansdowne whether in his opinion there are any exceptional circumstances in the present case sufficient to warrant a departure from the policy hitherto pursued by His Majesty's Government on similar occasions.

His Lordship would be glad to be favoured at the same time with any general observations which the Lord Chancellor may be good enough to offer for his assistance in further dealing with the matter.

Foreign Office, May 8, 1903.

List of Papers.

Baron Grenier	January 2, 1903.
To Board of Trade	January 13, „
Board of Trade	January 26, „
To Baron Grenier	February 4, „
Liverpool Steam-ship Owners' Association	February 5, „
Board of Trade	February 7, „
To Liverpool Steam-ship Owners' Association	February 12, „
International Law Association (two letters)	February 18, „
Memorandum by Mr. Brant	March 13, „

Report.

I can see no reason for departing from the very useful rule of the Foreign Office.

It is obvious that if any one was at a Conference in the character of a Representative of the Government, he must take no part whatever or must be instructed beforehand what part he was to take.

In the one case he would be useless, and in the other he would require a determination by his Government what views he was to insist upon, and this would involve a preliminary discussion and decision which at present has not been arrived at.

I should, of course, attach great weight to the request of the Lord Chief Justice, but I observe he is the Chairman of one of the Societies, and I should suppose it is rather in that character than in his position of Chief Justice that he favours the suggestion to send a Representative.

(Signed) HALSBURY.

May 13, 1903.

CHINA.

No. 6.

[July 29, 1903.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 22, 1903.

Gentlemen,

Removal of prohibition to import Arms. Proclamation.

I HAVE the honour to inform you, by direction of the Marquess of Lansdowne, that His Majesty's Government are of opinion that the necessity which arose in 1900, in consequence of the position of affairs in China, to prohibit the export of materials of war to that country, has now ceased to exist.

It has, therefore, been decided to issue a Proclamation repealing the provisions of the Proclamation issued on the 7th August, 1900, by which such export was prohibited.

I have the honour to transmit to you the draft of a Proclamation (Paper A) providing for the repeal of the prohibition, and to request that you will take this draft into your consideration, and favour his Lordship with your opinion on its terms at your early convenience, as it is proposed that the repeal of the prohibition should take effect from the 7th August. This date has been fixed on in order to admit of goods from the United Kingdom reaching China soon after the expiration, on the 25th August, of the prohibition to import arms into China, which is provided for by the Chinese Imperial Edict issued in compliance with Article 5 of the Final Protocol, signed at Peking in 1901 (Paper B).

Lord Lansdowne would also be much obliged if you would be good enough to offer any general observations or suggestions which may occur to you in regard to the matter.

Copies are inclosed of the Proclamation of the 7th August, 1900, of "The Exportation of Arms Act, 1900," referred to therein, and of the correspondence that took place between you and this Department on the subject in August 1900 (Papers C, D, and E respectively).

I have, &c.
(Signed) CHARLES HARDINGE.

List of Papers.

(A.) Draft Proclamation.	
(B.) Protocol	September 7, 1901.
(C.) Proclamation	August 7, 1900.
(D.) Act (Exportation of Arms) 63 & 64, Vic., c. 44	.. 1900.
(E.) To Law Officers	August 2, 1900.
Law Officers	August 7, „

Report.

We approve of the draft Proclamation as altered and initialled by us.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 29, 1903.

Annex.

Draft Proclamation.

By the King.

A PROCLAMATION.

Edward R.

WHEREAS by "The Exportation of Arms Act, 1900," section 1, it is enacted that it shall be lawful for His Majesty by Proclamation to prohibit the exportation of all or any of the following articles, namely, arms, ammunition, military and naval stores, and any article which His Majesty

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shall judge capable of being converted into, or made useful in, increasing the quantity of arms, ammunition, or military or naval stores, to any country or place therein named, whenever His Majesty shall judge such prohibitions to be expedient in order to prevent such arms, ammunition, military or naval stores being used against His Majesty's subjects or forces, or against any forces engaged, or which may be engaged, in military or naval operations in co-operation with His Majesty's forces:

Whereas a Proclamation was issued, dated 7th August, 1900, prohibiting the exportation to China of arms and ammunition from and after the date aforesaid;

And whereas we, by and with the advice of our Privy Council, judge it no longer expedient to prohibit the exportation to China of arms and ammunition ~~in order to prevent their being used as in the said Act stated~~;

Now we, by and with the advice aforesaid, hereby repeal the said Proclamation prohibiting the exportation to China of arms and ammunition from and after the date hereof.

Given at our Court at this 7th day of August, in the year of our Lord 1903 and in the 3rd year of our Reign.

GOD SAVE THE KING.

R. B. F.
E. C

No. 7.

[August 4, 1903.]

Foreign Office to the Law Officers of the Crown.

As to handing over to Chinese authorities of writers in "Supao," a seditious newspaper

Gentlemen, *Foreign Office, July* 29, 1903.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers indicated in the accompanying list on the subject of a difficulty which has arisen in Shanghae in regard to handing over to the Chinese provincial authorities two Chinese subjects who have pleaded guilty in the Mixed Court of the Shanghae International Settlement to publishing seditious articles in a newspaper called the "Supao."

Chinese subjects residing in the Settlement are subject to Chinese Criminal Law, and are only amenable to the Chinese Judicial authorities; but it has long been the custom for an Assessor representing one of the foreign Consulates at Shanghae to be present at all criminal cases tried by the Chinese Magistrate in the foreign Settlement, even when no direct foreign interest is involved; and the Court in which these cases are tried is known as the Mixed Court. In 1869 the accompanying Rules (Paper A) were put in force in the Mixed Court by instruction of Her Majesty's Minister in China, with the implicit, and probably explicit, consent of the Chinese Government; these Rules have ever since formed the basis of the procedure of the Court.

No. 4 of these Rules reserves to the district Magistrate jurisdiction in grave offences, and it appears to have been intended at the time that the Mixed Court should not deal with such cases at all.

It will be seen, however, from the accompanying Memorandum (Paper B), that in practice it has since been found necessary, as the development of the foreign Settlement progressed, to make various alterations in the procedure, which have tended to augment the effective control of the Municipal Council of the Settlement over the practical administration of justice; and the Chinese authorities have long abandoned to the Council the custody of persons brought to trial, both before and after their conviction by the Court.

The present practice is for all Chinese accused of offences, such as murder or manslaughter, which are punishable with death, to be brought before the Mixed Court by the Settlement police, and if there appears to be a good case against them, they are at once handed on to the Chinese District Magistrate in the native city.

Mr. Townley's two telegrams (Papers C and E) describe the point which has now arisen.

You will perceive that the demand of the Chinese Government for the delivery to the higher provincial authorities of the persons who have pleaded guilty is made in spite of a verbal arrangement having been come to with the Shanghae Taotai (who is the district authority) that their trial and punishment should be left to the Mixed Court. If the arrangement with the Taotai were carried into effect, the parties, if convicted, would remain in the custody of the Municipal Council, and would escape capital punishment, which the Magistrate in the Mixed Court has no power to inflict.

The Council are opposed to granting the application of the Chinese Government, and Mr. Townley points out that it is open to question whether the accused would have pleaded guilty had they not believed that they would be tried and punished by the Mixed Court, and would, therefore, not suffer the death penalty, to which they are now liable under Chinese law, and which, if they are surrendered, will probably be inflicted on them at once, as having already pleaded guilty.

Mr. Townley also expresses the opinion that there is some danger that disorders may arise in Shanghae if the surrender be effected, and that the landing of an armed force may be necessitated.

It appears to Lord Lansdowne that the Chinese Government are hardly entitled to expect the alteration, in the present case, of a procedure which has existed, without being challenged by them, for so long a period, viz., that under which all criminal cases, however serious, arising in the Settlement, are brought before the Mixed Court in the first instance, and an opportunity is given to the Assessor to see that a *primâ facie* case is made out against the accused.

As, however, according to Chinese law, conviction would take place without trial in the case of persons who have already confessed their guilt, it will be necessary, if a proper hearing of the case is to be secured, that permission should be previously given by the Mixed Court Magistrate for the withdrawal by the accused of their plea of guilty.

His Lordship proposes to instruct Mr. Townley to inform the Chinese Government that, if this permission is given, and if the Mixed Court decide, after a fair hearing, that there is a case against the accused, they will be handed over to the Chinese authorities, provided an undertaking be given that no torture will be used at any time on the accused.

I am to request that you will take the papers submitted herewith into your immediate consideration, and that you will inform Lord Lansdowne whether you consider that it would be possible, due consideration being given to the arrangement made with the Shanghae Taotai, to adopt any other course than to deliver the accused to the Chinese Government in the event of a case being made out against them in the Mixed Court. If no other course is, in your opinion, possible, his Lordship will be glad if you will favour him with your opinion on the stipulations which it is proposed to make, and with any observations of a general character which you may be good enough to offer on the case.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Mixed Court Rules of April 20, 1869.
(B.) Memorandum by Mr. Mayers, [?] June 27, 1901.
(C.) Mr. Townley, No. 188, Telegraphic, July 25, 1903.
(D.) To Mr. Townley, No. 134, Telegraphic, July 25, 1903.
(E.) Mr. Townley, No. 192, Telegraphic, July 28, 1903.

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 3, 1903.

I have the honour, by direction of the Marquess of Lansdowne, to transmit to you, for your consideration, the accompanying copy of a further telegram which has been received from His Majesty's Chargé d'Affaires at Peking,* and which bears upon the case submitted to you in my letter of the 29th ultimo, of the difficulty which has arisen in Shanghae in regard to the handing over to the Chinese provincial authorities of two Chinese subjects who have pleaded guilty in the Mixed Court of the Shanghae

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* Mr. Townley, No. 196, Telegraphic, August 3, 1903.

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International Settlement to publishing seditious articles in a newspaper called the "Supao."

I have, &c.
(Signed) F. H. VILLIERS.

P.S.—A copy of the reply which has been sent to Mr. Townley's telegram is also inclosed.[*]

F. H. V.

Report.

In our opinion the persons who pleaded guilty should not be handed over to the Chinese Government. There appears to be some reason to believe that the plea of "guilty" was entered on the supposition that the arrangement made by the Shanghae Taotai would be carried out, and that the punishment would be inflicted by the Mixed Tribunal.

The withdrawal by permission of such a plea, even if such a course was legal, could not put the accused in the same position as before the plea as their own confirmation of the charge must tend to prejudice their cause.

We, therefore, think that a refusal to deliver up the prisoners should be made based on the arrangement with the Shanghae Taotai.

R. B. F.
E. C.

August 4, 1903.

CONGO.

No. 8.

[June 27, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, June* 17, 1903.

Arrest of Rabinek by Congo officials in British Protectorate waters.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the accompanying papers in connection with the arrest of the late M. Rabinek by the authorities of the Congo Free State at Mpweto.

The circumstances are briefly as follows:—

The Congolese authorities decided to arrest M. Rabinek in consequence of an alleged infraction by him of the trading regulations of the State, and, on hearing that he was on board the steam-ship "Scotia," a British merchant-vessel belonging to the African Lakes Corporation, then at anchor off Mpweto, sent one of their officials on board. This person went into the cabin where M. Rabinek was sitting, and producing a warrant read it over to him; but while M. Rabinek was still considering what he should do, the Congolese official was overcome with sea-sickness and returned on shore. M. Rabinek subsequently, of his own motion, followed, and having been met by the officer went up with him into the town. He was there tried, convicted, and sentenced to one year's imprisonment and a fine of 40*l*. He appealed against the sentence, but died on his way to Boma, where the appeal was to have been heard.

There appear to His Majesty's Government to be two points in the case which call for examination:—

1. Was the "Scotia," at the time when the Congolese official went on board, in British Protectorate, or in Congo Free State waters?

Assuming that she was lying in British Protectorate waters, were the proceedings which took place on the vessel of such a nature as to amount to a violation of British Protectorate territorial jurisdiction, and to call for a representation to the Congolese Government?

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[*] To Mr. Townley, No. 138, Telegraphic, August 3, 1903.

Lord Lansdowne does not desire to trouble you with the consideration of the first point, which is one that must depend for its determination on questions of fact, which are at present not clearly ascertained; but his Lordship would be glad to be favoured with your views on the second, and generally with any remarks which the papers may suggest to you.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Mr. Sharpe	March 13, 1903.
Colonial Office	May 29, „
Sir C. Phipps	(No. 66. Africa)

Report.

In our opinion the Representative of the Congolese Government had no right to enter the "Scotia" for the purpose of making an arrest whilst the ship was lying in British Protectorate waters, and if the facts establish that Chargois entered the vessel for that purpose we think a representation may properly be made to the Congolese Government if it is thought expedient to do so.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 27, 1903.

FRANCE.

No. 9.

[May 13, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 1, 1903.

Marriage before Anglican clergyman only in Madagascar.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you a despatch from His Majesty's Consul at Tamatave,[*] in regard to a marriage between two British subjects which was solemnized on the 7th January last in the Anglican Church at Mahanoro, Madagascar, by Archdeacon Kestell Cornish, a clergyman in holy orders of the Church of England.

The parties to the marriage, although warned by His Majesty's Consul of the desirability of their being married in accordance with "The Foreign Marriage Act, 1892," have gone through no ceremony beyond that which took place in the Anglican Church at Mahanoro.

Although a marriage such as this might have been recognized as valid in contemplation of English law while Madagascar remained a semi-civilized independent sovereign State, Lord Lansdowne presumes that since 1896, when the island was annexed to the dominions of the French Republic and became a Colony of France,

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[*] Consul Sauzier, No. 10, March 17; Minute by Mr. Oakes, April 20, 1903.

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a marriage which did not comply with the requirements of the local French law would not be recognized as valid in contemplation of the law of England.

I am, however, to request you to be good enough to favour his Lordship with your opinion on this point, and with such observations of a more general nature as you may desire to offer on the case.

I have, &c.
(Signed) F. H. VILLIERS.

Report.

In our opinion the marriage in question would not be recognized as valid in contemplation of the law of England. We assume that it is not valid by the *lex loci*. Since the annexation of Madagascar by the French Republic it cannot any longer be considered a semi-civilized state, and the marriage should have been celebrated either under "The Foreign Marriage Act, 1892," or according to the *lex loci* which prevails under French law.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
May 13, 1903.

No. 10.

[May 14, 1903.]

Foreign Office to the Law Officers of the Crown.

Infringement of Holt and Co.'s trading rights in French Congo: Further as to.

Foreign Office, March 13, 1903.

Gentlemen,

I HAVE the honour, by the direction of the Marquess of Lansdowne, to transmit to you the papers noted on the inclosed list, which relate to the position of British traders in the French Colony of the Congo.

This case was referred to you, in some detail, in Sir F. Bertie's letter of the 19th February, 1901. (P. 114 of the printed papers, Document O.)

No material facts have been ascertained since that date, nor has anything transpired to throw a new light on the question, which is shortly whether the British firms long established in the French Congo have a right to continue to buy from the natives the produce of the forests. The greater part of these forests have been granted to individuals or Companies under Concessions, which are all of one type. The text of every Concession, which has been published in the French "Journal Officiel," excepts specifically the rights of third parties, though some of the earliest of the Concessions not so published do not contain this clause; it is thought, however, that the absence of these specific words makes no difference in the effect of the document, as it may be assumed that a civilized State such as France would not act in such a manner as intentionally to injure the rights of third parties.

But since the case was first referred to you, several more Judgments pronounced by the Courts of the French Congo Colony have been received, and they will no doubt be found to contain much matter which throws light on the aspect of the case, as it presents itself from the French point of view.

The earlier papers and all the Judgments as yet received have been printed, and it will perhaps be sufficient on the present occasion that I should, instead of recapitulating the whole case, which was fully stated in Sir F. Bertie's above-mentioned letter (p. 114 of the printed papers), merely call your attention to the more important papers, and indicate briefly their substance:—

French Presidential Decree, March 28, 1899, providing that in French Congo vacant and ownerless lands belongs to the State Domain. (Not printed. Sent in MS. marked "A.")

A typical Concession, that namely of the 22nd June, 1899, to M. Gazengel. It is now held by the "Compagnie Coloniale Ogooué N'Gounié." It will be found in Mr. de Bunsen's private letter of the 19th February last. (Not printed. Sent in MS. marked "B.")

A later Concession sent for the purpose of showing how closely the terms of all the Concessions follow the same type. (Not printed. Sent in MS. marked "C.")

Instructions issued by the French Colonial Minister to the Commissary-General of French Congo, the 24th May, 1899. Attention is called to §§ 7 and 8 regarding the position of third parties in connexion with the rights granted to the concessionnaires, also to the last section of § 18 regarding the rights of the natives. (P. 30.)

Reference to the Law Officers, the 19th February, 1901. Statement of the facts of the case. (P. 114.)

Report from Law Officers, the 2nd May, 1901. Outside of the free trade zone established by the Berlin Act, the representations to be made to the French Government can be based only on the moral claim to equitable consideration to which the past dealings of the British firms may have entitled them. Within the zone the Concessions are so interpreted in the French Colony as to constitute a monopoly of trade, and thus to be at variance with the provisions of the Berlin Act. (P. 131.)

Private letter to the Attorney-General, the 5th June, 1901, calling attention to the use of the word "unappropriated" in the above Report. (P. 132.)

Memorandum referred to in above. (Not printed. Sent in MS. marked "D.")

Reply to the above, the 7th June, 1901. "Unappropriated" is used in the sense of "not appropriated as private property." (Not printed. Sent in MS. marked "E.")

Note to the French Government, the 22nd June, 1901, founded on the Law Officers' Report of the 22nd May, 1901. (P. 135.)

Reference to the Law Officers the 25th December, 1901, calling attention to the Judgment of the 24th October, 1901. (P. 15 of the printed Judgments.) (P. 179.)

Reference to the Law Officers, the 16th January, 1902, calling attention to the further Judgment of the 27th November, 1901 (p. 20 of the printed Judgments). The Judgment decides, *inter alia*, that the British firms have not acquired a right to the trade which they have so long carried on, and that there is no monopoly in the sense of the Berlin Act. (P. 195.)

Report from the Law Officers, the 13th February, 1902. The Judgments enable the equitable claims of the British firms to be represented to the French Government; the result of the Judgments is to deprive, in contravention of the Berlin Act, the British firms of their rights of trading. (P. 199.)

To Sir E. Monson, No. 48, Africa, the 8th March, and to Sir E. Monson, No. 49, Africa, March 10, 1902. Instructions in the sense of the Law Officers' Report of the 13th February, 1902. (P. 209.)

Despatch from the French Foreign Minister to M. Cambon, the 11th February, 1903, communicated by the latter the 12th February, 1903. This despatch explains on what basis the French State has dealt with the lands forming the Concessions; claims that the State can give property in such lands, and can, therefore, give occupation and rights of use for a term of years; an analogous right was granted to the late Imperial British East Africa Company; urges the distinction between monopoly in property and monopoly in trade, the latter alone being prohibited by the Berlin Act; offers to consider, and eventually to refer to arbitration, claims presented in exact form and based on relevant facts. (Sent as a separate paper in print, marked "F.")

Memorandum, February 24, 1903, in which an endeavour is made to state the elements of the case, and to summarize the results of the Judgments. (Sent as a separate paper in print, marked "G.")

Memorandum in which an endeavour is made to set out the difference between an exclusive privilege in regard to property and an exclusive privilege in regard to trade. (Sent as a separate paper in print, marked "H.")

Memorandum by Mr. Hurst, Assistant Legal Adviser to the Foreign Office, March 11, 1903: considerations on the present aspect of the case, and on the position to be taken up by His Majesty's Government. (Not printed, sent in MS. marked "I.")

Charter of the late Imperial British East Africa Company. (It is believed that the Company took no action on the power conferred on them of granting forest rights.) (Sent separate in print, marked "K.")

Order in Council of 1902 for British East Africa, Article 7 of which deals with Crown Lands. (Sent as a separate paper in print, marked "L.")

Ordinance of British East Africa, under which grants of Crown lands can be made. (Sent as a separate printed paper, marked "M.")

Map of the French Congo Colony, showing the position of the several Concessions and their areas in kilometres, and likewise, approximately, the position and

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extent of the Congo basin and free trade zone. (Sent as a separate paper, marked "N.")

The correspondence in the case down to the 12th December, 1902. (In print, paper "O.")

The Judgments pronounced in the Colony. The Legal Adviser to His Majesty's Embassy in Paris has stated privately that he considers the Judgment of the 28th June, 1902 (printed Judgments, p. 45), to be one which it would be difficult to set aside. (Marked "P.")

The Berlin Act. (Marked "Q.")

It is a matter of regret that none of the points dealt with by the Judgments pronounced in the French Congo Colony have as yet been carried before the superior Tribunals in Paris. It must be remembered that there are in the Colony neither counsel nor solicitors, and it is very possible that the several appeals lodged by the local agents of the British firms will fail on technical grounds. It is also a matter for regret that it has not been possible to lay before you the opinion of the Legal Adviser to His Majesty's Embassy in Paris on the whole case as seen from the point of view of French law. The Legal Adviser has, however, stated privately that he would dislike undertaking to give such an opinion, as he would not care to find himself in the position of having to criticise the Judgments of French Courts.

I have the honour, by direction of the Marquess of Lansdowne, to request you to take the above-mentioned papers into your consideration, and to favour his Lordship with your opinion—

1. As to whether His Majesty's Government should continue to urge on that of France the view that the Concessions, as interpreted in the Colony, involve a monopoly which is a violation of the Act of Berlin;

2. As to whether, apart from the provisions of the Act of Berlin, the British firms had acquired a right to trade in the produce of these forests to the continued enjoyment of which they are entitled;

3. As to the arguments with which your opinions on these questions can best be supported, from a legal point of view, in making representations on the subject to the French Government; and

4. Generally, with any observations which will, in your opinion, be useful to his Lordship in dealing with the case.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Decree	March 28, 1899.
(B.)	Mr. de Bunsen	February 19, 1903.
(C.)	In Sir E. Monson's No. 67	April 29, 1900.
(D.)	Memorandum (H. F.)	June , 1903.
(E.)	Law Officers	June 7, 1901.
(F.)	M. Delcassé to M. Cambon	February 11, 1903.
(G.)	Memorandum (H. F.)	February 24, ,,
(H.)	Memorandum (H. F.)	March 12, ,,
(I.)	Memorandum (Mr. Hurst)	March 11, ,,
(K.)	British East Africa Company's Charter. (Confidential 5668*)..	September 6, 1888.
(L.)	East Africa Order in Council. (Confidential 7759*)	August 11, 1902.
(M.)	British East Africa Crown Lands Ordinance. (Confidential 7786)	September 27, 1902.
(N.)	Map of French Congo, shewing Concessions and their areas.	
(O.)	Printed correspondence respecting Trade in French Congo down to December 12, 1902.	
(P.)	Printed Judgments in case.	
(Q.)	Act of Berlin. (Treaty Library No. 757)	February 26 (1885).

Report by the Attorney-General.

1. I think that His Majesty's Government may properly continue to urge on that of France the view that the Concessions, as interpreted in the Colony, involve a monopoly which is a violation of the Act of Berlin. How far such representations should be pressed is, of course, a matter of policy.

2. This question must, in my opinion, be answered in the negative so far as any legal right is concerned. What had been done by the British firms no doubt constitutes a strong claim morally to consideration at the hands of the French Government, and from this point of view it may be used as a subsidiary argument in aid of any representations.

3. The statement in the "Dépêche Coloniale," 29th March, 1903, seems to me to afford a very good illustration of the way in which these Concessions are practically worked. The business of the concessionnaires appears in substance to resolve itself into barter with the natives who collect the products of the forests. The concessionnaires have asserted with success in the French Court the right to exclude British traders from competition with them. The enormous extent of territory over which these Concessions range is well shown on the map of the French Congo which accompanies the papers now before me. When the substance of the matter is looked at it seems quite clear that the only thing that the concessionnaires regard as of real value in the Concession is the right to trade with the natives in the products of the forests and to exclude from this trade all competitors. The natives do not collect these products as agents for the concessionnaires, but on their own account, and the concessionnaires recognize this by buying these products from them. Whatever form of expression may be employed, it is obvious that the concessionnaires have not in reality any property in the forests, except to the extent to which they may avail themselves of their rights as to "mise en valeur des terres." It cannot, of course, be contended that the "free trade provisions of the Berlin Act means that the land in the Congo basin is to remain for ever 'free commercial land,' where any one may trade in natural products." As the land is reclaimed it becomes the subject of private property, and only the owner would be entitled to deal with its products. As regards the unreclaimed forests, both the wording of the Concessions and the fresh facts which are now before me as to the manner in which they have been worked appear to me to show that the concessionnaires have no property in these enormous tracts, and that the right of "jouissance et exploitation" means in substance a monopoly of trade with the natives for the products. This way of looking at the case does not involve the slighest imputation upon the good faith of the French Government, but merely the assertion that the construction which the local French Courts have put upon these Concessions and the manner in which they have been worked constitute an infraction of the Act of Berlin.

4. Generally, I have nothing to add.

(Initialled) R. B. F.

Report by the Solicitor-General.

Upon a further consideration of this case, and upon the fuller materials before me, I regret that I cannot now agree with the view taken by the Attorney-General, or with that contained in the previous Reports to which I was a party.

In my opinion, the case briefly stands thus:—

Upon the passing of the French Presidential Decree of the 28th March, 1899, the French Government had a right to deal with vacant and ownerless lands in such a way as they thought proper, and they could have leased or transferred them to such persons or Companies as they thought right, or to grant restricted or limited rights over them.

As they had this power it is, in my opinion, impossible to quarrel with the decisions come to by the French Colonial Courts, which are binding on the French Government, and declare the rights of the concessionnaires under the Concessions.

Unless, therefore, it could be contended that the granting of the Concession was a breach of the Berlin Act, I do not see how His Majesty's Government can successfully impeach the conduct of the French Government, although no doubt the consequence of so dealing with the vacant lands creates very serious hardship in its result on the trading carried on by Messrs. Holt.

The unfortunate results arise, in my opinion, from a legitimate dealing by the French Government with the vacant lands, and not from any prohibition of or interference with their right to trade, and I cannot see, under the circumstances, how His Majesty's Government can successfully contend that there has been an infraction of the Berlin Act.

I am therefore of opinion that the only claim that can be urged on behalf of Messrs. Holt is an equitable one, founded upon the fact that the result of the dealing by the French Government with the vacant lands has been to seriously injure a long existing trade without any fault on the part of Messrs. Holt.

2. On this question I concur with the opinion of the Attorney-General.

(Initialled) E. C.

No. 11.

[June 5, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, May 11, 1903.

Property of English Benedictines at Douai.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you herewith the papers, marked in the accompanying list, which relate to the closing of the establishment of the English Benedictines at Douai in accordance with the Law lately passed in France in regard to religious corporations.

It will be observed that the Abbot President has appealed to His Majesty's Government to protect the property of the community from confiscation at the hands of the French Government on the grounds that the property in question has hitherto been regarded as British. It has been pointed out, in reply, that although the individual members of the confraternity of the Benedictines at Douai may be British subjects, the community cannot be exempt from the principle that persons who voluntarily settle in another country submit themselves to the law of that country, and that it is beyond the power of His Majesty's Government to interfere to protect them from the operation of that law.

I have the honour to request you to take these papers into your consideration, and to favour Lord Lansdowne with your opinion whether you concur in the view (1) that the property of the community, as distinct from the personal property of the individual members, is subject to the law of France; (2) that His Majesty's Government have no *locus standi* to intervene on behalf of the corporate property of a community which has voluntarily established itself and become domiciled in a foreign country.

His Lordship would at the same time be glad to be favoured with any observations of a general character which you may have to offer.

I have, &c.

(Signed) F. A. CAMPBELL.

List of Papers.

Abbé Gasquet	April 19, 1903.
To Abbé Gasquet	May 2, „
Abbé Gasquet	May 5, „
To Abbé Gasquet	May 8, „

Report

We concur in your Lordship's view that the property of the community is subject to the law of France, and we think the reply already made to the Abbot President states correctly the view which His Majesty's Government is bound to take.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 5, 1903.

Annex 1.

Foreign Office to Rev. F. A. Gasquet.

Sir,

Foreign Office, May 2, 1903.

I am directed by the Marquess of Lansdowne to acknowledge the receipt of your letter of the 19th ultimo on the subject of the closing of the establishment of the English Benedictines at Douai, in accordance with the law lately passed in regard to French religious corporations.

I am to inform you that the Benedictine College at Douai, being situate in France, is governed by the law of that country, and not by the law of England.

His Majesty's Ambassador at Paris took every step which was possible in the interests of the English religious bodies in France during the consideration of the Associations Bill in the Chamber of Deputies, but it is beyond the power of His Majesty's Government to interfere to protect the community at Douai from the operation of the law of the country, in which their establishment is situated.

I am, &c.

(Signed) T. H. SANDERSON.

Annex 2.

Foreign Office to Rev. F. A. Gasquet.

Sir,

Foreign Office, May 8, 1903.

I am directed by the Marquess of Lansdowne to acknowledge the receipt of your letter of the 5th instant, in regard to the property of the English Benedictines at Douai.

I am to inform you in reply that his Lordship is advised that, although the individual members of the confraternity of the Benedictines at Douai may be British subjects, the community cannot be exempt from the general principle that persons who voluntarily settle in another country submit themselves to the law of that country. There is in these circumstances nothing in the execution of the present law to which His Majesty's Government can take exception.

His Majesty's Ambassador at Paris is fully aware of the circumstances of the case, and has done what is possible to obtain considerate treatment for the English Benedictines, but His Majesty's Government have no *locus standi* for further intervention. The points raised in your letter will, however, be carefully examined in consultation with Sir E. Monson and the Law Officers of the Crown.

I am to add that, as Lord Lansdowne has had several interviews with Cardinal Vaughan with regard to this question, his Lordship does not think that, for the present at any rate, there would be any advantage in troubling you to call.

I am, &c.

(Signed) T. H. SANDERSON.

No. 12.

[September 14, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, August 18, 1903.

Settlement of Anglo-French difficulties by Arbitration.

I HAVE the honour, by direction of the Marquess of Lansdowne, to address you on the following subject:—

The French Ambassador recently approached his Lordship with regard to the visit of Baron d'Estournelles de Constant and other Members of the French Chamber of Deputies to this country in connection with the movement now in progress for the settlement by arbitration of differences between the French and British Governments. M. Cambon at the same time left with his Lordship, for his confidential information, a copy of a suggested Agreement which, his Excellency said, had been submitted unofficially to M. Delcassé by M. Anatole Leroy-Beaulieu, President of the Committee formed for promoting a good understanding between France and England.

Lord Lansdowne promised M. Cambon to consult his colleagues on the subject, and the text of a draft Agreement, which his Excellency subsequently communicated, was accordingly submitted by his Lordship to the Cabinet, who showed themselves well disposed towards the project, and were ready to examine any such proposals in the most friendly spirit.

The Lord Chancellor has concurred in the text of the draft, and the Cabinet have authorized Lord Lansdowne to accept the proposal.

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Before, however, returning a definite reply to the French Government, his Lordship desires me to submit to you the accompanying copy of the draft Agreement for any observations thereon that may occur to you, and I am to state that as the French Chambers meet in the middle of September, it would be desirable that the matter should be arranged before that date, and he would, therefore, be glad to be favoured with your Report as soon as convenient.

I have, &c.
(Signed) F. A. CAMPBELL.

Report.

We have no observations to make on the draft Agreement communicated by M. Cambon.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
September 14, 1903.

Annex.

Draft Declaration.

LES différends tombant sous l'application de l'Article XVI de la Convention pour le réglement pacifique des conflits internationaux, conclue à La Haye, le 29 Juillet, 1899, c'est-à-dire les différends d'ordre juridique et particulièrement ceux qui sont relatifs à des difficultés d'interprétation ou d'appréciation des Conventions existantes, qui viendraient à se produire entre les Hautes Puissances Contractantes, seront, à la condition cependant qu'ils ne touchent ni aux intérêts vitaux ni à l'honneur des dites Puissances Contractantes, et si, d'autre part, ils ne peuvent être résolus par la voie diplomatique, soumis à la Cour Permanente d'Arbitrage, conformément aux dispositions de la Convention susmentionnée.

GENERAL.

No. 13.

[February 4, 1903.]

Foreign Office to Law Officers of the Crown.

Foreign Office, January 26, 1903.

Gentlemen,

Extension of Foreign Marriages Order in Council to Colonies and India.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers as marked on the accompanying list respecting the extension to the Colonies and to India of the provisions of Article 6 (4) of the Foreign Marriages Order in Council, 1892.

That Article requires that in cases where one of the parties has not been resident within the district of the marriage officer who is to solemnize the marriage such party shall produce a certificate from the marriage officer of the place in which he or she has been resident that proper notice has been given of the marriage, but these requirements of the Order in Council relate only to foreign countries and to the United Kingdom, while no instructions are given concerning notice of marriage by persons resident in the Colonies and India.

On several occasions difficulties have been experienced in connection with the intended marriage of a British subject under the provisions of the Foreign Marriage Act and Foreign Marriages Order in Council, 1892, in cases where one of the parties has been resident in a British Colony or India. A case in point is illustrated by Paper (E). Lord Lansdowne therefore considered that it would be well to prepare an Order in Council dealing with this difficulty in so far as the requirements of the Imperial Act are concerned, and in such manner as will be consonant with the preliminary procedure in regard to notice, &c., of marriage prescribed by the Colonial or Indian Government involved.

After consulting the Secretary of State for the Colonies and the Secretary of State for India, his Lordship instructed Mr. A. Gray to prepare a Supplementary Order in Council giving effect to the proposals made by the Departments concerned. The terms of the draft Order in Council so prepared have now been submitted to, and provisionally approved by, both the Secretary of State for the Colonies and the Government of India.

I am to request that you will be so good as to take the inclosed papers into your consideration, and inform his Lordship whether the terms of the draft Order in Council are such as may properly be submitted to the King in Council for His Majesty's approval.

His Lordship will also be glad to be favoured with any general observations which you may wish to offer.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	To India Office and Colonial Office	.. .. ..	February 7, 1901.
(B.)	India Office	.. ..	March 12, ,,
(C.)	Colonial Office	.. ..	May 3, ,,
(D.)	Mr. Gray	.. ..	July 28, 1902.
(E.)	Consul Jerome	.. .. (No. 4)	January 10, 1901.

Report.

In our opinion the terms of the draft Order in Council initialled by us may properly be submitted to His Majesty in Council for His Majesty's approval. We assume that Protectorates have been intentionally omitted from this Order.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 4, 1903.

Annex.

FOREIGN MARRIAGES.

Draft Order in Council.

WHEREAS, by the Foreign Marriage Act, 1892, it is provided (section 1) that all marriages between parties of whom one at least is a British subject solemnized in the manner in that Act provided in any foreign country or place, by or before a marriage officer within the meaning of that Act, shall be as valid in law as if the same had been solemnized in the United Kingdom with a due observance of all forms required by law:

And whereas the said Act also provides (section 2) that in every case of a marriage intended to be solemnized under that Act, one of the parties intending marriage shall give such notice as is therein mentioned to the marriage officer within whose district both of the parties have had their residence not less than one week then next preceding; but the said Act makes no provision for cases where one only of the parties has had such residence:

And whereas the said Act (section 21) authorized Her Majesty the Queen in Council to make Regulations for (amongst other purposes) modifying in special cases or classes of cases the requirements of that Act as to residence and notice, so far as such modification should appear to Her Majesty to be consistent with the observance of due precautions against clandestine marriages:

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And whereas, by the Foreign Marriages Order in Council, 1892, passed in pursuance of the said last-mentioned authority, it was provided (Article 6) as follows:—

"6. The following modifications of the requirements of the Foreign Marriage Act as to residence and notice which appear to Her Majesty to be consistent with the observance of due precautions against the solemnization of clandestine marriages shall have effect in cases where one only of the parties has dwelt within the district of the marriage officer:—

"(1.) A marriage may be solemnized under the Foreign Marriage Act in the official house of a marriage officer in whose district one of the parties has dwelt—

"(*a*.) If the marriage officer is satisfied that such notice as is mentioned below in Sub-Articles (3) and (4) of this Article has been given of the intended marriage in the place where the other party has dwelt; or

"(*b*.) If a Secretary of State is satisfied that the intended marriage is not clandestine, and that adequate notice has been given, and gives permission for the same to be solemnized.

"(2.) In either case the oath, affirmation, or declaration under section 7 of the Foreign Marriage Act shall, in addition to the matters specified in sub-sections (*a*) and (*c*) of that section, state that one of the parties has for three weeks immediately preceding had his or her usual place of abode within the district of the marriage officer, and further state the place where the party who has not dwelt within that district has, within three months immediately preceding, had for three consecutive weeks his or her usual place of abode, and the notice which has been given in that place during those three weeks.

"(3.) The notice to be given where the marriage is not solemnized with the special permission of a Secretary of State shall, if the party has dwelt in a foreign country, be given, entered, and posted up in the manner and during the period provided by the Foreign Marriage Act, in like manner as if the marriage were to be solemnized by or before a marriage officer in that country, and the marriage officer to whom the notice is given in that country shall, on payment of the proper fee, give a certificate that the notice has been so given and posted up and that he is unaware of any impediment which should obstruct the solemnization of the, marriage.

"(4.) If the party dwells in a place in the United Kingdom, the notice shall be given in the like manner and on payment of the like fee as if that party were about to be married in that place, and in England or Ireland shall be given to the Superintendent Registrar or Registrar, and in Scotland shall be given by proclamation of banns; and the Superintendent Registrar or Registrar shall deal with the notice and give a certificate for marriage in like manner and on payment of the like fee as in the case of a marriage in his district; and the Session Clerk of the parish in which the banns were proclaimed in Scotland shall, in like manner and on payment of the like fee as in the case of a marriage in his district, give a certificate of proclamation of such banns."

And whereas it is expedient that further modifications of the requirements of the said Act as to residence and notice should have effect in cases where one only of the parties has dwelt within the district of the marriage officer and the other has dwelt in a Colony or in India:

Now, therefore, His Majesty, by virtue and in exercise of the powers enabling him in this behalf, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:—

1. The following further modifications of the requirements of the Foreign Marriage Act, 1892, as to residence and notice which appear to His Majesty to be consistent with the observance of due precautions against the solemnization of clandestine marriages, shall have effect in cases where one only of the parties has dwelt within the district of the marriage officer and the other of such parties has dwelt in a Colony or in India, that is to say:—

(1.) If the marriage officer is satisfied that such notice has been given by the party dwelling in such Colony or in India as may be provided by any law of that Colony or of the Governor-General of India in Council (as the case may be) giving effect to this Order.

(2.) In any such case the oath, affirmation, or declaration required by section 7 of the Foreign Marriage Act shall be made subject to the modifications thereof, to which effect is given by Article 6 of the Foreign Marriages Order in Council, 1892.

2. A law enacted by the Legislature of a Colony or by the Governor-General of India in Council shall be deemed to give effect to this Order if it makes provision (in whatever terms expressed) as follows:—

(1.) That a notice of a marriage intended to be solemnized under the Foreign Marriage Act may be given by one of the parties intending such marriage who has had his or her usual place of abode for three consecutive weeks immediately preceding in some place in that Colony or in India (as the case may be) to such marriage Registrar or other officer as may be designated by the law in this behalf;

(2.) That such notice shall be published either by proclamation of banns or in such other manner as the law may provide; and

(3.) That such marriage Registrar or other officer, unless he is aware of any impediment or objection which should obstruct the solemnization of the marriage, shall, on payment of such fee, if any, as the law may provide, give a certificate that the said notice has been so given and published as aforesaid.

3. In this Order "Colony" and "India" have the same respective meanings as are given to these expressions by section 18 of the Interpretation Act, 1889.

4. This Order may be cited as "The Foreign Marriages Order in Council, 1902"; and the Foreign Marriages Order in Council, 1892, and this Order may be cited together as "The Foreign Marriages Orders in Council, 1892 and 1902."

And the Right Honourable Joseph Chamberlain and the Right Honourable Lord George Hamilton, two of His Majesty's Principal Secretaries of State, are to give the necessary directions herein as to them may respectively appertain.

R. B. F.
E. C.

No. 13A. **[Board of Trade.]**

[July 17, 1903.]

Board of Trade to Foreign Office.

Inter-Imperial Coasting Trade.

Sir, *Board of Trade, August* 12, 1903.

I AM directed by the Board of Trade to inform you that they have recently submitted to the Law Officers of the Crown the question whether His Majesty has power, by Order in Council made under sections 324 to 326 of "The Customs Consolidation Act, 1853," to impose the necessary prohibitions or restrictions upon shipping belonging to the countries which do not give reciprocity in this matter; and I am now to transmit to you herewith, for the information of Lord Lansdowne, copy of the Opinion which has been received from the Law Officers.

I have, &c.
(Signed) A. E. BATEMAN.

Opinion.

We are of opinion that—

The powers conferred on His Majesty by sections 324 and 325 of 16 and 17 Vict., c. 107, have no reference to the coasting trade of the United Kingdom. Subject to this limitation, His Majesty's Government has, upon the contingencies mentioned in and in the manner provided by the said sections, power to restrict the trade between the United Kingdom and the Colonies and Inter-Colonial trade without fresh legislation.

(Signed) R. B. FINLAY.
EDWARD CARSON.
HENRY SUTTON.

Royal Courts of Justice,
July 17, 1903.

No. 14.

[September 11, 1903.]

Foreign Office to the Law Officers of the Crown.

Report of Naval Prize Law Committee.

Gentlemen, *Foreign Office, August* 11, 1903.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you, for your information, copies of the Report of the Naval Prize Law Committee on the questions referred to them, together with a print of the Naval Prize Manual prepared by the Committee.

Lord Lansdowne will be glad to learn at your convenience whether you have any observations to offer on the recommendations of the Committee or on the Manual.

His Lordship has communicated copies to the Lords Commissioners of the Admiralty and to the Secretaries of State for the Colonies and for India, and has proposed that the Treasury should be requested to make arrangements for compilations of Reports of leading prize cases as suggested by the Committee, and that Professor Holland should be employed to select the foreign cases which it would be desirable to include in the collection.

I have, &c.
(Signed) T. H. SANDERSON.

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Report.

We have no observations to offer.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
September 11, 1903.

[Home Office.] *No. 14*^{A}.

[September 29, 1903.]

Opinion by the Attorney-General.

As to marriage of Prince Louis of Battenberg's daughter.

I AM informed that no consent under the Statute 12, Geo. III, cap. 11, was given for the marriage of the mother of Princess Victoria to Prince Louis of Battenberg.

This, no doubt, was in consequence of the view being entertained that the Princess Alice had married into a foreign family within the meaning of the Statute. This view, according to the information at my disposal, seems to be correct, as Princess Alice married a foreign Sovereign who was not naturalized here.

It follows that no consent under the Statute is required for the marriage of the issue of Princess Alice.

No such consent was required for the marriage of her daughter, and no such consent is required now for the marriage of her granddaughter.

(Signed) R. B. FINLAY.
Attorney-General.

Temple, September 29, 1903.

Inclosure in
letter from Admiralty of
November 28, 1903.

No. 14^{B}.

CORRESPONDENCE having passed with the Treasury as to the date of cessation of salary of an official who had been summoned home to stand his trial on a criminal charge, as to which he was found guilty, that Department forwarded to this Office, in their letter of the 28th November, 1903, 18897/03, the following opinion of the Law Officers of the Crown in reference to a similar question which had arisen in regard to an official serving under the Admiralty :—

H. H. Miller, official, dismissed for fraud: As to date of cessation of salary.

ON the 10th September, 1900, the Admiral at Queenstown reported that on the audit of the Naval Canteen Accounts of Haulbowline Dockyard, certain irregularities on the part of Mr. Miller, who had been acting as Treasurer of the Naval Canteen at that place, had been brought to his notice.

Mr. Miller was the Deputy Victualling Store Officer and Cashier of the Victualling Yard at Haulbowline, and a Civil Servant, as defined in the Superannuation Acts, 1859 and 1887.

It appeared that during the months of April, July, and August, seven cheques, amounting in the aggregate to 1,036*l*., had been drawn by Mr. Miller on the Canteen Account at the Bank of Ireland, Queenstown, for the purpose of providing money for the payment of the Dockyard workmen. It was his duty as Treasurer of the Naval Canteen to receive the money taken by the Canteen Steward, and lodge it in the Canteen Account kept at the Bank of Ireland. On the audit of the Canteen Accounts it was found that he had drawn cheques on the Canteen Account at the Bank for considerable amounts payable to "self." When asked for an explanation he stated that he had done this to meet yard payments for which he had not received the necessary funds.

The Admiral further reported that as this course was highly irregular, he had suspended Mr. Miller, and placed the public chest in the charge of the Assistant Store Officer, and requested that an officer might be sent from the Admiralty to audit Mr. Miller's cash accounts. He added that he had no means of knowing if there were any deficiency in the public money, but Mr. Miller's action in using Canteen money for public purposes led him to suspect that there might be.

Mr. Roper, an officer of the Department of the Accountant-General of the Navy, was accordingly sent to Haulbowline to examine the cash accounts of the Dockyard. He completed his investigation by the 18th September, on which day the Admiral reported that a deficiency of 418*l*. was found in Mr. Miller's cash account. The Admiral further reported that he had called on Mr. Miller for an explanation, and that, as his answer was unsatisfactory, he had suspended him from all duties.

Mr. Miller's answer was that he regretted that he was unable to explain the apparent deficiency, but that he felt satisfied that the deficiency was only apparent, and not actual, and that some error would subsequently be discovered which would account for it. In the meantime he asked for seven days' leave to enable him to make arrangements for replacing the amount said to be deficient.

On the 19th September, 1900, Mr. Roper reported to the Admiralty the result of his investigation (a copy of his report is left herewith). It will be seen that Mr. Roper reported that there was no possibility of the deficiency of over 400*l*. being due to a clerical error.

On the 24th September, 1900, the Admiral at Queenstown reported that Mr. Miller had informed him that he was in a position to replace the money deficient if he was granted seven days' leave of absence to confer with his brother, and he (the Admiral) submitted that this be granted.

The Admiral was informed by letter of the 27th September that Mr. Miller might be allowed to leave Haulbowline as submitted.

On the 6th October, 1900, the Admiral reported that Mr. Miller left Haulbowline for the purpose of obtaining money to replace deficiency, and had not yet returned, though he should have returned on the 3rd October.

On the 8th October, 1900, Mr. Miller called at the Admiralty and stated that he was making arrangements to replace the deficiency in a few days. He called again at the Admiralty, as requested by telegram, and saw the Secretary, on the 11th October, 1900. It was arranged that he should have further time, and should return to Queenstown. He returned to Queenstown, and on the 17th October reported that he had been unable to procure the whole of the money required to replace the deficit, and asked that the balance might be deducted from moneys that might accrue to him thereafter. He still protested his inability to explain the deficit, and begged that their Lordships' clemency might be extended to him in consideration of the services of his family and himself in the Admiralty. He claimed that his action in first remaining at Haulbowline and afterwards reporting himself at the Admiralty showed that he had no desire to evade inquiry. He stated that he still felt confident that a full examination would reveal some error which would materially reduce, if it did not wholly absorb, the deficit.

On the 23rd October, 1900, the papers were referred to the Treasury Solicitor for advice. Mr. Chance reported that he had discussed the case with the Public Prosecutor, who was of opinion that, although there was no technical objection to a prosecution, it would not result in a conviction, the matter having, up to that time, been dealt with as one of account.

It was, however, on further consideration, decided by the Admiralty that criminal proceedings should be instituted against Mr. Miller, and Sir Patrick Coll, the Chief Crown Solicitor in Ireland, was, on the 14th November, 1900, requested to proceed accordingly. He instructed Mr. Henry T. Wright, Crown Solicitor for the county of Cork, to take charge of the prosecution. Mr. Miller was arrested on the 28th November, 1900, and eventually committed to take his trial at the Cork Assizes. He was tried on the 20th March, 1901, before Chief Baron Palles, and was acquitted. A copy of a report of the trial, taken from the "Cork Examiner," the only one which can be obtained, is sent herewith. As the Treasury Solicitor is informed that no shorthand notes of the evidence were taken, application has been made to the Crown Solicitor for copies of any statements of witnesses which were taken by him, and these will be furnished to the Law Officers as soon as received.

On the 22nd March, 1901, Mr. Miller wrote to the Secretary of the Admiralty reporting his acquittal, and requesting instructions as to where he was to report

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himself for duty. He also requested information as to the payment of his salary from the 31st August, 1900, the date of the last payment. After full consideration of his case, the Admiralty informed Mr. Miller, on the 29th May, 1901, that they had decided to remove him from his appointment, and that in view of the culpably careless manner in which he had discharged his duty, their Lordships had further decided that he was not fit to be employed in the public service, and that his services should be dispensed with in the future. They added that they did not propose to recommend to the Treasury that he should be granted any gratuity or pension.

A copy of these letters and of the subsequent correspondence with Mr. Miller and his solicitor is left herewith.

On the 31st May, 1901, Mr. Miller wrote requesting that he might be informed of the Regulation under which their Lordships had dispensed with his services in view of the fact that the jury had found that the charge had not been proved. He also asked for his Certificate of Qualification issued by the Civil Service Commissioners to him, and retained by the Admiralty.

On the 10th June, 1901, Mr. Miller wrote with reference to the Admiralty letter of the 29th May, 1901, making a claim (subject to the assumption that the Regulations permitted of his services being dispensed with) for balance of pay, six months' pay in lieu of notice, and expenses incurred, amounting to 594*l.* 10*s.*, and stating that he assumed that he would receive the pension to which he was entitled by length of service from the date when his full pay ceased.

By Admiralty letter of the 21st June, 1901, Mr. Miller was informed that their Lordships had nothing to add to their letter of the 29th May, 1901, in regard to the decision to dispense with his services. He was also informed that their Lordships were not prepared to accede to his request that the Certificates of Qualification issued by the Civil Service Commissioners should be forwarded to him.

The correspondence was then taken by Mr. H. W. Bliss, Solicitor, acting for Mr. Miller, and on the 23rd October, 1901, Mr. Bliss wrote to the Treasury Solicitor the letter a copy of which is with the correspondence left herewith. His client's principal complaint appears to be that he was not allowed to examine the books, and so was prevented from showing that the deficit was the result of a mistake. This, however, is not in accordance with Mr. Roper's Report of the 19th September, 1900.

After an interview with Mr. Mellor at the Treasury on the 31st October, 1901, Mr. Bliss wrote on the 21st November to the Treasury Solicitor, informing him that he had taken Counsel's opinion and was advised that an action would lie against the Crown, and that, even if the Admiralty could prove that there was a balance due to them as a result of careless book-keeping, this could not be set off against arrears of salary.

The Accountant-General of the Navy has furnished a Memorandum, dated the 24th December, 1901, showing, with reference to Mr. Miller's letter of the 10th June, 1901, how his claim would have been dealt with apart from his dismissal, and if he had not been in debt to the Crown. A copy of this Memorandum is left herewith. It will be seen that the Admiralty do not admit that anything beyond the sum of 251*l.* would have been due to him for salary, which is considerably less than the deficiency on his accounts.

The rule of practice approved by the Treasury in the cases of Civil Servants dismissed after a period of suspension is that all claim to suspended pay is forfeited, but that special circumstances may warrant a relaxation of the rule, which is based upon the view that salary cannot be recovered and that payment up to dismissal is a matter of discretion. The sections of the Superannuation Acts which may be considered to bear on this case would appear to be section 2 of 22 Vict., cap. 26, and section 2 of 50 & 51 Vict., cap. 67.

It is apprehended that Mr. Miller's claim to salary in lieu of notice cannot be maintained in view of the decision in the case of Dunn *v.* The Queen, 1896, 1 Q.B., 116, and that his claim to pension cannot be enforced. (See Edmunds *v.* Attorney-General, 47 L.J. (N.S.), Ch. 345.)

In Boston Deep-Sea Fishers, &c., Co. *v.* Ansell, 39 Ch. D., 339, it was held that a servant who is dismissed for wrongful behaviour cannot recover his current salary which is not due and payable at the time of his dismissal, but which is only to accrue due and become payable at some later date, and on the condition that he had fulfilled his duty as a faithful servant down to that date.

But if Civil Servants hold at pleasure, and the Crown is not bound to give any length of notice to determine the service, the question arises whether the salary does not accrue due from day to day until the service is determined, and, if so whether the salary is payable to dismissal notwithstanding suspension for misconduct

As regards the right to set off the deficiency against any claim against the Crown Rule 3 of Order 19 provides that a defendant in an action may set off, or set up by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim be sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross-action, so as to enable the Court to pronounce a final Judgment in the same action, both on the original and on the cross-claim. But the Court or a Judge may, on the application of the plaintiff before trial—if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed—refuse permission to the defendant to avail himself thereof.

Their Lordships desire to be advised—

1. Whether Mr. Miller is liable in respect of the deficiency of public money in his hands.

2. Whether he is entitled to recover—
   (*a.*) The balance of his salary unpaid up to his dismissal;
   (*b.*) Up to the date of his suspension; or
   (*c.*) Any salary in lieu of notice.

3. In the event of the Law Officers being of opinion that any portion of Mr. Miller's salary is recoverable, whether the Admiralty can set off against his claim the amount of the loss of public money.

And, generally, on his claim.

Opinion.

1. Yes.

2. He is entitled to recover his salary up to the date of suspension only if there is a well-understood practice known to those in the Civil Service, by Regulations or otherwise, that salary stops on suspension. Otherwise, he will be entitled up to the date of dismissal. He is not entitled to any salary in lieu of notice.

3. Yes.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Law Officers' Department,
January 22, 1902.

JAPAN.

No. 15.

[February 23, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, January 16, 1903.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers indicated in the accompanying list on the subject of the recent action of the Japanese Government in prohibiting British lighters from plying for trading purposes between Yokohama and Tôkio.

British Lighters plying between Yokohama and Tôkiô.

The Japanese Government first showed signs of wishing to restrict British transport traffic in the Bay of Yedo in the early part of 1901, when British steam

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launches which had hitherto been allowed to ply in all the waters of the bay were compelled to restrict themselves to traffic in Yokohama Harbour, which forms an inlet in the bay (Paper A).

In consequence of the complaints which ensued on this restriction, Mr. Whitehead, then His Majesty's Chargé d'Affaires at Tôkiô, made representations to the Japanese Government; His Majesty's Minister, however, considers that there is now a prospect of the matter being satisfactorily settled locally (Paper E).

Meanwhile, evidently in pursuance of the same restrictive policy, a British firm established at Yokohama, Messrs. Helm Brothers, received a notice from the Japanese authorities, prohibiting them from continuing their business of forwarding goods on lighters from Yokohama to Tôkiô (Yedo), which they had been engaged on ever since foreigners had been allowed in that place (Paper B).

Sir C. MacDonald then addressed a note of remonstrance to the Japanese Government (Paper B, Inclosure 2), appealing not only to the general intention clearly revealed by the text of the Anglo-Japanese Convention of 1894 (Paper C), that equality of treatment should be accorded to Japanese and British subjects in Japan, but also to the specific provisions of Article III of that Treaty, as well as to the arrangements for the settlement of foreigners at Yedo, arrived at in 1867 between Sir H. Parkes and the Japanese Government (Paper D).

Paragraph 3 of Article III of the Treaty of 1894 runs as follows:—

"They (*i.e.*, British and Japanese subjects) shall have liberty freely to come with their ships and cargoes to all places, ports, and rivers in the dominions and possessions of the other which are or may be opened to foreign commerce, and shall enjoy, respectively, the same treatment in matters of commerce and navigation as native subjects, or subjects or citizens of the most favoured nation, without having to pay taxes, imports, or duties, of whatever nature or under whatever denomination, levied in the name or for the profit of the Government, public functionaries, private individuals, Corporations, or establishments of any kind, other or greater than those paid by native subjects, or subjects or citizens of the most favoured nation, subject always to the Laws, Ordinances, and Regulations of each country."

The first sentence of Article 1 of the Arrangements of 1867 is to the following effect:—

"Within the limits . . . . , foreigners of nations having Treaties with Japanese may hire houses and reside for purposes of trade."

Sir C. MacDonald urged that foreigners being thus allowed in Tôkiô for purposes of trade, that place came under the provisions of Article III of the Treaty of 1894 as to the grant to foreign ships of access to places open to foreign commerce. He also quoted Article 7 of the Arrangements of 1867, which runs as follows:—

"Lighters, tow-boats, and passage-boats, propelled by steam or sails, and belonging to foreigners, may ply between Yedo and Yokohama for the conveyance of cargo and passengers under the Regulations annexed to the Agreement, and subject to the provisions of the Regulations of Trade attached to the Treaties.

The Japanese Government in their reply (Paper E, Inclosure 1,), take in turn all the Treaty provisions quoted by Sir C. MacDonald in support of his contention, and deny in each case their applicability to the action complained of by Messrs. Helm.

As they point out at the end of paragraph 3 of their note, they consider the whole question turns on whether Tôkiô is an "open port" in the sense in which the term is used in paragraph 3 of Article XI of the Treaty of 1894. They deny that Tôkiô is such an open port, and are, therefore, of opinion that foreigners cannot claim to enjoy at Tôkiô the right which they possess of carrying cargo between existing open ports of the Empire. In proof of this allegation the Japanese Government quote the words, "Yedo, however, is not an open port," which are to be found in Article 6 of the Arrangements of 1867.

In regard to Article III of the Treaty of 1894, the Japanese Government appear to have missed the point of Sir C. MacDonald's contention, which is that Tôkiô is a "place open to foreign commerce," and therefore free of access to foreign ships and cargoes in that they point out that foreign ships are not allowed, as are foreign nationals, to trade in *any* part of the Japanese dominions. This is not disputed. They also appear to distinguish between "international commerce" on the one hand, and "special transport business," carried on locally by foreigners, on the other.

As to the express mention of the rights of foreign lighters contained in Article 7 of the Arrangements of 1867, the Japanese Government consider that these rights stand or fall with the "Arrangements," and they hold that these last (together with all other Anglo-Japanese Agreements previous to the conclusion of the Treaty of 1894), have lapsed owing to the provision of Article XX of the Treaty, which says that the Treaty of 1894 shall be "substituted for all Arrangements and Agreements *subsidiary*" to the Conventions of 1854, 1858, and 1866, and that "from the date of the commencement of the new Treaty, the former Conventions, Treaty Arrangements, and Agreements shall cease to be binding and, in consequence, the jurisdiction then exercised by British Courts in Japan and all exceptional privileges, exemptions, and immunities then enjoyed by British subjects *as a part of*, or *appurtenant to* such jurisdiction, shall absolutely and without notice cease and determine," &c.

It seems clear to Lord Lansdowne that the Arrangements of 1867 would fall under the designation of "subsidiary" engagements; it is not, however, equally clear that the privileges referred to in Article XX are necessarily to be considered as at an end.

It is to be observed that the wording of Article XX is peculiar and explicit; it does not say that all privileges *whatsoever* shall cease; it specifies only those arising out of the extra-territorial jurisdiction; and, unless it can be shown that the stipulations of the Treaty of 1894 are inconsistent with the continued existence of the privilege to convey goods on lighters between Yokohama and Tôkiô, it seems to his Lordship that it may be held that the privilege remains, having been conferred, like many others, once for all, and that it is not dependent on the duration of the "Arrangements" preceding it. Neither Tôkiô nor any other so-called Treaty-ports are specially mentioned in the Treaty of 1894 which repeals previous Treaties; but I am to submit that it would not on that ground be arguable that, by reason of the abrogation of the previous Treaties, the ports therein declared to be open were now to be closed to foreign trade.

The context, on the contrary, would appear to imply that they are still open, and also that commercial facilities hitherto enjoyed by British subjects under the older Treaties remain unimpaired.

Tôkiô (Yedo) was opened as a residence for British subjects for the purposes of trade by Article III of the Treaty of the 26th August, 1858 (Paper F), which says:—

". . . . From the 1st January, 1862, British subjects shall be allowed to reside in the City of Yedo . . . for the purposes of trade only," &c.

The same Article declared that the ports and towns of Hakodate, Kanagawa, and Nagasaki should be opened to British subjects on the 1st July, 1859, and that Niigata or some other port on the west coast should be opened subsequently.

The Arrangements of 1867 contained the details for carrying out these stipulations (or some of them).

In the Arrangements respecting Yedo it is explained that that place is not an "open port," and that, therefore, foreign merchant-ships cannot anchor there, but must enter at Yokohama, where there is a custom-house. It is, however, added in Article 7 of the Arrangements already quoted (as a means whereby British subjects may carry on their trade at Yedo), that "lighters, tow-boats, and passage-boats . . . belonging to foreigners may ply between Yedo and Yokohama, for the conveyance of cargo and passengers."

This permission appears to Lord Lansdowne to be incidental to the opening of Yedo to British subjects for purposes of trade, and unless the Treaty of 1894 is to be understood as reversing all the stipulations of former Treaties (a construction which could hardly be seriously put forward), it must be held to be effective as long as British subjects are permitted to reside at Yedo for purposes of trade.

Moreover, it seems clear from the preamble and general tenour of the Treaty of 1894 that the curtailment of British privileges, except where specially expressed, was not present to the minds of the negotiators.

The preamble says that Her Majesty the Queen and the Emperor of Japan "being equally desirous of maintaining the relations of good understanding which happily exist between them, by *extending and increasing* the intercourse between their respective States have resolved upon a revision of the Treaties, based upon *principles of equity and mutual benefit*."

Article I of the Treaty declares that the subjects of each of the High Contracting Parties shall have full liberty to enter, travel, and reside in any part of the dominions and possessions of the other.

As was represented by Sir C. MacDonald to the Japanese Government, Article III says that there shall be reciprocal freedom of commerce and navigation between the respective dominions. The subjects of each Contracting Party "shall have liberty freely to come *with their ships and cargoes* to all *places, ports*, and *rivers*" in the dominions of the other "which are or may be opened to foreign commerce, and *shall*

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enjoy the same treatment in matters of commerce and navigation *as native subjects*" or those entitled to the most-favoured-nation treatment, subject always to the laws, &c., of each country.

Tôkiô may not be open to foreign commerce as a *port*, having a custom-house, but it is evidently a "place" open to British subjects as a residence for purposes of trade, and that trade, as shown in the Arrangements of 1867, must be carried on in lighters, the cargoes having previously entered at the Yokohama Custom-house. This fact does not seem to be disputed by the Japanese Government, and as British subjects enjoy the same treatment in matters of navigation as native subjects, it would appear to follow that the intention of the Treaty of 1894 is that the privilege of owning and trading by means of lighters is vested in British subjects in future as it has been in the past.

As regards Article III of the Treaty, however, the Japanese Government would not appear themselves to rely implicitly on it in support of their contention that they have a right to exclude foreign lighters from plying between Yokohama and Tôkiô, as in their reply to Sir C. MacDonald (Paper E, Inclosure 1) they have, in quoting the Article, omitted the word "places," under which category Tôkiô would come.

I am to request that you will take the papers submitted herewith into your consideration, and that you will favour Lord Lansdowne with your opinion on the following points:—

1. Are the provisions of all Treaties concluded between Great Britain and Japan previously to that of 1894 (in cases where they are not explicitly or implicitly recognized by that Treaty), invalidated by Article XX thereof, even when these provisions do *not* deal with "exceptional privileges, exemptions and immunities" enjoyed hitherto by British subjects "as a part of, or as appurtenant to" the jurisdiction hitherto exercised by British Courts in Japan?

2. If so, would the Japanese be justified in taking advantage of the fact that Tôkiô is expressly stated in the "Arrangements" of 1867 not to be an "open port" (a status recognized in the Treaty of 1894), to revoke, at any time, the privileges granted to foreigners of residing in that place for trading purposes, if that Government desired to do so?

3. If not, was the privilege, granted to foreigners under Article 7 of the "Arrangements" of 1867, of carrying on lighter traffic between Yokohama and Tôkiô given once for all as an incidental to the permission given to foreigners to reside there for purposes of trade; or was the privilege dependent on the duration of the validity of the Arrangements?

4. Can Tôkiô, as a "place" where foreigners may reside for trading purposes be considered "open to foreign commerce" in the sense in which it is used in Article III of the Treaty of 1894; and, if so, are British subjects entitled at Tôkiô to the privileges granted to them in Article XI of the same Treaty, of carrying "cargo between the existing open ports of the Empire, excepting the ports of Osaka, Niigata, and Ebisu-minato"?

5. If Tôkiô is "open to foreign commerce" are the Japanese Government entitled to deprive British subjects living there of the privileges explicitly granted to them previously to the conclusion of the Treaty of 1894 (such as those given under Article 7 of the Arrangement as to lighter traffic), seeing that, in the case of open ports, that Treaty implicitly provides for the continuance of all such privileges?

His Lordship will also be glad to receive any observations of a general character which you may be good enough to offer on the subject of this reference.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

(A.)	Sir C. MacDonald	(No. 11)	February 17, 1902.
(B.)	Ditto	(No. 94)	August 9, „
(C.)	Treaty between His Majesty's Government and Japan. [Treaty Library No. 957. C.—7588.]		July 16, 1894.
(D.)	Arrangements of 1867. [See Conf. 1579.]		
(E.)	Sir C. MacDonald	(No. 121)	October 28, 1902.
(F.)	Treaty between His Majesty's Government and Japan. [Treaty Library No. 433.]		August 26, 1858.

Report.

We do not think that Article XX of the Treaty of 1894 can be construed so as to limit its effect to merely putting an end to the jurisdiction formerly exercised by British Courts in Japan and the privileges of British subjects under such arrangement. The Treaty of 1894 seems to have been intended to determine the previously existing Treaties and to define the rights of the subjects of each Power in the country of the other. Whether any previously existing privileges, exemptions, or immunities have been determined by this Treaty must depend upon a consideration of the circumstances of any case which may arise, and the effect of the Treaty thereon.

2. We do not think, having regard to Article III, that the Japanese could during the existence of the Treaty of 1894 refuse to foreigners the right to reside in Tôkiô for the purposes of trade. This right is not affected by the question as to whether Tôkiô is an open port or not and results from Articles I and III of the Treaty.

3. The right granted under the special Arrangements made in 1867 was dependent on the duration of such Arrangements. The question now depends on the Treaty of 1894.

4 and 5. We are of opinion that, upon the true construction of Article III of the Treaty of 1894, the port of Tôkiô should be considered a port open to foreign commerce to the extent to which it was so open before the Treaty, viz., by traffic in lighters, &c., from Yokohama, and that there is therefore nothing in the Treaty indicating any intention to limit the rights and privileges which previously existed at Tôkiô. We therefore think that British subjects are still entitled to the same privileges as to lighter, &c., traffic as existed before the Treaty.

Generally, it might be arguable that the right to bring in lighters goods which have been imported into a port open to foreign commerce is incident to the right to trade conferred by Article III, like the right to carry such goods by road to the place of trade, unless the circumstances are such as to constitute coasting trade within the meaning of Article XI; but it does not appear to be necessary to raise this general question in the present case.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 23, 1903.

No. 16.

[August 13, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August* 11, 1903.

Arbitration respecting Taxation in former foreign Settlements in Japan.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the accompanying papers relating to the forthcoming arbitration at The Hague between Great Britain, France, and Germany on the one side, and Japan on the other side, with reference to the power of the Japanese Government to tax property in the former foreign Settlements in Japan.

These foreign Settlements ceased to exist when the Treaty of 1894, which swept away the British extra-territorial jurisdiction in Japan, came into force.

Article XVIII of that Treaty provided for the Settlements being incorporated in the Japanese communes; it also provided for the confirmation of the leases under which property was then held in the Settlements, and stipulated that no conditions whatsoever other than those contained in the existing leases should be imposed in respect of such property.

The actual words of the Article were as follows:—

"ARTICLE XVIII.

"Her Britannic Majesty's Government, so far as they are concerned, give their consent to the following arrangement:—

"The several foreign Settlements in Japan shall be incorporated with the

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respective Japanese Communes, and shall thenceforth form part of the general municipal system of Japan.

"The competent Japanese authorities shall thereupon assume all municipal obligations and duties in respect thereof, and the common funds and property, if any, belonging to such Settlements, shall at the same time be transferred to the said Japanese authorities.

"When such incorporation takes place the existing leases in perpetuity under which property is now held in the said Settlements shall be confirmed, and no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of such property. It is, however, understood that the Consular authorities mentioned in the same are in all cases to be replaced by the Japanese authorities.

"All lands which may previously have been granted by the Japanese Government free of rent for the public purposes of the said Settlements shall, subject to the right of eminent domain, be permanently reserved free of all taxes and charges for the public purposes for which they were originally set apart."

The corresponding Articles of the French and German Treaties were (in the French Treaty) :—

"ARTICLE XXI.

"Le Gouvernement de la République Française donne, en ce qui le concerne, son adhésion à l'arrangement suivant :

"Les divers quartiers étrangers qui existent au Japon seront incorporés aux communes respectives du Japon et feront dès lors partie du système municipal du Japon.

"Les autorités Japonaises compétentes assumeront en conséquence toutes les obligations et tous les devoirs municipaux qui résultent de ce nouvel état de choses, et les fonds et biens municipaux qui pourraient appartenir à ces quartiers seront, de plein droit, transférés aux dites autorités Japonaises.

"Lorsque les changements ci-dessus indiqués auront été effectués, les baux à perpétuité en vertu desquels les étrangers possèdent actuellement des propriétés dans les quartiers seront confirmés, et les propriétés de cette nature ne donneront lieu à aucuns impôts, taxes, charges, contributions, ou conditions quelconques autres que ceux expressément stipulés dans les baux en question. Il est entendu toutefois qu'aux autorités Consulaires dont il y est fait mention seront substituées les autorités Japonaises.

"Les terrains que le Gouvernement Japonais aurait concédés exempts de rente, vu l'usage public auquel ils étaient affectés, resteront, sous la réserve de droits de la souveraineté territoriale, affranchis d'une manière permanente de tous impôts, taxes, et charges ; et ils ne seront point détournés de l'usage auquel ~~ils~~ était primitivement destinés."

In the German Treaty :—

"ARTIKEL XVIII.

"Die vertragschliessenden Theile sind über Folgendes einverstanden :—

"Die einzelnen Fremdenniederlassungen in Japan sollen in betreffenden japanischen Gemeinden einverleibt werden und hinfort Bestandtheile der japanischen Gemeinden bilden.

"Die zuständischen japanischen Behörden sollen demnach mit Bezug auf dieselben alle Verbindlichkeiten und Verpflichtungen übernehmen, welchen ihnen hinsichtlich der Gemeinden obliegen, und gleichzeitig sollen die öffentlichen Gelder und Vermögensverstände, welche diesen Niederlassungen gehören, den genannten japanischen Behörden übergeben werden.

"Sobald diese Einverleibung erfolgt, sollen die bestehenden, zeitlich unbegrenzten Ueberlassungsverträge, unter welchen jetzt in den gedachten Niederlassungen Grundstücke besessen werden, bestätigt und hinsichtlich dieser Grundstücke sollen keine Bedingungen irgend einer anderen Art auferlegt werden, als sie in den bestehenden Ueberlassungsverträgen enthalten sind.

"Die Besitzrechte an diesen Niederlassungsgrundstücken können in Zukunft von ihren Besitzern frei und, ohne dass es dazu, wie bisher in gewissen Fällen, der Genehmigung der konsularischen oder japanischen Behörden bedarf, an Inländer oder Ausländer veräussert werden.

"Im Uebrigen gehen die nach den ursprünglichen Ueberlassungsverträgen den Konsularbehörden zustehenden Funktionen auf die japanischen Behörden über.

"Alle Ländereien, welche von die japanischen Regierung für öffentliche Zwecke der Fremdenniederlassung bisher Zinsfrei hergegeben worden sind, sollen, unbeschadet der aus der Gebietshoheit sich ergebenden Rechte, frei von allen Steuern und Lasten den öffentlichen Zwecken, für welche sie ursprünglich bestimmt worden, dauernd erhalten bleiben."

On the date on which the German Treaty was signed, complementary notes were exchanged between the German Secretary of State for Foreign Affairs and the Japanese Minister at Berlin, from which the following are extracts from the former's note :—

"3. dass, da das Eigenthum an den im Artikel XVIII des Vertrages erwähnten Niederlassungsgrundstücken dem japanischen Staate verbleibt, die Besitzer oder deren Rechtsnachfolger für ihre Grundstücke ausser dem kontraktmässigen Grundzins Abgaben oder Steuern irgend welcher Art nicht zu entrichten haben werden."

and from the note of the Japanese Minister in reply—

"dass die darin unter Nummer 1 bis 4 zum Ausdruck gebrachten Voraussetzungen, welche den Erwerb dinglicher Rechte an Grundstücken, die Errichtung von Waarenhäusern, die Steuerfreiheit der Grundstücke in den Fremdenniederlassungen und die Erhaltung wohlerworbener Rechte nach Ablauf des Vertrages zum Gegenstande haben, in allen Punkten zutreffend sind."

The Treaties came into operation in 1899, and it at once became apparent that the Japanese Government placed a very much narrower interpretation upon these clauses than did the land-renters and the foreign Governments concerned.

The diplomatic correspondence that ensued between 1899 and 1902 chiefly centred round two points—(*a*) the claim of the Japanese Government to treat the tenure created by the perpetual leases as equivalent to "superficies" under the Japanese Civil Code ; (*b*) the claim of the Japanese Government to sever the houses from the land on which they are built in accordance with the Japanese custom, and to impose the same taxes upon the houses as are paid by Japanese, thus confining the operation of the third paragraph of Article XVIII of the Treaty with Great Britain, and of the corresponding portions of the Treaties with France and Germany, to the ground on which the houses stand.

On the first point the Japanese Government gave way, and by a law promulgated on the 20th September, 1901, enacted that subject to the terms of the title-deeds the provisions of the Civil Code as to ownership should apply to the rights created by a perpetual lease.

On the second point they declined to give way, but ultimately agreed to submit the question to arbitration. For this purpose a Protocol was signed on the 28th August, 1902, at Tôkiô, under which the question at issue is to be submitted to an Arbitral Tribunal, composed of three members of the Permanent Court of Arbitration of The Hague, one to be named by each of the parties to the arbitration and the two so named to choose the third ; and the question at issue was defined by Article II to be :—

"Whether or not the provisions of the Treaties and other engagements above quoted exempt only land held under leases in perpetuity granted by or on behalf of the Japanese Government, or land and buildings of whatever description, constructed, or which may hereafter be constructed, on such land, from any imposts, taxes, charges, contributions, or conditions whatsoever, other than those expressly stipulated in the leases in question."

Article VIII provided that for the purposes of the arbitration the Government of Japan should be regarded as one party, and the Governments of Great Britain, France, and Germany, jointly, should be regarded as the other party.

It was at first intended that the three European Governments should each draw up their own Case, and under instructions from the Foreign Office the preparation of the British Case was undertaken in Japan ; later on it was decided to have a Joint

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Case, but the work was continued at Tôkiô by a Committee representing the various Legations.

After a considerable delay, the draft of a Case was completed by Mr. Bonar, His Majesty's Consul at Yokohama, no person of legal training or experience being available.

The Representatives of the three Governments concurred in the draft, and it was sent home with the proposal that, after being considered by the Foreign Offices in London, Paris, and Berlin, the draft should be revised by a Committee of Representatives before its final submission to the Tribunal.

A copy of the draft Case, with its proposed annexes, will be found in the bundle of papers marked (A).

Arrangements have been made for the selection by the French Government of the Arbitrator to be appointed by the three European Governments, and they have selected a French jurist, M. Reynault. The Japanese Government have selected as their Arbitrator M. Motono, their Minister in Paris, who knows French, but does not know English.

It is therefore obvious that the Case must be presented to the Arbitrators in French, and it will probably be convenient that the actual wording should be left to the French Government.

Lord Lansdowne is advised that the terms of the Protocol of the 28th August exclude oral arguments, and he would be glad to be favoured with your opinion whether this view is correct.

Mr. A. B. Walford, a barrister, formerly in practice at Yokohama, who has had considerable local experience of the question, has been retained to represent His Majesty's Government with Mr. Bonar on the Revision Committee, and the Committee is to meet in Paris on the 17th instant.

The draft Case has been since its arrival in London subjected to careful consideration by Mr. Walford, in concert with Mr. Hurst, the Assistant Legal Adviser to this Department, and with Mr. Bonar.

It will be seen from a perusal of the Case that it is directed towards claiming, first, a complete exemption from all taxation—Imperial, Prefectural, or municipal—imposed on property held by land-renters in the former foreign Settlements, both land and buildings; and, secondly, complete exemption for the *owners* of such Settlement property from all taxes or impositions levied to raise money for municipal purposes, whether charged on the property or not, upon the ground that the annual payment or ground-rent is a commutation for all municipal services.

It is obvious that the scope of the Case as drafted is far more extensive than the question at issue as defined in the Protocol of 1902, and it also appears to Lord Lansdowne to travel beyond the points raised and the claims made in the diplomatic correspondence that took place before the agreement for arbitration was entered into.

It appears to have been thought at Tôkiô that it would be possible to obtain from the Tribunal an award that would explain what was the correct interpretation of Article XVIII of the Treaty of 1894 and the corresponding Articles of the French and German Treaties, and would indicate how those Articles should be applied.

It will also be seen that the arguments in support of each claim are not clearly distinguished in the draft Case, but are worked up together in a way that renders it somewhat difficult to follow.

The reasons which have led to the Case being given so extended a scope are believed to be as follows: the English system of raising money for municipal purposes exclusively by rates assessed on the property is not followed in Japan; direct impositions on the property form but a small part of the money raised for local purposes in that country, the greater portion being levied by adding a percentage on to the amount of Imperial taxes paid by inhabitants of the town. Many of these Imperial taxes, such as the income tax, are not assessed on the property at all, or only to a very slight extent. Assuming, therefore, that the members of the Tribunal decided unanimously against the Japanese contention, and held that the exemption from taxation extended to both land and buildings, it would still be open to the Japanese authorities, while continuing to exact the ground-rent, to levy upon the holders of the old Settlement property exactly the same municipal contributions that are paid by the native owners. In this way the holders of the Settlement property would be made to pay twice over for municipal services, first in ground-rent and then in municipal taxes, and no benefit would have resulted from the arbitration.

To avoid this result the Case puts forward the claim for exemption from all municipal taxation for the owners of Settlement property based chiefly on the contention that the ground rent was a commutation for all municipal taxation, and that such was an incident of the tenure of Settlement property which the confirmation of the leases provided for in the Treaty of 1894 must be taken to have perpetuated.

The exemption from payment of the municipal percentages on the Imperial taxes is also of far greater importance financially to the landholders than the exemption from municipal taxes imposed directly on the property.

The bearings of this question may perhaps not have been fully understood at the time the Protocol of 1902 (which defines the question at issue) was negotiated, and Lord Lansdowne is advised that the terms of Article II will enable the Tribunal to avoid giving any award upon the second head of the claim.

I am also to refer you to the opinion given by the Law Officers on the 11th September, 1901, in which you reported on the papers then laid before you that no such exemption could be claimed.

Mr. Hurst and Mr. Walford consider that there is nothing revealed by the consideration the Case has undergone since that date, and by the documents and papers now produced, which shows that that opinion requires reconsideration.

Lord Lansdowne therefore proposes to instruct the British Representatives at the Revision Committee in Paris to suggest that the Case should be rearranged under three heads:—

1. Claiming exemption from taxation directly imposed either on the land or the houses, upon the ground that the word "property" in Article XVIII of the Treaty of 1894 covers both land and houses.

2. Claiming exemption for the owners of Settlement property from all taxation imposed for municipal purposes, upon the ground that, as the annual payment or ground rent was a commutation for all municipal services, any further municipal taxation would constitute a variation of the tenure and the imposition of a new condition in respect of the property.

3. Claiming relief upon equitable grounds, as it is unreasonable that holders of Settlement property should pay the same municipal taxes as the Japanese and ground rent as well.

The accompanying Memorandum (Paper B), prepared by Mr. Walford in the form of a Report on the draft Case, contains an outline of the argument that Lord Lansdowne is advised may reasonably be put forward in support of 1 and also in support of 2, and which he purposes, subject to your opinion on their validity, to instruct the British Representatives to put forward at the meetings of the Revision Committee in Paris.

As the arguments under 3 will consist mainly of figures, &c., drawn from Japanese municipal accounts, it is not considered necessary to trouble you with them at the present stage. The claim under 2 is so important to the holders of Settlement property that Lord Lansdowne proposes to concur in its being submitted to the Tribunal if the Governments of France and Germany concur, provided that the Case is so arranged that its inclusion will not endanger the claim under 1.

Accompanying the draft Case will be found a number of Annexes, but Lord Lansdowne is advised that many of them are not, in their present shape, suitable for incorporation in the Appendix to the Case. Extracts are printed instead of whole documents; italics are introduced which were not present in the originals; and some of the documents consist of Memoranda or statements of fact which are unsupported by proof in any way.

A list is accordingly inclosed (Paper C) of the documents that, so far as His Majesty's Government are concerned, will be required, though additions will no doubt be made by the Representatives of France and Germany.

I am to request you to take the accompanying papers into your consideration, and to favour Lord Lansdowne with your opinion—

1. Whether the terms of the Protocol of the 28th August, 1902, exclude oral argument before the Tribunal at The Hague, where it has been decided that it shall sit.

2. Whether you consider that the arguments outlined in the accompanying Memorandum may be put forward by the British Representatives at the Paris Revision Committee.

His Lordship will also be glad to be favoured with any observations of a general character that you may have to offer.

I have, &c.
(Signed) F. A. CAMPBELL.

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List of Papers.

(A.) Draft Case and Annexes.
(B.) Mr. Walford's Memorandum, [?] August 11, 1903.
(C.) List of Annexes required.
(D.) Protocol of August 28, 1902.
(E.) Law Officers' opinion of April 4, 1900.
(F.) Law Officers' opinion of September 11, 1901.
(G.) Treaty between Great Britain and Japan of July 16, 1894, Library No. 957.
(H.) Treaty between France and Japan of August 4, 1896, State Papers, Vol. 88, p. 530.
(I.) Treaty between Germany and Japan of April 4, 1896, State Papers, Vol. 88, p. 582

PROPOSED List of Exhibits.

1. Protocol of Tôkiô, August 28, 1902, Library No. 1160.	
2. Anglo-Japanese Treaty, 1894	Volume of Treaties and Conventions, p. 37.
3. Franco-Japanese Treaty, 1896	Ditto, p. 237.
4. German-Japanese Treaty, 1896	Ditto, p. 131.
5. British Treaty, 1858	Volume (1884) of Treaties and Conventions, p. 418.
6. French Treaty, 1858	Ditto, p. 291.
7. Prussian Treaty, 1861	Ditto, p. 367.
8. North German Treaty, 1869	Ditto, p. 392.
9. Austro-Hungarian Treaty, 1869	Ditto, p. 1.
10. United States of America Treaty, 1858	Ditto, p. 717.
11. Japanese draft Treaty, April 2, 1887	Confidential Print, 1887, p. 100.
12. Report of the Commercial Committee	Ditto, p. 191.
12A. Letter. Mr. Braess to Mr. Van der Pot	Ditto, p. 203.
13. Viscount Aoki to the Committee	Ditto, p. 204.
14. Japanese draft of Article XXII	Blue Book, 1894 (Japan), p. 2.
15. 1889. British counter-draft (Article XXV)	Ditto, p. 12.
16. 1890. British counter-draft (Article XXV) as amended	Ditto, p. 30.
17. Memorandum of interview, April 2, 1894	Ditto, p. 92.
18. „ by Viscount Aoki, April 11, 1894	Ditto, p. 95.
19. „ of interview, April 24, 1894	Ditto, p. 99.
20. „ „ May 7, 1894	Ditto, p. 106.
21. Draft Article proposed by Great Britain	Ditto (Annex B), p. 108.
22. Memorandum of interview, May 25, 1894	Ditto, p. 111.
23. Japanese draft Article	Ditto, p. 114.
24. Land Regulations, &c.	As printed in Exhibit "C 1."
25. Marquis Ito's communication, March 30, 1868	Volume (1884) of Treaties and Conventions, p. 1134.
26. Kobe Hill Lots Arrangement, 1888	Volume II of Treaties and Conventions, p. 406.
27. Specimen Title Deeds	As produced in Exhibit "D 1."
28. Specimen Transfers	Ditto, "E 1."
29. Correspondence between British Legation and Japanese Foreign Office	As printed in Exhibit "F 1."
30. 1860 Correspondence between British Legation and Japanese Government	Ditto, "F 5."
31. 1860 Correspondence between British Consul at Kanagawa and local Japanese authorities	Ditto, "G 1."
32. 1860 Correspondence between British Consul at Nagasaki and British Minister at Tôkiô	Ditto, "G 2."
33. Imperial Ordinance No. 329	Confidential Print, 1899, p. 130.
34. „ „ No. 458	Ditto, 1900, p. 41.
35. Perpetual Lease Law, 1900	As printed in Exhibit "I 4."
36. 1867 or 1868 Correspondence relating to Form of Title Deed for Yokohama Bluff Land	To be obtained from Japan.
37. Kobe Foreign Settlement Municipal Accounts 1890 to 1899	Ditto.
38. Japanese Government Notification promulgating the Treaty of 1894	Translation to be made; original in Japanese only.
39. Japanese Income Tax Forms	As printed in Exhibit "I 8."
40. Business Tax Law, Articles 12 and 18	Ditto, "I 5," p. 35.
41. Law concerning the Registration of Immoveables (February 24, 1899), Article 1	To be obtained.
42. Registration Fees Law, Articles 1 and 2	As printed in Exhibit "I 5," p. 113.
43. Speech of Mr. Uchida	Confidential Print, 1901, p. 23.
44. Stamp Law, Articles 1 and 2	As printed in Exhibit "I 5," p. 144.

Report.

1. We answer this question in the affirmative.

2. As the Committee are to meet on the 17th instant, and the very voluminous papers in this case were only delivered yesterday, it would be impossible for us to express any opinion which would be of any value on the validity of the arguments in the Memorandum.

R. B. F.
E. C.

NETHERLANDS.

No. 17.

[February 27, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, July* 31, 1902.

Foreign Consuls taking evidence in Great Britain.

I HAVE the honour, by direction of the Marquess of Lansdowne, to inclose a note from the Netherland Minister at this Court, in which he inquires (1) whether it is competent for a Netherland Consul in Great Britain to take evidence on oath from witnesses who come before him spontaneously, without infringing English law; and (2) if so, whether the matter is affected by the Consul being a British subject.

With regard to the first point, I am to refer you to two Reports from the Law Officers of the Crown, dated respectively the 6th May, 1884, and the 17th January, 1887 (copies of which are inclosed), in which divergent opinions are expressed.

On the second point, Lord Lansdowne assumes that it would be immaterial to the issue whether the Consul were a British or a foreign subject.

I am to request that you will take Baron Gericke's note into your consideration, and that you will favour Lord Lansdowne with your opinion as to the reply which should be returned to the question he raises.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

Baron Gericke	January 1, 1902.
Law Officers	May 6, 1884.
Ditto	January 17, 1887.

Report.

1. Though there is an absence of legal authority for taking evidence on oath before a foreign Consul in Great Britain, we cannot, as the taking of such oaths seems to have prevailed to a considerable extent, and for a long time without objection, advise any proceedings to put a stop to the practice.

Lord Coke lays down in general terms that the administration of oaths without authority is punishable at common law by fine and imprisonment (3 Inst. 165), but there is a total absence of any precedent in the books for a proceeding of this nature, and there is nothing to show that Lord Coke's dictum is applicable to proceedings before a foreign Consular officer, and for the purposes only of a suit in the foreign country.

2. The matter is not affected by the Consul being a British subject.

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3. We would suggest that Baron Gericke be informed that His Majesty's Government does not propose, under present circumstances, to raise any objection to the continuance of the practice in question.

(Signed) R. B. FINLAY.
EDWARD CARSON

Royal Courts of Justice,
February 27, 1903.

No. 18.

[July 29, 1903.]

Foreign Office to Law Officers of the Crown.

Foreign Office, June 18, 1903.

Gentlemen,

Mr. Godden's claims in Aruba: Land concessions, working of phosphates, &c.

I AM directed by the Marquess of Lansdowne to transmit to you herewith copy of a letter from Mr. John Godden relating to his complaints against the action of the Netherland Colonial authorities in the Islands of Curaçao and Aruba, as well as copies of letters from Mr. Henniker Heaton, M.P., and Mr. Ernest Flower, M.P., on the same subject.

Various points arising out of Mr. Godden's claims have been submitted to the Law Officers of the Crown on previous occasions, and reports have been received in reply, dated respectively the 28th April, 1886, the 30th March, 1887, the 29th February, 1888, the 11th November, 1899, and the 22nd July, 1901.

Copies of these papers are inclosed for convenience of reference, together with a Memorandum prepared in this Office and dated the 12th March, 1888.

Mr. Godden's first complaint referred to the assessment of his estate at Santa Barbara in Curaçao for purposes of taxation. The local authorities, it seems, decided to tax the land according to its mineral value rather than according to its value as agricultural land. The amount payable by Mr. Godden was consequently greatly increased. The matter was referred in March 1886 by the Earl of Rosebery to the then Law Officers of the Crown and to Dr. Deane, Q.C., who were of opinion that the interpretation placed upon the terms of the Ordinance No. 20 of the 20th December, 1881, by the Netherland Government was not incorrect, and that the case afforded no ground for the further intervention of Her Majesty's Government.

Mr. Godden subsequently submitted a statement of his grievances against the Colonial authorities of Curaçao and Aruba in respect of a Concession of lands obtained by him in the latter island for agricultural and stock-breeding purposes.

The right to work the lime phosphate deposits was, however, put up for public tender and granted, notwithstanding Mr. Godden's protest, to another concessionnaire, who afterwards transferred his rights to the Aruba Phosphate Company, whose operations, as Mr. Godden alleged, were prejudicial to his agricultural interests.

He further complained that he was not permitted to blast stones on Aruba, although the right to do so was conceded to the Aruba Phosphate Company.

A third grievance was that he was not allowed to store gunpowder in Aruba, the Regulations in force in Curaçao not being applicable in that island, while the Aruba Phosphate Company kept their powder close to their works.

The system of assessment applied in the case of the Santa Barbara estate was again brought forward, and, owing to the refusal of the authorities to supply the complainant with a copy of the Register of Mortgages for the Island of Aruba, this further (and fifth) grievance was submitted at a later period.

Mr. Godden also stated that he had appealed to the Courts of Law, but that no qualified person would undertake the conduct of his case.

The points raised in Mr. Godden's complaints involved a number of questions of Dutch Law, and Her Majesty's Minister at the Hague was requested to obtain the opinion of a Netherland jurist thereon. In the meanwhile a sixth complaint was received from Mr. Godden, who stated that a Decree of the Government of Curaçao, dated the 23rd November, 1868, No. 654, permitted concessionnaires on Aruba, who had been in possession for three years, as from the 1st January, 1869, to acquire the ownership of the soil by paying into the Colonial Treasury a reasonable amount for the properties. Mr. Godden, however, declared that on applying to the authorities

for leave to take advantage of this Regulation, the Governor of Aruba had replied that the Government was "not disposed, for the present, to grant in property grounds in Aruba to any one, whomsoever it may be." This point was submitted with the others to the legal expert at the Hague, who gave it as his opinion that none of Mr. Godden's complaints were well founded.

The case was then again laid before the Law Officers of the Crown, who dissented from the view taken by the Netherland jurist in respect of Mr. Godden's first complaint, viz., that in granting to Mr. Godden his agricultural Concession in Aruba, the Netherland authorities had reserved the minerals, and were entitled to grant to other parties the right to work them.

The Law Officers considered that the language of the Ordinance relating to such Concessions (May 8–9, 1867, No. 4) did not amount to a reservation of the property in the minerals, and still less of any right of going upon the land in order to take them. They held that the Colonial Government was not authorized to put up to tender and to grant to another concessionnaire a licence to go upon Mr. Godden's land and extract minerals therefrom.

They further thought that Mr. Godden ought not to be expected to sue Netherland subjects in a Netherland Court of Justice for wrongs due to the action of the Netherland Government; and they stated that in their opinion a claim could be made for payment to Mr. Godden and those claiming under him of a fair equivalent for the profit made by the Aruba Phosphate Company out of the deposits on his land.

The Law Officers also considered that the refusal of the local authorities to give Mr. Godden a copy of the Register of Mortgages was a substantial grievance.

The Netherland Government denied all liability in respect of the extraction of the phosphates from Mr. Godden's land, and referred him to the Courts of Law. They, however, admitted that an error had been committed in refusing a copy of the Register of Mortgages, and expressed their regret.

The reply of the Netherland Government was referred to the Law Officers, who were of opinion that the explanations given by them should be accepted.

As regards Mr. Godden's other complaints, their view coincided with those of the Netherland expert.

Mr. Godden was accordingly informed that no further representations would be made on his behalf.

This was the state of the case in March 1888.

On the 24th July, 1899, Mr. Godden again addressed a letter to the Marquess of Salisbury in support of his claims, transmitting copies of certain documents relative to the action taken by him.

The first of these is a statement in which he recapitulates his grievances against the Administration of Curaçao. He begins by adducing a number of Ordinances which he alleges to have been contravened to his prejudice, and states that the local Government have received 235,000*l.* for royalty, export duty, and share of profits in the phosphates out of the land in dispute, and that the Aruba Phosphate Company has made a net profit of over 136,000*l.*

In 1891 Mr. Godden addressed a Memorial to the Netherland Minister for the Colonies. In this he emphasizes the fact that the Concession granted to work certain estates in Aruba gives the owners the right to work them for agricultural purposes, "which right necessarily implies the prerogative to hold and use the surface of the soil to the exclusion of every other person." The grant of Concessions to another person or persons to work phosphate deposits was, he considered, a direct infringement of his rights.

Another point to which he drew attention is that in the Concession granted to Mr. Sewell (who afterwards sold it to the Aruba Phosphate Company), it is stipulated that "the concessionnaire is obliged to allow upon the lands granted the exercise of rights to those who may have obtained them upon any portion of such lands for the purposes of agriculture."

It is undoubtedly the case that the operations of the Phosphate Company must interfere with agriculture as the phosphate deposits form the actual surface soil of that part of the island.

Mr. Godden then proceeded to dilate on the delays to which his suit had been exposed in the Courts of Justice at Curaçao, and stated that the Counsel for the defendants had openly declared that it was proposed to endeavour to delay proceedings until the deposits were exhausted.

He next pointed out that there is a clause in the Concession of the Aruba Phosphate

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Company which prescribes that the Concession shall be null and void whenever the concessionnaire fails to carry out any of the obligations imposed on him. Mr. Godden contended that the Government of Curaçao ought to apply this clause because his rights had been infringed by the Phosphate Company, although the Administration recognized the existence of these rights by receiving every year the special tax levied on his Concession. He then alluded to the refusal of the Governor of Curaçao to entertain his request to be permitted to acquire the ownership of the soil by payment to the Treasury.

Mr. Godden requested the Netherland Minister of the Colonies to cause the nullity clause to be applied to the Aruba Concession, to sell the ownership of the land to himself or rather to the Alliance Phosphate Company (which he represented, being Managing Director and chief shareholder), and to cause a portion of the sum of 2,324,500 guilders to be paid to him.

The Netherland Minister for the Colonies refused to accede to these requests.

In a letter to the Minister for the Colonies, Mr. Godden contests the reasons on which this refusal is founded, more especially with reference to the request to acquire the ownership of the land.

From the Foreign Office Memorandum of March 1888, p. 5, it will be perceived that the Netherland legal expert was of opinion that Mr. Godden had no "right" to have his Concession in Aruba converted into ownership.

The Dutch Government, however, contended that only the concessionnaires of the three years 1869, 1870, and 1871 could have acquired the ownership, whilst persons who obtained their Concessions only in 1873 and 1874 (Mr. Godden purchased his on the 1st December, 1875) were debarred from any such right. Mr. Godden pointed out that this argument was not employed by the Lieutenant-Governor of Aruba, who based his refusal to accede to Mr. Godden's request on his own arbitrary will and pleasure.

The Netherland Minister for Foreign Affairs would not modify the decision previously come to with regard to Mr. Godden's case.

Mr. Godden obtained both a Dutch and an English legal opinion on the Law of the 23rd November, 1868, by which concessionnaires who have been in possession for three years can acquire absolute ownership, in support of his contention that this Law does not only apply to the years 1869, 1870, and 1871, and that the Netherland Government are bound to compensate him for the infringements of his rights by the grant of a Concession to the Aruba Phosphate Company. The English legal expert considered that the interpretation placed on the Law by the Dutch Minister of the Colonies was not in accordance with the principles of general jurisprudence.

The Law Officers replied on the 11th November, 1899, that they did not think there was any ground for renewed representations to the Netherland Government in favour of Mr. Godden.

The Concession to Mr. Godden was only for agricultural purposes. It was, in their opinion, quite clear that he had not under this Concession any right to remove the phosphates. His claim, therefore, could at the outside be only for disturbance of agricultural operations. This was not the claim which he made, and his claim to the value of the phosphate which had been realized appeared to them to be quite unfounded.

In this respect they thought that the Report of the Law Officers of the 30th March, 1887, went too far in suggesting that a claim might be made for the profit made in working the phosphates.

It was, in their opinion, open to very serious question whether Mr. Godden had any claim even for damage to his agricultural operations. The question depended upon Dutch Law, and they were not in a position to dissent from the view which M. de Brauw took as to the effect of the reservation of minerals. If phosphate of lime be included in this reservation, it was possible that there would be a right on the part of the Government to authorize the breaking up the surface for the purpose of getting these minerals, even though they themselves formed the surface of the ground. It was, however, enough to say that Mr. Godden's claim was not for damage sustained by him in pursuit of agriculture.

It appeared from M. de Brauw's supplementary opinion that the effect of the Resolution of the 23rd November, 1868, had been misunderstood by Mr. Godden and his advisers. According to M. de Brauw, this Resolution had not the force of law, but was a mere Resolution of the Executive Government, which might, or might not, be acted on at their discretion, and upon this view, from which the Law Officers saw no reason to dissent, it conferred no right upon any one to the acquisition of the fee.

Moreover, M. de Brauw stated that this Resolution had been mistranslated by Mr. Godden, and, according to the translation which he gave as being correct, the Resolution was only in favour of those who had occupied for three years consecutively, reckoning from the 1st January, 1869. This Resolution, if M. de Brauw was correct in his translation, would have no application to Mr. Godden.

The Law Officers added that it is by no means clear that acquisition under the Resolution would enlarge the rights of the concessionnaire so as to confer a title to the minerals.

Upon the whole, therefore, the then Law Officers were unable to advise Her Majesty's Government further to press Mr. Godden's case.

In July 1901, Mr. Godden forwarded to this Office an opinion given by M. H. de Ranitz, of the Dutch Bar, and asked for a reconsideration of the case. You then reported that you did not think that the situation was altered by the further materials submitted to you, and that you could not advise His Majesty's Government to take any further action in the matter.

It will be observed in the letter now submitted to you that Mr. Godden appeals for the intervention of His Majesty's Government on the following grounds:—

That the action of the Dutch Colonial Government by which he has been wronged was outside questions of civil law.

That it was not reasonable to expect him, in face of his experience of the Court of Curaçao, and of the animus shown against him in the letters from the Government Secretary at Curaçao to the Lieutenant-Governor of Aruba, to sue the Netherland Government in their own Courts or Netherland subjects in those Courts for wrongs inflicted by that Government.

That the Netherland Colonial Government cannot escape responsibility for the direct injuries done by itself. It cannot transfer such responsibility to third parties.

That material matters of complaint were not in possession of this Office when a demand was addressed to the Netherland Government in 1887.

That he had no opportunity of answering the reply of the Netherland Government, and that particularly he was not given an opportunity of showing that M. de Brauw's view of his claim was incorrect, and that a good and decisive answer could have been made to the reply of the Netherland Government.

That a serious wrong has been inflicted upon him by the action of the Netherland Government, and that the justice and equity of his claim to indemnification from that Government are evident.

I am to request that you will be good enough to consider the inclosed papers, and to favour his Lordship with your opinion (1) whether there has been such a failure or denial of justice as would entitle His Majesty's Government to make an official representation to the Netherland Government on Mr. Godden's behalf, and (2) whether, having regard to all the circumstances, you think the case to be one in which His Majesty's Government should press for arbitration, and, if so, on what grounds such a request could most advantageously be urged.

His Lordship will also be obliged if you will at the same time furnish him with any observations of a general character which you may have to offer on the case.

I have, &c.

(Signed) F. A. CAMPBELL.

List of Papers.

Law Officers' Report	April	28, 1886.
Ditto	March	30, 1887.
Ditto	February	29, 1888.
Ditto	November	11, 1899.
Ditto	July	22, 1901.
Mr. Henniker Heaton and Mr. Ernest Flower (joint letter)	May	14, 1903.
Ditto ditto ditto	June	6, ,,
Mr. John Godden	May	12, ,,
Memorandum by Mr. Farnall	March	10, 1888.
MS. correspondence respecting land tax in Curaçoa (Mr. Godden's claim), in two volumes:—		
Vol. I, Library Catalogue, No. 714		1885–1887.
Vol. II		1888–

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Report.

We do not think that there is any new or additional information disclosed in the papers now sent, such as to enable us in any way to alter or modify the conclusion already arrived at.

We cannot recommend any further protest, and we do not think that His Majesty's Government have sufficient grounds for insisting on arbitration.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 29, 1903.

PERSIA.

No. 19.

[December 3, 1903.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 23, 1903.

Gentlemen,

Loans to Persian Government by Imperial Bank of Persia.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list relative to the powers of the Imperial Bank of Persia under the Concession granted to them in 1899 by His Majesty the Shah to make loans to the Persian Government.

These powers are at present limited by Article 6 of Appendix 4 to the Concession (Paper A, p. 56), which runs as follows:—

"The Bank shall not be required to make any advances to the Imperial Government beyond the stipulated 40,000*l.* without having approved securities for such further advances. The total amount of loans by the Bank to the Government shall not at any one time exceed one-third of the then paid-up capital of the Bank."

For political reasons, however, it is considered desirable that this limit should now be exceeded.

The Persian Government are bound by the terms of the Russo-Persian Loan Contract of 1899 not to accept for a term of years any foreign loan, and, consequently, the Imperial Bank of Persia, which is a Persian institution, is the only agency through which His Majesty's Government can acquire the influence to be derived from placing the Persian Government under financial obligations.

His Majesty's Government and the Government of India are agreed that it is important that they should give financial assistance to Persia, and a sum of 200,000*l.* has already been advanced by them in the name of the Imperial Bank; but His Majesty's Minister at Tehran is of opinion (Paper B) that, if any further advance of the kind were made, the Russian Government would raise the question of the right of the Persian Government to borrow more than one-third of the subscribed capital from the Bank, an amount which has already been exceeded.

Sir A. Hardinge has suggested that steps might be taken, by agreement between the Persian Government and the Imperial Bank, to modify, or even strike out, the limitative clause in Article 6 of the Concession. This the Directors of the Bank feel themselves unable to do (Paper E) without calling a general meeting of their shareholders, and they point out that the explanations which it would be necessary to give at such a meeting would defeat the intention of the operation.

It is suggested, however, that it may in practice be found possible to get rid of, evade, or modify the limitative clause without the necessity of explaining the circumstances to a general meeting of the shareholders of the Bank.

I am to request that you will take the accompanying papers into your consideration, and favour Lord Lansdowne with your opinion as to the possibility of overcoming, without publicity, the restrictions laid down in Article 6 of the Bank's Concession, and with any observations of a more general character which you may desire to offer.

I have, &c.
(Signed) CHARLES HARDINGE.

List of Papers.

(A.) Charter, Deed of Settlement, and Concession of the Imperial Bank of Persia. Communicated to Foreign Office on November 19, 1889.
(B.) Sir A. Hardinge .. .. .. (No. 125) August 16, 1903.
(C.) To Imperial Bank .. .. September 15, ,,
(D.) Imperial Bank .. .. September 17, ,,
(E.) Imperial Bank .. .. September 30, ,,

Report.

In our opinion, it would not be possible to alter or modify, as proposed, the restrictions laid down in Article 6 of the Bank's Concession and Appendix without the assent of the shareholders, and such a course, as pointed out in Mr. Hardinge's letter to us, would necessitate the publication of the objects in view.

We do not know of any way in which the legal difficulty can be got over without the objects being made public.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
December 3, 1903.

PORTUGAL.

No. 20.

[February 10, 1903.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, December 11, 1902.

Gentlemen,

Shore and Chapman claim for losses in Benguela revolt.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers, as marked in the accompanying list, which relate to an insurrection which has recently taken place in the Benguela district of Portuguese West Africa, and to the claims which have been put forward by certain British subjects in connection with losses incurred through the insurrection.

In reporting to Mr. Chamberlain on the 17th August, 1899, on the subject of the damage caused during the rebellion in Sierra Leone, the then Law Officers of the Crown expressed the opinion that no Government guaranteed either its own subjects or the subjects of foreign States against the possibility of insurrection, and that all residents in a State must take the chance of damage arising from such causes. They added, however, that, if it could be clearly established that the damage was the result of the neglect of some obvious and necessary precaution on the part of the Government of the State in which the insurrection took place, or that the insurrection was caused by misconduct or neglect on the part of the Government itself or its officials,

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they thought that in the case of foreigners a claim for compensation might be put forward by their Government.

The question therefore arises whether, in the present instance, such neglect as that indicated can be proved to have taken place on the part of the Portuguese authorities.

It will be seen that there is good ground for believing—

1. That the insurrection was largely due to the Slave Trade, which Portugal is bound to do her best to put down, a portion of the district whence these claims originated being within the purview of Article IX of the Berlin Act.

2. That individual Government officers have countenanced, and even on occasion actually shared in, that trade.

And I am accordingly to request you to favour Lord Lansdowne with your opinion as to whether these circumstances are sufficient to afford His Majesty's Government fair ground for holding Portugal responsible for any losses that may have occurred to British subjects during the progress of the insurrection, or whether there are any points on which you require further information before coming to a decision in the matter; and generally, with any other observations on the case which may occur to you.

A copy of the Law Officers' Report above alluded to is inclosed for convenience of reference, as also a Memorandum, which was drawn up in this Office, on the liability of Governments to give compensation for losses incurred during insurrections, rebellions, riots, and civil disturbances.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.)	Law Officers		August 17, 1899.
(B.)	Memorandum, H. Farnall		November 17, ,,
(C.)	Consul Nightingale	(No. 2)	June 20, 1902.
(D.)	,, ,,	(No. 8)	August 20, ,,
(E.)	,, ,,	(No. 12)	September 6, ,,
(F.)	,, ,,	(No. 15)	September 23, ,,
(G.)	,, ,,	(No. 18)	October 6, ,,

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December* 22, 1902.

WITH reference to my letter of the 11th instant I have the honour, by direction of the Marquess of Lansdowne, to transmit to you a despatch from His Majesty's Consul at Loanda* regarding the claim for compensation preferred by Mr. Shore for losses sustained in connection with the insurrection which has recently taken place in the Benguela district of Portuguese West Africa.

Lord Lansdowne would be obliged if you would add the accompanying paper to those already submitted to you by his Lordship for your opinion.

I have, &c.
(Signed) F. A. CAMPBELL.

Report.

Upon the materials before us we do not think there is sufficient evidence that the revolt was caused by misconduct or neglect on the part of the Portuguese Government to enable His Majesty's Government to press a claim for compensation to be paid to Messrs. Shore and Chapman.

The effective government of such a country as the Benguela district of Portuguese West Africa is necessarily attended with great difficulty, and it would be no easy matter to trace clearly the causes of insurrection amongst natives in such a district.

The putting forward of such a claim as the present might, moreover, form a very inconvenient precedent in the case of disturbances in territories under our own control.

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* Consul Nightingale No. 22, Africa, November 6, 1902.

It is only in very clear cases that compensation on such grounds should be insisted on. The case, however, appears to be one in which it might be proper to bring the claims unofficially under the notice of the Portuguese Government, with a view to that Government giving it friendly consideration.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 10, 1903.

SWITZERLAND.

No. 20^{A}. **[Home Office.]**

[December 19, 1903.]

Case for the Opinion of the Law Officers of the Crown.

Bloesch: As to holding in custody in England under a Colonial extradition warrant.

ONE, Bloesch, charged with fraud in Switzerland, absconded to Cape Colony. A warrant was taken out in Switzerland for his arrest, and an application for his extradition was made by the Swiss Government. Bloesch has not yet been arrested.

The question has been raised whether, if Bloesch is surrendered from Cape Colony on a warrant signed by the Governor of the Colony, and is sent to England for delivery to the Swiss authorities, he can be lawfully held in custody under the Colonial Governor's warrant, while in England, pending his re-shipment to the Continent.

An Opinion of the Law Officers in 1887 is submitted herewith, in which they advised that a Canadian warrant of surrender in extradition has no force or effect outside Canadian territory. That Opinion, however, turned on the fact that Canada possesses Extradition Acts of its own, and the Imperial Extradition Acts have been suspended within the Dominion by Order in Council of the 28th December, 1882.

Reference is made to a letter from Mr. Vaughan, one of the Magistrates of Bow Street Police Court, dated the 3rd September, 1887 (of which a copy is attached to the case above referred to), in which he expressed the opinion that "the possessions of the Colonies and the territory of Great Britain were for the purposes of extradition intended to be regarded as identical," and that a prisoner surrendered in extradition to a foreign State by a Colonial Government could therefore be conveyed across England under the Colonial Governor's warrant.

Reference is also made to the last paragraph of section 11 of "The Extradition Act, 1870," which runs as follows:—

> "It shall be lawful for any person to whom such warrant is directed, and for the person so authorized as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign State the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape,"

And to section 17, subsection (2) of the same Act which provides—

> "(2) No warrant of a Secretary of State shall be required, and all powers vested in or acts authorized or required to be done under this Act by the Police Magistrate and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the Governor of the British possession alone."

The effect of these sections would appear to be that a prisoner surrendered to some foreign Government from the Cape or other Colony in which the Imperial Extradition Acts are in force would be in legal custody while temporarily detained in England for the purpose of extradition under a warrant issued in pursuance of

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section 17 of the Act of 1870, and if escaping, could be recaptured in the same way as a person arrested for an offence committed in England. The Secretary of State, however, thinks it right to point out that some doubt appears to have been felt in Cape Colony, where "The Extradition Act, 1870," is in force, as to the power to detain a fugitive offender in transit under a warrant granted elsewhere, since a Colonial Act (No. 6 of 1895), of which a copy is inclosed, has been passed for the purpose of dealing with the case of persons surrendered not only from foreign possessions, but also from British possessions and Colonies (other than the Cape Colony) in South Africa.

The Law Officers are therefore requested to advise:—

Whether in the case of a fugitive offender whose surrender to a foreign State has been ordered by the Governor of a British possession under section 17 of "The Extradition Act, 1870," and who has been removed to the British Islands on his way to such foreign State, the warrant of the Colonial Governor ordering the fugitive's surrender is sufficient to authorize his detention, and his recapture, should he attempt to escape, while in the British Islands.

Opinion.

Yes.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Law Officers' Department,
December 19, 1903.

TURKEY.

No. 21.

[February 11, 1903.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 1, 1902.

Gentlemen,

Jurisdiction over foreign seamen in British ships within the limits of the "Ottoman Order in Council, 1899."

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list regarding the exercise of jurisdiction over foreign seamen in British ships within the limits of the "Ottoman Order in Council, 1899."

The facts of the particular case which has made it necessary to consider this general question are set forth in a despatch from Mr. Cumberbatch, His Majesty's Consul-General at Smyrna, of the 31st October, 1901 (Paper A), and are shortly as follows:—

On the 20th September, 1901, while the British steam-ship "Ayr" was at her moorings in the port of Smyrna, and therefore in the territorial waters of Turkey, a seaman of Greek nationality, named Stavro Dassis, who was a member of the crew of the vessel, committed an offence under section 2 of "The Criminal Law Amendment Act, 1885" (48 & 49 Vict., cap. 69), upon the person of another member of the crew of the same ship, who was a British subject.

When the charge was investigated and the accused person was found to be a Greek subject, the Acting British Consul-General, following the precedents during the last few years of that Consulate, communicated with the Greek Consul-General, with a view to obtaining his consent to the trial of the accused man in the British Consular Court. The Greek Consul-General, however, declined to consent to this course, and further stated that his own Consular Court could not try the case, as the alleged crime had not been committed on board a Greek vessel.

With the concurrence of the Judge of His Majesty's Supreme Court at Constantinople the accused person was then committed for trial, and tried at Smyrna by the Assistant Judge of the Supreme Court. The jury brought in a verdict of "guilty," but upon the question of jurisdiction, which was raised on behalf of the prisoner, the Assistant Judge decided, after argument, that the Court had no jurisdiction, and the prisoner was in consequence discharged.

Mr. Consul-General Cumberbatch, who was himself away on leave at the time of the occurrence, states that, had he been at Smyrna, he would, on the refusal of the Greek Consul to consent to trial in the British Court, have acted under section 689 of "The Merchant Shipping Act, 1894" (Paper B), in which case the prisoner would have been sent home to, and tried in, the United Kingdom. He also asks for instructions whether he would have been right in so doing, and it is upon this point more especially that your opinion is desired.

In view of the importance of the case, the opinions of Sir E. O'Malley and of Mr. de Sausmarez, the Judges of the Supreme Court at Constantinople, and also of the Board of Trade, have been obtained.

Before dealing with the opinions they have expressed it may be well to refer to Reports given by the then Law Officers of the Crown in 1877 on the case of Stiglitch; in 1880, in the case of D. Ross; and, in 1884, upon the case of an Italian and a German (Papers C, D, E). But, though these cases arose out of similar circumstances, they do not touch the point whether an accused person who is not a British subject can be sent away for trial, either to England or to a British possession, though the existence of such power seems to be recognized in the Report in the Stiglitch case, in which a Memorandum by Sir J. Pauncefote expressing this view (Paper C) appears to have been approved—at any rate, implicitly—by the then Law Officers.

In the present case the question depends upon the construction of the "Ottoman Order in Council, 1899" (Paper F). In Sir E. O'Malley's view (Paper G), the Court had no jurisdiction to try Dassis, because it only has jurisdiction to try foreigners in the cases specified in Article 5 (3) and (4), which do not cover that of Dassis; nor would the Consul have been entitled to act under section 689 of the Merchant Shipping Act, because, by Article 6 of the Order in Council, "all Her Majesty's jurisdiction in the Ottoman dominions . . . . must be exercised under, and in accordance with, the provisions of this Order," and the Consul is given no such power in the Order; but Sir E. O'Malley makes no reference to Article 5 (5), which gives jurisdiction over "British ships . . . . . . and the persons . . . . . . on board thereof . . . . . . being within the Ottoman dominions," nor to Article 28, where the Order appears to recognize the power the Consul-General desired to exercise.

In Mr. de Sausmarez' view (Paper H), "The Merchant Shipping Act, 1894," did not confer on Consuls power to arrest seamen in a foreign country, nor does the Order in Council give such power where the seaman is a foreigner. He thinks, however, that section 689 is not abridged by the Order in Council, but that it could only be put in force where the authorities of the country have refused to put the man on his trial.

In the opinion of the Board of Trade (Paper I), the Court had, under the "Ottoman Order in Council, 1899," jurisdiction to try Dassis.

On the other hand, both the Legal Adviser and the Assistant Legal Adviser of the Secretary of State are of opinion, with the Judge and the Assistant Judge of the Supreme Court, that the Court, under the Ottoman Order in Council, had no jurisdiction to try the man. If section 686 and section 687 of "The Merchant Shipping Act, 1894," are looked at and compared, it will be seen that section 686 (which confers jurisdiction upon Courts in British possessions) is, except as to the high seas, limited to British subjects; section 687 (which reserves the trial for England) covers foreigners. The powers of section 686 of "The Merchant Shipping Act, 1894," are conferred upon the Ottoman Court by Article 55 of the Order in Council; but it is under section 687 that Dassis would be brought to justice, and power to try under that section is not conferred upon the Court under the Order in Council.

Mr. Hurst is, however, of opinion that the mode of dealing with Dassis suggested by Mr. Consul-General Cumberbatch was correct—*i.e.*, that he might have been sent home for trial at the Central Criminal Court, and that this mode of procedure is contemplated under the "Ottoman Order in Council, 1899."

By Article 5 (5) of that Order, British ships, and the persons and properties on board thereof, within the Ottoman dominions, are within the jurisdiction conferred by the Order, in so far as, by Treaty, usage, sufferance, or other lawful means, His Majesty has jurisdiction in relation to such matters or things. It is clear from

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sections 687 and 689 of "The Merchant Shipping Act, 1894," that this country regards herself as entitled to legislate with regard to foreigners on board a British ship within the territorial dominions of another Power, as the word "persons" is not limited to British subjects; similarly, there appears to be no ground for construing the word "persons" in Article 5 of the Order in Council as limited to British subjects.

Again, the Act contemplates that persons committing offences within section 687 of the Act shall be sent home for trial in England. Similarly, Article 28 of the Order provides that every Court may cause to be arrested any persons subject to, and within the limits of, its jurisdiction and charged with an offence cognizable under the Order, and may deal with the accused according to the jurisdiction of the Court and in conformity with the provisions of the Order, or, when the offence is liable and is to be tried in England, may take the preliminary examination and commit the accused for trial, and cause or allow him to be taken to England.

The effect of Article 6, in so far as it bears upon the question, seems to be that the power conferred by section 689 of the Merchant Shipping Act upon the Consul is, under Article 28 of the Order, only to be exercised by the Consular Court; but the jurisdiction is recognized and provided for in the Order. It seems, therefore, that when the charge against Dassis was investigated by the Consular Court, there would have been jurisdiction to commit him for trial in England.

About the year 1880 a prolonged correspondence took place between this country and the United States as to a prisoner named Ross, a British subject employed on board an American vessel, and convicted by an American Court in Japan for a murder committed within Japanese waters. The English Court claimed jurisdiction over the prisoner and demanded his surrender, but the United States declined; the protest, however, against the United States exercising jurisdiction was not withdrawn by Her Majesty's Government. This case, which is the converse of that of Dassis, shows that this country has not in the past regarded the Power to whose mercantile marine the vessel belonged as primarily entitled to exercise jurisdiction over foreign seamen for serious crimes—*i.e.*, other than breaches of discipline—committed within the territorial jurisdiction of another Power. On the other hand, where the territorial Power declines to exercise jurisdiction, England has claimed and exercised the right. (Reg. *v.* Anderson, L.R., 1 C.C.R., 161.)

In a country where extraterritorial rights are enjoyed by foreign Powers the national Power stands in the position of the territorial, and therefore, in this case, as Greece declined jurisdiction, it would have been in accordance with precedent for His Majesty to claim and exercise jurisdiction over Dassis.

If this view is upheld, it would, of course, in practice be necessary to instruct His Majesty's Consuls that jurisdiction in such cases should only be exercised where there would be otherwise a failure of justice.

Mr. Davidson, while not altogether dissenting, if the matter be regarded as one of pure statutory construction, from the conclusions arrived at by Mr. Hurst, thinks that there are strong reasons of policy and expediency which militate against the carrying of those conclusions into actual practice.

It can scarcely have been contemplated, whatever may be the result of a technical interpretation of the various Statutes and Orders in Council concerned, that a foreigner who commits a crime on a British merchant-vessel within the territorial waters of Turkey should, although not amenable to the special Courts established for the exercise of His Majesty's jurisdiction within the limits of the Ottoman dominions, yet be triable at the Central Criminal Court in this country; and it is suggested that attempts to exercise such a jurisdiction, if it exist, would be likely to provoke remonstrance on the part of the Government of the foreign country to which the offender belonged.

It would not be easy in such circumstances to explain why, if the offender were not justiciable by the British Tribunals on the spot, he should yet be punishable by some other British Tribunal hundreds—or, possibly, thousands—of miles away, or to defend such a practice as reasonable and just, or even as convenient.

I have the honour to request that you will take these papers into your consideration, and favour Lord Lansdowne with your opinion—

1. Whether His Britannic Majesty's Supreme Court for the Ottoman dominions had jurisdiction to try Dassis.

2. Whether it would have been legal for Dassis to have been sent home for trial under sections 687 and 689 of the Merchant Shipping Act, or under Article 28 of the Ottoman Order in Council.

3. If the answers to the preceding questions should be in the negative, whether it would be advisable to amend the "Ottoman Order in Council, 1899," with a view of rendering offences committed by foreigners and members of the crew of a British merchant-vessel on such ship when within the territorial waters of Turkey justiciable by His Majesty's Supreme Consular Court, or to take any other—and, if so, what—steps with a view to preventing a failure of justice in any similar cases which may arise in the future.

His Lordship would also be glad to receive any general observations which you may wish to offer on the matter.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Mr. Cumberbatch	(No. 29)	October 31, 1901.
(B.)	Merchant Shipping Act, 1894 (57 & 58 Vict., Ch. 60).		
(C.)	To Mr. Fawcett	(No. 8)	March 20, 1877.
(D.)	Law Officers		September 7, 1880.
(E.)	Ditto		March 15, 1884.
(F.)	Ottoman Order in Council, 1899 (Confidential No. 7171*).		
(G.)	Sir E. O'Malley	(No. 17)	November 22, 1899.
(H.)	Memorandum by Judge de Sausmarez		March 5, 1902.
(I.)	Board of Trade		February 5, 1902.
(J.)	Memorandum by Mr. Hurst		September 5 1902.
	"Treaties, &c., between Turkey and foreign Powers, 1535–1855."		

Report by the Attorney-General.

1. In my opinion, Dassis could *not* properly be tried in the British Consular Court. It appears that the Porte raises no objection to the trial in the British Consular Court of a foreigner on board a British ship if the Consul of his country consents, and Dassis fell under the description in Article 5 (5) of the "Ottoman Order in Council, 1899." But the Greek Consul refused his consent, and, under these circumstances, it appears to me that the British Consular Court could not properly exercise jurisdiction.

2. I think that Dassis might have been tried under the Admiralty jurisdiction at the Central Criminal Court (Reg. *v.* Anderson, 1 C.C.R., 161), and no international difficulty as to his trial would probably have arisen if he had been brought here without leaving his ship or had been transferred direct to another. But, when he was once ashore, I think that he could be brought here only with the consent of the Greek Consul. The jurisdiction conferred by section 689 is, in my opinion, vested in the Consular Court under the Order in Council, Articles 6 and 28; but Dassis would not have been a person subject to the jurisdiction without the consent of the Consul of his own country.

3. I do not think that any good would be done by altering the Order in Council. Any difficulty in the case is international, and could not be removed by any modification of the terms of the Order.

I have, &c.
(Signed) R. B. FINLAY.

Report by the Solicitor-General.

1. I agree with the opinion of the Attorney-General that Dassis could not properly be tried in His Majesty's Supreme Court for the Ottoman dominions.

2. In my opinion, it *would* have been legal for Dassis to have been sent home for trial, as the Consul had the jurisdiction conferred by section 689 of the Merchant Shipping Act vested in him by Articles 6 and 28 of the Order in Council, and no objection is made to the exercise of such jurisdiction by the Porte.

If such a course elicited a protest by the Greek Government I do not think the protest could be sustained, having regard to the fact that admittedly the Greek Consular Court had no jurisdiction to try the case, and that the Greek Consul had

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refused to have the prisoner tried. To press such a contention would be to assist the escape from punishment of a foreign subject who was guilty of a crime against English law upon a British ship which is admittedly punishable in England.

I think, too, that if such a protest were made it would be material that the proceedings under section 689 are only ancillary to having the person charged tried in the proper venue, and are taken for the benefit of such person and with a view to having him transferred to the proper place of trial, as otherwise it might be necessary to detain him in custody on board the vessel upon which the crime had been committed until such vessel again returned to England.

3. I agree with the Attorney-General.

I have, &c.
(Signed) EDWARD CARSON.

Royal Courts of Justice,
February 11, 1903.

No. 22.

[April 28, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, March* 9, 1903.

Registration of issue, &c., of **Marriages** in Polygamous countries.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you a despatch from His Majesty's Ambassador at Constantinople, forwarding a despatch from His Majesty's Consul-General at Beyrout, in which the latter inquires: (1) whether, in view of a Circular addressed by the Marquess of Salisbury to His Majesty's Consular officers on the 4th November, 1899, which forbids the registration of *lex loci* marriages in Mahometan or polygamous countries without fulfilment of the provisions of "The Foreign Marriages Act, 1892," the issue of such marriages are to be registered at His Majesty's Consulate-General as British subjects; and (2) whether, after such marriage has been dissolved in the Mahometan or polygamous country, and the divorce is valid according to the personal law of the parties, the husband can claim to register a second wife and her children as British subjects.

A copy of the Circular above referred to is inclosed for convenience of reference.

I am also to transmit to you a Memorandum which has been drawn up by the Assistant Legal Adviser to this Office on the subject; and I am to request that, in taking these papers into your consideration, you will inform his Lordship whether you concur in the conclusions arrived at in this Memorandum, and, if so, whether instructions may properly be sent to Mr. Drummond-Hay to the effect suggested.

I have, &c.
(Signed) CHARLES HARDINGE.

List of Papers.

Sir N. O'Conor	(No. 25. Treaty)	December 18, 1902.
Consul-General Drummond-Hay	(No. 4. Treaty)	December 5, ,,
Foreign Office Circular (Library No. 2739)		November 4, 1899.
Memorandum by Mr. Hurst		February 2, 1903.

Report.

We agree with the view of the Assistant Legal Adviser that the answers to both the questions asked by Mr. Drummond-Hay should be in the affirmative, and we think instructions may be sent accordingly.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
April 28, 1903.

Annex.

Memorandum by Mr. Hurst.

BOTH the questions asked by the Consul should, in my opinion, be answered in the affirmative. I think he enunciates the correct principle when he writes:—

"The validity of these marriages would, I conclude, be decided by the laws of their country of origin."

The doctrine is recognized that a man carries his common law with him wherever he goes; if he is in a foreign country he continues to be subject to that law except in so far as entrance into that foreign country has subjected him to another code which supersedes his common law.

For a British subject of Indian origin, polygamy is lawful if he is a Mahometan or a Hindoo, or, I think, if he is a Jew; marriage is one of the questions which is decided in the British Courts in India by the personal law of the litigant, and the bigamy clause of the Indian Penal Code is carefully worded so as to preserve this right.

When a British Indian settles in the Ottoman Empire, where he will still be subject to the King's jurisdiction, he will continue subject to his personal law of marriage, except in so far as His Majesty enacts otherwise for him; no such legislation has, in fact, been provided with regard to him, and, consequently, a British Indian marrying according to his personal law, contracts a marriage which is valid, and of which the offspring will be legitimate; if his personal law permits polygamy, the marriage in the Ottoman dominions will not be invalid because it is polygamous.

The same reasoning applies to the British subject of Maltese origin: if he contracts in the Ottoman dominions a marriage which is valid by canon law, which is the common law of Malta, that marriage is valid.

The Law Officers recently advised that the marriage of an Englishman in a Greek island, celebrated by an ordained clergyman, was valid because it was good by the common law of England; as Greece had made no other provision for the marriage of Christians of other communions, the Englishman was governed in this particular matter by his common law.

This opinion of the Law Officers really covers the questions asked by the Consul.

If the marriage is valid the issue are legitimate, and, consequently, entitled to be registered at the Consulate both in the register of British subjects and in the register of births.

Similar considerations apply to the divorce question, where, under the religious law of his community, a man's marriage can be severed, a divorce in accordance therewith in the Ottoman Empire is permissible and valid for a British Indian, as being in accordance with his personal law, and because no machinery for divorce, that he could make use of, has been provided under the Ottoman Order in Council.

For Christians, this question as to divorce cannot arise, because the canon does not, any more than the English common law, allow divorce.

If the divorce is recognized, then the subsequent marriage is lawful, and its issue legitimate.

Cases that were decided on the rights of Englishmen to inherit real estate in this country, and cases on the jurisdiction of the English Divorce Court, do not appear to me to have any bearing on this question.

I have also read all the Abensur print, but nothing in the decisions arrived at in that case appears to me to conflict with what I have written above.

As to the practical working out of the proposition, there might, with Hindoos or Mahometans, be difficulty in finding out whether the marriages (and divorces for Mahometans) were, in fact, valid by the religious law of the community; but the Consul's despatch appears to refer chiefly to Jews and Maltese, and I do not see why there should be trouble as to these: the care with which Jewish records are kept is proverbial.

(Signed) C. J. B. HURST.

February 2, 1903.

No. 23.

[October 8, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, September* 18, 1903.

Claim owing to damage by bomb of "Guadalquivir."

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list relative to certain claims advanced in respect of losses caused by an explosion on board the French steam-ship "Guadalquivir" at Salonica.

The case was brought to the notice of His Majesty's Government by Lloyd's, with whom part of the cargo of the "Guadalquivir" was insured, and who stated that the owners of the ship had asked for the intervention of the French Government in

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putting forward a claim against the Ottoman Government for the loss of the steamer.

Lloyd's requested that a similar claim might be lodged on their behalf by His Majesty's Government.

The matter was referred by Lord Lansdowne to His Majesty's Ambassador at Constantinople, who discussed it with his French colleague (Paper C). The latter was of opinion that the Ottoman Government might be held responsible, firstly, under the Capitulation of 1740, which made the Turkish authorities liable for the proceedings of the Barbary pirates, and secondly, because, although a French merchant-ship practically enjoys extra-territoriality in a Turkish port, such ship is not French soil, and the Turkish authorities should therefore make good losses sustained in consequence of their failure to take proper precautions.

Sir N. O'Conor, however, points out that as the Turkish authorities cannot properly, and do not, in fact, claim to place police agents on foreign merchant-vessels in harbour, or to institute a search on board, without the consent of the Consul concerned, Turkish responsibility is greatly lessened in respect of outrages on board such vessels.

The arguments employed by the French Ambassador at Constantinople have been sustained by the French Ambassador at this Court in a Memorandum communicated to this Department on the 28th ultimo (Paper D). His Excellency there puts forward, as a ground for holding the Turkish Government responsible for the outrage, the alleged fact that that outrage was committed under the orders of the Macedonian insurgent leaders.

The established principle of His Majesty's Government is, on the other hand, that a Government is not responsible for the acts of armed insurgents whom it cannot control, in the absence of evidence of negligence.

Lord Lansdowne is advised that the fact of the bomb having been brought on board the vessel is not evidence of such negligence, as Turkey cannot be held to be bound to prevent explosives leaving her soil at all, and so long as foreign merchant shipping in Turkish waters does not allow the authorities of the Porte to exercise police supervision on board the ship, the responsibility for seeing that bombs are not brought on board must rest on the ship's officers.

I am to request that you will take these papers into your consideration, and furnish Lord Lansdowne with your opinion as to whether liability attaches to the Ottoman Government, and, if so, to what extent, in respect of the losses caused by the explosion on board the steam-ship "Guadalquivir." His Lordship would also be glad to be favoured with any observations of a more general nature which you may wish to offer.

I have, &c.
(Signed) F. H. VILLIERS

List of Papers.

(A.) Lloyd's	.. ..		July 8, 1903.
(B.) To Sir N. O'Conor	.. ..	(No. 186)	July 15, ,,
(C.) Sir N. O'Conor	.. ..	(No. 476)	August 14, ,,
(D.) M. Cambon	.. ..		August 28, ,,

Report.

We cannot see any evidence of negligence on the part of the Turkish police. There is nothing to show that they ought, by the exercise of ordinary care, to have detected, and stopped upon the quay, the bearer of the bomb.

The only ground which occurs to us as a possible means of sustaining a claim of such a nature would be that the damage might be regarded as resulting from an insurrectionary movement caused by gross misgovernment in Macedonia. A State may be held liable for damage directly resulting from insurrectionary movements provoked by its own misconduct, but we think that there are two fatal objections to urging this ground of claim in the present case. The first is that it would, no doubt, be maintained by the Turkish Government that the true cause of the insurrection was not misgovernment, but the aspirations of the Macedonian Committees. The second is that damage of this kind can hardly be considered as a direct or natural result of an insurrection. It was caused by an atrocious crime on the part of one miscreant, and, even if he were acting under the orders of a Revolutionary Committee, we do not think that such an act could be regarded as having its effective cause in Turkish misgovernment.

For these reasons, we do not think the payment of these claims can be properly insisted upon.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 8, 1903.

UNITED STATES.

[See No. 31 under "Venezuela."]

VENEZUELA.

No. 24.

[January 14, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 8, 1903.

Reference of dispute with Venezuela to Hague Tribunal.

AMONG the alternative suggestions which have been made for the solution of the Venezuelan difficulty is one that the questions at issue should be submitted to the arbitration of the Hague Tribunal.

The Tribunal itself is of very recent establishment, and recourse has only as yet been had to it in a single instance. There is little, therefore, in the shape of precedent for guidance as to the terms of reference or the procedure to be adopted beyond the Protocols of the Conference which resulted in the Convention signed at the Hague on the 29th July, 1899, and those of the "Pious Fund" case, recently submitted to the Tribunal by the United States of Mexico.

In view of the possibility of a reference of the Venezuela question to the Tribunal, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you copies of these Protocols and of the text of the Convention referred to,* marked Papers (A), (B), and (C), and to submit to you the following observations:—

So far as the position of the Powers is concerned, the circumstances in the case of the Pious Fund were not similar to those at present under consideration, inasmuch as both the United States and Mexico were Signatories of the Hague Convention, whereas although this country was a party to the Convention, Venezuela was neither represented at the Hague, nor did she subsequently adhere to that Convention.

No agreement has yet been arrived at with regard to the conditions in which non-Signatory Powers not represented at the Conference can adhere to the Convention, although such adhesion is contemplated under Article LX, which provides that the conditions of such adhesion shall form the subject of a subsequent agreement among the Contracting Powers.

The question has, however, just been raised in consequence of an application from the Republic of Salvador. It has been referred to His Majesty's Government, and, no doubt, to all the other Contracting Powers, and is under consideration by Sir E. Fry, Professor Westlake, and Sir John Ardagh, British members of the Permanent Court.

There is no doubt, however, that Venezuela can appeal to the Tribunal at the Hague under the provisions of Article XXVI, which runs as follows:—

"The International Bureau at the Hague is authorized to place its premises and its staff at the disposal of the Signatory Powers for the operations of any special Board of Arbitration.

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* Proceedings of Hague Convention; Hague Convention; Record of Papers in "Pious Fund" case.

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"The jurisdiction of the Permanent Court may, within the conditions laid down in the Regulations, be extended to disputes between non-Signatory Powers *or between Signatory Powers and non-Signatory Powers*, if the Parties are agreed on recourse to this Tribunal."

It will be seen that the Convention contemplates two kinds of Courts of Arbitration: (1) the Permanent Court of Arbitration of the Hague, the provisions in respect of which are contained in chapter 2 of the Convention; (2) the Special Courts to be instituted by agreement between the Parties having recourse to arbitration. The Arbitrators in the alternative first named must be chosen from among the members of the Permanent Court; in the second, they may be selected at will by the Parties interested, as provided under Articles XXIV and XXXII.

It is believed that the intention of Article XXVI was to open the door as wide as possible to Powers, whether Signatories or non-Signatories of the Convention. But the wording of the Article, if strictly interpreted, does not carry out that intention in an explicit manner. It is only the "jurisdiction of the Permanent Court" which may be extended to disputes in which non-Signatory Powers are concerned. It is not stated that the Special Courts, where the Arbitrators may be selected at will, are open to non-Signatory Powers.

It would seem highly undesirable to delay reference to arbitration by a discussion of this point. But it is necessary to call attention to the difficulty in case it should be raised. The best plan for meeting it would, it is thought, probably be to express a preference for the Permanent Court on account of the doubt which exists, but not to raise a formal objection to the Special Court if all the Parties to the arbitration are agreed to adopt this alternative. An agreement of this kind would prevent any attempt at withdrawal from the desired arbitration. The Permanent Administrative Council would not be likely to object, as the desire at the Hague is rather to attract disputants than to place difficulties in their way.

So soon as the form of Court is determined, the next step would be for the Powers concerned to sign a special Act ("compromis") defining the subject of difference and the extent of the Arbitrator's powers, as provided in Article XXXI.

The Arbitrators have then to be chosen. Here a question will arise: In the "Pious Fund" case, the first, and so far the only, matter referred to the Hague, the Governments of the United States and Mexico, both Signatory Powers, agreed to appoint non-national Arbitrators. If the Permanent Court is adopted in the present instance it would seem necessary to follow the same course, for Venezuela, being non-Signatory, there are, of course, no Venezuelan members of the Court.

It might, it is suggested, be agreed that the Umpire should be one of the United States' members of the Court.

It will also be necessary to decide upon the number of Arbitrators. Venezuela will, it may be assumed, not be disposed to go into Court in a minority of one to three, viz., Venezuela *v.* Great Britain, France, and Italy. There would seem to be three courses open: either for the three Powers to name one Arbitrator each, and for Venezuela to name three; or for the three Powers to name one Arbitrator between them, and Venezuela one; or for the cases to be taken separately—that is to say, the British cases to be heard before the British and Venezuelan Arbitrators and the Umpire, the German cases before the German and Venezuelan Arbitrators and the Umpire, and so on. There would, in that case, be separate "compromis"—and perhaps this last alternative may be the best.

The whole question of procedure appears to abound in opportunities for controversy, but Lord Lansdowne, as at present advised, is disposed to consider—

(1.) That it would be better to have recourse to the Permanent Tribunal, as there appears to be no reason why this country should desire a special Court, and it seems doubtful whether Venezuela is entitled to claim one.

(2.) That each power should have its own "compromis" with the Venezuelan Government. This would, it is hoped, avoid protracted discussions, and would, moreover, be in harmony with the procedure of His Majesty's Government in other particulars throughout the discussion of the Venezuelan question—*e.g.*, His Majesty's Government have had separate notifications of blockade, separate instructions to their naval officers, and separate reservations as to the claims to be referred to arbitration, &c.

(3.) That each of the three complainant Powers should name its own Arbitrator, who would, with the Venezuelan Arbitrator and the Umpire, adjudicate as to the claims of that Power.

I am accordingly to request that you will take these papers into your consideration, and favour his Lordship by informing him whether, and, if so, to what extent you concur in the above conclusions. His Lordship would, at the same time, be glad to receive any observations of a more general nature which you may be disposed to offer on the whole question.

I have, &c.
(Signed) F. H. VILLIERS.

Report.

I concur in all of the above conclusions, 1, 2, and 3.

As to 1. The Permanent Court seems to be the natural Tribunal to deal with the proposed reference, but if all parties are agreed the decision may very well be left to a Special Court.

As to 2. It seems clearly expedient that each Power should have its own "compromis" with the Venezuelan Government. The claims are distinct, and an attempt to deal with them in one "compromis" might cause delay.

As to 3. This conclusion appears to me to follow from conclusion No. 2.

I have no further observations to offer.

R. B. F.

Royal Courts of Justice,
January 14, 1903.

No. 25.

[January 21, 1903.]

Law Officers of the Crown to Foreign Office.

Claims of H.M.'s Govt. on Venezuela: Draft "Compromis" for Arbitration.

Sir, *Royal Courts of Justice, January* 21, 1903.

SUBJECT to the alteration and additions suggested in red ink[*] in Article II and Article V, we approve of the draft Protocol initialled by us.

(Initialled) R. B. F.
E. C.

Annex.

Draft Protocol of an Arbitration Agreement ("Compromis") between Great Britain and Venezuela for the Adjustment and Settlement of Claims for Compensation, Indemnification, and Redress, on account of Losses, Damages, Injuries, and Maltreatment alleged to have been suffered by British Subjects, in consequence of the Wrongful Acts and Neglects of the Government of Venezuela.

WHEREAS certain differences and controversies have arisen between Great Britain and Venezuela, in connection with the claims of British subjects against the Government of Venezuela, which have not been susceptible of settlement by ordinary diplomatic methods, but which, with the reservations hereinafter mentioned, the High Contracting Parties are desirous of terminating by a reference to arbitration; and

Whereas the Venezuelan Government have undertaken to pay without reference to arbitration the claims arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects; and

Whereas the Venezuelan Government have admitted in principle that a liability on their part exists in cases where the claim is for injury to, or wrongful seizure of, property, and that in such cases the questions which the Arbitral Tribunal will have to decide will only be—

(*a.*) Whether the injury took place, and whether the seizure was wrongful, and (*b*) if so, what amount of compensation is due; and

Whereas the Government of His Britannic Majesty have consented, in the case of claims other than the above, to accept arbitration without any reserve; and

Whereas the High Contracting Parties have agreed that the Arbitral Tribunal shall not only determine the amount of compensation payable by Venezuela, but shall also define the security to

[*] Printed in *italics*.

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be given by the Venezuelan Government, and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation;

The High Contracting Parties have, with a view to carry out their intention, authorized their Representatives:

For Great Britain:—

For Venezuela:—

to conclude the following Agreement:—

I.

The Convention for the pacific settlement of international disputes, concluded at The Hague on the 29th July, 1899 (hereinafter described as "the Convention"), shall, unless otherwise herein expressed, govern and regulate the proceedings of this arbitration.

II.

The High Contracting Parties desiring to avail themselves of the permissive faculty accorded by the 2nd paragraph of Article XXVI of the Convention, whereby—"The jurisdiction of the Permanent Court may, within the conditions laid down in the Regulations, be extended to disputes between non-Signatory Powers, or between Signatory Powers and non-Signatory Powers, if the Parties are agreed on recourse to this Tribunal"—and having so agreed to have recourse to the jurisdiction of the said Permanent Court of Arbitration—as constituted by the 2nd Chapter of the said Convention—for the examination and determination of the *said* claims, *other than those which the Venezuelan Government have as aforesaid agreed to pay without reference to arbitration*, and of the manner and method of securing the due liquidation and discharge of such obligations as may be created by the Awards delivered thereon by the Arbitral Tribunal, do now further agree that *such jurisdiction shall be exercised upon the terms above stated, and that* such Tribunal shall be constituted in the following manner:—

III.

Each of the two High Contracting Parties shall name one Arbitrator from the general list of members of the Permanent International Court; and an Umpire ("Sur-Arbitre") shall be selected in accordance with the provisions of the Convention (Article XXIV). None of those so named shall be a subject or citizen of either of the States who are Contracting Parties hereto.

The names of the Arbitrators so chosen shall be signified by the High Contracting Parties—each to the other—within   days from the date of signature of this Protocol, by their Representatives, and also to the Secretary-General of the International Bureau established at the Hague.

The name of the Umpire shall in like manner be communicated immediately after the selection has been made.

IV.

The Arbitral Tribunal thus constituted shall assemble at the Hague within   days of the appointment of the Umpire.

V.

Each of the High Contracting Parties, acting in conformity with Article XXXVII of the Convention, shall, within thirty days of the signature of this Protocol, nominate and appoint an Agent; and such Agents, hereinafter described as the British Agent and the Venezuelan Agent respectively, shall represent them before the said Tribunal in all matters concerning this arbitration.

The Tribunal shall be bound to receive and consider all written documents or statements which may be presented to them by the said Agents on behalf of their respective Governments, in support of, or in answer to, any claim submitted for arbitration, and to hear, if required, one person on each side on behalf of each Government, on each and every separate claim, such person being either the Agent, or a Counsel, or Advocate, whose name shall be communicated to the Tribunal by the Agent of the Party concerned.

The evidence of witnesses shall be taken in the manner and subject to the precautions and conditions ordinarily prescribed for the conduct of notaries public, Commissioners for oaths, or other officers duly empowered to take such depositions, provided always that such manner, precautions, and conditions shall be recognized as sufficient, and accepted by the Tribunal.

Saving and except in those cases in which the Tribunal shall determine and notify to the Agents that, in their opinion, the personal attendance of a witness for the purpose of giving oral evidence before it on a matter material to the issue is absolutely indispensable and essential to the ends of justice, the Agents shall not be required nor permitted to tender oral evidence in support of their contentions.

All documents connected with the cases, and forming the preliminary examination or first phase, shall be furnished by the respective Agents in print, in the English and Spanish languages. The documents in support of the claims shall be delivered to the adverse Party within   days from the date of signature of this Protocol; ~~and~~ the documents rebutting the claim shall be delivered to the claimant's Agent within   days from the same date of signature, *and any documents by way of reply in support of the claims shall be delivered to the adverse party within   days of the same date of signature.*

On or before the expiration of the latter period, *i.e.*, within   days from the date of signature of this Protocol, the whole of the documents, on either side, as aforesaid, shall be delivered in six certified copies, in print, in the English and Spanish languages, to the Arbitral Tribunal, and upon their delivery the first phase, as specified in Article XXXIX of the Convention, shall be deemed to be completed, and no further documents, except only those which may be called for by the Tribunal to be produced shall be received.

VI.

Upon the completion of the first phase, the Tribunal may adjourn for the purpose of taking into consideration the documents which have been presented to it, or which it has called for; the period of such adjournment not to exceed   days, within which time it shall fix, and notify to the Agents of both parties, the date for commencing the hearing of oral arguments and, if required, oral evidence; and the period within which—in default of good and sufficient cause being shown to its satisfaction for an extension—it considers that such arguments and evidence should be concluded. In no case shall the total period allowed for the trial of the claims, reckoning from the first meeting of the Arbitral Tribunal to the pronouncement of the Awards upon the claims, exceed   days.

VII.

All vacancies occurring among the members of the Arbitral Tribunal or the Agents shall be filled within   days, in the same manner as is provided for their nomination.

VIII.

No counter-claims arising out of reprisal, retortion, embargo, blockade, or other acts done or performed in pursuance of the enforcement of redress and reparation shall be entertained by the Arbitral Tribunal.

IX.

The High Contracting Parties undertake to publish in their official Gazettes, as soon as may be after the signature of this Protocol, and not exceeding a delay of   days, Notifications for the information of all whom it may concern, of the names, addresses, styles, and titles of the Agents whom they have respectively appointed to represent them before the Arbitral Tribunal.

X.

In every case in which compensation is awarded in respect of the claims of British subjects' the Tribunal shall state in its findings the amount in each case, and in what currency, and at what date the same shall be payable, and it shall further define the security to be given for payment by the Government of Venezuela, and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligations imposed by the Award.

In deciding upon these last-named points, the Tribunal shall have regard to all existing external obligations of the Republic constituting preferential claims upon its sources of revenue by other Powers, and also to the claims which may be preferred contemporaneously with Great Britain by other Powers.

In the event of the Tribunal deciding that any sources of revenue accruing to the Government of Venezuela shall be assigned and set apart for the purpose of securing the due liquidation and discharge of the obligations created by the Award, and by the Awards which may be made by the other Arbitral Tribunals which may be constituted for the settlement of the claims preferred against Venezuela by other Powers, the present Tribunal is empowered, by and with the consent of those other Powers, if such consent—duly asked for through the usual diplomatic channels—shall have been obtained, to confer with the other Arbitral Tribunals engaged in the settlement of the claims of the said other Powers, and in conjunction with them to determine the manner in which the said assigned revenues shall be administered for the above-named purposes.

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XI.

Each of the Parties hereto shall pay its own expenses, and one-half of the expenses of the arbitration, including the remuneration of the Members of the Arbitral Tribunal, except as hereinafter provided with regard to appeals for revision, but the Tribunal shall not be empowered, in delivering Judgment, to specify the amount of, or to make any order with regard to, such expenses.

XII.

Revision, in any case where an Award has been made, may be permitted by the Tribunal on the demand of either Party made within eight days after the announcement of the Award, on the conditions prescribed in Article LV of the Hague Convention—the grounds upon which the demand is based being submitted to the Tribunal at the time the demand is made, as well as communicated to the other Party. The Tribunal shall forthwith call upon the Agents and Counsel of the Parties to appear before it on a date not later than four days from the presentation of the demand for revision, for the purpose of interrogating them, and requiring explanations or exceptions as to the existence and nature of the new matter upon which the demand for revision is based, and shall on the following day declare its decision granting or refusing the demand.

In the event of the demand for revision being granted, proofs upon such demand shall be submitted to the Tribunal and to the adverse Party within five days from such grant, and counter-proofs within the following ten days. The Tribunal shall decide the further period within which the arguments must be completed, and shall pronounce its Judgment or Award upon the appeal for revision not later than forty days after the date of the original Award. The Judgment or Award upon appeal for revision shall be final and conclusive as to the matters adjudicated upon therein.

XIII.

In appeals for revision it shall be competent for the opposing party to plead that the demand for revision is vexatious and dilatory, and to claim, as an exception to the Rule laid down by Article LVII of the Convention, that the entire expenses of the appeal shall be borne by the appellant, and the Tribunal shall be competent to award such expenses if it shall find such plea to be justified.

XIV.

The High Contracting Parties reserve to themselves the right, at any stage of this arbitration, to arrange, through their Agents or otherwise, for the settlement out of Court of any or all the subjects of dispute which have arisen between them, and if any such settlement shall be arrived at, they undertake to notify the terms thereof to the Tribunal, and to all other Powers then engaged in the settlement of claims against the Republic of Venezuela by way of arbitration or otherwise.

The Tribunal, upon receipt of such notification, shall take note of such arrangement, and shall discharge such case from further hearing.

R. B. F.
E. C.

Note.—The above proposed form of Agreement with Venezuela was subsequently recast. For Agreements actually concluded see "Treaty Series No. 8, 1903." [Cd. 1538.]

No. 26.

[February 10, 1903.]

Foreign Office to Attorney-General.

Claims on Venezuela. Article in Agreement as to assignment of the 30 per cent.

Dear Attorney-General, *Foreign Office, February* 10, 1903.

LORD LANSDOWNE is anxious to have your opinion, and that of the Solicitor-General, as soon as possible, upon the inclosed communication made to-day by the German Ambassador.*

The Protocol† and telegram are annexed, showing the addition to Article V, which

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* German Embassy, February 9.

† Printed as Annex (B).

was made after our conference on Friday, and also telegram No. 62* which has been received this afternoon (12·15 P.M.) from Herbert. I do not think that you will require any other papers, but if you do, and will let me know, to the Foreign Office to-morrow, I will send them, or bring them down myself at any time which may be convenient to you.

Yours sincerely,
(Signed) W. E. DAVIDSON.

Foreign Office to Attorney-General.

Dear Attorney-General, *Foreign Office, February* 10, 1903, 3·30 P.M.

I HAVE had a conversation with Lord Lansdowne since I wrote to you this morning, and find that the point which is specially causing him anxiety is this. It turns on the words which were added after our conference on Friday at the end of Article V, "if the Powers concerned so agree."

The Powers concerned means, of course, all the Powers concerned (*i.e.*, not only the three blockading Powers but the other Powers interested, such as France, Belgium, &c.).

Lord Lansdowne wants to know how the thing is to work out if one or more of the blockading Powers do *not* agree, and I don't quite see what the answer is except that the Power so not agreeing will place itself in an unsympathetic and false position, and that practically there is little chance of a Power like France adopting such a line. However, it is clear, as it seems to me, that the decision of the Tribunal of The Hague will not be binding on any Power which does *not* "so agree."

If it would suit the Solicitor-General and yourself to look in at the Foreign Office at 6.15 (unless in the meantime I telegraph to you or you to me to the contrary), I think Lord Lansdowne would be grateful.

Meanwhile, if you or the Solicitor-General have time to add anything to your opinion (left herewith) on the specific point mentioned above, we should all of us be grateful.

I do not see how it is possible to securely stop *every* hole which the insidious Bowen has been able to burrow—but I think your solution of Friday is by far the best yet proposed, though it may be capable of yet further improvement.

Would it be possible by some form of words specifically to confine the category of the "Powers interested" to Powers who had already a *vested* interest, *i.e.*, claims which, like those of France, had been acknowledged and recognized as valid by Venezuela.

This would prevent Nicaragua or some other Power being incited by Castro and Bowen to make a bogus claim which Venezuela would recognize in order to complicate the situation and upset the reference to The Hague.

Yours sincerely,
(Signed) W. E. DAVIDSON.

Report by Law Officers.

WE think it reasonable and advantageous to meet one point raised by the insertion in Article V of a date for the assignment of the 30 per cent. This might be effected by inserting after the words "undertake to assign" the date selected.

It appears to us that the argument of the German Government on the question of the proposed addition of the words as to possible arbitration between the Powers concerned overlooks the fact that in the very nature of things the rights of other Powers cannot be settled by arbitration between the blockading Powers and Venezuela without the concurrence of the other Powers concerned. This is expressed by the words "if the Powers concerned so agree," but it would in any case be implied, and if the omission of these words would facilitate the acceptance by Germany of the Protocol in the form proposed we see no objection to the omission of these words.

As regards the difficulty raised as to the necessity for the accession of all the Powers to the proposed arbitration, we may point out that only the Powers concerned

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* Sir M. Herbert's telegram No. 62, February 10, 1903.

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in the question as to which difference had arisen would have to accede, and the accession of the parties interested appears inevitable. This is, in fact, involved in the clause to which we understand the German Government offers no objection, that the distribution is to be "in accordance with arrangements to be hereafter made among the Powers interested."

We think the proposed addition to Article V instead of a separate Agreement would be an improvement, as we feel much pressed by the objections which might be raised to the separate Agreement in the form proposed; but it is, of course, possible that this difficulty may have to be faced if it is necessary to secure the co-operation of the German Government in the proposed arrangement.

R. B. FINLAY.
EDWARD CARSON.

Law Courts, February 10, 1903.

Annex (A).

The Marquess of Lansdowne to Sir F. Lascelles.

(No. 51.)

Sir, *Foreign Office, February* 9, 1903.

I HAD a further conversation to-day with the German Ambassador in regard to Venezuelan affairs.

His Excellency called my attention to the alteration which we proposed to make in Article V of the draft Protocol.

The German Government regarded it as objectionable, and his Excellency made to me the following statement upon the subject:—

"Although we have shown our willingness to accept all proposals of Lord Lansdowne, my Government do not think that the newest proposal of the British Government is suitable for coming to an arrangement according to the wishes of the three Powers, in regard to the separate satisfaction out of Customs revenues. The proposal tends to settle the question, not by arbitration between the three Powers and Venezuela but by arbitration between the three Powers and the other creditor Powers. This of course implies that all other creditor Powers consent to such a settlement. (I refer to the English proposal 'If the Powers concerned so agree.') Every single creditor Power could prevent the conclusion of the Arbitration Treaty, which is necessary, according to Article XXXI of the Treaty of The Hague. Besides, it may be apprehended that Venezuela would induce one of the Powers to do so by promising special advantages. But even apart from that, the negotiations would take much time in consequence of the large number of Powers concerned, and would probably result in an Arbitration Treaty which would, from the beginning, leave no possibility of a result favourable to us.

"We therefore strongly recommend to adhere to the former English proposal. A claim of the other creditor Powers to be invited to the arbitration cannot be admitted since, as has repeatedly been pointed out, the question at issue solely concerns Venezuela and the blockading Powers. Besides, the claims of the other creditor Powers are already sufficiently supported by Venezuela, as in this point her interests are identic with theirs. In any case, the English proposal does not contain a stipulation as to who is to receive the Customs revenues until the question at issue has been decided. Venezuela would probably try to retain the Customs revenues up to that moment for herself."

His Excellency then called my attention to the additions to the Protocol suggested in Sir M. Herbert's telegram No. 60 of the 7th February.

Count Metternich was evidently under the impression that this proposal had originated with Sir M. Herbert. I explained to him, however, that Sir M. Herbert had reported it to us as having been put forward by the German Minister. On hearing this, Count Metternich referred to his notes and said that it had, at all events, been "warmly recommended" by the British and Italian Ministers.

The German Government would be glad to know what we thought of it, and whether we knew how it was regarded by the United States' Government.

I told his Excellency that the amendment of Article V had been the result of its examination by the Law Officers of the Crown. We believed that the questions affecting the distribution of any revenues set apart by the Venezuelan Government concerned the Powers amongst whom these revenues were to be distributed, and was a matter for decision as between them rather than as between them and Venezuela. It did not seem to us to be possible to prevent the Powers who had not been engaged in the blockade from having something to say to the question of distribution, if once that question were referred to arbitration.

I pointed out, moreover, that if the proposals described in Sir M. Herbert's telegram of the 7th February were to be adopted, questions affecting the obligations of Venezuela to the other Powers would certainly not be withdrawn from the consideration of the Tribunal at The Hague. I promised, however, that the criticisms of the German Government should be immediately considered.

Count Metternich then informed me that the German Government had learned that Mr. Bowen had refused to admit the first-rank claims of Germany. The German Government,

therefore, intended to refuse to sign their Protocol or to raise the blockade until those claims had been settled in a satisfactory manner. The German Government trusted that we should concur with them in considering that this was the proper course, and that we would instruct our Ambassador to make a similar declaration to Mr. Bowen.

I said that we had never denied the right of Germany to demand prompt satisfaction for their first-rank claims, if not by immediate payment in cash, at least by "a safe guarantee for prompt payment" (*vide* the German note of the 22nd December, 1902). I was, however, bound to tell his Excellency that the situation which was being created by the unfortunate prolongation of these negotiations at Washington and the continuation of the blockade of the Venezuelan ports was most serious. We were warned by Sir M. Herbert as to the danger of an explosion of public feeling in the United States. In this country, too, the tension was becoming acute. I feared that the position of His Majesty's Government might become intolerable if, when Parliament met, it were found that although our own demands had been complied with, we had broken off negotiations on account of difficulties arising in consequence of the terms demanded by Germany for the payment of claims, the nature of which, it was well known, differed materially from that of our own. I reminded his Excellency that we had originally claimed an immediate payment of 66,000*l.* towards the satisfaction of our claims, and that, in order to facilitate a settlement, we had reduced our cash claims to a sum just sufficient for the satisfaction of our claims arising out of the seizure and plundering of British vessels and outrages on their crews.

His Excellency fully recognized the difficulty of the situation. He reminded me, however, as to the German first-rank claims, that the whole action of the German Government was based on them. If it had not been for these claims they would never have resorted to coercion. Many of these claims were, moreover, not very different from ours. Again, it should be borne in mind that our second-rank claims amounted to a much larger sum than those of Germany. Finally, we should not forget that the German first-rank claims had been twice taxed: once by the Legation at Carácas, and a second time by the Legal Department of the German Foreign Office. It was, therefore, only reasonable that Germany should insist upon their prompt payment, and upon their immunity from revision by the Mixed Commission.

I admitted the force of some of his Excellency's arguments: I said that it seemed to me that Germany required the fulfilment of two conditions in regard to her first-rank claims so far as these were not covered by the cash payment of 5,500*l.* which she was to receive.

These were:—

1. That she should have, to use the language of the German note of the 22nd December, a safe guarantee for prompt payment; and
2. That the claims in question should not be subject to further revision.

I told his Excellency that we were ready to do all that was possible in order to facilitate the fulfilment of the first condition, and that we were ready to agree that in any settlement which might be arrived at the balance of German first-rank claims should have priority over all British claims other than those covered by the cash payment which we were to receive.

As for the second condition, I doubted whether it would be resisted by the Venezuelan Government, and we should support the German Government in making such a demand.

Count Metternich seemed favourably impressed by my proposal, and promised to telegraph it to the German Government.

I informed Count Metternich confidentially that Sir M. Herbert was under the impression that there had been some misunderstanding between Mr. Bowen and the German Chargé d'Affaires upon the point which we had been discussing, and that Mr. Bowen probably believed that on his undertaking to pay 5,500*l.* to the German Government they would be willing not to press for an immediate settlement of the balance.

At the close of our conversation his Excellency mentioned to me that the German Government had heard that pamphlets were being circulated in Carácas throwing doubts upon Mr. Bowen's power to conclude an Agreement on behalf of the Republic without the consent of Congress.

I am, &c.
(Signed) LANSDOWNE.

Annex (B).

The following is the version, as actually signed, of the Protocol referred to in the above Report (see footnote):—

Protocol between the United Kingdom and the United States of Venezuela relating to the Settlement of the British Claims and other Matters.

WHEREAS certain differences have arisen between Great Britain and the United States of Venezuela in connection with the claims of British subjects against the Venezuelan Government, the Undersigned, his Excellency the Right Honourable Sir Michael H. Herbert, K.C.M.G., C.B., His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary to the United States of America, and Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, have agreed as follows:—

NOTE.—The copy actually submitted to the Law Officers was not forthcoming on going to press

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ARTICLE I.

The Venezuelan Government declare that they recognize in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of British subjects.

ARTICLE II.

The Venezuelan Government will satisfy at once, by payment in cash or its equivalent, the claims of British subjects, which amount to about 5,500*l.*, arising out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects.

ARTICLE III.

The British and Venezuelan Governments agree that the other British claims, including claims by British subjects other than those dealt with in Article VI hereof, and including those preferred by the Railway Companies, shall, unless otherwise satisfied, be referred to a Mixed Commission constituted in the manner defined in Article IV of this Protocol, and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim.

The Venezuelan Government admit their liability in cases where the claim is for injury to, or wrongful seizure of, property, and consequently the questions which the Mixed Commission will have to decide in such cases will only be—

(*a*.) Whether the injury took place, and whether the seizure was wrongful; and

(*b*.) If so, what amount of compensation is due.

In other cases the claims shall be referred to the Mixed Commission without reservation.

ARTICLE IV.

The Mixed Commission shall consist of one British member and one Venezuelan member. In each case where they come to an agreement, their decision shall be final. In cases of disagreement, the claims shall be referred to the decision of an Umpire nominated by the President of the United States of America.

ARTICLE V.

The Venezuelan Government being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Article III and similar claims preferred by other Governments, undertake to assign to the British Government, commencing the 1st day of March, 1903, for this purpose, and to alienate to no other purpose, 30 per cent. in monthly payments of the Customs revenues of La Guaira and Puerto Cabello. In the case of failure to carry out this undertaking, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government, in respect of the above-mentioned claims, shall have been discharged.

Any question as to the distribution of the Customs revenues so to be assigned and as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims, shall be determined, in default of arrangement, by the Tribunal at The Hague, to which any other Power interested may appeal.

Pending the decision of The Hague Tribunal, the said 30 per cent. of the receipts of the customs of the ports of La Guaira and Puerto Cabello are to be paid over to the representatives of the Bank of England at Carácas.

ARTICLE VI.

The Venezuelan Government further undertake to enter into a fresh arrangement respecting the external debt of Venezuela, with a view to the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.

ARTICLE VII.

The British and Venezuelan Governments agree that, inasmuch as it may be contended that the establishment of a blockade of Venezuelan ports by the British naval forces has, *ipso facto*, created a state of war between Great Britain and Venezuela, and that any Treaty existing between the two countries has been thereby abrogated, it shall be recorded in an exchange of notes between the Undersigned that the Convention between Great Britain and Venezuela of October 29, 1834, which adopted and confirmed, *mutatis mutandis*, the Treaty of April 18, 1825, between Great Britain and the State of Colombia, shall be deemed to be renewed and confirmed, or provisionally renewed and confirmed, pending conclusion of a new Treaty of Amity and Commerce.

ARTICLE VIII.

Immediately upon the signature of this Protocol arrangements will be made by His Majesty's Government, in concert with the Governments of Germany and Italy, to raise the blockade of the Venezuelan ports.

His Majesty's Government will be prepared to restore the vessels of the Venezuelan navy which have been seized, and further to release any other vessels captured under the Venezuelan flag, on the receipt of a guarantee from the Venezuelan Government that they will hold His Majesty's Government indemnified in respect of any proceedings which might be taken against them by the owners of such ships or of goods on board them.

ARTICLE IX.

The Treaty of Amity and Commerce of October 29, 1834, having been confirmed in accordance with the terms of Article VII of this Protocol, His Majesty's Government will be happy to renew diplomatic relations with the Government of Venezuela.

Done in duplicate at Washington, this 13th day of February, 1903.

(L.S.) (Signed) MICHAEL H. HERBERT.
(L.S.) (Signed) HERBERT W. BOWEN.

No. 27.

[March 9, 1903.]

Foreign Office to the Law Officers of the Crown.

Agreement for procedure of Claims Commission.

Gentlemen, *Foreign Office, March* 7, 1903.

WITH reference to my letter of the 3rd instant* respecting the settlement of the claims preferred by British subjects against the Government of Venezuela, I have the honour, by direction of the Marquess of Lansdowne, to transmit the draft of an Agreement (Paper A) dealing with the procedure of the Mixed Commission to which those claims are to be referred.

In my preceding letter I forwarded a copy of the Protocol of the 13th February, which provides for the constitution of the Mixed Commission, and a further copy (Paper B) of that document is inclosed for convenience of reference. At Mr. Bowen's request, all questions of detail were postponed until the Protocol had been signed and the blockade of the Venezuelan ports raised; but it now becomes necessary to complete the arrangements connected with the Commission. The present Agreement follows in the main points an Agreement (Paper C) signed between the United States' Government and the Government of Venezuela for the settlement of the claims of United States' citizens.

I have the honour to request that you will take these papers into your consideration and favour Lord Lansdowne with your opinion as to whether the Agreement may properly be signed in its present form, or whether any, and if so what, alterations may advantageously be introduced.

Lord Lansdowne would also be glad to receive any observations of a more general nature which you may be disposed to offer.

I have, &c.
(Signed) F. H. VILLIERS.

Report.

We have the honour to return the draft Agreement as to the Commission. We approve of its terms subject to the query as to the phraseology to be used as to the currency in which payment is to be made.

(Signed) R. B FINLAY.
EDWARD CARSON.

March 9, 1903.

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* The Law Officers Report of March 11 (which see) was in reply to the above letter.

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Annex.

Whereas by a Protocol signed on the 13th February, 1903, by his Excellency the Right Honourable Sir Michael Henry Herbert, G.C.M.G., C.B., His Britannic Majesty's Ambassador, &c., and Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, it was agreed that certain claims by British subjects, including those preferred by the Railway Companies against the Government of Venezuela should, unless otherwise satisfied, be referred under the conditions specified in the Protocol to a Mixed Commission, to consist of one British and one Venezuelan member; and that in each case where the Commissioners came to an agreement, their decision should be final; and that, in cases of disagreement, the claims should be referred to the decision of an Umpire nominated by the President of the United States of America:

Now, the Undersigned, &c., have further agreed as follows:—

If either of the said Commissioners or the Umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. The said Commissioners and Umpire are to be appointed before the 1st day of May, 1903.

The Commissioners and the Umpire shall meet at   , on the 1st day of June, 1903. Before assuming the functions of their office the Commissioners, and the Umpire if necessary, shall make solemn oath or declaration carefully to examine and impartially decide according to justice and the provisions of the Protocol of the 13th February, 1903, all claims submitted to them, and the oath or declaration so made shall be embodied in the record of their proceedings. The Commissioners, or, in case of their disagreement, the Umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or the provisions of local legislation.

The decisions of the Commission, and, in the event of their disagreement, those of the Umpire, shall be final and conclusive. They shall be given in writing. All awards shall be made payable in sterling.

The Commissioners or Umpire, as the case may be, shall investigate and decide the said claims upon such evidence or information only as shall be furnished by or on behalf of the Governments of Great Britain and Venezuela respectively. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of these Governments respectively in support of, or in answer to, any claim, and to hear oral or written arguments submitted by the Agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim the Umpire shall decide.

Every claim shall be formally presented to the Commissioners within thirty days from the day of their first meeting, unless the Commissioners or the Umpire in any case extend the time for presenting the claim for a further period not exceeding three months. The Commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and, in case of their disagreement, the Umpire shall examine and decide within a corresponding period from the date of such disagreement.

The Commissioners and the Umpire shall keep an accurate record of their proceedings. For that purpose each Commissioner shall appoint a secretary, versed in the language of both countries, to assist him in the transaction of the business of the Commission. Except as herein stipulated all questions of procedure shall be left to the determination of the Commissioners, or, in case of their disagreement, to the Umpire.

Reasonable remuneration to the Commissioners and to the Umpire for their services and expenses, and the other expenses of the said arbitration, are to paid in equal moieties by the Powers parties to this Agreement.

R. B. F.
E. C.

No. 28.

[March 11, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, March 3, 1903.

Agreement to refer to Hague Tribunal the claims of all the Powers.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the accompanying draft of an Agreement (Paper A) which has been prepared with a view to the submission to the Tribunal of the Hague of certain further questions arising out of the action of Great Britain, Germany, and Italy, in connection with the settlement of their claims against Venezuela, beyond those in respect of which a Protocol has already been signed by His Majesty's Ambassador at Washington and Mr. Bowen as the Representative of Venezuela. A copy of this Protocol is inclosed (Paper C).

The circumstances which have made it necessary to draw up this Agreement are as follows:—

On the 24th January Mr. Bowen, as Representative of the Venezuelan Government, informed Sir M. Herbert, His Majesty's Ambassador at Washington, that he was authorized by President Castro to offer 30 per cent. of the Customs receipts of La Guayra and Puerto Cabello in satisfaction of the claims of the creditor Powers against Venezuela.

Mr. Bowen in reply to inquiries explained that this offer was intended to satisfy not only the claims of the three Powers, Great Britain, Germany, and Italy, then engaged in active operations against Venezuela, but also the claims upon Venezuela of other Powers, namely, France, Belgium, the United States, Spain, the Netherlands, Sweden and Norway, Denmark, and Mexico.

His Majesty's Government declined to accept this offer. Their views were explained in a note addressed, according to his instructions, by Sir M. Herbert to Mr. Hay on the 6th ultimo, in which, after reviewing some of the previous communications with the United States' Government, his Excellency proceeded as follows:—

"Mr. Bowen has apparently felt himself precluded from coming to any arrangement which would not place all the Powers claiming compensation from Venezuela upon precisely the same footing.

"This seems to His Majesty's Government to be a course quite opposed both to principles of equity and to international practice. They could not assent to it except at the instance of some competent Umpire or Arbitration Tribunal.

"It must be remembered that no proposal of the kind was made until Mr. Bowen's arrival in Washington; that neither the President of the United States in his communications with His Majesty's Government, nor any of the blockading Powers, nor, so far as His Majesty's Government are aware, President Castro had ever suggested making the neutral Powers party to the controversy between the blockading Powers and Venezuela. It must further be borne in mind that the preferential treatment for which the blockading Powers have asked is not one which either exhausts the resources at the disposal of Venezuela for the payment of her external debt, or which interferes with what is known as the 'Diplomatic Debt,' a charge amounting to only 5·2 per cent. on the total Customs revenue of Venezuela. There can be no doubt that the neutral Powers will be in a far better position under the proposal made by the blockading Powers than they have ever been before, and this without any of the cost and trouble necessarily incidental to naval operations.

"Under these circumstances it seems to his Majesty's Government that the most expeditious mode of terminating the hostilities would be to embody the conditions already accepted by Mr. Bowen on behalf of the Government of Venezuela, including those for the settlement of the first rank of claims, in a Protocol to be signed at Washington, and to refer the proposal made by him for the identic treatment of all the creditor Powers to the Hague Tribunal, unless indeed the President of the United States would be prepared in the interests of a speedy settlement to decide the single point which appears to stand in the way of a complete agreement between the blockading Powers and Venezuela.

"Should the President consent to adopt this suggestion, the following questions would have to be adjudicated upon by him:—

"1. Whether the three Powers are not entitled to a separate settlement provided this settlement leaves an adequate margin for the payment of claims of the other Powers, having regard to the resources of Venezuela?

"2. If the answer to the first question is in the affirmative, then what are the terms of payment which would leave such adequate margin?

"If the answer to the first question is in the negative, then is it not equitable that some compensation should be made by Venezuela to the three Powers for the expense which they have incurred in connection with the blockade."

The President of the United States declined to adjudicate on the question thus raised, and it therefore became necessary to provide, in the Protocol signed on the 13th ultimo between His Majesty's Government and the Government of Venezuela, for a reference to the Tribunal at the Hague. This was done by Article V in the following terms:—

"Any question as to the distribution of the Customs revenues so to be assigned, and as to the right of Great Britain, Germany, and Italy to a separate settlement of their claims, shall be determined, in default of arrangement, by the Tribunal at the Hague by arbitration, to which any other Power interested may appeal."

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Similar provision was made in the Protocols signed on the same date by Mr. Bowen and the Representatives at Washington of Germany and Italy.

Mr. Bowen has since been engaged in negotiating Protocols with the other creditor Powers. It was intended, before any further step was taken by His Majesty's Government, to ascertain whether these Protocols contained an engagement to refer to the Hague the question of a separate settlement for Great Britain, Germany, and Italy. If so, the idea was, after consultation with the Law Officers of the Crown, to propose to all the Powers an Agreement on the lines of the accompanying draft marked (A).

Mr. Bowen has, however anticipated any such proposal on the part of His Majesty's Government, and has himself drawn up a form of Agreement, the text of which Sir M. Herbert, at Mr. Bowen's request, has transmitted by telegraph (see paper marked B).

The Agreement (A) reproduces the conditions set forth in Sir M. Herbert's note to Mr. Hay of the 6th February, and is so drawn as to include all the creditor Powers, on the assumption that they will engage to refer to the Tribunal at the Hague, and also to include Venezuela, who may rightly claim to be one of the Powers interested if the resources of the country are to be considered.

With regard to the third condition of reference, it is necessary to point out that no provision for repayment of the expenses of the blockade was made in the Protocol signed by Sir M. Herbert and Mr. Bowen, nor has any such claim ever been specifically made upon the Venezuelan Government.

On the other hand, it is not unreasonable to contend that if, contrary to the just expectation of His Majesty's Government, the Tribunal at the Hague should decide that the blockading Powers are not entitled to a separate settlement they should obtain in some other way reimbursement of the expenses to which they have been put. It is understood that this view is strongly held by the German Government.

The Agreement proposed by Mr. Bowen seems to be open to objection on two points at any rate.

1st. It leaves the adhesion of the non-blockading Powers an open question. It would therefore be possible for any of these to prevent a settlement by refusing to appear before the Tribunal, and declining to accept any decision given in favour of the blockading Powers.

2ndly. Article 1 would restrict the provision made for the settlement of all the claims to the 30 per cent. of the two ports, and would preclude the Tribunal from taking account of the assignment already made for the liquidation of "the Diplomatic Debt," or from dealing in its Award with any sources of revenue other than the 30 per cent. above mentioned.

I have the honour to request that you will take these papers into your consideration and favour Lord Lansdowne with your opinion as to whether the Agreement, marked (A), may properly be put forward in its present form by His Majesty's Government, or whether any, and, if so, what alterations in its language may advantageously be introduced.

His Lordship would also be glad to receive any observations of a more general nature which you may be disposed to offer.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.) Draft Agreement prepared by His Majesty's Government.
(B.) Draft Agreement submitted by Mr. Bowen.
(C.) Protocol providing for settlement of claims.

Report.

On the whole we are disposed to prefer Form (B) with the additions which we have suggested in pencil.*

The last Article provides for the accession of the other Powers, but will admit of the arbitration proceeding whether they accede or not. This will probably lead to their coming in as parties, while delay might be caused if they had to be made formal parties to the Agreement in the first instance.

R. B. F.
E. C.

March 11, 1903.

Annex.

Form (B.)

"Article 1. The question as to whether or not Great Britain, Germany, and Italy, are entitled to preferential or separate treatment in the payment of their claims against Venezuela, by reason of the fact that they blockaded the ports of Venezuela so as to compel her to make a settlement with them, shall be submitted for final decision to the Tribunal at the Hague. Venezuela having agreed to set aside 30 per cent. of the Customs revenues of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the Tribunal at the Hague shall decide how the said revenues shall be distributed among the said nations, and its decision shall be final.

"*In deciding this question the Tribunal shall have regard to the resources of Venezuela other than the 30 per cent. Customs revenues so set aside which may be available for the payment of the claims of other Powers.*

"*Art. 2. If preferential or separate treatment is not given to Italy, Great Britain, and Germany, the Tribunal may consider whether any and what compensation should be made by Venezuela to these Powers for the expense which they have incurred in connection with the blockade.*

"Art. ~~2~~. *3*. The facts on which shall depend the decision of the questions stated in Article 1 shall be ascertained in such manner as the Tribunal may determine.

"Art. ~~3~~. *4*. The Emperor of Russia shall be invited to name and appoint three Arbitrators to constitute the Court that is to determine and settle the questions submitted to it under and by virtue of this Agreement. The Court shall meet on the 1st day of September, 1903, and shall render its decision within six months thereafter.

"Art. ~~4~~. *5*. The proceedings shall be carried on in the English language. Except as herein otherwise stipulated the procedure shall be regulated by the Hague Convention of the 29th July, 1899.

"Art. ~~5~~. *6*. The Court shall decide how, when, and by whom the cost of this arbitration shall be paid.

"Art. ~~6~~. *7*. Any nation having claims against Venezuela may join as a party in the arbitration provided for by this Agreement."

No. 29.

[July 1, 1903.]

*Report by the Law Officers of the Crown.**

British vessels proceeding to Ciudad Bolivar. As to seizing in absence of blockade.

IT appears to us that the telegram should not be sent in either of the forms proposed. We think it would be legitimate for His Majesty's Government to protest and, if necessary, to enforce reprisals if the Government of Venezuela should, without proclaiming a blockade, seize or attempt to confiscate any British vessels making their way to Ciudad Bolivar, as such penalties could only be enforced for breach of a formal blockade which would involve the recognition of the insurgents as belligerents, but we know of no principle of international law by which His Majesty's Government could prevent Venezuela from prohibiting the passage through her territorial waters in the Orinoco of British and other ships on their way to Ciudad Bolivar. The fact that Ciudad Bolivar is in the hands of the insurgents is, we think, a circumstance which would prevent such prohibition from constituting a breach of the comity of nations.

We are of opinion, therefore, that the telegram to be sent should be confined to protesting against seizure or confiscation of British ships. We may add that it does not appear on what ground Venezuela bases her action, and we have thought it right to indicate the above considerations in order that His Majesty's Government may not

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* Printed in italics.

* No document explaining the points referred to the Law Officers was forthcoming on going to press.

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become involved in a line of action which, if Venezuela resisted, might prove not to be justifiable on principles of international law.

R. B. F.
E. C.

July 1, 1903.

Annex.

The Marquess of Lansdowne to Mr. Bax-Ironside.

(No. 25.)
(Telegraphic.)

Foreign Office, July 3, 1903.

INFORM Venezuelan Government that as Ciudad Bolivar is in possession of insurgents, His Majesty's Government cannot recognize the right of the Venezuelan Government to seize and confiscate British merchant-vessels proceeding thither unless a blockade of the port be proclaimed and effectively maintained.

Such a blockade will involve recognition of the insurgents as belligerents.

His Majesty's Government may have to send a British man-of-war to Bolivar in case of necessity to protect British life and property there.

The text of the President's Decree will be published in the "London Gazette," with a notification that as Ciudad Bolivar is in the possession of the insurgents, who have not yet been recognized as belligerents, His Majesty's Government are in communication with the Government of Venezuela as to the effect of the above notification.

R. B. F.
E. C.

July 2, 1903.

No. 30.

[July 24, 1903.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, June 11, 1903.

Gentlemen,

Law affecting National Status, in Venezuela, of foreigners.

I HAVE the honour to transmit to you herewith, by direction of the Marquess of Lansdowne, the papers noted in the accompanying List, which relate to a Law passed by the Venezuelan Congress on the 16th April last, affecting the status of foreigners resident in Venezuela.

Since the date (18th April) of the despatch from His Majesty's Minister at Carácas (Paper A) in which he forwards a translation of this Law, a telegram has been received from him (Paper D), in which he states that the President of Venezuela has instructed the Governors of the various States forming the Republic not to enforce the provisions of the new Law against foreigners for the present.

It is thought necessary, however, in view of the intrinsic importance of this Law and of its possible effects on the rights of British subjects, that, notwithstanding the receipt of this information, His Majesty's Government should come to a decision as to the attitude to be taken up with regard to it, for its suspension appears to have been only temporary, and its provisions may be put into effect at any moment.

The Law appears to Lord Lansdowne to be an attempt on the part of the Venezuelan Government to deprive foreigners within the territories of the Republic, as soon as they have been in the country for two years, of their nationality of origin, and of the advantages which that nationality might confer, without giving them (1) any option or election in the matter, or (2) any complete national status in exchange for that which they will lose. It rigorously excludes them from any share in the public life of Venezuela (Article 6, (3), and Article 8, despite the general statement contained in Article 1), and compels them, on pain of expulsion, to agree to bear all the burdens that Venezuelans have to bear (except military service and forced loans during revolutions), and to forego resort to diplomatic intervention (Articles 5, 11, and 12).

In this there is, of course, nothing which directly affects His Majesty's Government, as neither residence in Venezuela nor the declaration provided for in the Law (Article 12) confer Venezuelan nationality, so as to amount to naturalization under section 6 of the Naturalization Act of 1870, which would deprive the individuals of their British nationality according to English law. In practice, however, it would be much more difficult for His Majesty's Government to intervene on behalf of a man who had made such a declaration, and the Venezuelan Government would meet such intervention with the expulsion of the individual.

Lord Lansdowne is advised that in the strict theory of international law a State may be entitled to exclude or even to expel all foreigners from her borders (subject to reasonable conditions as to notice), but that where Treaties of amity and commerce exist the theoretical right is limited by the Treaty engagement, and that this Law cannot be applied against British subjects without contravening British Treaty rights.

By Article II of the Treaty (Paper E) with Colombia of 1825 (of which State Venezuela then formed a part), confirmed by Venezuela as an independent State in 1834, the latter has agreed to allow British subjects to enter, remain, and reside in any part of her territories.

According to the natural and obvious meaning of language, the terms of this stipulation would seem to import that British subjects having entered Venezuela should be permitted to remain and reside in any part of the territories of that Republic without being compelled in any way to modify the British national status with which they were clothed on entering these territories; and it would therefore in his Lordship's opinion be contrary both to the spirit and the letter of the Treaty for Venezuela to refuse to allow British subjects to remain in her territory unless they agreed to divest themselves, in contemplation and for the purposes of Venezuelan law and so long as they remained within Venezuelan jurisdiction, of the attributes of British nationality.

It is true that the right of residence conferred by Article II of the Treaty is qualified by the final phrase "subject to the laws of the two countries respectively." Lord Lansdowne does not think, however, that this has any deeper significance than has a phrase which occurs in Article XI of the same Treaty, to the effect that the Parties may carry on their trade in the dominions of the other "so long as they behave peaceably and commit no offence against the laws," and that neither of these expressions can entitle Venezuela, by an internal Law, to render inoperative one of the principal provisions of the Treaty.

In addition to the above general considerations the following observations may be made with regard to certain details of the Law:—

Article IX of the Treaty provides for the exemption of British subjects from all compulsory military service whatever. Article 5 of the new Law is limited to exemption from military service, &c., in revolutions and intestine struggles. Any attempt to compel British subjects to undertake military service against a foreign Power would seem to violate Article IX of the Treaty.

Article 14 of the Law prohibiting the issue of exequaturs to Consular officers engaged in trade appears to be contrary to Article X of the Treaty, which states that the Contracting Parties shall be free to appoint Consuls for the protection of trade, but in that Article there is no mention of, and nothing to point to, the entire exclusion of the class from which a large proportion of Consular officers is habitually drawn. If Venezuela desires not to have British Consuls residing in her territory who are engaged in trade, her proper course would be to enter into negotiations with His Majesty's Government with a view to amending, in this regard, the provisions of the Treaty of 1825.

Article 15 of the Law prohibits the establishment within the territory of Venezuela of Societies of any kind whatever which have not their head-quarters in that country. It is presumed that the expression "Societies" means "Companies," and that the intention of the provision was to exclude all Companies from trading in the Republic, unless their head-quarters are in Venezuela. Lord Lansdowne has some doubt as to how far the Treaty of 1825 covers Corporations. It was drafted at a time when trading Companies scarcely existed, and seems to refer only to individual persons; but his Lordship is disposed to think that His Majesty's Government might be entitled to claim that a British Company under Article VIII of the Treaty can carry on their business in Venezuela by an agent.

Article 11 of the new Law states that foreigners shall not have any right to resort to diplomatic intervention, except when they have exhausted their legal remedies before the Venezuelan Courts, with the result that a denial of justice is clearly apparent. The attitude usually adopted by His Majesty's Government with regard to Decrees of this nature, which have from time to time been promulgated by various South American Republics, has, as you are aware, been to decline to recognize their validity.

For instance, in 1873, the Venezuelan Government issued a Decree requiring that foreigners having claims against the Republic should have recourse to the Tribunals of the country, to the exclusion of diplomatic intervention. The then Law Officers of

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the Crown, who were consulted in the matter, advised that His Majesty's Minister at Carácas should be instructed to inform the Venezuelan Government that His Majesty's Government reserved to themselves the right, if occasion should require it, of objecting to any claim on the part of the Venezuelan Republic at any future time to have relieved itself by its own Decree from responsibility towards Great Britain in respect of wrongs or injuries done to British subjects, for which the Venezuelan Republic would be liable to make compensation either under the general law of nations or under Treaty engagements. A copy of this Report (Paper F) is inclosed herewith.

His Majesty's Minister at Carácas was at the time instructed in the sense of this Report, and an intimation in the same sense has been renewed on more than one subsequent occasion, both to Venezuela and to others of the South or Central American Republics.

With reference to Article 11 it may, therefore, be thought sufficient to recall attention to these previous communications.

Other Reports, furnished by your predecessors at various times, on subjects which bear some analogy to the one now under discussion, are transmitted herewith for your information and for convenience of reference, but no completely analogous precedents have been discovered in the archives of this office.

I am to request that you will take these papers into your consideration, and favour Lord Lansdowne with your opinion on the following points:—

1. Whether a general remonstrance should be made against the Venezuelan Law in question, on the ground that it attempts to limit the protection which His Majesty's Government is entitled to afford to British subjects in Venezuela.

2. Whether the following provisions of the Law would not, if enforced against British subjects, be contrary to the stipulations of the Treaty of 1825:—

(*a*.) Article 8, requiring domiciled foreigners to make a declaration of their submission to the Law;

(*b*.) Article 5, which exempts foreigners from military service only in the case of revolution;

(*c*.) Article 14, prohibiting the issue of exequaturs to Consuls engaged in trade;

(*d*.) Article 15, relative to "Societies."

Lord Lansdowne would also be glad to be furnished with any observations of a more general nature which you may be disposed to offer on the papers.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Mr. Bax Ironside	(No. 67)	April	18, 1903.
(B.)	Ditto	(No. 81)	April	25, ,,
(C.)	Ditto	(No. 89)	May	2, ,,
(D.)	Ditto	(No. 97)	May	11, ,,
(E.)	Ditto	(No 23. Telegraphic)	May	12, ,,
(F.)	Treaty between His Majesty's Government and Colombia of April 18, 1825 (Library No. 214).			
(G.)	Law Officers' Report		April	22, 1873.
(H.)	Ditto .. .. (Together with copy of despatch to Mr. Graham No. 25 of August 5, 1881.)		July	18, 1881.
(I.)	Ditto		May	14, 1884.
(K.)	Ditto		September	(?), 1862.
(L.)	Ditto		April	28, 1880.
(M.)	Ditto		February	1, 1881.
(N.)	Two Reports from Law Officers		February and April	11, 1890. 25, ,,

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Report.

1. We think a general remonstrance should be made upon the ground stated, and also upon the ground that the Law, taken as a whole, is inconsistent with the Treaty rights existing between His Majesty's Government and Venezuela.

2. We think that the provisions referred to under heads (*a*), (*b*), and (*d*) would be contrary to the stipulations of the Treaty of 1825. As regards (*c*) it is not in direct

violation of the Treaty, but if in practice it prevents His Majesty's Government from taking advantage of the right to appoint Consuls, we think it may properly be made the subject of diplomatic representation.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 24, 1903.

No. 31.

[July 29, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, July 10, 1903.

Treatment of United States' vessels "Carácas" and "Maracaibo" during Venezuelan Blockade.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying List relative to the treatment of the American steam-ships "Carácas" and "Maracaibo" by the British naval authorities engaged in blockading the port of La Guayra during the early part of this year.

The "Carácas" and "Maracaibo" are vessels belonging to the "Red D" line of steamers, which are under a contract with the Government of the United States to carry the mails between the port of New York and several ports of Venezuela. A note was received from the American Chargé d'Affaires (Paper A) in which he complained—

1. That the days of grace allowed by the Proclamation of Blockade (Paper B), published in the "London Gazette" of the 19th December, 1902, were not observed by Captain de Horsey, of His Majesty's ship "Tribune," the British man-of-war engaged in carrying out the blockade at La Guayra; and

2. That unfair discrimination was exercised against the "Carácas" and "Maracaibo" by the blockading force in that—

(*a*.) They were informed by Captain de Horsey that, having called at La Guayra, they would not be allowed to enter the ports of Puerto Cabello and Maracaibo respectively, whereas a Dutch vessel, which had called at the port of Guanta, had been allowed to enter La Guayra;

(*b*.) That the "Carácas" was ordered to leave La Guayra before she had completed the discharge of her cargo.

It was considered necessary in the first place to ascertain the exact facts and the reasons for the course alleged to have been followed by the Captain of His Majesty's ship "Tribune." The Admiralty were, consequently, requested (Paper C) to obtain a report on the case, and a letter has been received from that Department (Paper D) forwarding a Report from Captain de Horsey.

With regard to the charges of non-observance of the days of grace and unfair discrimination, based on the alleged prohibition to enter Puerto Cabello and Maracaibo, the following considerations occur to Lord Lansdowne:—

Puerto Cabello and Maracaibo were the two ports blockaded by Germany under an independent German Proclamation of Blockade, and the blockading ships were acting under the instructions of the German Imperial Government. It is clear that Captain de Horsey was not in a position to prohibit a vessel from entering these ports, and even if he had attempted to do so, the German naval authorities would not have been in any way bound by anything he said or did. Captain de Horsey denies, however, that he at any time communicated any information with regard to restrictions affecting ports other than La Guayra, as such ports were outside his jurisdiction. He adds that his opinion on such points was several times asked, and that he gave it to the best of his ability, expressly stating, however, that he had no jurisdiction over the acts of other Commanders.

It appears to his Lordship that Captain de Horsey had, in reality, no better means of knowing what would or would not be permitted at Puerto Cabello and Maracaibo than had the captains of the "Red D" steamers themselves.

It seems probable that, to avoid the trouble of going to the two ports concerned in

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order to ascertain whether they would be admitted, the masters of the American vessels applied to the Senior British Naval Officer on the spot for information on the subject, and that hearing that there was a probability of their not being admitted, they decided to sail straight to Curaçoa, and subsequently to make an attempt to shift the responsibility on to the blockading Powers.

As to the treatment meted out to the Dutch steamer, it appears to show (if it shows anything) that if the two vessels had gone to Puerto Cabello and Maracaibo respectively and had been denied admittance by the German blockading ships, their owners might have had a good cause of complaint against the German Government; but Lord Lansdowne is unable to see that the British naval authorities are in any way involved or concerned as regards this point.

For the above reasons it appears to his Lordship that, in so far as the complaints of the American vessels are based on the alleged prohibition against entering Puerto Cabello and Maracaibo, the charges of non-observance of the days of grace and unfair discrimination cannot be sustained.

As to the complaint that the "Carácas" was not allowed sufficient time to discharge her cargo, it appears from a despatch received from His Majesty's Minister at Carácas (Paper E) that the British steam-ship "Yucatan" was, for reasons unconnected with the blockade, which had not then been established, not allowed to enter La Guayra on the 17th December, and, consequently, discharged her cargo for that port at Curaçoa; and that the master of the steam-ship "Carácas," with the object, it may be assumed, of making additional profit, took on board all the goods from the "Yucatan," proposing to discharge them at La Guayra as well as his own. The date on which he shipped them and sailed from Curaçoa was the 22nd December, *i.e.*, two days after the blockade began, and Lord Lansdowne is advised that the goods shipped at Curaçoa were not entitled to enter La Guayra under the days of grace clause, seeing that, in so far as those goods were concerned, the voyage of the vessel did not begin till two days after the notification and commencement of the blockade. His Lordship understands that the allowance of a period of grace is intended to enable the ship to complete a voyage which had been begun, and to land cargo which she had on board when the blockade was declared; but that it no more entitles her to load cargo at an intermediate port after the declaration of blockade, and to convey it to the blockaded port than the period of fifteen days of grace allowed by the Proclamation of the 20th January to vessels lying in the blockaded port enables them to begin loading a cargo after the commencement of the blockade.

On these grounds the captain of the "Tribune" would, it is thought, have been justified in refusing admittance to the American vessel, all the more as he had already written a Circular letter to the Consular Body at La Guayra, in which he announced that a steamer arriving in the harbour would be allowed "to discharge cargo consigned before the 20th December, 1902," and that "no cargo consigned since that date could be landed."

Captain de Horsey, however, examined the ship's papers, and allowed her to enter. All vessels similarly allowed to enter La Guayra under the days of grace clause were given one day to land their passengers and discharge their cargo (the average time at La Guayra for the double process of loading and unloading being one and a-half days).

It seems to be pretty clear that if the "Carácas" had unloaded only the cargo consigned from New York she would have had ample time to do so, but she occupied her time in discharging the goods from Curaçoa. No doubt this cargo was stowed on the top of her original cargo, and therefore had to be removed before the New York cargo underneath could be reached. But, in Lord Lansdowne's opinion, although this supposition would explain the inability of the "Carácas" to discharge the whole within the time limit, it would not, if a fact, appear to furnish any ground of complaint on her part.

It is to be noted, moreover, that, according to the statement of Captain de Horsey, no complaint was made at any time by either vessel to the naval officers, and that no formal protest in writing was made, either then or subsequently.

I am to request that you will take the accompanying papers into your consideration, and favour Lord Lansdowne with your opinion as to whether the owners of the "Carácas" and "Maracaibo" have any claim against His Majesty's Government for compensation on account of their treatment by the British naval authorities, and in the event of the reply to this inquiry being in the negative, as to the answer which should be returned to the United States' Government, and the considerations by which such answer may most effectively be supported.

Lord Lansdowne would at the same time be glad to be furnished with any observations of a more general nature which you may be disposed to offer.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Mr. White		January 22, 1903.
(B.)	Proclamation of Blockade [Confidential 7829*]		December 20, 1902.
(C.)	To Admiralty		February 28, 1903.
(D.)	Admiralty		June 9, "
(E.)	Mr. Bax-Ironside	(No. 85)	April 29, "

Report.

We are of opinion that the owners of the "Carácas" and "Maracaibo" have no claim against His Majesty's Government for compensation under the circumstances stated.

We think the facts should be fully laid before the Government of the United States with a statement that under the circumstances His Majesty's Government cannot admit any claim for compensation.

We agree with the minute of Mr. Hurst and the reasons stated by him.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 29, 1903.

Annex.

Minutes on Admiralty Letter of June 9, 1903.

WE are now in a position to answer the complaints of the United States' Government with regard to the treatment of the steam-ships "Maracaibo" and "Carácas" of the "Red D" line during the Venezuelan blockade.

The complaints are twofold: (*a*) that the days of grace were not observed; and (*b*) that unfair discrimination was exercised against the American ships, in that—

(i.) Having called at La Guayra they were told they could not call at Maracaibo; when a Dutch vessel that had called at Guanta had been allowed to enter La Guayra.

(ii.) That the "Carácas" was ordered to leave La Guayra before she had completed the discharge of her cargo.

As to the prohibition to enter Maracaibo because the vessels had called at La Guayra—

Maracaibo was one of the ports blockaded by Germany: the Captain of His Majesty's ship "Tribune," the ship maintaining the blockade at La Guayra, states that no information was at any time communicated by him as to entering ports other than La Guayra as they were outside his jurisdiction; that his opinion on such points was several times asked, and he gave it to the best of his ability, expressly stating, however, that he had no jurisdiction over the actions of other commanders.

It is clear that Captain de Horsey (of His Majesty's ship "Tribune") was not in a position to prohibit a vessel from entering a port blockaded by Germany; even if he had attempted to do so, which he denies the Germans would not have been in the least bound by anything he said or did; they were carrying on an independent blockade, initiated under a German Proclamation and maintained under German instructions, and Captain de Horsey had no better means of knowing what would or would not be permitted at Maracaibo than the Captains of the "Red D" steamers had themselves. To save themselves the trouble of going to Maracaibo to see if they would be admitted, I expect they asked the Senior British Naval Officer if they would be allowed to call at Maracaibo, and hearing that they very likely would not be allowed to, decided to sail straight away to Curaçoa, and try to shift the responsibility on to the Blockading Powers. The treatment meted out to the Dutch steamer shows (if it shows anything) that had these vessels gone to Maracaibo and been denied admission by the German blockading ships they might have a good cause of complaint against the German Government. In so far as the complaints are based on the

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alleged prohibition against entering Maracaibo, the charges of non-observance of the days of grace and unfair discrimination appear to me to break down.

As to the complaint that the "Carácas" was not allowed sufficient time to discharge her cargo, it appears from Mr. Bax Ironside's No. 85 that the British steam-ship "Yucatan" was not allowed to enter La Guayra on the 17th December, so she discharged her cargo for that port at Curaçoa. The Captain of the steam-ship "Carácas," thinking to do a good stroke of business, took on board all the goods from the "Yucatan," proposing to discharge them at La Guayra as well as his own. The date on which he shipped them and sailed from Curaçoa was the 22nd December, *i.e.*, two days after the blockade, and, in my opinion, the goods shipped at Curaçoa were not entitled to enter La Guayra under the days of grace at all; in so far as concerned those goods the voyage of the vessel did not commence till after the blockade; the allowance of a period of grace is to enable the ship to complete her voyage and land the cargo which she had on board when the blockade was declared; it does not, in my opinion, enable her to load cargo at an intermediate port after the declaration of blockade and convey it to the blockaded port, any more than the fifteen days of grace allowed to vessels lying in the blockaded port enables them to load cargo after the commencement of the blockade (Hall, p. 733*).

The Captain of the "Tribune," however, examined the ship's papers and allowed her in, but, according to the letter which he had previously issued to the Consular Body at La Guayra, the cargo from Curaçoa ought not to have been landed at all. All vessels allowed to enter that harbour under the days of grace were given one day to land their passengers and discharge their cargo (the average time being one and a-half days for unloading and loading); had the "Carácas" unloaded only the cargo consigned from New York she would have had ample time to do so, but she occupied her time with the goods from Curaçoa. It does not appear to me that she has any ground for complaint if, being given time sufficient for landing what she was entitled to land, she fails to do so, and prefers to discharge cargo that she was not entitled to have on board at all, and the presence of which, in my opinion, exposed her to liability to seizure and condemnation.

According to the Admiralty information no complaint was made at any time by either of these vessels to the naval officers, nor was any copy of any protest given them.

I think this will afford material to answer the United States' Government.

C. J. B. H.

Foreign Office, June 30, 1903.

I agree. It is clear that the "Carácas" when she took on board the "Yucatan's" cargo at Curaçoa, whence she cleared for La Guayra on the 22nd December, was fixed with knowledge of the existence of the blockade, and although she may have been entitled to unload her original cargo at La Guayra she was not entitled to land the cargo she took on board at Curaçoa after the blockade had commenced.

No doubt this cargo was stowed on top of her original cargo, and therefore had to be removed before the blameless cargo underneath could be reached; but this fact, although it explains why she could not unload her original cargo within the time limit prescribed furnishes no ground of complaint on her part.

I need not add further, however, to what Mr. Hurst has already said, as he has gone into the matter fully, and I agree generally with his views.

I think, however, that as this is rather an important case, involving discussion with a foreign Government, and also (incidentally) a complaint in my opinion absolutely unfounded and unsustainable—against an officer in His Majesty's service in the discharge of his duty, it will be right and proper as well as in accordance with our usual procedure to refer the papers to the Law Officers of the Crown before taking further action.

W. E. D.

Foreign Office, July 1, 1903.

Seen.—C. J. B. H.

Foreign Office, July 1, 1903.

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* Mr. Hurst: I believe this means to *begin* to load a cargo. I think the ship may finish loading a cargo *bonâ fide* bought and begun to be put on board before the commencement of the blockade. But the subject is full of obscurity, and is treated in a hazy manner even by Hall.—W. E. D. *July* 1, 1903.

ZANZIBAR.

No. 32.

[February 9, 1903.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, January 12, 1903.

Infringement of Liquor Ordinance by foreigners: As to who deals with.

ON the 11th February, 1899, the then Law Officers of the Crown reported as follows with regard to the application of certain Articles of the General Act of the Brussels Conference relative to the African Slave Trade, signed the 2nd July, 1890, in the case of a man named Reich:—

"It seems quite clear that in practice the provisions of the Brussels Act in regard to fire-arms would become a dead letter unless all persons who offend against them of whatever nationality are amenable to the Courts of the State within whose territory the offence has been committed. It is obvious that it is by that State that the prohibition against importations must be enforced, and this applies also to the enforcement of penalties for unlawful possession. We therefore think that by implication the Brussels Conference superseded the right of extra-territoriality in the case of offences against its provisions in respect of fire arms"; and the Law Officers then proceeded to add that inasmuch as the offence for which Reich had been tried at Mombasa in the Sultanate of Zanzibar was for having fire-arms in his possession contrary to the provisions of the Brussels Act, and of the laws made in pursuance of those provisions, he was for the reasons given in the Report amenable to the jurisdiction of the State within whose frontiers the infraction of the Act was committed.

The question has now arisen whether a similar principle applies to the "restrictive measures concerning the traffic in spirituous liquors" which form Chapter VI of the Brussels Act (Article XC), due regard being had to the fact that under Article XCVI all contrary stipulations of earlier Conventions between the Signatory Powers are repealed.

The provisions of this Act as to arms differ, however, in an important respect from those in regard to liquor. Article XII regarding arms says: "The Powers undertake to adopt . . . . . . the measures necessary to insure that those who infringe the prohibitions laid down in Articles VIII and IX and their accomplices shall . . . . . . be punished either by fine or by imprisonment. . . . . ."

This provision appears to support the claim to jurisdiction over foreigners who would, but for the provisions of the Act, be entitled to the privileges of extra-territoriality; the provision in question is not, however, specifically referred to in the Law Officers' Report above mentioned.

But there is no corresponding provision in regard to liquor, and, in these circumstances, the Treaty Powers might not be willing to agree with the principle quoted in the earlier part of this letter from the Law Officers' Report, viz., that foreigners violating the provisions of the Brussels Act, so far as arms are concerned, and, by parity of reasoning, those who violate the provisions regarding liquor are under the Sultan's jurisdiction, because those provisions would become a dead letter unless offenders were under the jurisdiction of the Sultan's Courts. They might point, for instance, to the Zanzibar Customs Law, which prohibits the importation of, say, cotton cloth without the payment of 5 per cent. import duty, and draw attention to the fact that this prohibition is maintained in the case of foreigners, although infractions of it are justiciable only in their respective Consular Courts; and it would be contended that these Courts would be equally able to enforce the Zanzibar laws relating both to the prohibition of the importation of liquor generally and to the admission of limited quantities for non-natives.

On the other hand, it may be maintained that the fulness of the provisions of the Brussels Act as to fire-arms and the scantiness of those as to liquors is due to two causes:—

(*a.*) Because the Brussels Act was chiefly aimed at the suppression of the Slave Trade, and this, to a great extent, depended on fire-arms for its existence.

(*b.*) Because there is less importance as compared with the restriction on entry

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attaching to the Regulations affecting the subsequent use of consumable stores like spirituous liquors than in the case of fire-arms.

The territory of Zanzibar is, as to spirituous liquors, an area of total prohibition, with the exception of limited quantities imported for the use of non-natives. Such liquor is imported, as provided by the Act, under the system and conditions determined by the Government. This may well be taken to mean that it is the business of the territorial Government to see that the liquor does not reach the natives. Can they do this if they cannot enforce their Regulations?

Again, "imported" in Article XCI is "introduites." The same expression is also used in Article VIII, which deals with the introduction of fire-arms. Article IX forms the code of "conditions" under which fire-arms may be imported: in case of liquors, it is left to the territorial Power to lay down the "system" and "conditions." It would seem to follow that the conditions as to liquor may be as comprehensive as is Article IX. Article X shows that as to fire-arms the territorial Power is to do all the administrative work; and Article XII that the penalties for a breach of the stipulations as to fire-arms were to be enacted and enforced by the territorial Government.

If the jurisdiction for the enforcement of the conditions laid down by the Act on which arms may be imported is to be exercised by Zanzibar, it would appear as if she should also have jurisdiction to enforce her own conditions laid down in accordance with the Act on which liquors may be imported for the non-natives.

I have the honour, by direction of the Marquess of Lansdowne, to request you to take the above observations into your consideration, together with the papers which accompany this letter, and to favour his Lordship with your opinion as to whether the Government of Zanzibar can claim, in the case of a breach of the Liquor Regulations, jurisdiction over foreigners who, but for the provisions of the Act, would be entitled to be tried by their respective Consular Courts; and also with any general observations on the case which may occur to you.

Should you be of opinion that the Government of Zanzibar can claim such jurisdiction as that referred to above, I am to inquire further whether you would concur in the terms of the accompanying draft to His Majesty's Consul at Zanzibar instructing him in this sense.

Copies of the German and British Treaties with Zanzibar are inclosed as examples of those under which foreigners enjoy extra-territorial rights at Zanzibar.

I have, &c.
(Signed) FRANCIS BERTIE.

List of Papers.

Law Officers		February 22, 1899.
Brussels Act (Treaty Library No. 889)		July 2, 1890.
Sir C. Eliot	(No. 199)	, 1902.
To ditto	(No. 287)	"
Mr. Cave	(No 86)	"
Ditto	(No. 94)	"
Ditto	(No. 96)	"
To ditto	(No.)	January , 1903.
German Treaty with Zanzibar ("State Papers," vol. lxxvi, pp. 247 *et seq.*)		December 20, 1885.
British Treaty with Zanzibar (Treaty Library No. 782)		April 30, 1886.

Report.

In our opinion, the circumstances of the present case as to the liquor traffic in Zanzibar materially differ from those in Reich's case as to the possession of fire-arms in Mombasa.

In Mombasa there were, as we understand at the time of [Wilhelm] Reich's case, no German Consular Courts in which offences under the Brussels Convention in regard to fire-arms could be dealt with. In Zanzibar there is no difficulty in the way of taking proceedings in the Consular Courts against foreigners who may commit offences in regard to the liquor traffic, and we see nothing in the provisions of the Brussels Convention in regard to liquor traffic, which necessarily involves the abolition of the right of foreigners to be tried in Zanzibar in their own Consular Courts. It must, of course, be assumed that the Consular Courts will loyally give effect to the provisions of the Brussels Convention. We are, therefore, unable to concur in the terms of the proposed despatch.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 9, 1903.

Annex.

Draft of Despatch to Mr. Cave.

(No. .)
Sir,
Foreign Office, January , 1903.

THE Marquess of Lansdowne has had under his consideration your despatch No. 86 of the 17th October last, inquiring whether the subjects of Treaty Powers should be tried in the Courts of His Highness the Sultan or by their respective Consular Courts for offences against Regulations such as, in the present instance, the Zanzibar Liquor Regulations, drawn up in accordance with the stipulations contained in the Brussels Act of the 2nd July, 1890.

I am to inform you that, in his Lordship's opinion, persons guilty of a breach of the Zanzibar Liquor Regulations must be tried in the Sultan's Court and not in the extra-territorial Court of the particular State of which they are subjects or citizens, since the general Brussels Act overrides special and earlier Treaty rights in the case of offences committed against its provisions by persons whose Governments were Signatories of the Act. It would otherwise be practically impossible for the Government of His Highness the Sultan to enforce conditions for which he made himself responsible by becoming a Signatory to the Brussels Act.

Offences against the Liquor Regulations would be tried in the Court of Delegated Jurisdiction in which Mr. Piggott sits as a Judge.

It appears to Lord Lansdowne that the Notification published by Sir R. Rodd on the 27th September, 1893 (to which you refer in your despatch under reply), must have been issued under a misapprehension, as it seems to have been thought that the Liquor Regulations published by the Sultan would not apply to British subjects unless this Notification had been issued, although this is clearly not the case

I am, &c.

No. 33.

[June 27, 1903.]

Law Officers of the Crown to the Marquess of Lansdowne.—(Received June 27.)

My Lord,
Royal Courts of Justice, June 27, 1903.

Zanzibar Import Duties: Increase to 10 per cent.

WE were honoured with your Lordship's commands, signified to us by Mr. Villiers in his letter of the 26th March last, stating that he was directed by your Lordship to transmit to us the papers respecting a proposal which had been put forward to increase from 5 to 10 per cent. the duties leviable on imports into the dominions of the Sultan of Zanzibar, and to request that we would take them into our consideration, and favour your Lordship with our opinion as to whether the Government of Zanzibar was entitled, so far as its Treaty obligations were concerned, to levy *ad valorem* import duties not exceeding 10 per cent, and further, that we would furnish your Lordship with any observations which would, in our opinion, be of assistance in dealing with the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the Government of Zanzibar is entitled to levy *ad valorem* import duties not exceeding 10 per cent. We do not think it is open to any of the Powers who were parties to the Declaration appended to the general Act of the

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Brussels Conference now to raise the point that the Sultan was not entitled to sign the Declaration.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

List of Papers.

(A.) British Treaty with Zanzibar (Treaty Library No. 782) ..	April 30, 1886.
(B.) Treaty between France and Muscat (Conf. 7555) ..	November 17, 1844.
(C.) „ „ Germany and Zanzibar (Conf. 5370, p. 69)	December 20, 1885.
(D.) General Act of the Berlin Conference (Treaty Library No. 757)	February 26, 1885.
(E.) „ „ „ Brussels Conference (Treaty Library No. 889)	July 2, 1890.
(F.) Agreement between Great Britain, Germany, and Italy, respecting the Tariff of the eastern zone of the Conventional basin of the Congo (Map of Africa by Treaty, p. 90)	December 22, 1890.
(G.) Circular to Powers parties to Berlin Act	June 22, 1892.
(H.) Memorandum. Mr. Farnall	December 27, 1901.
(I.) Act of adhesion of Zanzibar to Berlin Act (Parliamentary 3123)	November 8, 1886.
(J.) Lord Dufferin .. .. (No. 232. Africa)	August 29, 1892.
(K.) To Lord Dufferin .. .. (No. 265. Africa)	October 31, 1892.
(L.) Sir E. Malet .. .. (No. 42. Africa)	June 7, 1892.
(M.) To Lord Pauncefote .. (No. 9. Africa)	April 14, 1902.
(N.) Treaty between United States and Zanzibar (State Papers, vol. lxxviii, p. 777)	July 3, 1886.
(O.) Declarations exchanged between Great Britain and France (Treaty Library No. 856)	August 5, 1890.

No. 34.

[November 18, 1903.]

Foreign Office to the Law Officers of the Crown.

Draft Zanzibar Order in Council, as Second Assistant Judge.

Gentlemen, *Foreign Office, September* 5, 1903.

WITH reference to your letter of the 19th December last relating to a new Zanzibar Order in Council, supplementary to the Zanzibar Order in Council of 1897, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you the accompanying copy of the draft Order, as revised by Mr. Gray, in accordance with the suggestions contained in your Report.

The letter to Mr. Gray and his reply, together with previous correspondence on the subject, are inclosed for convenience of reference.

I have the honour to request that you will take these papers into your consideration and favour his Lordship with your opinion as to whether "The Draft Zanzibar Order in Council, 1902," may properly be submitted in its amended form for the approval of His Majesty.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

"Zanzibar Order in Council, 1897." (Confidential 6934*).
"East Africa Order in Council, 1902." (Confidential 7759*).

To Law Officers	December 13, 1902.
Law Officers	December 19, „
Solicitor-General	June 19, 1903.
To Mr. Gray	August 12, „
Mr. Gray	August 27, „

Draft Order in Council (two copies).

Report.

As altered by us in red ink* and initialled, we approve of the draft Order in Council herewith.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 18, 1903.

Annex.

Draft of "Zanzibar Order in Council, 1903."

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, His Majesty the King has power and jurisdiction within the dominions of His Highness the Sultan of Zanzibar:

Now, therefore, His Majesty, by virtue and in exercise of the powers on this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Zanzibar Order in Council, 1903."

2. This Order shall be construed as one with "The Zanzibar Order in Council, 1897," hereinafter called the "Principal Order."

3.—(1.) Notwithstanding anything contained in the Principal Order, a Second Assistant Judge may be appointed for the Court for Zanzibar.

(2.) The Second Assistant Judge shall be appointed in like manner and upon the same conditions as, and shall possess the like qualifications as are required for, the Assistant Judge.

(3.) The Second Assistant Judge shall have the same powers as the Assistant Judge.

(4.) In case of the illness or temporary absence of the Second Assistant Judge, or of his temporary appointment as Judge or Assistant Judge, the Consul-General may appoint either a person qualified to be appointed Second Assistant Judge, or a person appointed to hold a subordinate Court under the Principal Order, or a commissioned Consular officer to act as Second Assistant Judge.

4. The Assistant Judge and the Second Assistant Judge shall respectively undertake such part of the duties prescribed in the Principal Order for the Assistant Judge and such other duties of a judicial, magisterial, or legal nature as the Judge, with the approval of the Secretary of State, shall direct.

5. In the event of the death, incapacity, removal, or absence from Zanzibar of the Consul-General for the time being, all and every the powers and authorities by the Principal Order granted to him shall, until His Majesty's further pleasure is signified through the Secretary of State, be vested in the senior Consular officer in His Majesty's service for the time being in Zanzibar.

6. The production of a grant of probate or of letters of administration shall, notwithstanding any provision to the contrary contained in any Indian Act or Law in force in Zanzibar or in the Principal Order, be necessary to establish the right to recover or receive any part of the estate or effects of any deceased person situate in Zanzibar.

7. The powers of the Secretary of State with respect to the application to Zanzibar of enactments and Acts of the Governor-General of India in Council or of the Governor of Bombay in Council under Article 11 of the Principal Order, and of laws and ordinances for the time being in force in African possessions of His Majesty, under Article 13 of that Order shall, on the commencement of this Order, be transferred to the Consul-General; but those powers shall be exercised by him only by means of Regulations made under and subject in all respects to the provisions of Article 47 of the Principal Order.

8. The Consul-General may by ~~such~~ Regulations *made under and subject in all respects to the provisions of Article* 47 *of the Principal Order* repeal or amend with respect to Zanzibar any enactments, Acts, laws, or ordinances which are made applicable or have been brought into operation in Zanzibar by or under any of the provisions of Articles 11 and 13 of the Principal Order.

9. In Article 9 of the Principal Order the word "Judge" shall be substituted for the word "Consul-General."

10. The following provisions of the Principal Order are hereby repealed:—

Article 3 (iii). The words from "including" to "Consul-General."

Article 9. The word "Consul-General."

Article 11 (*e*) (iii). The words "relating to civil or criminal procedure or to procedure in bankruptcy."

Article 31 (2) and Article 32. The words "in Zanzibar."

And the Most Honourable the Marquess of Lansdowne, K.G., one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein.

R. B. F.
E. C.

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* Printed in italics.

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Printed for the use of the Foreign Office. *September* 1905.

CONFIDENTIAL.

(8498.)

REPORTS

BY THE

LAW OFFICERS OF THE CROWN, &c.

1904.

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CONFIDENTIAL.

REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.:
1904.

AFRICA.

No. 1.

[April 27, 1904.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, February 27, 1904.

Gentlemen,

Draft Divorce Ordinance for the Protectorates.

WITH reference to my letter of the 19th August, 1902, on the subject of the draft Marriage Ordinance to be promulgated in the four African Protectorates administered by this Department, in which you were informed that divorce legislation in those Protectorates would form the subject of a separate communication to you, I have the honour to transmit herewith, by direction of the Marquess of Lansdowne, a draft Divorce Ordinance which it is proposed to issue in the East Africa, Uganda, and British Central Africa Protectorates.

The draft has been prepared in this Department, and is based on "The Indian Divorce Act, 1869" (Act IV of 1869), with such slight modifications as are required by local circumstances, and by such statutory modifications of the English Divorce Law, upon which the Indian Act is based, as have taken place since the date of its enactment.

A copy of the Indian Divorce Act is inclosed herewith, and on the last page of the draft will be found a Table showing how the various sections of that Act are dealt with in the proposed Ordinance.

The draft has been submitted to the Commissioners of the various Protectorates, and to the British South Africa Company (who administer the government of North-Eastern Rhodesia), for their observations. The recommendations from the Commissioners have in most cases been adopted and embodied in the Ordinance; but his Lordship desires to draw your attention to the following points:—

As the recommendations from the various Protectorates in regard to the definition of minor children are not identical, Lord Lansdowne considers that the best method of dealing with the various suggestions will be to insert a special definition in each draft Ordinance when prepared for promulgation in the respective Protectorates.

The Commissioner for Uganda, in his despatch No. 264 of the 9th September, 1903, advises, with regard to clause 4 (jurisdiction), that the necessary powers to hear and decide cases of divorce should be given to the Courts of the Sub-Commissioners of the various provinces and Collectors of districts, as he considers that otherwise the poorer classes of natives would not be able to avail themselves of the relief afforded by the Ordinance. His Lordship is, however, of opinion that jurisdiction in divorce should only be conferred on Courts presided over by trained lawyers, and he considers that it would be most unwise to confer such jurisdiction on Courts of Sub-Commissioners and Collectors, especially when the power to grant divorces is being introduced

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for the first time into the Protectorate. As regards the question of jurisdiction in the Kingdom of Uganda, and in Toro and Ankole, which is also referred to in the same despatch, his Lordship proposes at a later stage to make such local arrangements as may be considered necessary.

The Acting Commissioner for British Central Africa suggests in his despatch No. 137 of the 27th June, 1903, with regard to clause 5 (2) that the words "has changed his profession of Christianity for the profession of some other religion and gone through a form of marriage with another woman," should be omitted; but his Lordship holds that where a native woman convert marries under the Christian system of marriage a male native convert, and the latter lapses into paganism and polygamy, the woman should be entitled to a divorce, and not compulsorily be dragged back into savagery with her husband.

The draft Ordinance was referred to the British South Africa Company for the observations of the local authorities in North-Eastern Rhodesia, and a copy of Judge Beaufort's remarks is inclosed in the letter from the British South Africa Company of the 21st October last.

Judge Beaufort considers that under Article 21 of "The North-Eastern Rhodesia Order in Council, 1900," the North-Eastern Rhodesia High Court has already jurisdiction to grant divorces, since it is given under this Article "full jurisdiction, civil and criminal, over all persons and over all matters within North-Eastern Rhodesia;" and further, that as the North-Eastern Rhodesia Order in Council directs that English law is to prevail in the Protectorate, questions might arise whether this Ordinance was not *ultra vires* in so far as it departs from the English divorce law.

The first point appears to Lord Lansdowne to be one of considerable magnitude, because if the words he refers to in the Order in Council do confer jurisdiction to grant divorces, the High Courts of British Central Africa, East Africa, and Uganda have already the powers this Ordinance purports to confer under the corresponding words in the Orders in Council referring to those Protectorates.

Lord Lansdowne is advised that neither the Court of North-Eastern Rhodesia nor the High Courts of East Africa, Uganda, or British Central Africa at present possess jurisdiction to grant a divorce.

It is open to grave doubt whether the expression "criminal or civil jurisdiction" includes jurisdiction in matters of divorce, which was ecclesiastical in origin, and the East Africa and corresponding Orders in Council of 1902, in Article 16, specifically confer Admiralty jurisdiction on the Courts, which shows, at any rate, that *that* jurisdiction was not regarded as conferred by the words "full jurisdiction, civil and criminal," in Article 15.

Assuming that the views stated above are in your opinion correct on this point, the further question arises whether such jurisdiction can be conferred by an Ordinance.

In the three Protectorates for which new Orders in Council were passed in 1902 it appears to his Lordship that the power to confer divorce jurisdiction on the High Court of the Protectorate by an Ordinance is indirectly given by Article 12 (8), for if the divorce law of India or England can be applied to the Protectorate, the highest Court in the Protectorate must be empowered to administer it; and even should this not be the case, it seems probable that the power was conferred by the general right of the Commissioner under Article 12 (1) of the Order in Council to make Ordinances for the administration of justice.

It may be, however, that the general words giving the High Court jurisdiction (Article 21 in "The North-Eastern Rhodesia Order in Council, 1900," Article 15 in "The East Africa Order in Council, 1902," &c.) do not themselves enable the Court to act, but only enable it to carry out the powers given to it by the various laws and Acts applied to the Protectorate.

This view, however, would, were it adopted, cause great difficulty in North-Eastern Rhodesia, for the Order in Council applying to that Protectorate does not contain any Article equivalent to Article 12 (8) of the East Africa Order, 1902, and his Lordship does not think that it can prevail.

With regard to the further point raised by Judge Beaufort (*i.e.*, whether such an Ordinance as this would be valid in so far as it departs from English law in any particular) there appears to be no difficulty, because Article 21 (2) of "The North-Eastern Rhodesia Order in Council, 1900," says that the jurisdiction is to be exercised in conformity with English law, "except so far as such law may be modified by any Order in Council, Regulation, or Queen's Regulation."

I am to transmit for your information the papers referred to in this letter,

together with others, as marked in the accompanying list, and to request that you will take them into your consideration, and favour his Lordship with your opinion:—

(1.) Whether you consider the draft Divorce Ordinance is one that may properly be sanctioned for issue in the Protectorates;

(2.) Whether the High Courts of the Protectorates are entitled to grant divorces under the "full jurisdiction, civil and criminal," conferred upon them;

(3.) Whether, if not already in possession of it, such jurisdiction can properly be conferred by Ordinances in the Protectorates of British Central Africa, Uganda, and East Africa, and by King's Regulations in North-Eastern Rhodesia.

His Lordship would also be glad to receive at the same time any observations of a more general character that you may have to offer.

I have, &c.
(Signed) CLEMENT Ll. HILL.

List of Papers.

1.	Draft Divorce Ordinance.		
2.	Colonel H. Sadler	(No. 303)	November 6, 1902.
3.	Sir C. Eliot	(No. 36)	February 7, 1903.
4.	To ditto	(No. 140)	April 6, "
5.	To British South Africa Company		April 6, "
6.	To Colonel H. Sadler (No. 125), Major Pearce (No. 95), and Mr. Cordeaux (No. 97)		April 6, "
7.	Mr. Cordeaux	(No. 46)	April 28, "
8.	Sir C. Eliot	(No. 239)	May 25, "
9.	Major Pearce	(No. 137)	June 27, "
10.	Colonel H. Sadler	(No. 264)	September 9, "
11.	British South Africa Company (inclosing Memorandum by Judge Beaufort)..		October 21, "
12.	Memorandum by Mr. Hurst		December 3, "
13.	"The East Africa Order in Council, 1902" (Confidential 7759*), "The Uganda Order in Council, 1902" (Confidential 7760*), "The British Central Africa Order in Council, 1902" (Confidential 7761*). "The North-Eastern Rhodesia Order in Council, 1900" (Confidential 7236*), and "The Somaliland Order in Council, 1899" (Confidential 7202*).		
14.	"The Indian Divorce Act, 1869" (Act IV of 1869).		

Report.

(1.) We think the draft Ordinance, subject to certain alterations we have made in the copy marked (A) and initialled by us, may properly be sanctioned;

(2.) We answer in the negative; and

(3.) In the affirmative.

Generally.—We have nothing to add.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Law Officers' Department,
April 27, 1904.

(A.)

Draft Divorce Ordinance.

1. THIS Ordinance may be cited as "The Divorce Ordinance, 1904." Short title.

2. Nothing hereinafter contained shall authorize— Limitations of this Ordinance.

(1.) The grant of any relief under this Ordinance unless the petitioner resides in the Protectorate at the time of presenting the Petition; and

(*a.*) Either professes the Christian religion; or

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(*b.*) Has been married under the provisions of the Marriage Ordinances in force in the Protectorates of East Africa, Uganda, or British Central Africa.

(2.) Or the making of any decree of dissolution of marriage except in the following cases:—

(*a.*) Where the marriage shall have been solemnized in Africa; or

(*b.*) Where the adultery, rape, or unnatural crime complained of shall have been committed in Africa; or

(*c.*) Where the husband has since the marriage adopted some form of religion other than Christianity.

Definitions.

(3.) Or the making of any decree of nullity of marriage, except in cases where the marriage has been solemnized in Africa.

3. In this Ordinance—

"Africa" means the British Protectorates of Zanzibar, East Africa, British Central Africa, Somaliland, Uganda, and the German, Italian, and Portuguese territories on the East Coast of Africa.

"~~Minor children~~" ~~means, in the case of natives and British Indians, boys who have not attained the age of 15 years, and girls who have not attained the age of 13 years~~.

Jurisdiction of the High Court.

Principles of law to be applied.

4. Jurisdiction under this Ordinance shall only be exercised by the High Court (hereinafter called the Court), and such jurisdiction shall, subject to the provisions of this Ordinance, be exercised in accordance with the law applied in matrimonial proceedings in the High Court of Justice in England.

Dissolution of Marriage.

Grounds for divorce.

5.—(1.) A husband may apply by Petition to the Court for the dissolution of his marriage on the ground that since the solemnization thereof his wife has been guilty of adultery.

(2.) A wife may apply by Petition to the Court for the dissolution of her marriage on the ground that since the solemnization thereof her husband has changed his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman, or has been guilty of incestuous adultery; or

Of bigamy with adultery; or

Of marriage with another woman with adultery; or

Of rape, sodomy, or bestiality; or

Of adultery coupled with cruelty; or

Of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Co-respondent.

6. Where the husband is the petitioner, he shall make the alleged adulterer a co-respondent to the Petition unless he is excused by the Court from so doing on one of the following grounds:—

(1.) That the respondent is leading the life of a prostitute, and that he knows of no person with whom the adultery has been committed.

(2.) That he does not know the name of the alleged adulterer, although he has made due efforts to discover it.

(3.) That the alleged adulterer is dead.

Scope of inquiry by the Court.

7. The Court shall satisfy itself, so far as it reasonably can, as to the facts alleged, and also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage or the adultery complained of, or has condoned the same, and shall also inquire into any counter-charge which may be made against the petitioner.

When Petition shall be dismissed.

8. The Petition shall be dismissed if the Court is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed, or finds that during the marriage the petitioner has been accessory to, or conniving at, the going through of the said form of marriage or the adultery, or has condoned the same, or finds that the Petition is presented or prosecuted in collusion with either the respondent or co-respondent.

When Petition shall be granted.

9. If the Court is satisfied that the petitioner's case has been proved, and does not find that the petitioner has been accessory to, or has connived at, the going through of the said form of marriage or the adultery, or has condoned the same, or that the Petition is presented or prosecuted in collusion, the Court shall pronounce a *decree nisi* for the dissolution of the marriage:

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has during the marriage been guilty of adultery, or been guilty of unreasonable delay in presenting or prosecuting the Petition, or of cruelty to the respondent, or of having deserted or wilfully separated himself or herself from the respondent before the adultery complained of, and without reasonable excuse, or of such wilful neglect of or misconduct towards the respondent, as has conduced to the adultery.

Condonation of adultery.

10. Adultery shall not be deemed to have been condoned unless conjugal cohabitation has been continued or subsequently resumed.

Grant of relief to the respondent.

11. If the respondent opposes the relief sought on the ground, where the petitioner is the husband, of his adultery, cruelty, or desertion without reasonable excuse, or, where the petitioner is the wife, on the ground of her adultery, the Court may give the respondent, on his or her application, the same relief to which he or she would have been entitled if a Petition had been presented seeking such relief, and the respondent may give evidence of or relating to such adultery, cruelty, or desertion.

Nullity of Marriage.

Petitions for nullity of marriage.

12. A husband or a wife may present a Petition to the Court praying that his or her marriage may be declared null and void.

Grounds for decree of nullity.

13. The following are grounds on which a decree of nullity of marriage may be made:—

(*a.*) That the respondent was *permanently* impotent at the time of the marriage;

(*b.*) That the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

(*c.*) That either party was a lunatic or idiot at the time of the marriage:

(*d.*) That the former husband or wife of either party was living at the time of the marriage, and the marriage with such previous husband or wife was then in force;

(*e.*) That the consent of either party to the marriage was obtained by force or fraud *in any case in which the marriage might be annulled on this ground by the law of England.*

(2.) If the Court finds that the petitioner's case has been proved it shall pronounce a *decree nisi* declaring the marriage to be null and void.

Children of annulled marriage.

14. Where a marriage is annulled on the ground that a former husband or wife was living, and it is found that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or where a marriage is annulled on the ground of insanity, children begotten before the *decree nisi* is made shall be specified in the decree, and shall be entitled to succeed in the same manner as legitimate children to the estate of the parent who at the time of the marriage was competent to contract.

Judicial Separation and Protection Orders.

Grounds for judicial separation.

15. A husband or a wife may apply by Petition to the Court for a judicial separation on the ground of cruelty, or adultery, or desertion without reasonable excuse for two years or upwards, and the Court, on being satisfied that the allegations of the Petition are true, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

Property of wife after judicial separation.

16. Where judicial separation has been decreed under this Ordinance, the wife shall, from the date of the decree, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her, and such property may be disposed of by her in all respects as if she were an unmarried woman, and on her decease, if she die intestate, shall go as it would have gone if her husband had then been dead:

Provided that if she again cohabit with her husband, all property to which she may be entitled when such cohabitation takes place shall be held to her separate use, subject, however, to any Agreement in writing made between herself and her husband while separate.

Contracts, &c., of wife after judicial separation.

17. Where a judicial separation has been decreed under this Ordinance, the wife shall, whilst the separation continues, be considered as an unmarried woman for the purposes of contracts, wrongs, and injuries, and of suing and being sued in any civil proceedings, and her husband shall not be liable in respect of any contract, act, or costs entered into, done, omitted, or incurred by her during the separation:

Provided that where alimony has been decreed or ordered to be paid to the wife upon such judicial separation, and the same is not duly paid, the husband shall be liable for necessaries supplied for her use:

Provided also that nothing in this Ordinance shall prevent the wife from joining at any time during the separation in the exercise of a joint power given to herself and her husband.

18. A husband or wife upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may at any time thereafter present a Petition praying for the reversal of such decree on the ground that it was obtained in his or her absence, and that where desertion was the ground of such decree there was reasonable excuse for the desertion alleged.

The Court may, on being satisfied of the truth of the allegations of the Petition, reverse the decree accordingly.

Protection orders.

19.—(1.) Any wife, in whose property the husband has acquired an interest by virtue of the marriage, may, if deserted by him, apply by Petition to the Court for an order to protect any property which she may have obtained, or may obtain after the desertion, against him and his creditors and any person claiming under him.

(2.) The Court may, if satisfied that the desertion was without reasonable excuse, and that the wife is maintaining herself, make such order.

(3.) The order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

Position of wife.

(4.) While any such order is in force, the wife shall be, and be deemed to have been from the date of the desertion, in the like position in all respects with regard to property and contracts and suing and being sued, as she would be if she had obtained a decree of judicial separation under this Ordinance.

Discharge and variance

(5.) The husband, or any creditor or person claiming under him, may apply to the Court for the discharge or variation of the order, and the Court may, if the desertion has ceased, or if for any other cause it thinks fit so to do, discharge or vary the order accordingly.

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Action for seizing wife's property.

(6.) If the husband, or any creditor or person claiming under him, seizes or continues to hold any property of the wife after notice of any such order, the wife may, by action, recover such property, and also a sum equal to double its value.

Reversal or discharge of judicial separation or protection order, effect of.

20.—(1.) The reversal, discharge, or variation of a decree of judicial separation, or of a protection order, shall not affect any rights or remedies which a person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of the decree or order and of the reversal, discharge, or variation thereof.

(2.) Any person who, in reliance on any such decree or order, makes any payment to or permits any transfer or act to be made or done by the wife shall, notwithstanding such decree or order may then have been reversed, discharged, or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if at the time of such payment, transfer, or act such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued, unless at the time of the payment, transfer, or other act such person had notice of the reversal, discharge, or variation of the decree or order or of the cessation or discontinuance of the separation.

Restitution of Conjugal Rights.

Restitution of conjugal rights.

21—(1.) If a husband or wife has without reasonable excuse withdrawn from the society of the other, the wife or husband may apply by Petition to the Court for restitution of conjugal rights.

(2.) The Court, on being satisfied that the allegations of the Petition are true, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

(3.) Nothing shall be pleaded in answer to a Petition for restitution of conjugal rights which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

General.

Husband may claim damages for adultery.

22.—(1.) A husband may, by Petition, claim damages from any person on the ground of his having committed adultery with the wife of the petitioner.

(2.) Such claim may be made either in a Petition for dissolution of marriage or for judicial separation, or by Petition for that purpose only.

(3.) The Court shall ascertain the amount of damages whether the respondents appear or not, and may in every case direct in what manner the damages shall be paid or applied, and may direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage, or as a provision for the maintenance of the wife.

Costs against a co-respondent.

23. A co-respondent may be ordered to pay the whole or any part of the costs of the proceedings if adultery with the wife of the petitioner has been established against him:

Provided that he shall not be ordered to pay the costs of the petitioner—

(1.) If at the time of the adultery he had no reason to believe the respondent to be a married woman.

(2.) If the respondent was at the time of the adultery living apart from her husband and leading the life of a prostitute.

Alimony *pendente lite.*

24. In any suit under this Ordinance the wife, whether or not she has obtained a protection order, may apply to the Court for alimony pending the suit, and the Court may thereupon make such order as it may deem just, provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue in the case of a *decree nisi* of dissolution or nullity of marriage until the decree is made absolute.

Permanent alimony.

25.—(1.) On a decree absolute declaring a marriage to be dissolved, or on a decree of judicial separation obtained by a wife, the Court may order the husband to secure to the wife such sum of money as, having regard to her fortune (if any), to the ability of the husband, and the conduct of the parties, it thinks reasonable.

(2.) The Court may direct the alimony to be paid either in a lump sum or in yearly, monthly, or weekly payments for any period not exceeding the life of the wife, and for that purpose may cause a proper instrument to be executed by all necessary parties.

(3.) The Court may direct the alimony to be paid either to the wife herself or to a trustee to be approved on her behalf by the Court, and may impose such terms and restrictions, and may direct the execution of such trust deeds as it may think fit, and may from time to time appoint a new trustee.

Discharge or alteration of order for alimony.

26. Where an order has been made for the payment of alimony, and the husband from any cause subsequently becomes unable to make such payments, the Court may discharge or modify, or suspend the order in whole or in part, and may again revive the order in whole or in part.

Settlement of the wife's property.

27. When a decree of dissolution of marriage or of judicial separation is pronounced on account of adultery by the wife, and the wife is entitled to any property the Court may, notwithstanding the existence of the disability of coverture, order the whole or any part of such property to be settled for the benefit of the husband, or of the children of the marriage, or of both.

Power to vary settlements.

28. After a decree absolute of dissolution or of nullity of marriage, the Court may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or part of the settled property, whether for the benefit of the husband or wife or of the children (if any) or of both children and parents, as seems fit:

Provided that no order for the benefit of the parents, or either of them, shall be made at the expense of the children.

Powers of the Court as to settlements.

29. Where the Court has power to direct any property to be settled, or to vary the terms of an existing settlement, it may appoint trustees, and may order the necessary instruments to be prepared, containing such provisions as it may think fit, and may order all necessary parties to execute the same, and may from time to time appoint new trustees, and may do all such other acts as it may deem necessary for carrying such directions into effect.

Custody of children.

30. In suits for dissolution of marriage, or for nullity of marriage, or for judicial separation, the Court may at any stage of the proceedings, or after a decree absolute has been pronounced, make such orders as it thinks fit, and may from time to time vary or discharge the said orders, with respect to the custody, maintenance, and education of the minor children of the marriage, or for placing them under the protection of the Court.

Procedure.

31. Subject to the provisions herein contained, all proceedings under this Ordinance shall be regulated by the Code of Civil Procedure.

[In B.C.A. only—

Procedure followed in matrimonial proceedings in the High Court of Justice in England.]

Petitions.

32.—(1.) Every Petition shall state, as distinctly as the nature of the case permits, the facts on which the claim is based, and shall be verified as if it were a plaint, and may at the hearing be referred to as evidence.

(2.) Petitions for dissolution of marriage, or for nullity of marriage, or for judicial separation, shall state that there is not any collusion or connivance between the petitioner and the respondent.

Service of Petition.

33. Every Petition under this Ordinance shall be served on the party to be affected thereby, either within or without the Protectorate, in such manner as the Court may, by general or special order, from time to time direct:

Provided that the Court may dispense with such service in case it seems necessary or expedient so to do.

Examination of witnesses.

34. The witnesses in all proceedings shall be examined orally:

Provided that the parties may verify their respective cases by affidavit, but so that the deponent may be orally cross-examined and re-examined, either on the application of the other party or by direction of the Court.

Husband and wife compellable witnesses.

35. On any Petition presented by a wife for the dissolution of her marriage on the ground of adultery coupled with cruelty or desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence relating to such cruelty or desertion.

Sittings *in camerâ.*

36. The Court may hear the whole or any part of the proceedings under this Ordinance with closed doors.

Adjournment.

37. The Court may adjourn the hearing of any Petition under this Ordinance, and may require further evidence thereon.

Making *decrees nisi* decrees absolute.

38.—(1.) No *decree nisi* of dissolution or nullity of marriage shall be made absolute till after the expiration of six months from the date thereof, or such longer period as the High Court may by rule prescribe.

(2.) During that period any person may show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion, or by reason of material facts not being brought before the Court.

(3.) On cause being so shown, the Court shall make the decree absolute, or reverse the *decree nisi*, or require further inquiry, or otherwise deal with the case as justice may demand.

(4.) The Court may order the costs arising from such cause being shown to be paid by the parties, or such one or more of them, including a wife, if she have a separate property, as it thinks fit.

(5.) Where a petitioner fails to move within a reasonable time that the *decree nisi* be made absolute, the Court may dismiss the suit.

Enforcement of orders. Appeals.

39. All decrees and orders made by the Court in proceedings under this Ordinance shall be enforced, and may be appealed from, as if they were decrees or orders made by the Court in the exercise of its original civil jurisdiction:

Provided that in suits for dissolution or nullity of marriage no respondent or co-respondent not appearing and defending the suit on the occasion of the *decree nisi* being made shall appeal against the decree being made absolute unless the Court gives leave to appeal at the time of the decree being made absolute:

And provided that no appeal from an order absolute for dissolution or nullity of marriage shall lie in favour of any party who, having had time and opportunity to appeal from the *decree nisi*, shall not have appealed therefrom:

And provided that no appeal in any proceedings under this Ordinance shall lie from the Court of Appeal for Eastern Africa to His Majesty in Council, except where an appeal would lie in England from a similar decision of the Court of Appeal to the House of Lords.

Re-marriage of the parties.

40. When the time limited for appealing against a decree of dissolution or nullity of marriage shall have expired, and no appeal has been presented, or when in the result of any such appeal any marriage shall be declared to be dissolved or annulled, but not sooner, it shall be

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lawful for the parties thereto to marry again as if the prior marriage had been dissolved by death.

Clergyman not bound to marry a divorced guilty party.

41. No clergyman in holy orders of the Church of England shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnizing or refusing to solemnize such marriage.

But must permit another clergyman.

42. When a clergyman in holy orders, or other minister of religion in charge of any church or chapel, refuses to perform such marriage service between persons who would, but for such refusal, be entitled to be married in such church or chapel, he shall permit any other clergyman in holy orders of the said Church to perform the service in such church or chapel.

Rules of Court.

43. The Court may make Rules of Court with respect to all matters of procedure under this Ordinance, and may also prescribe the forms to be used and the fees to be paid in proceedings taken hereunder.

(Initialled) R. B. F.
E. C.

Divorce Ordinance.

TABLE showing how the provisions of the Indian Divorce Act are dealt with.

Indian Act. Act IV of 1869.	Draft Corresponding Provision.	
1	1	The first paragraph of the Indian Act is irrelevant, but most of the Indian definitions appear unnecessary, and those in the draft are new.
2	2	
3	3	
4, 5, 6	Omitted	Unnecessary.
7	4	
8, 9,	Omitted	Not applicable.
10	5	
Last paragraph	32 (1)	
11	6	
12	7	
13	8	
Last paragraph	Omitted	Not applicable.
14	9	
Last paragraph	10	
15	11	
16	38	
17	Omitted	Not applicable.
18	12	
19	13	
20	Omitted	Not applicable.
21	14	
22, 23	15	
24	16	
25	17	
26	18	
Last paragraph	Omitted	Covered by 60, 3rd paragraph = 20 (1).
27, 28, 29, 30, 31	19	Abbreviated.
32, 33	21	
34	22	
35	23	Last paragraph omitted.
36	24	
37	25, 26	Except 2nd paragraph, omitted.
38	25 (3)	
39	27	
Last paragraph	22 (3)	
40	28	Except 2nd paragraph, omitted.
41, 42, 43, 44	30	Abbreviated.
45	31	
46	Omitted	Forms to be prescribed by rule.
47	32	
48, 49	Omitted	Covered by the Indian Civil Code, § 440.
50	33	
51	34	
52	35	
53	36	
54	37	
55	39	
56	39	Last proviso covers this.
57	40	
58	41	
59	42	
60	20	
First paragraph	Omitted	Unnecessary.
61	Omitted	Unnecessary.
62	43	

No. 2.

[May 30, 1904.]

Foreign Office to Law Officers of the Crown.

Foreign Office, May 14, 1904.

Gentlemen,

Draft Somaliland Order in Council, 1904.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you herewith the draft of an Order in Council for the Somaliland Protectorate, to be intituled "The Somaliland Order in Council, 1904."

It has been considered advisable to prepare this draft Order in connection with the withdrawal of Consular attributes from the officers of the Protectorate who are dealt with in the Order in Council of 1903, a copy of which is inclosed, and also in order to provide for the substitution of the title "Commissioner" for that of "Consul-General."

The opportunity has been taken to introduce certain other clauses, framed upon the model of similar provisions, which are at present embodied in the East Africa and Zanzibar Orders in Council, copies of which are inclosed herewith.

The clauses in the above Orders in Council to which those in the draft Order in Council correspond are:—

Clause		Article	
2	in Somaliland Order in Council corresponds to	2	in East Africa Order in Council, 1902.*
3	" " "	4	" "
5	" " "	5	" "
6	" " "	6	" "
7	" " "	7	" "
8	" " "	10	" "
9	" " "	7	in Zanzibar Order in Council, 1903.†
10	" " "	8	" "
11	" " "	9	of the East Africa Order in Council, 1899 (now repealed).‡
12	" " "	20	in East Africa Order in Council, 1902.*
13	" " "	6	in Zanzibar Order in Council, 1903.†

I have the honour to request you to take this draft Order into your consideration, and to favour Lord Lansdowne with your opinion as to whether it can properly be submitted for the approval of His Majesty in Council.

I have, &c.
(Signed) CLEMENT Ll. HILL.

List of Papers.

Draft Order in Council, 1904.
Somaliland Order in Council, 1903 (Confidential No. 7883*).
East Africa Order in Council, 1902 (Confidential No. 7759*).
Zanzibar Order in Council, 1903 (Confidential No. 8048*).

Report.

In our opinion this draft Order in Council may properly be submitted for the approval of His Majesty in Council.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
May 30, 1904.

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* See Confidential No. 7759*. † See Confidential No. 8048*. ‡ See Confidential No. 7189*.

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Annex.

Draft Somaliland Order in Council, 1904.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, His Majesty the King has power and jurisdiction within the Somaliland Protectorate:

Now, therefore, His Majesty, by virtue and in exercise of the powers on this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Somaliland Order in Council, 1904," and shall be construed as one with the Somaliland Order in Council, 1899.

2. In this Order—

"Crown Lands" means all public lands in the Protectorate which are subject to the control of His Majesty by virtue of any Treaty, Convention, or Agreement, or of His Majesty's Protectorate, and all lands which shall have been acquired by His Majesty for the public service or otherwise howsoever;

"The principal Order" means the Somaliland Order in Council, 1899.

3.—(1.) His Majesty may by Commission under His Sign Manual and Signet appoint a fit person to administer the Government of the Protectorate under the designation of Commissioner or such other designation as His Majesty thinks fit, and the person so appointed is hereinafter referred to as the Commissioner.

(2.) In the event of the death, incapacity, removal, or absence from the Protectorate of the Commissioner for the time being, all and every the powers and authorities by this Order granted to him shall, until His Majesty's further pleasure is signified through the Secretary of State, be vested in the Deputy Commissioner or other principal officer of the Protectorate Government for the time being in the Protectorate.

(3.) The Commissioner shall administer the Government of the Protectorate in the name and on behalf of His Majesty, and shall do and execute in due manner all things that shall belong to his said command and to the trust thereby reposed in him, according to the several powers and authorities granted or appointed to him by virtue of this Order and of his Commission, and according to such instructions as may from time to time be given to him under His Majesty's Sign Manual and Signet, or by Order of His Majesty in Council, or by His Majesty through a Secretary of State, and according to such laws as are or shall hereafter be in force in the Protectorate.

4. All references to the Consul-General in the Principal Order or in the Somaliland Order in Council, 1903, or in any King's Regulations, Proclamations, Notices, Rules of Court or other documents issued or made under the Principal Order shall be deemed to be references to the Commissioner, and construed accordingly.

5. The Commissioner shall have an official seal, bearing the style of his office, and such device as a Secretary of State from time to time approves, and such seal shall be deemed the public seal of the Protectorate, and may be kept and used by the Commissioner for the sealing of all things whatsoever that shall pass the public seal. And, until a public seal shall be provided, the seal of the Commissioner may be used as the public seal.

6.—(1.) The Commissioner may, with the approval of the Secretary of State, by Proclamation define any boundaries of the territories for the time being within the limits of this Order, and divide those territories into provinces or districts in such manner and with such sub-divisions as may be convenient for purposes of administration, describing the boundaries thereof and assigning names thereto.

(2.) If a question arises whether any place is or is not within the Protectorate, or within any province or district, and such question does not appear to be determined by any such Proclamation, or other evidence, it shall be referred to the Commissioner, and a certificate under his hand and seal shall be conclusive on the question, and judicial notice shall be taken thereof.

7.—(1.) All rights of His Majesty in or in relation to any Crown lands shall vest in and may be exercised by the Commissioner for the time being in trust for His Majesty, or, if the Secretary of State at any time with respect to all or any such lands by order under his hand so directs, in such other trustee or trustees for His Majesty as the Secretary of State may appoint.

(2.) The Secretary of State may, when he thinks fit, by a like order remove any trustee so appointed, and may appoint any new or additional trustee or trustees.

(3.) The Commissioner, or such other trustee or trustees, may make grants or leases of any Crown lands, or may permit them to be temporarily occupied, on such terms and conditions as he or they may think fit, subject to the provisions of any King's Regulations.

(4.) All mines and minerals being in, under, or upon any lands in the occupation of any native tribe, or any members thereof, or of any person not possessed of the right to work such mines and minerals, shall vest in the Commissioner, or such trustee or trustees, in like manner as the mines and minerals being in, under, or upon any Crown lands.

8.—(1.) A Secretary of State, or the Commissioner, subject to the directions of a Secretary of State, may, on behalf of His Majesty, appoint, or authorize the appointment of, such public officers for the administration of the Protectorate, under such designations as he may think fit, and may prescribe their duties.

(2.) The Commissioner may, upon sufficient cause to him appearing, suspend from the exercise of his office in the Protectorate any such public officer, which suspension shall continue and have effect only until His Majesty's pleasure therein shall be made known and signified to the Commissioner.

(3.) Subject to the provisions of any King's Regulations, the Commissioner may appoint, or may authorize Heads of Departments to appoint, such clerks and other subordinate officers as may be required; and unless other provision is made all subordinate officers shall be removable by the respective officers by whom they were appointed.

9. The powers of the Secretary of State with respect to the application to the Protectorate of enactments and Acts of the Governor-General of India in Council or of the Governor of Bombay in Council under Article 7 of the Principal Order, and of laws and ordinances for the time being in force in any British possession under Article 9 of that order shall, on the commencement of this Order, be transferred to the Commissioner, but those powers shall be exercised by him only by means of Regulations made under and subject in all respects to the provisions of Article 32 of the Principal Order.

10. The Commissioner may by such Regulations repeal or amend with respect to the Protectorate any enactments, Acts, laws, or ordinances which are made applicable or have been brought into operation in the Protectorate by or under any of the provisions of Articles 7 and 9 of the Principal Order.

11. All King's Regulations made or to be made under Articles 32 or 33 of the Principal Order, or under Article 3 of the Somaliland Order in Council, 1903, shall, unless a contrary intention appears, extend to natives, and may in relation to natives comprise such special provisions, modifications, and penalties as the Commissioner may think fit.

12. In all cases, civil and criminal, to which natives are parties, every Court (*a*) shall be guided by native law, so far as it is applicable and is not repugnant to justice and morality, or inconsistent with any Order in Council or King's Regulations, or any regulation or rule made under any Order in Council or King's Regulations; and (*b*) shall decide all such cases according to substantial justice, without excessive regard to technicalities of procedure and without undue delay.

13. The production of a grant of probate or of letters of administration shall, notwithstanding any provision to the contrary contained in any Indian Act or Law in force in the Protectorate or in the Principal Order, be necessary to establish the right to recover or receive any part of the estate or effects of any deceased person situate in the Protectorate.

14.—(1.) Article 3 (iii) of the Principal Order and the words "in the Protectorate" in Article 25 (*a*) of the Principal Order are hereby repealed.

(2.) In Article 26 of the Principal Order the words "in the Protectorate" shall follow the word "property," and shall not appear after the word "dies."

And the Most Honourable the Marquess of Lansdowne, K.G., one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein.

R. B. F.
E. C.

No. 3.

[July 6, 1904.]

Foreign Office to Law Officers of the Crown.

Foreign Office, June 27, 1904.

Gentlemen,

Chamberlain and Flemmer. Leases of land in East Africa.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit herewith a copy of a despatch from Sir C. Eliot, late His Majesty's Commissioner for the East Africa Protectorate, containing copies of correspondence which passed between Messrs. R. Chamberlain and A. S. Flemmer and himself with regard to the leases of certain areas in the East Africa Protectorate.

I am also to inclose a Memorandum on this correspondence by the Assistant Legal Adviser to this Department, in which he states his opinion that (1) there is a binding Agreement for the breach of which Messrs. Chamberlain and Flemmer could recover damages, should an action be brought in the matter; (2) that the provisions in the Agreements for the conversion of the leaseholds into freeholds are invalid; and (3) that an action against the Commissioner for specific performance of the Agreement would probably fail.

I am to state, for your information, that it was the entering into these arrangements with Messrs. Chamberlain and Flemmer that originally led to Sir C. Eliot's tendering his resignation of his post of Commissioner. The Secretary of State had issued instructions that no further large grants of land were to be made. The land referred to in these Agreements is, moreover, situated within an area which his Lordship, as at present advised, considers it desirable should be reserved for the Masai. These points are fully dealt with in despatches addressed by the Secretary of State to Sir C. Eliot on the 3rd March and 8th March last, of which copies are attached to this letter.

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Whether it may be possible eventually to sanction the leases of these particular areas must depend on reports which will be made by the new Commissioner on arrival at his post, but, in view of the attention that may be aroused by the incident, and of the probability that Messrs. Chamberlain and Flemmer may institute legal proceedings in the High Court at Mombasa, Lord Lansdowne is anxious that the legal position should be clearly ascertained, and would therefore be glad to learn whether you concur in the conclusions come to by Mr. Hurst in his Memorandum.

His Lordship would, at the same time, be glad to receive any observations of a more general character that you may desire to offer.

Copies of the East Africa Crown Lands Ordinance No. 21 of 1902, "The East Africa Order in Council, 1902," and the Indian Code of Civil Procedure are inclosed for convenience of reference.

I am to add that Sir D. Stewart, who has been selected to succeed Sir C. Eliot, leaves for his post early in July, and Lord Lansdowne would therefore be glad to receive your Report at as early a date as may be convenient.

I have, &c.
(Signed) CLEMENT Ll. HILL.

List of Papers.

(A.)	To Sir C. Eliot	(No. 127 A.)	March 3, 1904.
(B.)	Ditto	(No. 137.)	„ 8, „
(C.)	Sir C. Eliot	(No. 359)	May 22, „
(D.)	Memorandum, Mr. Hurst		June 22, „
(E.)	East Africa Crown Lands Ordinance, 1902 [Confidential 7786]		Sept. 27, 1902.
(F.)	East Africa Order in Council, 1902 [7759*]		August 11, „
(G.)	Anglo-Indian Codes, vol. ii. Edited by Mr. Whitley Stokes, 1888.		

Report.

In our opinion there is a good defence to any proceedings upon this Agreement.

Having regard to the covenant for the expenditure of 5,000*l.*, we think that the clause giving an option of purchase is an essential part of the Agreement, and we think that the consent of the Secretary of State is *not*, in the true construction of the clause, a condition of the option to purchase.

This construction is fortified by the correspondence, in which Messrs. Chamberlain and Flemmer treat the right to purchase as of the essence of the transaction.

The Commissioner had no authority to enter into any Agreement of sale except up to 1,000 acres, and as the Agreement is one for a lease, with an option of purchase of 10,000 acres, we think that any proceedings upon it may be successfully resisted upon the ground that his action was *ultra vires*.

The case is one which should, if possible, be settled, as the difficulty is due to the action of the Commissioner. If Messrs. Chamberlain and Flemmer refuse reasonable terms any proceedings by them should be resisted, as advised in Mr. Hurst's Minute.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 6, 1904.

Annex.

Minute by Mr. Hurst on Sir C. Eliot's No. 359 *of May* 22, 1904.

I THINK the letter No. 9 of the 6th January, 1904, from the land officer, inclosing a draft Agreement, with the request that it may be signed and returned, coupled with the letter No. 12 of the 2nd February, from Flemmer, and similar letters to and from Chamberlain, constitute Agreements binding on the Protectorate Administration to lease the lands therein referred to.

The subsequent suggestions by these gentlemen (see No. 12), that the terms of the leases themselves should differ in certain respects from the Agreements, appear to me only to mean that, though content with the leases stipulated for in the Agreements, if they can get nothing better, yet they would prefer certain variations; the suggestions do not seem to me to be conditions on which their acceptance of the leases was based.

The clause providing for the conversion into freehold appears to me to be invalid: it is in its essence an Agreement for the sale of more than 1,000 acres; such a sale requires the approval of the Secretary of State, and without such approval an Agreement for sale is not complete. The concluding words of section 4 of "The Crown Lands Ordinance, 1902," "nothing herein shall invalidate any sale," refer in my opinion to completed sales, and do not affect mere Agreements to sell, the object being to prevent the title to lands, which were originally Crown lands, being disquieted by the necessity of proving the assent of the Secretary of State to the original sale. This does not, however, affect the validity of the Agreement to lease the land for ninety-nine years.

Then comes the question of enforcing the Agreement. I think each of these gentlemen is entitled to bring an action in the High Court at Mombasa.

If they sue for damages, I think they would obtain them. What the measure of damages would be I cannot say at present, as it is possible that on the faith of the Agreements these gentlemen may have taken steps in South Africa which would increase the amount recoverable, but I do not think it is very likely that the damages would be heavy.

The more important question is whether they would be entitled to Decrees for specific performance of the contracts to grant the leases. On the whole, I think actions for this purpose would fail; various defences might be raised by the Crown, and I think they would prevail. A Decree for specific performance would have to direct the Commissioner to execute a lease, and the Court cannot exercise jurisdiction over the Commissioner (see Article 23 (1) of "The East African Order in Council, 1902"), as such a Decree can only be enforced by the imprisonment or attachment of the property of the defaulting party (see section 260 of the India Code of Criminal Procedure). It is not usual for Courts to make Decrees for specific performance which they cannot enforce. Section 261 of the Code does not apply, as leases are not conveyances, see section 3 of the Indian Stamp Act.

Furthermore, these gentlemen have insisted so strongly that the right to convert into freehold is an essential part of their applications (see paragraph 2 of letter 24 in Print) that I do not think they would consider a lease pure and simple, excluding the conversion provisions, worth having.

As to what action should be taken, I think the position of Chamberlain and Flemmer is strong enough to make it worth while to lay the facts fully before them, viz.: That the Agreements were made by the ex-Commissioner in direct contravention of the Secretary of State's instructions, and against the advice of the experienced officials; that the ground of the Secretary of State's action is that this land cannot be disposed of without the risk of a rising of the Masai, and that its reservation is as much in the interests of the white settlers as of the natives; and then to offer them each 32,000 acres of land elsewhere, at a spot to be agreed on with the new Commissioner. It is desirable to dispose once and for all of the Bowker delusion (see Print, p. 14). If the offer is declined, then I should recommend that the parties be left to their legal remedies; if a decision against the Crown is given at Mombasa, there should be an appeal to Zanzibar, and, if necessary, to the Privy Council. If the case is fought at all, it should be fought hard. If an offer of land elsewhere is made, it should be done in a way that will not amount to an admission of liability in the present case.

C. J. B. H.

June 22, 1904.

No. 3A. **[Colonial Office.]**

[August 15, 1904.]

The Law Officers of the Crown to Colonial Office.

Royal Courts of Justice, August 15, 1904.

Sir,

WE were honoured with your commands signified in Mr. F. Graham's letter of the 29th ultimo, stating that he was directed by you to transmit to us a letter received by your Department from the Home Office (with its Inclosure), relating to a request made on behalf of a Mr. van Diggelen that his children might be considered British subjects. Nationality of children of Transvaal burgher, now a British subject.

That it was presumed that, on the annexation of the Transvaal, Mr. van Diggelen, who was a burgher of the late South African Republic, became a British subject, and that Mr. Graham was to refer us in that connection to our Report of the 17th May, 1900.

That Mr. van Diggelen's children, however, were apparently not with their father at the time of the annexation of the Transvaal, and were not then inhabitants of the conquered country, and that Mr. Graham was, therefore, to request us to take the

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matter into our consideration, and to report whether the children of Mr. van Diggelen were to be considered as British subjects.

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report—

That if, as is stated in Messrs. Waterlow's letter of the 12th ultimo, the children of Mr. van Diggelen became burghers of the South African Republic, we are of opinion that, under the circumstances stated, they are now British subjects.

We are, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

CHINA.

No. 4.

[April 6, 1904.]

Foreign Office to the Law Officers of the Crown.

Russo-Japanese War.
—
Carriage of flour to Newchwang by Chinese Government Railway.

Gentlemen,

Foreign Office, March 29, 1904.

WITH reference to my letter of the 17th instant, relating to the shipment of contraband from China in Chinese or British vessels, I have the honour, by direction of the Marquess of Lansdowne, to transmit, for your consideration, a telegram* which his Lordship has received from His Majesty's Minister at Peking, inquiring whether the transport to Newchwang of 190 tons of flour on behalf of a British firm by a Chinese Government railway would be a breach of neutrality on the part of the Chinese Government, assuming that the flour was intended for the consumption of the Russian naval or military forces.

The question thus raised would appear to be one not decided by authority or precedent, but Lord Lansdowne inclines to the view that the Chinese Government would incur no responsibility if the railway were owned by a commercial Company of the ordinary character, and that, even assuming the circumstances attending the sale by the consigners and the carriage by the Company of the flour to constitute trade in contraband, the transaction would, nevertheless, be legitimate commercially although undertaken by the consigners and by the Company respectively at the risk of seizure of the flour and of the rolling-stock which was conveying it by the Japanese forces, if the latter should be able to intercept the contraband goods in transit.

The generally accepted rules with regard to contraband do not apply directly to trade by land, since the belligerent Power can only interfere with such trade either (*a*) in the actual theatre of war, or (*b*) within its own territories, and in either case it can, should it so desire, prohibit trading altogether. Lord Lansdowne, however, presumes that he is right in thinking that, as an admitted principle of international law, a neutral State must not itself, during the continuance of hostilities between two Powers, sell or supply contraband articles to one of the belligerents.

The point that arises in this case is, whether conveyance of such articles by a Government railway would be contrary to international law.

Questions of an analogous nature are likely to occur at some future time on the continent of Europe, where many of the railways are already State-owned, and where the tendency is for them to become so more and more. For example, in the event of hostilities breaking out between Russia and Germany, the case might occur of the transport of contraband over two lines of railway between Paris and Berlin, (*a*) owned by the State, and (*b*) by a private Company. It seems to his Lordship that if the principle of international law above referred to be carried to its logical conclusion, it would be the duty of the French Government to prohibit the transport of contraband over (*a*), while, as regards (*b*), its transport would continue unchecked.

On the other hand, it may be argued that, if a State descends into the commercial arena for the purpose of conducting a commercial business, it does not thereby divest itself of its ordinary obligations and duties to other States, and that it must so conduct its commercial enterprise as not to give cause for offence on the part of a State with which it is at peace.

It may further be urged that the State carries on the business of a Railway Company *cum privilegio et cum onere*, and that it cannot, merely because it is carrying on such business, commit, or be party or privy to, acts which, under the general rules of neutrality, would be considered as offences against a friendly State; nor would such fact be likely to afford satisfactory explanation or excuse.

I am to request that you will take the matter into your consideration, and that you will favour Lord Lansdowne with your opinion as to whether the neutrality of the Chinese Government may be considered to be involved by its permitting the the transport of flour over a Chinese State railway (assuming that such flour is intended for the consumption of the Russian naval or military forces), *i.e.*, whether the share of the Chinese Government in the transaction—the forwarding of the goods—is sufficient to warrant the accusation that China, as a State, is assisting in the supply of provisions to the Russian Army.

I have, &c.
(Signed) CHARLES HARDINGE.

Report.

We answer this question in the negative. It is, in our opinion, no infraction of the duty of neutrality if, in the ordinary course of traffic, goods are conveyed by a State railway, although these goods are intended for the forces of a belligerent. It is clear that there would be no infraction of neutrality if the railway belonged to a Company, and when a State works a railway it does not cease to act as a neutral by permitting the use of the railway in the ordinary course. No preference must be given to one belligerent over the other, and special facilities out of the ordinary course would raise different considerations.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
April 6, 1904.

No. 5.

[April 15 and 27, 1904.]

Foreign Office to the Law Officers of the Crown.

Russo-Japanese War.
—
Chinese Customs prohibition of export of contraband to belligerents.

Gentlemen,

Foreign Office, March 17, 1904.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit, for your consideration, the papers noted in the accompanying list, which relate to an official notification made by the Chinese Government to His Majesty's Minister at Peking to the effect that the Chinese Imperial Maritime Customs have been instructed to refuse permission to ship to either belligerent country during the continuance of the present hostilities between Russia and Japan, whether in Chinese or foreign vessels, articles declared contraband by the Russian Government.

It will be seen from the telegram from Sir E. Satow (Paper A), that the order only applies in terms to shipments by sea; but Lord Lansdowne apprehends that it may be meant to be applied also to export over the land frontier, which has, his Lordship understands, also been carried on to a considerable extent.

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* Sir E. Satow, No. 55, Telegraphic, February 20, 1904 (and Minutes thereon).

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The right of the Chinese Government to impose her own views of neutrality upon British subjects and British vessels in China, where they carry on trade under extra-territorial privileges, appears to his Lordship to raise a somewhat novel question, on which little or no authority exists.

The then Law Officers of the Crown, in two Reports dated respectively the 5th November, 1884, and the 17th August, 1885 (Papers B and C), expressed the view (*a*) that Great Britain, *as a belligerent Power*, could not utilize her Treaty rights in Japan in such a way as to compromise the latter's neutrality, and (*b*) that Great Britain, *as a neutral Power*, must submit to and enforce on her own subjects prohibitions issued by China as a belligerent with regard to the sale of contraband to her opponent.

In the present case, however, both Great Britain and China are neutral Powers, and, consequently, the case must apparently be decided on first principles.

"Few rules of international law," says Wheaton (p. 653, 3rd English edition (Boyd), 1889), "are so certain as that a neutral Government cannot be made responsible as for a breach of neutrality because its subjects carry on a contraband trade," and similar language is held by other recognized authorities on the subject.

Applying this rule, it would accordingly seem clear, therefore, that neither Great Britain nor China can be involved in international difficulties through the export of contraband from China by British subjects. As between Great Britain and China the extra-territorial privileges enjoyed by British subjects in China owe their origin and existence to a delegation of sovereignty by China to Great Britain; and it cannot be that China's responsibility for the proceedings of British subjects within her territory is greater than is her responsibility for the acts of her own subjects.

However much the Treaty rights of Great Britain in China must be held to be impliedly limited by the rights and duties of China as a belligerent or as a neutral, they cannot be affected by a matter which does not involve China's duty as a neutral at all.

The Treaty stipulations between this country and China and between other Powers and China are summarized in the annexed Memorandum (Paper D). It will be observed that Article XI of the Treaty of Tien-tsin of the 26th June, 1858, after enumerating a list of Treaty ports, goes on to say:—

"They" (British subjects) "are permitted to carry on trade with whomsoever they please, and to proceed to and fro at pleasure with their vessels and merchandize."

Again, in the Rules of Trade of the 8th November, 1858, drawn up under Article XXVI of the above Treaty, Rule 3 (which is headed "Contraband of War"), provides for a prohibition of a trade in munitions and implements of war, and salt, and Rule 5 (3) prohibits the export of grain to a foreign port.

The position, therefore, would appear to be that China has granted freedom of trade; but that, by agreement between the two Powers, the import or export of certain particular articles is prohibited. The latter arrangement would, however, seem to have no relation to a state of war, and would, therefore, not be affected by the present hostilities between Russia and Japan. Moreover, such hostilities do not seem to afford any justification for the order of the Chinese Government, in so far as the result of that order is to restrict the trading facilities of British subjects.

I have the honour to request that, in taking these papers into your consideration, you will favour Lord Lansdowne with your opinion (1) whether, in view of the foregoing arguments and considerations, His Majesty's Government would be justified in protesting against the terms of this notification on the ground that it goes beyond the ordinarily accepted and recognized doctrines on the point, and constitutes an unreasonable limitation on the freedom of trade and commerce guaranteed to British subjects under the Treaties or on any other, and, if so, what, grounds, and (2) if so, as to the terms in which such a protest may most advantageously be framed.

His Lordship would also be glad to be favoured with any general observations which you may be good enough to offer on the papers submitted to you herewith.

I have, &c.
(Signed) CHARLES HARDINGE.

List of Papers.

(A.)	Sir E. Satow .. .. (And Minutes.)	(No. 80. Telegraphic.)	March	10, 1904.
(B.)	Law Officers' Report (France)		November	5, 1884.
(C.)	Ditto (Russia)		August	17, 1885.
(D.)	Memorandum by Mr. Oakes		March	12, 1904.
(E.)	(Annex) Sir H. Parkes	(No. 96)	March	10, 1885.
(F.)	Sir E. Satow	(No. 20)	January	20, 1904.
(G.)	Ditto	(Telegraphic)	April	7, ,,
(H.)	Ditto	(No. 84)	March	10, ,,

Report.

That in our opinion the rights by Treaty of British traders in China are subject to the right of China to enforce neutrality in case of war between other Powers. No complaint can be made of any interference with trade, so far as such interference is reasonably necessary to secure the observance of neutrality in China.

But the Edict in the present case seems to go far beyond anything that is required for this purpose by the law of nations. There is no general obligation on the part of a neutral Power to prevent the export of contraband of war: it may be exported subject to the risk of capture and condemnation.

The instructions to the Maritime Customs in forbidding entirely the export of all articles which Russia has declared to be contraband appear to us unnecessarily to interfere with the carrying on of trade and to go beyond what China is bound to do as a neutral, according to the principles above stated.

We would suggest that representations may be properly made to the Chinese Government, based on the considerations mentioned above, and that an attempt should be made to procure a modification of the Edict.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
April 15, 1904.

Report.

We have taken this telegram* into our consideration, and do not think it necessitates any addition to our Report of the 15th instant, to which we beg to refer your Lordship.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
April 27, 1904.

No. 6.

[June 15, 1904.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, May 6, 1904.

China and Corea Consular and Marriage Fees Order in Council

WITH reference to the letter from this Office of the 18th August, 1903, I have the honour to transmit to you, by direction of the Marquess of Lansdowne, the accompanying draft of the new China and Corea (Shipping Registry) Order in Council, which has been amended by the conversion of the fees from dollar currency to sterling.†

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* Sir E. Satow, No. 96, Telegraphic, April 7, 1904.

† See Law Officers' Report of June 22, 1904.

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I am also to submit a draft of the new China and Corea (Consular and Marriage Fees) Order in Council, and I am to state that Lord Lansdowne will be obliged if you will take these draft Orders into your consideration and will favour him with your opinion as to whether their terms are fit and proper for submission to the King in Council for His Majesty's approval.

It is particularly desired that the Consular and Marriage Fees Order in Council should come into force in China and Corea on the 1st October next, and, in these circumstances, Lord Lansdowne would be greatly obliged if you could furnish him with your Report at as early a date as possible.

I have, &c.
(Signed) F. A. CAMPBELL.

Report.

This draft Order in Council as initialled by us may, in our opinion, properly be submitted for the approval of His Majesty in Council.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 15, 1904.

Annex.

Draft China and Corea (Consular and Marriage Fees) Order in Council, 1904.

WHEREAS by "The Consular Salaries and Fees Act, 1891," His Majesty the King is authorized by Order in Council to fix the fees to be taken in respect of any matter or thing done by a Consular officer in the execution of his office, and to vary such fees by way of increase or decrease, and to abolish fees and to create new fees;

And whereas by "The Foreign Marriage Act, 1892," and by "The Foreign Marriages Order in Council, 1892," made in pursuance of that Act, it is provided that certain things may or shall be done on payment of the proper fee, and that Act further provides that the proper fee shall be such fee as may for the time being be fixed under the first recited Act, and that the fee so fixed, as respects a Consul, shall be the fee which shall be taken by any marriage officer;

And whereas under "The Foreign Jurisdiction Act, 1890," His Majesty in Council has power to make Orders in Council, and also to revoke or vary Orders in Council made, or deemed to have been made, in pursuance of that Act;

And whereas it is expedient that the Table of fees fixed by "The China and Corea (Consular and Marriage Fees) Order in Council, 1900," should, in certain respects, be amended, and that the whole of the fees to be taken by Consular officers and marriage officers in China and Corea should be fixed in British currency by an Order in Council made under the provisions of "The Consular Salaries and Fees Act, 1891."

Now, therefore, in pursuance of the before-mentioned Acts, it is hereby ordered by His Majesty, by and with the advice of His Privy Council, as follows:—

1. This Order may be cited as "The China and Corea (Consular and Marriage Fees) Order in Council, 1904."
2. The several fees set forth in the Tables annexed to this Order are hereby established, and the said Tables and notes thereto shall be construed as part of this Order.
3. This Order shall come into operation on the 1st day of October, 1904, or at such later date as, in the case of any particular Consular jurisdiction or part thereof, a Secretary of State, by any general or particular instructions, may from time to time direct.
4. On and after the day when this Order comes into operation in any place to which this Order applies, "The China and Corea (Consular and Marriage Fees) Order in Council, 1900," shall be repealed as to that place without prejudice to any right or liability existing at the commencement of this Order in that place.
5. In this Order the expression "Consular jurisdiction" means the district, place or places for which a Consular officer acts.
6. This Order shall extend to all places in China and Corea.

And the Most Honourable the Marquess of Lansdowne, K.G., one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

(Initialled) R. B. F.
E. C.

SCHEDULE.

TABLES OF CONSULAR AND MARRIAGE FEES.

To be taken in China and Corea, in pursuance of "The Consular Salaries and Fees Act, 1891," "The Foreign Marriage Act, 1892," "The Foreign Marriages Order in Council, 1892," "The China and Corea (Consular and Marriage Fees) Order in Council, 1904," and "The China and Corea (Shipping Registry) Order in Council, 1904."

PART I.

Fees to be taken in respect of Matters in which the Interposition of a Consular Officer is required by Law.

MATTER IN RESPECT OF WHICH THE FEE IS TO BE TAKEN.

Merchant Shipping.

	£	s.	d.
1. For every declaration taken or recorded under the Merchant Shipping Acts, with a view to the registry, transfer, and transmission of ships, interests in ships, or mortgages on ships	0	5	0
2. For indorsing a Memorandum of change of master upon the certificate of registry, and initialling his signature on agreement with crew, if required	0	4	0
3. For granting a provisional certificate of registry (this fee to be exclusive of fees on declarations) ...	1	0	0
4. For recording a mortgage of a ship, or shares in a ship, made under a certificate of mortgage ...	1	0	0
5. For recording the transfer of a mortgage of a ship, or shares in a ship, made under a certificate of mortgage...	1	0	0
6. For recording the discharge of a mortgage of a ship, or shares in a ship, made under a certificate of mortgage...	1	0	0
7. For every sale of a ship, or shares in a ship, made before a Consular officer under a certificate of sale	1	0	0
8. For inspection of the register book of transactions in ships, kept in pursuance of the Merchant Shipping Acts	0	1	0
9. For certified copy of extract from register book of transactions in ships	0	2	6
9 A. Certificate of registry	1	10	0
9 B. Certificate of sale or mortgage	0	4	0
9 C. Indorsing ownership on certificate of registry	0	4	0
9 D. Transfer of registry to another port...	0	4	0
9 E. Pass for ship	0	10	0
9 F. Alteration in register of name, rig, or tonnage	0	4	0
9 G. For measurement of tonnage as under:—			
For ships of 15 tons, and under 500 tons, gross tonnage	1	10	0
,, 500 ,, 1,000 ,, ...	2	5	0
,, 1,000 ,, 2,000 ,, ...	2	14	0
,, 2,000 ,, 3,000 ,, ...	3	3	0
,, 3,000 ,, 4,000 ,, ...	3	12	0
,, 4,000 ,, 5,000 ,, ...	4	0	0
,, 5,000 ,, and upwards ,, ...	4	10	0
9 H. For the inspection of the berthing or sleeping accommodation of the crew:—			
For each visit to the ship...	0	10	0
Provided as follows:—			
(*a.*) The aggregate amount of the fees for any such inspection shall not exceed 1*l.* whatever be the number of separate visits.			
(*b.*) When the accommodation is inspected at the same time with the measurement of the tonnage, no separate fee shall be charged for the inspection.			
For the inspection of light and fog signals:—			
For each visit made to the ship on the application of the owner, and for each visit made where the lights or fittings are found defective	0	10	0
Provided that the aggregate amount of fees for any such inspection shall not exceed 1*l.* whatever be the number of separate visits.			
For the inspection of the marking of a ship:—			
For each visit made to the ship on the application of the owner, and for each visit made where the provisions of the Merchant Shipping Acts with respect thereto have not been complied with	0	5	0
Provided as follows:—			
(*a.*) The aggregate amount of the fees for any such inspection shall not exceed 10s. whatever be the number of separate visits.			
(*b.*) When the marking of a ship is inspected at the same time with the inspection of light and fog signals, no separate fee shall be charged for the inspection.			

[N.B.—Fees 1 to 9 H are to be taken under the provisions of "The China and Corea (Shipping Registry) Order in Council, 1904."]

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		£	s.	d.
10.	For every seaman engaged before a Consular officer	0	2	0
11.	For every alteration in agreements with seamen made before a Consular officer	0	2	0
12.	For every seaman discharged or left behind with the sanction of the Consular officer	0	2	0
13.	For every desertion certified by a Consular officer	0	2	0
14.	For attesting a seaman's will (*see* No. 100)	0	2	0
15.	For examination of provisions or water, to be paid by the party who proves to be in default, in addition to cost of survey	0	10	0
16.	For every salvage bond made in pursuance of section 560 (1) of "The Merchant Shipping Act, 1894," to be paid by the master or owner of the property salved	2	0	0
17.	For making indorsement on ship's papers, as required by section 257 of "The Merchant Shipping Act, 1894" ... ... (To include the fee for inspection of ship's papers. *See* No. 43.)	0	2	6

[N.B.—A payment of 5*l*. shall free the ship from the payment of Fees Nos. 17 and 37 at every port in China during the following three months.]

Marriage Fees to be taken by Marriage Officers acting under "The Foreign Marriage Act, 1892," *and "The Foreign Marriages Order in Council,* 1892."

		£	s.	d.
18.	For receiving notice of an intended marriage	0	10	0
19.	For receiving notice of a caveat	1	0	0
20.	For every marriage solemnized by or in the presence of a Marriage officer, and registered by him ...	0	10	0
21.	For certificate by Marriage officer of notice having been given and posted up (Article 6 of "The Foreign Marriages Order in Council, 1892")	0	5	0
22.	For attendance by Consular officer at a marriage solemnized in accordance with the local law, and his registration of the marriage (*see* Article 8 of "The Foreign Marriages Order in Council, 1892")	1	0	0

PART II.

Fees to be taken in respect of Matters in which the Interposition of a Consular Officer is to be given when required by the Parties interested.

MATTER IN RESPECT OF WHICH THE FEE IS TO BE TAKEN.

		£	s.	d.
23.	For noting a marine protest and furnishing one certified copy if required	0	7	6
24.	For filing a request for survey and issuing order of survey	0	10	0
25.	For receiving report of survey, filing original in archives, if not exceeding 200 words, and furnishing, if required, one certified copy of request, order, and report of survey	1	0	0
26.	For extending marine protest, if not exceeding 200 words, filing original, and furnishing one certified copy if required. This to be exclusive of fee for oaths or declarations (*see* No. 48), or for drawing, if required, the body of the protest (*see* No. 94)	1	0	0
27.	For any other protest, if not exceeding 200 words, filing original, and furnishing one certified copy if required. This to be exclusive of fee for drawing, if required, the body of the protest (*see* No. 94)	1	0	0
28.	If the protest or report of survey exceed 200 words, for every additional 100 words or fraction thereof	0	2	6
29.	For attesting average, bottomry, or arbitration bond, each copy (*see* No. 93)	0	5	0
30.	For preparing a fresh agreement with the crew of a British vessel on new Articles of Agreement being opened at a foreign port, and for furnishing the copy which the Merchant Shipping Acts require should be made accessible to the crew	0	10	0
31.	Bill of health	0	10	0
32.	Certifying to a foreign bill of health	0	10	0
33.	Certificate of origin of goods and filing copy	0	10	0
34.	Certificate of due landing of goods exported from a British port	0	10	0
35.	For application addressed to local authorities for arrest or imprisonment of a seaman, if granted pursuant to the request of the master	0	5	0
36.	Ditto, for release of a seaman	0	5	0
37.	For each certificate granted as to the number of the crew of a vessel, or as to any other matter required by local authorities for the clearance inwards and outwards of a vessel (*see* Nos. 17 and 38)	0	5	0

N.B.—A payment of 5*l*. shall free the ship from the payment of Fees Nos. 17 and 37 at every port in China during the following three months.

		£	s.	d.
38.	For drawing up, in form and language required by local authorities, a muster-roll, or detailed list, giving the names, &c., of each member of the crew of a vessel (to be charged in addition to No. 37)	0	2	6
39.	For affixing Consular signature, and seal if required, to a ship's manifest	0	10	0
40.	For affixing Consular seal or signature to any entry in the official log-book of a British vessel, if not required by the Merchant Shipping Acts	0	5	0
41.	For attesting the execution of a bill of sale of a ship, or shares in a ship	0	5	0
42.	For any document required from a Consular officer by foreign authorities as a preliminary to the engagement of a British seaman in a foreign vessel, including official seal and signature ...	0	1	0
43.	For inspecting ship's papers when their production is required to enable a Consular officer to perform any specific service on the ship's behalf	0	2	6

N.B.—This fee is not to be charged when Fee No. 17 is leviable or commuted.

		£	s.	d.
44.	For granting any certificate not otherwise provided for, if not exceeding 100 words	0	5	0
45.	If exceeding 100 words, for every additional 100 words, or fraction thereof	0	5	0
46.	For noting a bill of exchange	0	5	0
47.	For protest of a bill of exchange and copy	1	0	0
48.	For administering an oath, or receiving a declaration or affirmation without attestation of signature.	0	2	6
49.	For administering an oath, or receiving a declaration or affirmation with attestation of signature ...	0	5	0
50.	For each Consular signature attached to an exhibit referred to in an affidavit or declaration ...	0	2	6
51.	For each alteration or interlineation initialled by a Consular officer in any document not prepared by him	0	0	6
52.	For each signature to a transfer of shares or stock attested by a Consular officer	0	2	0
53.	For each signature to a transfer of shares or stock attested by a Consular officer when executed in the presence of one or more witnesses besides the Consular officer	0	5	0
54.	For each execution of a power of attorney attested by a Consular officer (*see* No. 102)	0	5	0

N.B.—When more than four persons execute a power at the same time, a fee of 1*l*. only is to be charged.

		£	s.	d.
55.	For attesting the execution of a will of any person not being a British seaman (*see* Nos. 14 and 100).	0	10	0
56.	For each execution of a deed, bond, or conveyance under seal, attested by a Consular officer ... N.B.—When more than four persons execute an instrument at the same time, a fee of 1*l*. 10*s*. only is to be charged.	0	7	6
57.	For each signature to an application for a patent attested by a Consular officer	0	5	0
58.	For attaching Consular signature, and seal if required, to quarterly or monthly declarations for Government pay, half-pay, or pension	0	1	0
59.	For attaching Consular signature to any other declaration of existence	0	2	6
60.	Ditto, if drawn up by a Consular officer	0	5	0
61.	For certificate of a person's identity	0	10	0
62.	For attesting the signature of a foreign authority	0	5	0
63.	For each signature attested by a Consular officer in any document not otherwise provided for ...	0	5	0

N.B.—No fee is to be charged for attesting a signature to any document required for the deposit or withdrawal of money in or from the Post Office Savings Bank.

		£	s.	d.
64.	For registration of a birth or death (except the death of a seaman)	0	2	6
65.	For any registration not otherwise provided for	0	2	6
66.	For issue of certificate of British registration when such registration is not compulsory under Order in Council	0	2	6
67.	For each search in the register books of births, marriages, or deaths kept at the Consulate ...	0	1	0
68.	For furnishing a certified copy of an entry in register books of births, marriages, or deaths (*see* No. 67)	0	2	6
69.	For certifying to a copy of any document, or part of a document, if not exceeding 100 words ...	0	5	0
70.	If exceeding 100 words, for every additional 100 words, or fraction thereof	0	1	0

N.B.—An additional fee is to be charged when the copy is made by the Consular officer (*see* No. 97)

		£	s.	d.
71.	Passport	0	5	0
72.	Visa of a passport	0	2	0
73.	For issue of certificate of nationality	0	2	6
74.	Request to local authorities for a passport, pass, or visa	0	2	0
75.	For transit pass	0	3	0
76.	Opening the will of a British subject, not being a seaman, including Consular signature to minute of proceedings	1	0	0
77.	For the administration and distribution, or for either administration, or distribution, of the property situate in the country of the Consular officer's residence, of a British subject, not being a seaman, dying intestate, or if not intestate, when undertaken in the absence of legally competent representatives of the deceased	2½ per cent. on gross value.		
78.	For uniting documents and attaching Consular seal to the fastening	0	2	6
79.	For directing search for, or obtaining from Public Record Office or elsewhere, extracts from local registers, or copies of wills, deeds, or other matters, in addition to expenses incurred and any fees for attestation	0	5	0
80.	For affixing Consular signature, and seal if required, to any document not otherwise provided for by this Table	0	5	0

N.B.—No charge is to be made for an order or letter sending a seaman to hospital.

		£	s.	d.
81.	For each Consular seal affixed to a document, packet, or article, when no signature is required ...	0	2	6
81 A.	For new title-deeds of land, including registration, ½ per cent. on value of the property, with a minimum fee of 1*l*. 10*s*. and a maximum of 10*l*.			
81 B.	For notifying authorities loss of owner's copy of title-deed, and requesting issue of copy to replace it	1	0	0
81 C.	For transfer of land, ¼ per cent. on value of the property, with a minimum fee of 1*l*. 10*s*. and a maximum of 10*l*.			
81 D.	For cancelment of title-deeds	1	0	0
81 E.	For registration of title-deeds issued by local authorities	1	0	0
81 F.	For registration or discharge of mortgage	1	0	0
81 G.	For registration of foreclosure of mortgage	2	0	0
81 H.	For any entry, not otherwise provided for, made in land register at the request of the parties interested	0	6	0
81 I.	For reference to land, mortgage, or other registers (except those under Nos. 8 and 67)	0	6	0

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PART III.

Fees to be taken for certain Attendances, in addition to any other Fee chargeable under the present Table, and to Travelling and other Expenses (see Notes 3 and 4).

ATTENDANCE IN RESPECT OF WHICH THE FEE IS TO BE TAKEN.

		£	s.	d.
82.	At a shipwreck, or for the purpose of assisting a ship in distress, per day	2	0	0
83.	At a shipwreck, at request of parties interested, to assist or advise as to salvage, per day ...	3	0	0
84.	At request of parties interested, or of local authorities, at the affixing or removing of seals on property of deceased persons, if absent less than two hours	1	0	0
85.	Ditto, ditto, for each additional hour, or fraction thereof, 10s., with a maximum per day of ...	4	0	0
86.	At request of parties interested, or of local authorities, at a valuation, if absent less than two hours	1	0	0
87.	Ditto, ditto, for each additional hour, or fraction thereof, 10s., with a maximum per day of ...	4	0	0
88.	At request of parties interested, or of local authorities, at a sale, if absent less than two hours ...	2	0	0
89.	Ditto, ditto, for each additional hour, or fraction thereof, 10s., with a maximum per day of ...	4	0	0
90.	At request of parties interested, or of local authorities, for the transaction elsewhere than at the Consular Office of any of the duties for which a fee is provided in the Table of Consular Fees, for each hour, or fraction thereof, 10s., with a maximum per day of	4	0	0
90 A.	At request of parties interested, or of local authorities, at a measurement of land, for each hour, or fraction thereof, 10s., with a minimum of	1	0	0
91.	At the request of parties interested for the transaction of any duty for which a fee is leviable under this Order, whether at the Consular Office or at the Consular officer's residence, in addition to such fee, for each half-hour, or fraction thereof, if in the day-time, that is to say, between the hours of 6 A.M. and 9 P.M., but not during the customary business hours of the place	0	5	0

PART IV.

Fees to be taken in respect of certain other Services which may be rendered by a Consular Officer, at his discretion, at the request of Parties interested.

SERVICE IN RESPECT OF WHICH THE FEE IS TO BE TAKEN.

		£	s.	d.
92.	For the transaction of any duty for which a fee is leviable under this Order, whether at the Consular Office or at the Consular officer's residence, in addition to such fee, for each half-hour, or fraction thereof, if in the night-time, that is to say, between the hours of 9 P.M. and 6 A.M. ...	0	10	0
93.	For preparing average, bottomry, or arbitration bond (*see* No. 29)	1	0	0
94.	For drawing a declaration or other document, or the body of a protest, or for taking down in writing verbal declarations or depositions of persons made before a Consular officer, or for reducing into writing agreements made before him by contracting parties, exclusive of fees for attestation, &c. (*see* Part II), if not exceeding 100 words	0	5	0
95.	If exceeding that number, for each subsequent 100 words, or fraction thereof	0	2	6
96.	For assisting in drawing up petitions, applications, or other documents not specified, each ...	0	5	0
97.	For making a copy of a document, if not exceeding 100 words, exclusive of fee for certificate (*see* No. 69)	0	1	6
98.	If exceeding that number, for every subsequent 100 words, or fraction thereof	0	1	0

N.B.—If the copy is in any foreign language, double the above fees are to be charged.

		£	s.	d.
99.	For making or verifying a translation of a document in any European language, for every 100 words, or fraction thereof, exclusive of fee for certificate (*see* No. 44)	0	5	0
99 A.	For making or verifying a translation of a document in the Chinese, Corean, or other Oriental language, for first 100 characters...	2	10	0
99 B.	For making or verifying a translation of a document in the Chinese, Corean, or other Oriental language, for every subsequent 100 characters, or fraction thereof	0	15	0
100.	For drawing a will, if not exceeding 200 words (*see* Nos. 14 and 55)	1	0	0
101.	If exceeding that number, for every subsequent 100 words, or fraction thereof	0	5	0
102.	For drawing a power of attorney (*see* No. 54)	0	10	0
103.	In cases where one or more attesting witnesses, besides a Consular officer, are required, for each witness supplied by him at the request of the parties interested	0	2	6
104.	Attendance out of Consular Office, at the request, and on behalf, of private persons, for the transaction of business which a Consular officer is permitted, but is not bound, to undertake under the Consular Regulations, for each hour, or fraction thereof, 10s., with a maximum per day of (*see* Notes 3 and 4 and Form A)	4	0	0
105.	In cases where a Consular officer acts as Arbitrator, provided the parties interested declare in writing in the reference to arbitration that they are aware of the nature and rate of the fee chargeable for such service, and agree to pay the same, a commission on the value of the property or amount in dispute of 2½ per cent., with a minimum of	2	0	0

N.B.—The value of the property or amount in dispute must be ascertained and agreed by the parties to the arbitration, and stated in the reference to arbitration.

NOTES.

1. If a Consular officer should be named Commissioner to examine witnesses under a Commission issued by a British Court of Justice he is allowed to act as such, charging and retaining the customary fees for so doing. A Consular officer should, however, before undertaking the office, come to an arrangement with the parties at whose instance the Commission is being issued as to the exact scale of fees to be charged. (*See* Foreign Office Circular of the 1st February, 1894.)

2. No fee is to be charged for drafting or receiving depositions, &c., taken *ex officio* under the Merchant Shipping Acts, except in cases specially provided for.

3. In cases of attendances (Parts III and IV), the fee per day is to cover a period not exceeding twelve hours.

4. In cases of attendances (Parts III and IV), if the Consular officer finds it necessary to be accompanied by a clerk, the fee will be increased by one-half, or, if a clerk only is sent, half the fees are to be charged.

5. The above fees, if not paid in British gold, are to be paid in China in Mexican dollars at the rate of exchange fixed periodically by the Treasury; in Corea, in Japanese currency, at the rate of 10 yen to the £ sterling.

FORM (A).

This is to certify that in consideration of having undertaken, at my request and on my behalf, to transact certain business which a Consular officer is permitted, but is not bound, to undertake under the Consular Regulations, I have agreed to pay him, on behalf of His Majesty's Government, therefor the fee in such case provided by "The China and Corea (Consular and Marriage Fees) Order in Council, 1904," section 104 of Table (viz., for each hour, or fraction thereof, of attendance, 10s., with a maximum per day of 4*l*.), in addition to any other fee properly chargeable under that Order in Council, and to travelling and other expenses.

Dated at , the day of , 19 .

No. 7.

[June 22, 1904.]

Foreign Office to the Law Officers of the Crown.

China and Corea Shipping Registry Order in Council.

Foreign Office, August 18, 1903.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the accompanying draft of the new China and Corea (Shipping Registry) Order in Council (which has been prepared by Mr. A. Gray) to repeal and re-enact the existing Orders, as the latter extend to Japan, where His Majesty no longer exercises jurisdiction under the Foreign Jurisdiction Act.

The provisions contained in this Order were not dealt with in the general Order because they are concerned with a distinct subject.

I have the honour to request that you will take this draft into your consideration, and favour Lord Lansdowne with your opinion as to whether its terms are fit and proper for submission to the King in Council for His Majesty's approval, or whether it requires any, and if so what, additions or amendments.

His Lordship would be glad to be furnished at the same time with any general observations which you may be good enough to offer on the subject.

I have, &c.

(Signed) CHARLES HARDINGE.

Report.

In our opinion the inclosed draft Order in Council, as altered and initialled by us, may properly be submitted to the King for His Majesty's approval.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 22, 1904.

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Annex.

China and Corea (Shipping Registry).

Draft Order in Council: 1904.

WHEREAS by Treaty, grant, usage, sufferance, and other lawful means, His Majesty the King has jurisdiction within the dominions of the Emperor of China and of the Emperor of Corea;

And whereas by section 88 of "The Merchant Shipping Act, 1894," it is enacted that where, in accordance with the Foreign Jurisdiction Acts, His Majesty exercises jurisdiction within any port out of His Majesty's dominions, it shall be lawful for His Majesty by Order in Council to declare such port a port of registry, and by the same or any subsequent Order in Council, to declare the description of persons who shall be the Registrars of British ships at such foreign port of registry, and to make Regulations with respect to the registry of British ships thereat:

Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by "The Foreign Jurisdiction Act, 1890," or otherwise in His Majesty vested, is pleased, by and with the advice of his Privy Council to order, and it is hereby ordered, as follows:—

Shanghae to be a port of registry. 1. The port of Shanghae shall be a port of registry under the said Act, and the provisions of this Order shall have effect accordingly.

Registrar. 2. The Registrar at the said port shall be such one of the Consular officers at Shanghae as the Secretary of State appoints in writing.

Deputy Registrar. 3. His Majesty's Minister in China may from time to time, in case of the absence or intended absence from Shanghae, or in case of the illness of the Registrar, appoint by writing under his hand a fit person to be the deputy of the Registrar for the time therein mentioned; but every such appointment shall be revocable at pleasure by the Minister by writing under his hand.

The person so appointed shall, during the continuance of his appointment, have all the power and authority of the Registrar.

Seal. 4. The Registrar shall have and use a seal bearing such style and device as the Secretary of State shall from time to time direct.

Proof of signature. 5. Every signature or seal affixed to any instrument purporting to be the signature or the seal, as the case may be, of the Registrar, shall, for all purposes under this Order, without any proof thereof, be presumed to be genuine, and shall be taken as genuine until the contrary is proved.

Powers of Registrar. 6. The Registrar of shipping at Shanghae shall have the same powers as any Registrar of shipping appointed under "The Merchant Shipping Act, 1894;" and for the purpose of enforcing the provisions of the said Act and of this Order, the said Registrar shall have the same powers as by the said Act are conferred for the purposes of registration and measurement on any officer of Customs or on any officer of the Board of Trade.

Certificate of mortgage or sale. 7. A certificate of mortgage or sale, granted in pursuance of "The Merchant Shipping Act, 1894," by the Registrar at Shanghae, may contain powers to be exercised at any place situate beyond the port at Shanghae within the limits of this Order.

Transfer of ship between British subjects. 8. On the transfer of a ship from one British subject to another under a certificate of sale, at any port in Corea, or at any port in China other than Shanghae, the Consular officer of such port shall indorse an entry of the transfer on the certificates of registry and sale of the said ship, and should the purchaser be desirous of registering the said ship at Shanghae, the said Consular officer shall, if requested so to do by the purchaser or transferee or other duly authorized person, forward to the Registrar at Shanghae the bill of sale and the declaration of ownership, together with the aforesaid certificates and a certificate of any survey of the said ship that may be required for the purposes of registry anew under the Merchant Shipping Acts; and upon receiving the same, the said Registrar shall register the said ship anew, and shall either retain the new certificate of registry or forward the same to the Consular officer or to the Registrar of shipping at such port or place as such purchaser or transferee or authorized person shall require; and on such request the said certificate shall be forwarded by any Consular officer or Registrar, into whose hands the same may come, to any other Consular officer or Registrar, to be handed by him to the master of the said ship when the requirements of the Merchant Shipping Acts as to marking the said ship shall have been complied with.

Transfer to British subject by foreigner. 9. On the transfer of a foreign ship to a British subject at any port in Corea or at any port in China other than Shanghae, should the purchaser be desirous of registering the said ship at Shanghae, the said Consular officer of such port shall, if requested so to do by the purchaser or transferee or other duly authorized person, forward to the Registrar at Shanghae the bill of sale, the declaration of ownership, and a certificate of any survey of the said ship that may be required for the purposes of registry under the Merchant Shipping Acts; and upon receiving the same the said Registrar shall grant a certificate of registry for the said ship, and shall either retain the said certificate or forward the same to the Consular officer or to the Registrar of Shipping at such port or place as such purchaser or transferee or other authorized person shall require; and on such request the said certificate shall be forwarded by any Consular officer or Registrar, into whose hands the same may come, to any other Consular officer or Registrar, to be handed by him to the master of the said ship when the requirements of the Merchant Shipping Acts as to marking the said ship shall have been complied with.

Registry of ship provided with sailing letters. 10. Lorchas and other Chinese and Corean rigged ships, or other ships provided with sailing letters or documents of the nature of sailing letters granted by His Majesty's Ministers in China or Corea shall, on their first arrival at any port in Corea, or at any port in China other than Shanghae, where there is a surveyor, be surveyed, and the Consular officer of such port shall transmit to the Registrar at Shanghae the said sailing letter, and a certificate of any survey of the said ship that may be required for the purposes of registry under the Merchant Shipping Acts; and upon receiving the same the said Registrar shall grant a certificate of registry for the said ship, and shall either retain the said certificate or forward the same to the Consular officer or to the Registrar of Shipping at such port or place as the owner or other duly authorized person shall require; and on such request the said certificate shall be forwarded by any Consular officer or Registrar into whose hands the same may come to any other Consular officer or Registrar, to be handed to him by the master of the said ship, when the requirements of the Merchant Shipping Acts as to marking the said ship shall have been complied with.

Passes. 11. On any such transfers, whether from one British subject to another, or from a foreigner to a British subject, or on the first arrival of any ship provided with a sailing letter or other document as aforesaid, at any port in Corea, or at any port in China other than Shanghae, where there is a surveyor, the Consular officer of such port shall grant to the master of such ship, upon his application, a pass containing the particulars required by the First Schedule to this Order. The pass so granted shall, within the Chinese and Corean seas, including the waters of Hong Kong and of Wei-hai-Wei, possess the same force as a certificate of registry, until the expiration of four months, or until such earlier time as the new certificate of registry shall be delivered to the master of the said ship by a Consular or other duly authorized officer, or until notice of the cancellation of such pass has been given to the master of the said ship by the Registrar at Shanghae, but upon the expiration of such period, or upon such delivery, or upon receipt of such notice of cancellation, shall be void to all intents and purposes; and the said pass on becoming so void shall be at once delivered by the master of the said ship to a Consular or other duly authorized officer, and in default of delivery the said master shall be liable to a fine not exceeding 50*l.*, *recoverable in any of His Majesty's Consular Courts in China or Corea.*

Powers of Minister. 12. His Majesty's Minister in China shall, with regard to the performance of any act or thing relating to the registry of a ship registered at Shanghae, or of any interest therein, be considered in all respects as occupying the place of the Board of Trade and the Commissioners of Customs.

Appointment of surveyors. 13. His Majesty's Ministers in China and Corea respectively shall, at any port or place in China or Corea, as the case may be, have the same power to appoint fit and proper persons to be surveyors under the Merchant Shipping Acts as are possessed by the Board of Trade in the United Kingdom, and the persons appointed shall have the same powers as are conferred on the surveyors appointed as aforesaid by the Board of Trade.

Pass to unregistered ship to Shanghae. 14. In cases where it appears to the Commissioners of Customs, or to the Governor or other person administering the Government of any British possession, that, by reason of special circumstances it would be desirable that permission should be granted to any British ship to pass without being previously registered from any port or place in His Majesty's dominions to the port of Shanghae, it shall be lawful for such Commissioners or Governor or other person to grant a pass accordingly, and such pass shall for the time and within the limits therein mentioned have the same effect as a certificate of registry.

Pass to unregistered ship to British port. 15. In cases where it appears to His Majesty's Minister in China that, by reason of special circumstances, it would be desirable that permission should be granted to any British ship to pass without being previously registered from the port of Shanghae to any port or place within His Majesty's dominions, it shall be lawful for such Minister to grant a pass accordingly, and such pass shall, for the time and within the limits therein mentioned, have the same effect as a certificate of registry.

Exemption of lorchas. 16. Lorchas and other Chinese and Corean rigged ships registered at Shanghae shall be exempted from the provisions of the Merchants Shipping Acts which relate to the shipment and discharge of seamen, so far as applies to the employment of natives of China and Corea on board these ships.

Instructions and scale of fees. 17.—(1) His Majesty's Minister in China may, with the approval of the Secretary of State, issue any instructions with reference to the performance of any act or thing relating to the registry of a ship registered at Shanghae, or of any interest therein, that may seem to him necessary or advisable.

(2.) The fees which shall be paid and taken in respect of matters arising under this Order are provided in the Table of Fees annexed to "The China and Corea (Consular and Marriage Fees) Order in Council, 1904," and are set forth in the Second Schedule to this Order.

Repeal. 18. "The China and Japan Maritime Order in Council, 1874," and "The Shanghae Shipping Registry Order in Council, 1883," are hereby repealed, without prejudice to anything done under those Orders respectively.

Interpretation. 19. In this Order the expression "Merchant Shipping Acts" means "The Merchant Shipping Act, 1894," and any Acts amending that Act.

Expressions defined in "The China and Corea Order in Council, 1904," and used in this Order have the same respective meanings as in that Order.

The Rules of construction contained in Article 4 of "The China and Corea Order in Council, 1904," shall apply to the construction of this Order.

Short title. 20. This Order may be cited as "The China and Corea (Shipping Registry) Order in Council, 1904."

(Initialled) R. B. F.
E. C.

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FIRST SCHEDULE.

STEAMER.

Pass granted only for Ships to be registered at Shanghae.

Name of Ship.	British or Foreign Built, and when Built.	How propelled.

Number of decks	... ...	Build	... ...
Number of masts	... ...	Galleries	... ...
Rigged	... ...	Head	... ...
Stern	... ...	Framework	... ...

MEASUREMENT.	Feet.	Tenths.
Length from the fore part of stem under the bowsprit to the aft side of the head of the sternpost		
Main breadth to outside plank		
Depth in hold from tonnage deck to ceiling at midships		

TONNAGE.	No. of Tons.
Tonnage under tonnage deck	
Closed-in spaces above the tonnage deck, if any, viz.:—	
Space or spaces between decks	
Poop	
Round-house	
Other inclosed spaces, if any, naming them..	
Gross tonnage	
Reduction for space required for propelling power	
Tonnage	

	Feet.	Tenths.
Length of engine-room		
Number of engines		
Combined power (estimated horse-power) } Number of horses-power		

Name and address of engine maker..

....

I, the undersigned.., His Britannic Majesty's Consul at the Port of... hereby certify that—

1. The ship, the description of which is prefixed to this my Pass, has been duly surveyed, and that the above description is true.

2. That...................................., of...................................., is the master of the said ship.

3. That the said ship was built at....................................on the..............day of.........................., 19......, and her foreign name is*.......................................

Dated at..., the..............day of.................................., one thousand nine hundred and...

....

His Britannic Majesty's Consul.

* These words to be added if the ship is foreign.

Note.—This Pass continues in force only until the..............day of............................, 19......, or until she completes her voyage from...................................to Shanghae, or until such earlier time as the new certificate of registry shall be delivered to the master of the said ship by a Consular or other duly authorized officer, or until notice of the cancellation of such Pass has been given to the master of the said ship by the Registrar at Shanghae; but upon the expiration of such period, or upon such delivery, or upon receipt of such notice of cancellation, shall be void to all intents.

Note.—Registrars of shipping are informed that this ship is in process of registration at Shanghae, and that registry must not be granted elsewhere.

SECOND SCHEDULE.

Fees.

Note.—See Fees 1 to 9 H inclusive annexed to "The China and Corea Order in Council (Consular and Marriage Fees), 1904."]

No. 8.

[August 15, 1904.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 12, 1904.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers noted in the accompanying list with regard to the draft Order in Council consolidating and amending the China Orders in Council of 1865 and subsequent years.

Draft China Order in Council consolidating existing Orders.

The draft has been prepared by Mr. A. Gray, and has been the subject of careful consideration by Sir H. Wilkinson, the Chief Justice, and Mr. Bourne, the Acting Chief Justice, at Shanghae, and the Legal Advisers to this Department.

The greater portion of the draft Order re-enacts in a modern form the provisions of the Orders it is proposed to repeal, and does not therefore call for particular comment.

You will observe (Papers, bundle B) that on account of the number of British subjects in Yünnan, and the great distance of that province from Hong Kong, it has been found necessary to provide for sending offenders for trial to Burmah as well as Hong Kong, and Article 50 has been drafted accordingly.

Article 103 deals with real property in China belonging to deceased British subjects, and is identical with Article 93 of "The Siam Order in Council, 1903," which received your sanction on the 3rd December, 1902. The papers on this subject are accordingly not again submitted to you.

An Article (154) has been added enabling the Court to make garnishee orders in aid of the judgments of the Courts of foreign Powers giving reciprocal advantages. It is, however, not considered advisable to extend the provisions of this Article to the Provincial Courts. The papers dealing with this subject will be found in bundle (C).

The question of regulating the importation of arms and munitions of war into China has already been referred to you, and the recommendations contained in your Report of the 17th January, 1901 (Paper D), are provided for in Article 155 (1) (*c*).

A provision has also been inserted which will enable the judicial work at the larger ports to be discharged by a Consular officer specially deputed for the purpose, as Mr. Bourne, when Acting Chief Justice, had occasion to call in question the right of the Vice-Consul at Tien-tsin to perform judicial work (bundle E).

In view of the constant fluctuations in the value of the Mexican dollar, it has been decided to revise the Judicial Fee Table on a sterling basis. All fines and penalties have therefore been stated in sterling at 2*s.* to the dollar, and in Articles 92, 93, 112, 113, and 115 the limitations of value for purposes of trials, appeals, &c., have also been stated in sterling. The fee for registration will, however, continue to be stated in local currency, *i.e.*, the maximum fixed by Article 162 (8) will be 2 dollars for China and 2 yen for Corea.

As all payments, where not made in British gold, are to be made in local currency at certain rates, it has been found necessary to make a provision to this effect, and Article 164 has therefore been inserted.

A note has also been added to the Judicial Fee Table providing for the valuation of estates for probate purposes according to the daily rate of exchange.

I have the honour to request that you will take this draft into your consideration, and favour Lord Lansdowne with your opinion as to whether its terms are fit and proper for submission to the King in Council for His Majesty's approval, or whether it requires any, and if so, what, additions or amendments.

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His Lordship would be glad to be furnished at the same time with any general observations which you may be good enough to offer on the subject.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.)—(*a.*)	To Mr. A. Gray		June	5, 1900.
(*b.*)	Mr. A. Gray		May	27, 1901.
(*c.*)	To Mr. A. Gray		July	4, ,,
(*d.*)	Mr. A. Gray		August	26, ,,
(*e.*)	To. Mr. H. S. Wilkinson		October	7, ,,
(*f.*)	To Sir E. Satow	(No. 71)	October	7, ,,
(*g.*)	Sir E. Satow	(No. 82)	December	9, ,,
(*h.*)	Mr. A. Gray		December	19, ,,
(*i.*)	Mr. Wilkinson		February	10, 1902.
(*j.*)	Ditto	(No. 8)	April	5, ,,
(*k.*)	Ditto	(No. 9)	April	5, ,,
(*l.*)	To Mr. A. Gray		May	24, ,,
(*m.*)	Mr. A. Gray		May	31, ,,
(*n.*)	To Mr. Wilkinson		June	10, ,,
(*o.*)	Mr. Wilkinson		June	12, ,,
(*p.*)	To Mr A. Gray		June	14, ,,
(*q.*)	Mr. Gray		June	17, ,,
(*r.*)	Mr. Wilkinson		June	18, ,,
(*s.*)	Mr. A. Gray		August	5, ,,
(*t.*)	Acting Chief Justice Bourne	(No. 25)	October	4, ,,
(*u.*)	Mr. Wilkinson		November	18, ,,
(*v.*)	To Mr. A. Gray		November	20, ,,
(*w.*)	Mr. Wilkinson		November	29, ,,
(*x.*)	Ditto		December	2, ,,
(*y.*)	Mr. Gray		March	14, 1903.
(*z.*)	Ditto		April	4, ,,
(a^1.)	Ditto		May	26, ,,
(b^1.)	To Mr. Wilkinson		June	18, ,,
(c^1.)	To Mr. Gray		June	18, ,,
(d^1.)	Mr. A. Gray		July	3, ,,
(B.)—(*a.*)	Acting Chief Justice Bourne	(No. 23)	September	25, 1902.
(*b.*)	To Mr. Wilkinson		November	25, ,,
(*c.*)	Mr. Wilkinson		December	13, ,,
(*d.*)	To Mr. A. Gray		December	24, ,,
(C.)—(*a.*)	Mr. Bourne	(No. 14)	June	12, ,,
(*b.*)	To Mr. Wilkinson		July	28, ,,
(*c.*)	Mr. Wilkinson		August	1, ,,
(*d.*)	To Mr. Wilkinson		August	12, ,,
(*e.*)	Mr. Wilkinson		September	3, ,,
(*f.*)	To Mr. Gray		September	20, ,,
(D.)—	Law Officers		January	17, 1901.
(E.)—(*a.*)	Acting Chief Justice Bourne	(No. 21)	July	23, 1903.
(*b.*)	To Mr. A. Gray		September	7, ,,
(*c.*)	Mr. A. Gray		September	11, ,,
(F.)—	Draft Order.			

Report.

This draft Order in Council, as altered and initialled by us, may, in our opinion, properly be submitted to the King for the approval of His Majesty in Council.*

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 15, 1904.

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* For text of Order as issued see "London Gazette" of the 28th October, 1904 [Confidential No. 8278*].

The following alteration was made by the Law Officers in the draft of the Order in Council as submitted to them:—

Article 79 (3). Instead of "A clerk or officer punished or acquitted," the words "A clerk or officer against whom an order has been made or who has been acquitted."

No. 9.

[October 15, 1904.]

Foreign Office to Law Officers of the Crown.

Foreign Office, September 17, 1904.

Gentlemen,

Crew of Russian torpedo-boat "Burni" interned at Hong Kong.

I HAVE the honour, by direction of the Marquess of Lansdowne, to bring to your notice the circumstances in which the officers and crew of the Russian torpedo-boat destroyer "Burni" are at present interned at Hong Kong. It appears—though the exact date of the event is not quite clear—that, subsequent to the sortie of the Russian fleet from Port Arthur and the naval engagement on the 10th August, the "Burni" ran on a rock on the promontory of Shantung. Lieutenant Tirkow, who was in command, thereupon destroyed the vessel, and he and the crew, having lost all their possessions, marched to Wei-hai Wei and placed themselves under British protection. They were at once interned on board one of His Majesty's ships by the Commander-in-chief, and were shortly afterwards removed to Hong Kong as being a more convenient place for internment, pending a decision as to their ultimate disposal.

The Japanese Government have made an earnest appeal to His Majesty's Government that the officers and crew may be interned until the end of the war. They state that they do not make this request as a matter of right, but they suggest, for the consideration of His Majesty's Government, that such treatment would be justified by the declaration made to the Russian and Japanese Governments in July last, that Wei-hai Wei would be closed to the ships of either belligerent attempting to take refuge at that port. They point out that the crew of the "Burni" were driven ashore as the result of battle, and not of the elements, the weather being fine and the sea perfectly calm.

You will observe that this statement is not in accordance with the account given by the Commander of the vessel on his arrival at Wei-hai Wei, who states that the ship ran aground in a fog at night.

The Russian Government have demanded, as a matter of principle, that the prisoners should be repatriated. They contend that the "Burni" was not seeking refuge at Wei-hai Wei from hostile pursuit, and therefore does not come within the scope of the Declaration of July; and that the precedents for interning belligerent troops forced over the frontier into neutral territory cannot be held to apply to the crew of the destroyer, who were merely seeking safety after shipwreck.

Lord Lansdowne is not aware of any previous occasion when this question has arisen, nor does the case appear to be covered by Conventions or Arrangements which are binding upon His Majesty's Government.

Article 57 of the Règlement attached to the Convention of The Hague concerning the laws and customs of war by land does not apply, because the crew of the "Burni" were not part of the Russian "land forces" or of the "belligerent armies."

The corresponding Convention of the same date, applying to maritime warfare the principles of the Geneva Convention, contains no provisions with regard to the disposal of the sailors of one belligerent in neutral territories, because Article X was excluded by all the Powers when the Convention was ratified; even if the Article had remained in the Convention, however, it seems to refer to sailors landed at a neutral port by one of the belligerents under Article IX after they had theoretically become prisoners of war.

When sailors have become permanently separated from their ship, as in this case, there does not appear to be any reason why they should not be treated upon the same footing as land forces, as the greater laxity of the rules with regard to naval forces are ascribed by writers on international law (*e.g.*, see Hall, p. 626, 5th edition) to the practice of allowing belligerent vessels to visit neutral waters. Lord Lansdowne is not aware whether the case has even occurred of a body of belligerent troops losing their way and crossing the border into neutral territory by mistake, but under circumstances that rendered it impossible for them to return, but such an occurrence would appear to raise similar considerations to those presented by the present case.

The papers on the subject, as noted in the accompanying list, are transmitted for your information, and I am to request that you will be so good as to take them into your consideration and favour Lord Lansdowne with your opinion as to the principle which should be applied in dealing with the officers and crew of the "Burni," and with any general observations which you may be good enough to offer on the issues involved.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.)	To Sir C. Hardinge	(No. 263)	July	6, 1904.
(B.)	To Sir C. MacDonald	(No. 135)	July	11, „
(C.)	Ditto	(No. 103. Telegraphic)	July	15, „
(D.)	To Sir C. Hardinge	(No. 290)	July	30, „
(E.)	Admiralty		August	13, „
(F.)	To Sir C. MacDonald	(No. 109. Telegraphic)	August	16, „
(G.)	Sir C. MacDonald	(No. 221. Telegraphic)	August	16, „
(H.)	Count Benckendorff		August	22, „
(I.)	To Sir C. MacDonald	(No. 115. Telegraphic)	August	24, „
(J.)	Sir C. MacDonald	(No. 240. Telegraphic)	August	26, „
(K.)	To Count Benckendorff		August	30, „
(L.)	Sir C. Hardinge	(No. 115. Treaty. Telegraphic)	September	8, „
(M.)	Mr. Campbell (Memorandum)		September	8, „
(N.)	To Sir C. MacDonald	(No. 119. Telegraphic)	September	12, „
(O.)	Sir C. MacDonald	(No. 257. Telegraphic)	September	18, „
(P.)	International Convention (Treaty Series 1901. No. 10). Maritime Warfare. Library No. 1119		July	29, 1901.
(Q.)	Ditto (Treaty Series 1901. No. 11). War by Land. Library No. 1120		July	29, „

Report.

We are of opinion that, upon the facts stated, it is within the rights of His Majesty's Government to intern the officers and crew of the "Burni."

We think the true view of the facts is that the loss of the "Burni" was the consequence of the naval operations in progress between the belligerents, and the fact that the officer in command destroyed the vessel—apparently to prevent its falling into the hands of the Japanese—seems to support this view.

We do not think, therefore, that the contention of the Russian Government that the present is a case of a crew shipwrecked merely by perils of the seas and seeking hospitality can be maintained.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 15, 1904.

CUBA.

No. 10.

[February 4, 1904.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, December 2, 1903.*

Claims by His Majesty's Government, &c., on Cuban Government for losses during Cuban revolt.

I HAD the honour, by direction of the Marquess of Lansdowne, to address you on the 19th August, 1901, in regard to the claims of British subjects on account of their losses in Cuba arising out of the acts of the Spanish authorities during the insurrection in that island and the subsequent war between Spain and the United States.

Lord Lansdowne has now under his consideration the question of the steps to be taken in regard to the claims of British subjects for losses and damage to their property arising out of acts of the insurgents during that insurrection.

It was from the first proposed that these claims should eventually be presented to the Cuban Government. Pending, however, the establishment of a Constitutional Government in the islands, the existence of these claims was in 1900 called to the notice of the United States' Government, and endeavours have from time to time been made to ascertain what course the United States' Government were likely to pursue in regard to similar claims of their nationals.

His Majesty's late Ambassador at Washington reported at the beginning of this year, as the result of his inquiries, that no decision of any kind was likely to be arrived at for some time to come so far as could then be seen, and that there was little probability that the United States' Government would assume responsibility for the claims even of their own citizens on account of such losses.

After consultation with the French and German Governments, who have similar claims, it was considered desirable that the Representatives of Great Britain, France, and Germany, at Havana, should ascertain whether, and to what extent, the Cuban Government would accept the responsibility for the claims.

A note, copy of which forms the inclosure to Paper (A) in the list of papers accompanying this letter, was accordingly addressed by His Majesty's Chargé d'Affaires at Havana to the Cuban authorities on the 16th July last, calling attention to the claims of British subjects, and expressing the satisfaction with which His Majesty's Government would regard action taken by the Cuban Government tending to lead to a settlement.

On the same date the French and German Representatives also addressed communications to the Cuban Secretary of State expressed in very similar terms.

The Cuban Government in a note, a translation of which is inclosed in Mr. Pearson's despatch No. 21 (Paper (B) in accompanying list), decline to accept responsibility for the losses in question on the ground that the claims are for acts of the insurgents at a time when they were not recognized as belligerents, and that the Cuban Republic was only subject to international rights and duties from the date of its Constitution as a sovereign State, *i.e.*, from the 20th May, 1902.

The French Government have proposed that the three Powers should confer as to the answer to be returned to this contention.

They have communicated to His Majesty's Government the opinion of their Chargé d'Affaires at Havana upon it and also that of M. Renault, the legal adviser to the French Foreign Office (Papers (C) and (D)).

It will be observed that M. Renault refutes the contention of the Cuban Government.

The point at issue appears to him to be the connection existing between the present Government of Cuba and the insurgent forces, who, having fought for many years against Spain, finally triumphed, thanks to the intervention of the United States. This connection, M. Renault observes, is established by the first of the Transitory Rules of the Constitution of the Republic of Cuba of the 21st February, 1901, an extract of which is as follows:—

"The Republic of Cuba does not recognize any other debts and obligations than those legitimately contracted in behalf of the revolution by the Corps Commanders of the liberating army . . . . ;" referring further on to "such debts and obligations as the revolutionary Government may have contracted subsequently, either by itself or through its legitimate Representatives in foreign countries." The Article concludes with the following sentence (which, however, is not quoted by M. Renault): "Congress shall classify said debts and obligations, and decide as to the payment of those that may be legitimate."

The Republic of Cuba having to some extent, therefore, acknowledged the debts and engagements contracted by the Commanders of the liberating army or by the revolutionary Government, M. Renault sees no reason why the same responsibility should not rest with the new Republic on account of the acts of the same parties which were not contracts; and the present Government being in effect the insurgent party now installed in power, he considers that they are responsible for their previous acts, and that their responsibility should be insisted upon.

Mr. Carden, His Majesty's Minister in Cuba, has stated that though he considers that it is the fact that the present Government and the old insurgent party are one and the same, it would be difficult to establish the connexion in a way that would be of any service in an arbitration.

There are a certain number of individuals, such as the President of Cuba, who are now connected with the Government, and who formerly figured prominently in the insurgent party, but beyond this Lord Lansdowne is not able at present to point

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to any facts that could be adduced in proof of the identity between the existing Government and the former rebel party.

I am to request that you will be good enough to take this matter into your consideration, and will inform Lord Lansdowne whether, in your opinion, His Majesty's Government can effectively and consistently take the line of argument suggested by M. Renault for insisting on the liability of the Cuban Government.

Lord Lansdowne will also be glad to be favoured with any observations which you may have to make on the general aspect of the question.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	Despatch from Mr. Pearson (His Majesty's Chargé d'Affaires at Havana)	(No. 20)	July 18, 1903.
(B.)	Ditto	(No. 21)	August 13, „
(C.)	Communiqué by M. Geoffray (French Minister in London) .		September 17, „
(D.)	Communiqué by M. Cambon (French Ambassador in London) ..		November 9, „

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 26, 1904.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit herewith a communication from the French Ambassador for consideration,* with the papers now before you, in regard to the claims of British subjects for losses arising out of the Cuban insurrection. I am to state that his Lordship will be much obliged for an answer at your early convenience to the letter of the 2nd ultimo, from this Office, on the subject.

I am, &c.
(Signed) T. H. SANDERSON.

Report.

We think that the construction put by the Cuban Government on the First Transitory Clause of the Constitution is unduly narrow, and that it covers all obligations contracted on behalf of the Chiefs of the Insurrectionary Army, even though they were not attended with the formalities which the Cuban Government now desire to treat as indispensable.

As regards claims which cannot be brought within the scope of the First Transitory Clause, we are not aware of any authority in international law establishing the liability of the Cuban Government for requisitions made or damage done by the insurgents. We think, however, that in substance the Cuban Government represents the party who conducted the insurrection, and that there is a strong moral claim on this head.

This claim, however, would not extend to the case of damage done incidentally in the course of military operations. It would apply to requisitions or to damage done for the purpose of inforcing requisitions.

In the circumstances, we think that His Majesty's Government would be justified in endeavouring to obtain payment from the Cuban Government of the claims now in question, subject to the limitations above indicated. Whether these claims should be urged in concert with France and Germany or by Great Britain separately, and in what manner, is a question of policy.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 4, 1904.

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* Memorandum by M. Cambon, January 20, 1904.

EGYPT.

No. 11.

[November 16 and 17, 1904.]

(1.)

The Earl of Cromer to the Marquess of Lansdowne.—(Received November 14, 10 P.M.)

(No. 103.)
(Telegraphic.)

Cairo, November 14, 1904, 8·20 P.M.

War with Japan: Coaling of Russian Fleet in Suez Canal and at Aden.

Consul at Port Saïd informs me that Russians are likely to raise question as to whether, under the terms of clause 3 [of Suez Canal Rules], Aden can be considered the "nearest accessible port, &c." They would maintain that under British Rules no coal will be supplied at Aden, and that, therefore, they should be supplied with enough coal at Port Saïd to take them to nearest port where coal will be supplied. I do not know what that port would be.

We propose to adhere to Aden. Do you approve?

Minutes.

This raises a difficult—though possibly a hypothetical—question, which has already undergone some theoretical discussion in January last.

I don't myself see how Aden "comes into the picture." We know they won't get any coal at Aden at all, but under the Rules they are entitled to sufficient to reach the nearest accessible port at which they can obtain supplies necessary for the continuation of the voyage. (See Nos. 37, 40, 44, and 45 of print.)

Note especially what was said about naming any place (*No.* 45).

See also Memorandum left by Viscount Hayashi on the 4th November.

It might be well to consult Admiralty.

W. M.

Foreign Office, November 15, 1904.

It must be remembered that our Rules have undergone a drastic change since January, and that the considerations which *then* applied to Aden do *not* apply now. No doubt after Port Saïd they could coal at Jibuti, and I should say a supply to take them there would suffice. They might put Jibuti in their declaration.

W. M.

We cannot advise coal being given to Aden, knowing that no coal can be obtained there.

Lord Cromer proposed (*No.* 39 of print) to class Aden, Perim, and Jibuti as one group. If Jibuti be named, the French could argue, in reply to the Japanese protest, that we had given them coal for that place as a port where they could obtain a further supply. But I don't see how we can help this.

Mr. Davidson.

F. A. C

Foreign Office, November 15, 1904.

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Something seems to me to turn on whether coal is merely to be regarded as "*supplies* necessary for the continuance of the ship's voyage," or whether, for the purposes of the decision of His Majesty's Government as to its non-supply to Russian ships going to the seat of war, it can any longer be regarded as, in any circumstances, *vis-à-vis* of Russian ships proceeding to the Yellow Sea, coming within the expression "supplies."

But, on the other hand, although the decision taken by His Majesty's Government applies in terms only to coal, I think the principle on which the decision was based requires that logically that decision must be applied to the supply of any sort of thing which will assist a Russian ship in her endeavours to reach the Yellow Sea and the seat of war, whether coal, ship's biscuits, fresh water, or anything else, if supplied with the full knowledge that they were going to be used in the prosecution of such a voyage.

It seems, therefore, clear that no Russian ship on its way to the seat of war can be given coal, or anything else, at Aden which will assist it in the prosecution of its voyage *to the seat of war*, and this being so, it would, to my mind, be extremely unwise (to use no stronger term) to advise the Canal authorities to give vessels so proceeding eastwards coal for Aden.

They are bound to give coal to "the *nearest accessible port at which the vessel can obtain the supplies necessary*, &c.," and Aden clearly is not such a port, whatever other port may be.

The Canal authorities must satisfy themselves as to what is "the *nearest accessible port*," and this depends, in the case of ports other than Aden, on facts at present unknown to me.

For instance, whether Jibuti be the nearest accessible port or not depends on whether the French will give the Russian vessels at Jibuti the supplies necessary for the continuance of their voyage.

The Canal authorities might perhaps require to be satisfied on this point before giving coal at all, or might say that the coal was given to the Russian vessel at the Captain's own risk, and subject of course to the possibility that he might not obtain further supplies when he got to the named port. But with regard to a port like Aden, at which it is quite certain that the Russians cannot get supplies, and where the Canal authorities either have been or can be officially informed that supplies will not be given, I think they certainly ought to decline to give coal.

I do not like the idea that they should be advised to give coal unconditionally for Jibuti, but pending some definite pronouncement by the French Government on the subject, which it is very desirable for many reasons to obtain, I think they might give it with some such reservation or caution as I have indicated.

The situation is indirectly a very difficult one, and raises questions of great delicacy and of very high policy.

I have said what occurs to me off-hand about it, in order that no unnecessary waste of time in a matter which is urgent may occur, but I presume that Lord Lansdowne will wish the Attorney-General to be consulted at once upon the question, as it is a matter on which His Majesty's Government will certainly desire to have his opinion before arriving at a final decision.

W. E. D.

Foreign Office, November 15, 1904.

In the meantime we might telegraph:—

"Your telegram No. 103 [of the 14th November: Coaling of Baltic fleet in Canal].

"It seems doubtful whether, having regard to our decision as to supply of coal in British ports, Aden could properly be named, but the question is a difficult one, and Law Officers must be consulted. We will reply as soon as possible." (Sent 16th November.)

F. A. C.

Telegraph as proposed, and send papers urgent to Attorney-General.

I should like to confer with him, and probably with the Prime Minister, before deciding.

L.

(2.)

Minute by Attorney-General.

November 16, 1904.

Lord Lansdowne,

I DO not think that Aden is a port at which the vessel "can obtain supplies necessary for the continuance of her voyage," in view of our Rules against coaling there.

It is for the Captain of the vessel to name the port for which he wants coal. If the Canal authorities know there is a nearer one which answers Rule 3 of the Suez Canal Rules they may refuse more than enough to take him there.

The vessel is not entitled to any coal if she has already enough on board to take her to the port in question. I understand that it is considered doubtful whether it is desirable as a matter of policy to contend that coal on the accompanying colliers must be taken into account for this purpose.

I have not the materials for determining what is the nearest port available for supplies. It may be that Jibuti or Acheen are available.

It does not appear to me that the question as between Japan and France depends on the construction of the French Rules, but on the question what Rules France ought to have and to enforce for securing the observance of neutrality in this matter. But even if France should fail to observe her obligations as we regard them in this matter, I do not think that this would constitute a *casus fœderis* under our Treaty with Japan. Of course, violations of neutrality may be of such a nature and on such a scale as to amount to taking part in the war, but I do not see that this could be said to be the case if no more was done than to supply coal to Russian vessels on their way to the seat of war.

(Signed) R. B. FINLAY.

(3.)

Mr. Davidson to Attorney-General.

Foreign Office, November 17, 1904.

Dear Attorney-General,

WILL you look at the draft telegram to Lord Cromer which is marked herewith,[*] and say whether you approve of it as it stands?

I am a little uneasy as to the words [Aden or] in the last sentence, and they do not appear to me to be consistent with either your own Minute or other Minutes with which I gather that you are in accord.

Campbell also rather shares my view, but as Lord Lansdowne is at Windsor we can't get at him at once, and the telegram ought to go to-night.

Would you mind looking at the draft and giving your opinion on the point?

Ever yours,
(Signed) W. E. DAVIDSON.

(4.)

Attorney-General to Mr. Davidson.

November 17, 1904.

My dear Davidson,

I THINK the telegram should go as settled by the Prime Minister and Lord Lansdowne.

If the Russian asks for coal to get to Aden, the permission of supply by the Suez Canal authorities for this purpose can't amount to an undertaking by them that coal will be supplied at Aden any more than it would as regards Jibuti, if that were the port named by the Russian. I don't see that it is the duty of the Canal authorities to tell the Captain that he is wrong in his supposition either that coal is in fact at a particular port or that it will be supplied to him there. The Canal authorities would

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[*] See (5.)

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properly intervene if they knew that coal could be got at a nearer port, as the Captain would be applying for more coal than he is entitled to. But it is hardly their duty to tell him he ought to apply for more; and Japan might, perhaps, not unreasonably object if they did. Worded as the paragraph is, I think it all right.

Yours sincerely,
(Signed) R. B. FINLAY.

(5.)

The Marquess of Lansdowne to the Earl of Cromer.

(No. 58. Treaty.)
(Telegraphic.) *Foreign Office, November* 17, 1904.

YOUR telegrams Nos. 103* and 108 [of 14th and 16th instant: Coaling of Russian fleet].

In view of Law Officers we could not, having regard to Rules now in force as to coaling at British ports, contend that Aden is a port at which the Russian ships can obtain supplies necessary for continuance of their voyage.

It is, however, for the Captain of the vessel to name the port for which he wants coal, and for the Egyptian authorities to refuse coal for that port if they know that a nearer one is available, regard being had to amount of coal already on board of vessel.

If Russians name Aden or Jibuti, it will be better not to raise any difficulties.

FRANCE.

[In Colonial Office letter of November 10, 1904.] *No. 11A.*

Law Officers of the Crown to Colonial Office.

Sir, *Royal Courts of Justice, November* 9, 1904.

Australian Immigration Act: Query of French Government as to merchant seamen deserters under.

WE were honoured with your commands signified in Mr. H. Bertram Cox's letter of the 11th October last, stating that he was directed by you to inform us that the French Government had again raised the question which was dealt with in our Report of the 23rd July, 1902, viz., whether Treaties between Great Britain and foreign countries for the surrender of merchant seamen deserters exempted vessels of those countries from the provisions of "The Immigration Restriction Act, 1901," of the Commonwealth of Australia.

That Mr. Bertram Cox was to inclose the correspondence which had passed on the subject with the French Ambassador, together with copies of the Australian Act and the Anglo-French Agreement of the 23rd June, 1854.

That he was to request that we would take the matter into our consideration, and report whether we saw any reason in the arguments urged by the French Government to modify the opinion given in our Report of the 23rd July, 1902.

We have taken the papers into our consideration, and, in obedience to your commands, have the honour to

Report—

That we see nothing in the arguments urged by the French Ambassador in his note of the 16th May last to lead us to modify the opinion expressed in our previous Report of the 23rd July, 1902. There is nothing in "The Immigration Act, 1901," which deprives the French Government of the benefits of the Treaty of 1854, as there is, notwithstanding the Act, the same obligation upon the Government of the Commonwealth to assist in the apprehension and sending on board of deserters.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

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* See (1.)

List of Papers.

Anglo-French Agreement (Hertslet's "State Papers," vol. 48, p. 863)	June 23, 1854
Australian Immigration. &c., Acts, 1901.	
Foreign Office to French Ambassador	March 26, 1903.
French Ambassador to Foreign Office	February 29, 1904.
Foreign Office to French Ambassador	April 14, ,,
French Ambassador to Foreign Office	May 16, ,,
Papers submitted to Law Officers in Colonial Office letter of the 14th July, 1902.	

GENERAL.

No. 12.

[January 2, 1904.]

Draft of Telegram to the Earl of Cromer.

(Treaty.)
(Telegraphic.) *Foreign Office, January* , 1904.

. . . . Supply of coal to belligerent vessels at Port Saïd.

Russo-Japanese war: Supply of coal to belligerent vessels at Port Saïd.

In our opinion, no coal should be supplied at all, except on the undertaking of the Russian ship to proceed to the nearest available Russian port (Baltic), or to some C nearer named neutral destination, *irrespective of whether this be to the eastward or to the westward.*

A We cannot dictate to a belligerent vessel the direction in which she should go.

According to our Rules, a Russian ship having once coaled at a British port, cannot coal again at that or any other British port during next three months. B *Thus a Russian vessel coaling at Port Saïd for Aden and again at Aden could not coal within the next three months at Aden, Colombo, or other British port.*

Minute by Lord Lansdowne.

I think the Attorney-General should see this before it issues.

I am disposed, and so is Lord Selborne, to omit the passages struck out in red, and marked (A) and (B).

We are not convinced that (A) is correct, and (B) is probably redundant, and a little puzzling.

We are also inclined to leave out (C) (underlined in blue), unless this interpretation of the Rule has been always accepted by this country and acted on.

L.

We assume that Libau is held to be the nearest Russian port.

L

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Dear Lord Lansdowne, *Blackmoor, Liss, December* 29, 1903.

I asked Lord Walter to consult Foreign Office about the coaling of Russian ships in case of war at our coaling stations and in Suez Canal. Surely we cannot contemplate allowing these ships to take in enough coal for their nearest port (Baltic), and then calmly to proceed eastward, renewing the farce at each port till Port Arthur becomes the nearest port?

In respect of the Suez Canal, what is the objection to the Egyptian Government following the very useful precedent of their treatment of the Spanish ships in the Spanish-American war?

Yours sincerely,
(Signed) SELBORNE.

P.S.—What is being done about this?

L.

Minutes.

We sent to the Admiralty some days ago answers—drafted by Mr. Davidson—to Lord W. Kerr's questions. We said these answers were provisional, and that the Attorney-General was being consulted.

F. A. C.

The papers only came back this morning from the Attorney-General. I have sent them on. The points raised in Lord Selborne's letter are all dealt with in a Memorandum[*] which I finished writing this morning, after I received the papers back from the Attorney-General.

They are also dealt with in the Admiralty letter, though in a sense somewhat adverse to the view expressed in the first part of Lord Selborne's letter to Lord Lansdowne of yesterday's date.

W. E. D.

Foreign Office, December 30, 1903.

The answer to Lord Selborne would seem to be:—

1. We sent answers to Lord W. Kerr's questions on the 23rd December (the day they were received).

2. We have since consulted the Attorney-General, who has answered to-day, and quite agrees, and has added some additional observations, which are being sent to the Admiralty.

3. The case mentioned by Lord Selborne could hardly arise in practice, as the Russian ship would be required to give an undertaking as to her destination; and our rule that if a ship has coaled at a British port she cannot coal again at that or any other British port within three months would also apply.

F. A. C.

Attorney-General to Mr. Davidson.

(Telegraphic.) *Nairn, January* 2, 1904.

Omit (A) and (B); include (C). Papers follow by this day's post.

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[*] See p. 38 A.

I think that we ought to follow the Spanish-American War precedent (which is the latest precedent) as far as we can. The matter was probably then gone into more carefully and in more detail, and presented itself practically for decision in more various phases than on any former occasions—at any rate of late years—when Great Britain was a neutral.

Mr. Maycock's Memorandum is a very valuable survey of the particular question, and generally I agree with it, except the last six words of it, viz., "*on the line of voyage thither*." It might possibly be a good thing if these words could be read into the rule and treated as *subaudita*. But I am quite sure that at present we can quote no satisfactory authority in support of this gloss upon, or interpretation of, the general rule.

"Nearer destination" means of course "nearer *neutral* destination," and although this is pretty obvious without more specific expression, it might, I think, be a good thing to insert the word "neutral," as has been done already by the Colonial Office in some of their notices to Governors, Proclamations, &c. The object, as I believe, of inserting the alternative "or some nearer destination" was primarily, at any rate, to provide for the case of a belligerent public ship, which could not store enough coal on board to take her back to the nearest port of her own country, which might conceivably be right on the other side of the world. But, however this may be, I think that it is fairly clear—on the rule as it stands—that a ship may be allowed sufficient coal to take her to any neutral port which is at a less distance from the coaling port than is the nearest port of the ship's own flag; it is not a question of this direction or of that—the question is the distance of the port of destination, as compared with the distance of the nearest port of the ship's own flag from the coaling port.

With regard to the expression "theatre of war," as applied to naval warfare (if it be applicable at all), it must be borne in mind that the sea is the highway of nations, and that the high seas are *communis juris*. For the belligerents, the whole of the high seas are—or may at any moment become—the "theatre of war." On any part of the high seas—in other words, on any part of the seas outside the territorial limits of the various littorals of the neutral Powers—the belligerents may meet in conflict or exercise any other belligerent rights. On land, on the other hand, the "theatre of war" is a much more closely-defined area, and its extreme limits must be the territories of the belligerent States, outside of which any hostile engagement between the parties would obviously constitute an infraction of neutrality—or rather a violation of neutral territory. On the high seas there is no neutral territory—those seas belong to all alike, and with the limit of the territorial water ends the exclusive *dominium* of each neutral power, and begins the general *condominium* of all, whether neutral or belligerent. For instance, in the interval between the rupture of the Peace of Amiens and the Battle of Trafalgar, the theatre (naval) of war as regards France and Spain on the one side and England on the other, stretched from within the Mediterranean to the West Indian Archipelago—whither Nelson pursued the French fleet. The phrase "the command of the seas," which is so often used, implies a capacity on the part of the Power which possesses such command to assert her superiority anywhere upon the seas,—there is no such analogous "command of the land"—and cannot be unless and until some nation succeeds in imposing on all others a universal domination, when war would presumably cease.

It has been pointed out to me that in 1885 (Franco-Chinese War) a telegraphic instruction was sent by the Colonial Office to the Governor of Hong Kong, and was thence repeated to Ceylon and the Straits Settlements, to the effect that "public ships of either belligerent should not be allowed supplies such as would assist naval operations: *therefore*, no more coal should be furnished to any belligerent ships than would be necessary for moving to the nearest port *where no naval operations are being carried on*." These instructions were subsequently embodied in a Proclamation issued by the Governor at Hong Kong.

It seems to have been thought that this telegram carried out the meaning of a Law Officers' Report which was made to the Foreign Office on the 22nd December, 1884 (L.O.R., 1884, pp. 53, 54, No. 36, France); but I very much doubt if it did so, or if the Law Officers saw it before it was sent off. It might be well to make inquiry at the Colonial Office as to this. I venture to think that we ought to adhere to the general rule that a public ship may have enough coal to take her to "the nearest port of her own nation or to some nearer neutral destination," and not to attempt to introduce further limitations and conditions, such as "on the line of voyage thither," or "where no naval operations are being carried on." Such limitations cannot fail to

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prove very embarrassing in practice if it should become necessary to apply them in the concrete to actual facts. For instance, what is "a port where naval operations are being carried on"? Of course, it cannot be a neutral port, and therefore it must be a port of one of the belligerents. If it is a port of the belligerent vessel's flag, why should she not go there if it is the nearest port of her flag available? If it is a port of the other belligerent, presumably she will not want to go there; and if she asks for coal for the purpose of going there she will not be able to get it under the rule, since it will be neither "the nearest port of her own nation" nor "some nearer neutral destination." Moreover, how is it possible to prevent belligerent vessels from going to the scene, or accidentally finding themselves upon the scene, of naval operations, unless, whenever they put into a neutral port, they are interned until the end of the war? Supposing, for instance, France and Germany are at war, and their respective fleets are at sea in the North Sea. A German vessel puts into Hull without coal, and asks for enough coal to enable her to make the nearest German port. Is she not to be given coal because she may, on the way thither, either be attacked and use the coal for fighting by manœuvre with a French cruiser, or because she may fall in with her own fleet at sea and take part in a general naval engagement next day? These matters, which are properly describable, both in fact and in theory, as the "accidents" of the situation, cannot be provided against. Of course, if it were clear that the request of the German vessel were not *bonâ fide*—that she did not mean to go to her nearest port, but had come in from a fleet which was in the offing, with the deliberate intention of getting as much coal as she could by means of a trick and then rejoining the fleet—she would not be given the coal. But, in the absence of any reasonable ground to suspect her *bona fides*, it is impossible to take into account all the possibilities and contingencies of the future.

The Law Officers' Opinion of the 22nd December, 1884, was meant to prevent breaches of section 10 of the Foreign Enlistment Act as to "equipping," and it seems to me that it has been interpreted in the Colonial Office Instruction, in a sense which was never intended, to the supply of coal by a neutral to a belligerent under the "nearest port" rule.

(6.) It seems to me that our telegram of the 24th December really did answer the questions which Lord Cromer further raises in his reply of the 26th December.

The answer to that reply of the 26th December is, however, in my opinion. that no coal is to be supplied at all unless on the undertaking of the Russian ship to proceed to the nearest available Russian port (Libau), or to some nearer named neutral destination, whether to the eastward or the westward.

It is no doubt the fact that in the Spanish case ships bound to the Philippine Islands (which are not the "nearest Spanish port or some nearer neutral destination") were not given coal, and were compelled to coal outside the 3-mile limit. But this is quite in accordance with the rules then laid down.

(2) and (3.) I think that the advice I gave in June 1898, when Lord Cromer raised the point as to whether, if the manifest intention of a Spanish fleet coming from Spain was to proceed to the Philippines, the Egyptian Government should refuse to supply them with coal, was sound then, and that, *mutatis mutandis*, it is sound now. It was concurred in by the Law Officers and acted on, and even assuming that Lord Salisbury was right in considering that my conclusion (*a*) did not follow from the statement (*b*), his Lordship agreed in, and acted in accordance with, the conclusion after it had been confirmed by the Law Officers.

I have never been able to see that (*a*) was as regards (*b*) a *non sequitur*, but as we acted in accordance with (*a*), which was accepted as correct by everybody concerned, the question whether the process of ratiocination by which I arrived at (*a*) was formally correct or not has now become, though still interesting to me, purely academic for all practical purposes.

A belligerent ship having obtained coal at a British port is not, under our rules, allowed to obtain coal again either at that port or at any other British port within the next three months.

Therefore, if a Russian vessel were to obtain coal for Aden at Port Saïd and were again to obtain coal at Aden, she could not obtain coal at any British port (*i.e.*, Colombo, Singapore, Hong Kong, &c.) within the next three months after obtaining coal at Aden. I am not quite sure whether this rule was present to Lord Cromer's mind when he laid such stress upon not allowing Russian vessels to proceed to the eastward.

W. E. D.

Foreign Office, December 30, 1903.

Lord Lansdowne,

The Attorney-General has telegraphed this morning approving the telegram to Lord Cromer, with the omission of (A) and (B).

If you approve, will you send me a telegram "*Treaty telegram approved*," and we will send it off at once? We have kept copy. There seems no time to lose now.

F. A. C.

Foreign Office, January 2, 1904.

Done. L.

January 2, 1904.

The Marquess of Lansdowne to Mr. Campbell.

Calne, January 2, 1904, 6·23 P.M.

(Telegraphic.)

Treaty telegram approved.

Note by Attorney-General.

I think that (C) should be retained. The question must be faced, and I think the view expressed upon this point in Mr. Davidson's Memorandum is correct.

(A) and (B) should, I think, be omitted. Indeed, the rule referred to in the paragraph of which (B) forms part does not seem directly to bear on the ports under Lord Cromer as to which he inquires.

Otherwise I agree with the draft.

(Signed) R. B. FINLAY.

January 2, 1904.

No. 13.

[January 12, 1904.]

The Earl of Cromer to the Marquess of Lansdowne.—(Received January 8.)

(Treaty.)
(Telegraphic.)

Cairo, January 8, 1904.

. . . . . . Supply of coal to belligerent vessels in Suez Canal.

I submit the following imaginary case:—

Russo-Japanese War: Supply of coal to belligerents in Suez Canal.

We should give a Russian or Japanese ship proceeding eastward enough coal to go to Perim, Aden, or Jibuti. The difference in amount between the three ports is not sufficient to be of any practical importance. But we should decline to give enough for the journey to any port further east—say, Colombo.

I am advised that this procedure would be the strict application of the Convention Rules, and I am inclined to think—more especially in view of the fact that in the course of recent negotiations we have told the French that we accept Convention—we had better adhere closely to those Rules.

I deprecate any attempt at applying purely British Rules which have no international sanction. If we are to do so the political aspects of the British occupation of Egypt would present themselves to foreign Powers in a different and less favourable light than at present.

The point which I now submit is one of much practical importance, for if a belligerent ship coaled at Aden I understand that, under the British Rules, she would not be able to coal at any more easterly British port for the period of three months.

Please note that what holds good for the Russians must, at all events in Egypt, hold equally good for the Japanese.

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Minutes.

The balance of argument appears to be in favour of adopting the Convention principles as defined by Lord Cromer. The only objection that I can think of is that Russia may say we have advised Egypt to adopt more stringent Regulations than our own. But a Russian ship would get a further supply at Aden if she wished (as Egyptian ports are not British ports), assuming she had not coaled at some other British port before.

W. M.

Foreign Office, January 8, 1904.

Lord Cromer's view appears to me sound, and I don't think we need be deterred from approving it by the objection referred to by Mr. Maycock.

What holds good for the Russians must, of course, hold good for the Japanese, as much here as in Egypt.

F. A. C.

Foreign Office, January 8, 1904.

I think these Rules might be adopted by Egypt; but I will see what Mr. Davidson has to say, and communicate to-morrow.

The post is just going.

F. A. C.

It is of great importance not to lose a moment.

I presume this telegram has gone to Mr. Balfour and that he has seen the other papers.

Unless Mr. Davidson decidedly disagrees, telegraph to the Prime Minister (using cypher for important parts of message) as below :—

"Cromer's No. 2.

* "I concur in his view, and propose to instruct him to act accordingly. Please telegraph reply as soon as possible."

And if Mr. Balfour's reply is favourable, then telegraph to Lord Cromer :—

"Your No. 2.

"I agree; act accordingly."

If Mr. Balfour has *not* already seen this telegram it will be necessary to telegraph substance to him as concisely as possible, going on as at*.

L.

Done.—F. A. C.

Foreign Office, January 9, 1904.

I rather agree with Lord Cromer's arguments in favour of treating the Canal and its accessories as a thing altogether apart, and as subject to separate treatment, the main object of which is to keep the Canal thoroughly neutral, and also to clear belligerent vessels out of it and its ports of access at the earliest possible moment consistent with their getting to some neutral port of safety, where they can further "ravitailler et s'approvisionner" (which are, I think, the words of the Protocol, though I have not got it by me for the moment).

It seems to me that, interpreting the duties of the Canal Commissioners by the language of Article IV of the Convention, as further explained by the Protocols (which is what I understand Lord Cromer is proposing to do), the right general rule would be that belligerent vessels coming through the Canal from the eastward should be allowed enough coal to take them to Alexandria, the nearest neutral port (excluding, of course, the Canal and its ports), while vessels approaching from the westward should be allowed enough coal to take them to the nearest neutral port east of Suez, which is certainly not *Aden* or any British port. If a Russian vessel asked at Port Saïd for coal to Suakim, or some neutral port nearer than Aden, I think that it would be very difficult to refuse it, because the real essence of the rule which Lord Cromer wants to have laid down is surely that the belligerent vessel should have coal enough, and coal *only enough*, to take her to the nearest neutral port outside of the Canal and its approaches, where she can obtain further coal.

For the purpose of this rule the Canal is a thing wholly secerned and apart. Egyptian ports proper are just as much neutral ports—*quâ* the Canal—as are British, French, or other ports not belonging to either of the two belligerents.

Of the ports mentioned by Lord Cromer, the Island of Perim is, of course, part of Aden—it is British, and is, for this purpose, the same thing as Aden.

Jibuti is outside of the Red Sea, after the Straits of Bab-el-Mandeb have been passed going eastward. It is under French protection.

But there are other neutral ports much nearer to the Canal than Aden, *i.e.*, Suakim and Massowah; and it seems to me that, if a Russian ship asks for coal to go (for instance) to either Suakim or Massowah, she could not be refused the coal.

From either Suakim or Massowah she could coal again for Colombo, and so she could from Jibuti, though, as that port is further from the Canal than is Aden–Perim, I should have thought that, under the spirit of the rule, the ship could only be allowed coal at Port Saïd or Suez for Jibuti, in the event of her being unable to obtain the requisite supply at some nearer neutral port.

I think that Lord Cromer is anxious that the Russian ships should be allowed coal for *Aden*, because the result of this would be that they could not take coal from Aden for Colombo, since Colombo, being also a British port, they would be refused coal there until a period of three months had elapsed.

But probably the Russian would anticipate this manœuvre by asking for coal for Suakim or Massowah; and, if he did, I do not think he could be refused by the Canal authorities, on Lord Cromer's interpretation of the Convention, by the further light of the Protocols.

Subject to this observation, I agree generally with Lord Cromer's telegram.

W. E. D.

Foreign Office, January 9, 1904.

As the Convention is to be regarded as in force, it is clearly right that Article IV should be acted on, as Lord Cromer proposes, irrespective of British rules.

It follows that, for this purpose, the Canal and its ports must be treated by themselves, and apart from other Egyptian ports, as well as ports in other countries.

The construction put upon Article IV by Lord Cromer in his telegram of the 8th January, subject to the qualification as to possible nearer ports suggested by Mr. Davidson in his minute on that telegram, appears to me to be correct. This view is strongly confirmed *by the passage marked on pp.* 9 *and* 10 *of the Protocol No.* 2 *of the* 4*th June*, 1885.

It follows that, as proposed by Lord Cromer, coal should be supplied in such quantity only as will take the vessel to the nearest port on her line of route where she can replenish her stores. For this purpose Suakim and Massowah should be taken into account, if there are facilities for coaling there.

(Signed) R. B. FINLAY.

Newton, Nairn, N.B.,
January 12, 1904.

Annex 1.*

International Convention respecting the Suez Canal, October 29, 1888.

ARTICLE IV.

Le Canal Maritime restant ouvert, en temps de guerre, comme passage libre, même aux navires de guerre des belligérants, aux termes de l'Article Ier du présent Traité, les Hautes Parties Contractantes conviennent qu'aucun droit de guerre, aucun acte d'hostilité ou aucun acte ayant pour but d'entraver la libre navigation du Canal ne pourra être exercé dans le Canal et ses ports

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d'accès, ainsi que dans un rayon de 3 milles marins de ces ports, alors même que l'Empire Ottoman serait l'une des Puissances belligérantes.

Les bâtiments de guerre des belligérants ne pourront, dans le Canal et ses ports d'accès, se ravitailler ou s'approvisionner que dans la limite strictement nécessaire. Le transit des dits bâtiments par le Canal s'effectuera dans le plus bref délai d'après les Règlements en vigueur, et sans autre arrêt que celui qui résulterait des nécessités du service.

Leur séjour à Port-Saïd et dans la rade de Suez ne pourra dépasser vingt-quatre heures, sauf le cas de relâche forcée. En pareil cas, ils seront tenus de partir le plus tôt possible. Un intervalle de vingt-quatre heures devra toujours s'écouler entre la sortie d'un port d'accès d'un navire belligérant et le départ d'un navire appartenant à la Puissance ennemie.

Annex 2.[†]

Extract from Protocol No. 2, June 4, 1885, of Suez Canal International Commission.

M. Asser rappelle qu'au sein de la Sous-Commission il avait, lors de la deuxième lecture, critiqué comme trop absolue l'expression *le port le plus voisin*, qui se trouvait dans le texte primitif. D'accord avec Sir Julian Pauncefote, il avait proposé de stipuler que les bâtiments de guerre des belligérants ne pourraient, dans le Canal ou ses ports d'accès, se ravitailler ou s'approvisionner que dans la mesure nécessaire pour gagner le port le plus voisin *qui leur soit accessible et où ils puissent pourvoir à leurs besoins.*

Le Délégué des Pays-Bas persiste à croire qu'une disposition ayant pour but de préciser ce que l'on entend par la *mesure nécessaire*, présenterait de sérieux avantages. Toutefois, la majorité de ses collègues pensant que la rédaction adoptée par la Sous-Commission sera interprétée conformément à ses vues, il ne croit pas devoir présenter un amendement.

Sir Julian Pauncefote partage l'opinion de M. Asser, mais ne croit pas non plus devoir soulever de nouveau la question.

No. 14.

[January 18, 1904.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, August 26, 1903.*

Reimbursement of charges on telegrams stopped by Military Censor.

I HAVE the honour, by the direction of the Marquess of Lansdowne, to transmit to you a letter from the War Office (Paper A), inclosing copies of letters received from the Post Office, on the subject of the reimbursement of charges on telegrams expressed in plain language which were stopped by the military censors during the recent war in South Africa.

In this connection, I am to draw attention to your Report of the 11th June, 1901 (Paper B), in which the opinion is expressed that the action of His Majesty's Government in stopping telegrams of this class was justified under Article VIII of the International Telegraph Convention, and that the view taken by the Postmaster-General in the letter from that Department of the 11th May, 1901 (Paper C), as to the transmission of telegrams "at the sender's risk" is sound.

It will be observed from the letter of the 30th August, 1901 (Inclosure 1 in Paper A), from the Post Office to the War Office, that it was decided to reimburse the charges on all telegrams in plain language (inclusive of those composed in any of the codes authorized through the medium of the International Bureau) which have been stopped, mutilated, or delayed by the censors; and that, although His Majesty's Government are desirous that some understanding should be arrived at as to the value of a notification of "sender's risk," they do not, as at present advised, consider that it would be expedient to raise the matter with the Telegraph Union.

At the recent Telegraph Conference, on the motion of Germany, it was decided to amend the detailed Regulation relative to the stoppage of telegrams or the suspension of a telegraphic service, by extending the obligation to give notice to the office of origin, which previously arose only in the case where a particular telegram was stopped, to the case of a general suspension of service.

This obligation was, however, modified by a condition that it should not apply where the stopping Administration considered it would be prejudicial to the interests of the State to give such a notice.

A copy of the Regulation, as well as of the two Articles of the Convention to which it refers, is forwarded for reference.

The Regulation as altered seems to have little effect, since the obligation to advise the senders in the case of stoppage of particular telegrams is obviously inappropriate to the general suspension of a service, and, moreover, the saving clause at the end of the addition leaves it entirely in the discretion of the stopping Administration to give notice or not.

The fact that the subject has been discussed in the Conference, and a Regulation on the subject framed, seems, however, to make it the more important that in any future case of censorship the Government should, as is suggested in the following observations, make it clear that it is acting entirely outside the provisions of the Convention.

It has accordingly been decided to modify the form of Notification on the next occasion when a censorship of telegrams has to be established, so as to make it clear that, so far as the Convention is concerned, His Majesty's Government are exercising their right under Article VIII of stopping all telegrams; but that as an act of grace, they will not object to telegrams in plain language being sent forward, on the understanding that such telegrams are sent subject to the liability to be stopped, delayed or otherwise dealt with at the point in question; and that the sender relinquishes all claim to reimbursement in the event of such telegrams being so stopped, delayed, or altered.

I am to inclose the draft of two forms of Notification (which have been drafted by the Solicitor to the Post Office, Papers D and E), the first announcing the suspension of the telegraphic service, the second, that telegrams of certain kinds may be sent subject to the chance of stoppage or delay or other treatment at the discretion of the suspending authority. The second Notice has been drafted to meet the case of a censorship similar to that notified in the case of South and East Africa in November 1899—that is, it is framed on the assumption (1) that the telegrams of neutral Governments in secret language will not be permitted to pass, (2) that telegrams in authorized codes, if allowed at all, will not be permitted at the outset, but will only be sanctioned by a subsequent relaxation of the censorship originally imposed. Should it, however, be decided on the occasion of a future censorship to depart from the course adopted in 1899 with regard to either of these points, the wording of the draft Notification could readily be altered.

The object of the Notification is to make it clear that the Government in transmitting telegrams is relaxing its power of suspending the telegraphic service entirely, and is not, therefore, acting under the ordinary provisions of the International Convention, but merely transmitting telegrams, if their transmission can be properly allowed, as an act of grace and favour.

It is stated on the part of the Post Office that during the last military censorship, telegrams were sometimes altered and forwarded as altered. Liability to alteration should, therefore, be covered by the general words used in the Notification.

I am to invite your special attention to the wording of that portion of the Notification which is intended to relieve His Majesty's Government of the obligation to compensate, and to request that, in taking these papers into your consideration, you will favour his Lordship with your opinion as to whether the draft Notifications are such as might properly be issued by His Majesty's Government under Article VIII of the International Telegraph Convention in the event of the establishment at any future time of a censorship of telegrams being deemed by them to be necessary, or whether its terms may be advantageously altered or modified, and, if so, in what respect.

Lord Lansdowne would also be glad to be favoured with any general observations upon the matter which you may be good enough to offer.

I have, &c.
(Signed) T. H. SANDERSON.

List of Papers.

(A.)	War Office		October 6, 1902.
(B.)	Law Officers' Report	(Confidential 7733, p. 19)	June 11, 1901.
(C.)	Post Office		May 11, „
(D.)	Draft Form of Notification		
(E.)	Ditto ditto		
(F.)	Regulations of Telegraph Convention and annexes (Confidential 7993*, pp. 3 and 24), London Revision, 1903.		

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Report.

We see no objection to the draft Notifications, and have no observations to make.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
January 18, 1904.

Annex.

Draft Notification of Suspension of Telegraphic Service.

HIS Britannic Majesty's Government find themselves under the necessity of availing themselves of the power reserved under Article VIII of the International Telegraph Convention to suspend entirely the transmission of telegrams to and from
at

R. B. F.
E. C.

Draft Notification as to Provisional Use of Suspended Telegraphic Service.

WHILST maintaining the Notification of the instant, of the suspension under Article VIII of the International Telegraph Convention of the transmission of telegrams to and from at , His Britannic Majesty's Government, with a view to minimize inconvenience to the public, will, until further notice, permit the transmission of such telegrams in plain language as the public choose to send; on the understanding that such telegrams are subject to censure by the British military authorities; that they may be stopped, delayed or otherwise dealt with, in all respects at the discretion of those authorities, and without notice to the senders; and that no claims in respect of them, whether for the reimbursement of the sum paid for transmission or otherwise, will be considered by His Majesty's Government in any circumstances whatever. It is, moreover, essential that such telegrams should bear the sender's signature at the end of the text; otherwise they are liable to be stopped until the name is notified by paid telegram.

R. B. F.
E. C.

No. 15.

[February 25, 1904.]

(No. 1.)

The Marquess of Lansdowne to Sir C. Eliot.

(Treaty.)
(Telegraphic.) *Foreign Office, February* 10, 1904.

Russo-Japanese war: Supply of coal to belligerents in Zanzibar waters. Position of the Protectorate.

[RUSSIA and Japan war.]

No coal should be supplied to any belligerent vessels except on a written declaration by the Officer Commanding that it is for the specific purpose of enabling them to proceed direct to the nearest port of their own country or other nearer named neutral destination with reference to which the supply of coal is given.

Coal should not be supplied at all if there is reasonable ground for supposing that the coal is in fact to be used for another purpose.

(No. 2.)

Sir C. Eliot to the Marquess of Lansdowne.—(Received February 10.)

(No. 46.)
(Telegraphic.) *Nairobi, February* 10, 1904.

YOUR telegram, Treaty, 10th February. Does it apply to Government coal only, or am I bound to control private firms? Indians have been buying up coal.

Minutes.

Qy. answer. The Rule, for terms of which see "London Gazette" of the 26th April, 1898, inclosed in Treaty Circular of same date, is applicable to all persons over whom His Majesty exercises jurisdiction in territorial waters of Protectorate.

Mr. Davidson.

W. M.

Foreign Office, February 11, 1904.

I should have thought that it would have been clear to Sir C. Eliot that these Rules would be absolutely nugatory if they were not of application to the supply of coal by private individuals.

The reply should be that the Rules are applicable to all persons in the Protectorate over whom His Majesty exercises jurisdiction.

Ought we not to suggest that the Sultan of Zanzibar should issue similar Rules with regard to his own subjects?

W. E. D.

Foreign Office, February 11, 1904.

The Sultan of Zanzibar did not issue any Proclamation of Neutrality at the time of the Spanish-American war, but I think Sir C. Eliot might be instructed to suggest to him that it might be well for him to adopt a neutral attitude, to make some public announcement of his intention to do so, and, by way of carrying it out, to enjoin his subjects to observe, as far as possible, the principles of the English Rules.

W. M.

Foreign Office, February 12, 1904.

But if the Sultan did not issue a Proclamation of Neutrality in 1898, we must pause before advising him to do so now. I was not suggesting that he should issue *a Proclamation of Neutrality*, but that he should, by issuing the rules as to coaling, make them binding on his subjects.

A Proclamation of Neutrality is a matter of external international relations as opposed to internal administration, and, in my opinion, would fall more properly within the domain of the Suzerain who is responsible for those external relations, than of the Sovereign whose foreign relations have been placed under the protection of the Suzerain.

But we had better obtain a Memorandum from the Library (the point has surely been discussed before), and when we have obtained all the available material in the way of fact and precedent, we should consult the Law Officers.

W. E. D.

Foreign Office, February 12, 1904.

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Three months' Rule as to Coaling, and its application to British Protectorates.

I feel some doubt whether they could refuse to coal a ship at Zanzibar (if the contingency arose) on the ground that it had coaled at Aden, *e.g.*, within the preceding three months. That is why I have put in "as far as possible."

W. M.

This is an important question, and I am glad Mr. Maycock has raised it so that it may be considered.

Personally, however, I am strongly of opinion that the three months' rule applies to British Protectorate ports as well as to British dominion ports.

His Majesty is responsible for the observance of neutrality by His Majesty's Protectorates, the external and international relations of which are entirely under His Majesty's control.

It is the essence of a Protectorate that the Suzerain or Protecting Power controls its external relations, while the Sovereign is concerned with its internal and domestic policy.

If a Russian cruiser which had coaled at Aden applied within three months for coal at Zanzibar she ought to be refused coal.

W. E. D.

Foreign Office, February 12, 1904.

Seen by Mr. Hurst.

Foreign Office, February 14, 1904.

Breach of Neutrality Rules by private individuals.

There is some doubt whether these neutrality rules can be enforced in the case of recalcitrant private British subjects, who insist on breaking them, unless such breach happens also to amount to a breach of the Foreign Enlistment Act.

To give an example: suppose a Russian vessel, which has already had coal within the last three months at Singapore, puts into Colombo and asks for more coal, she is, of course, refused coal from Government yards, but there are private coal yards there.

Unless the supplying of coal from such a private yard was in such quantity as to amount to an augmenting of the vessel's equipment for war (section 10 of the Foreign Enlistment Act), it seems to me extremely doubtful whether a private individual, disregarding the three months' rule, could be punished.

Other instances might be given.

Mr. Cox shares my doubts, and I think this point ought to be considered by the Law Officers.

These individuals would, of course, incur His Majesty's high displeasure, and they might be indirectly punished in other ways; but, meanwhile, if they get a famine price per ton for their Welsh steam coal, this would afford them some slight consolation perhaps.

W. E. D.

Foreign Office, February 12, 1904.

Seen by Mr. Hurst.

I felt pretty sure that a similar case had arisen during the Spanish-American war, and Mr. Maycock has since found the reference to it.

On that occasion I expressed a similar opinion to that expressed on the preceding page—and the Law Officers concurred in it—so that we may consider this question settled

Perhaps Mr. Maycock would kindly add the exact reference for future convenience in dealing with the question should it actually arise in practice.

W. E. D.

Foreign Office, February 13, 1904.

Seen by Mr. Hurst.

C. H.

I have not found any instance of the question having arisen as to the supply of coal to belligerent vessels by private individuals in British ports, but it would seem from the wording of Rule 3 in Lord Lansdowne's letter to the Public Offices, of the 10th February, 1904, that *all* coal is included within the meaning of the rule.

The rule says: "*No ship of war shall hereafter be permitted* to take in any supplies, except so much coal only as may be sufficient to carry such vessel to the nearest port," &c.

It is the ship of war which is forbidden to receive the coal, rather than the individual who is forbidden to supply it; and the special permission referred to in the case of further supplies within three months must therefore be intended to apply to the ship and not to the persons from whom the coal would be obtained. But there seem to be no cases recorded in our indexes in which the working of the rule is demonstrated.

The question of the application of the neutrality rules to British Protectorates in the matter of recoaling within three months was raised during the war between Spain and the United States in 1898, when it was decided that they applied equally to Protectorates and to Colonies (Colonial Office, 1st July, 1898).

Instructions in this sense were issued by the Colonial Office and concurred in by the Foreign Office. (To Colonial Office, 27th April, 1898.)

In the case of Sarawak, Rajah Brooke issued a Proclamation of Neutrality on his own account; as to which Mr. Davidson observed, in a Minute dated the 16th June, 1898: "I should doubt, moreover, whether, as a matter of policy, it is desirable that Rajah Brooke should magnify his sovereignty by issuing proclamations of his own motion." (Acting Consul-General Swettenham, No. 1, 16th May, 1898.)

(Signed) A. H. OAKES.

Foreign Office, February 13, 1904.

Mr. Davidson.—C. H.

There is no doubt at all that the rule is *meant* to apply to the supply of coal by private individuals as well as from Government sources. The rule would be quite nugatory otherwise.

Technically the rule as to no further supply within three months may be worded against the foreign public ship, but practically we should have to enforce its observance by restraining the private individual, and complaining of the conduct of the ship to the Government of the ship's nationality. We could not use force or coercive measures to a foreign man-of-war with whose nation we were at peace, except in an extreme case, as by international usage and courtesy she is not amenable to the ordinary law of any country but her own, and no other law runs on board of her while she is in commission but that of her own country.

Moreover, if a British subject aided a foreign man-of-war to do something which that foreign man-of-war was forbidden to do by the Rules in question, such British subject would himself be violating those Rules.

The question is whether, as the law now stands, such British subject could be punished, unless what he did amounted to an offence against the Foreign Enlistment Act. I doubt whether he could be punished, as a breach of these Rules—the provisions of the Foreign Enlistment Act apart—is not, so far as I know, a statutory offence, nor is it, I think, an offence at common law.

If this be the correct view, legislation is required on the subject, which, so far

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as our Protectorates and Crown Colonies are concerned, can readily be passed, but which, so far as this country and the self-governing Colonies are concerned, would require an Imperial enactment.

The case of Rajah Brooke differs materially from that of the Sultan of Zanzibar, but I did *not* propose that the Sultan of Zanzibar should issue a Proclamation of Neutrality. On the contrary, that is precisely what I deprecated in my previous Minute of yesterday's date.

But if the Sultan does not issue similar *Rules*, or in some way make them binding on his subjects, the Court at Zanzibar will not be able to enforce them quâ Zanzibar subjects. As regards foreigners, not subjects either of the protected or protecting State, whose nations still possess extra-territorial jurisdiction at Zanzibar, no means exist, so far as I can see, of making these Rules binding on them.

But Zanzibar is in this respect in a peculiar position, and in most other Protectorates this difficulty will not arise, as Great Britain possesses jurisdiction over all persons in the Protectorate.

W. E. D.

Foreign Office, February 13, 1904.

It seems to me that legislation is required, both Imperial and Protectorate.

The supply of coal to a belligerent ship of war putting into a port in the British dominions does not appear to me to be touched by "The Foreign Enlistment Act, 1870."

The only section that can affect it is section 10, and, in my opinion, the supply of coal in port is not "equipping" within the meaning of the Act. The word is defined in section 30, and is used in other sections of the Act, and it appears to me to apply only to the fitting out and adapting of the ship for sea service either when first put into commission or at some intermediate stage, when she is overhauled, strengthened, or repaired, and that the word does *not* cover the supply of consumable stores at an intermediate port in the course of a voyage. I quite admit that when a vessel is being equipped the supply of coal may be a portion of such equipping.

If the supply of coal at a neutral port is "equipping" within the meaning of section 10, then the supply of any coal at all (even within the limits allowed by the neutrality rules) is a criminal offence, and the merchant is liable to be punished, because the supply requires the licence of His Majesty, and such licence must be under the Sign Manual, or by Order in Council, or by Proclamation and consequently the instructions of the Secretary of State could not be pleaded as such licence.

There appears to me to be a further difficulty with regard to Rule 2. How can a foreign merchant-vessel be compelled to respect the twenty-four hours' rule? It seems to me an astute Japanese merchant-vessel might play over again the comedy of the "Tuscarora" and the "Nashville," and indefinitely detain a Russian war-ship in a British harbour by slipping out whenever the war-ship wished to leave and so preventing the latter sailing for twenty-four hours, she herself returning within that period.

With a war-ship the case is, I suppose, different, because it would be contrary to custom to affect her by legislation, and if she refused to abide by the neutral's instructions it would be a *casus belli.*

It seems to me that immediate legislation is required throughout the British dominions to give legal sanction to the coaling rule, and perhaps also to make the twenty-four hours' rule binding on neutral merchantmen.

To facilitate discussion I have drawn up a short Bill which would meet the point —not, of course, as a final draft, but merely to give a concrete form to the discussion of the question.

The British possessions between Europe and Japan are all Crown Colonies (except Somaliland, which is a Protectorate), and the most expeditious form of legislation would probably be local enactments in each particular Colony, which would eventually be superseded by an Imperial Act.

Immediate steps ought also, I think, to be taken to extend the Foreign Enlistment Act to our Protectorates. This cannot be done by Act of Parliament; it must be effected either by Order in Council or local enactment; the latter would be quicker, and I annex also the draft of an East African Ordinance applying the Act to the Protectorate, with the necessary modifications, and adding sections to deal with the coaling and the twenty-four hours' rule points.

In Zanzibar, King's Regulations should be issued similar to the Ordinance passed in East Africa, and the Sultan should be instructed to issue a Decree embodying an abbreviated Foreign Enlistment Act, and then also to issue the coaling rules.

I think in this way all the points might be met.

C. J. B. H.

Foreign Office, February 14, 1904

Draft Bill.

Whereas it is expedient to make further provision for regulation of the conduct of His Majesty's subjects during the existence of hostilities between foreign States with which His Majesty is at peace:

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "The Foreign Enlistment Amendment Act, 1904," and shall be read as one with "The Foreign Enlistment Act, 1870," hereinafter called the principal Act.

2. This Act shall come into operation in the United Kingdom immediately on the passing thereof, and shall be proclaimed in every British possession by the Governor thereof as soon as may be after he receives notice of this Act, and shall come into operation in that British possession on the day of such Proclamation.

3. If any person, without the licence of His Majesty, supplies, or causes to be supplied, or is privy to the supply of, any coal, provisions, or other stores to any ship in the dominions of His Majesty, which, at the time of the supply was a ship in the military or naval service of any foreign State at war with any friendly State, contrary to any rules or instructions issued by a Secretary of State or by the Governor of that possession,

Such person shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, with or without hard labour, or either of such punishments, at the discretion of the Court before which the offender is convicted; and the coal, provisions, or other stores in respect of which any such offence is committed, shall be forfeited to His Majesty.

4. If, during the continuance of any war in which His Majesty may be neutral, the Captain or other officer in command of any vessel of the mercantile marine of either of the belligerent Powers should, while the vessel is within any port of, or within the territorial waters adjacent to, the dominions of His Majesty, fail to comply with the instructions of the Harbour-master or any officer of Customs, or other public officer authorized in that behalf, as to the time or date at or before which the said vessel shall or shall not leave the said port or territorial waters, it shall be lawful for any of the officers mentioned in section 21 of the principal Act to seize and detain the said vessel in the manner provided by section 22 thereof until His Majesty's pleasure be known.

EAST AFRICA PROTECTORATE.

An Ordinance enacted by His Britannic Majesty's Commissioner for the East Africa Protectorate.

(L.S.)

,
Commissioner.

Mombasa. , 1904.

No. , of 1904.

FOREIGN ENLISTMENT.

It is hereby enacted as follows:—

1. This Ordinance may be cited as "The Foreign Enlistment Ordinance, 1904."

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2. "The Foreign Enlistment Act, 1870" (33 & 34 Vict., cap. 90), shall apply to the Protectorate with the following modifications and additions:—

The Commissioner shall be substituted for the Governor of a British possession; the Protectorate shall be substituted for a British possession;

Natives of the Protectorate shall be deemed to be British subjects for the purposes of the said Act.

If any person, without the licence of His Majesty, supplies, or causes to be supplied, or is privy to the supply of, any coal, provisions, or other stores to any ship in the Protectorate which at the time of the supply was a ship in the military or naval service of any foreign State at war with any friendly State, contrary to any rules or instructions issued by a Secretary of State or by the Commissioner, such person shall be guilty of an offence, and shall be liable on conviction to be fined or imprisoned, either with or without hard labour, or both fined and imprisoned, in the discretion of the Court before whom he is convicted, and the coal, provisions, or other stores shall be forfeited.

4. If, during the continuance of any war in which His Majesty may be neutral, the Captain or other officer in command of any vessel of the mercantile marine of either of the belligerent Powers, should, while the vessel is within a port or within the territorial waters of the Protectorate, fail to comply with the instructions of any public officer of the Administration as to the time or date at or before which the vessel shall or shall not leave the said port or territorial waters, it shall be lawful for any public officer to seize and detain the vessel in the manner laid down in section 22 of the said Act until His Majesty's pleasure be known.

(Signed) , *Commissioner.*

Mombasa, 1904.

Solicitor-General,

We can hardly do anything in this matter, at any rate so far as legislation of any kind may be involved, until the Attorney-General and yourself can consider the papers and questions together.

I would therefore propose that, as soon as you are ready, Cox of the Colonial Office, Hurst, and myself should come down to the House of Commons and have a conference with you both.

Meanwhile, if you *wish* to see me, will you send me a line, and I will come down any time to-morrow afternoon (Tuesday) that you like to appoint.

Hurst has made a rough draft of an Imperial Bill and of an Ordinance, which I send on as they may be useful for consideration. He has had to draft them in a great hurry, and desires your indulgence in consequence with regard to them

W. E. D.

Foreign Office, February 15, 1904.

Memorandum by Law Officers.

(B.)

The rules apply to all coal. The vessel is admitted only on terms of complying with the Regulations, and we think that in practice this would be found sufficient without Imperial legislation to prevent coal being taken on board in excess of the Regulations.

R. B. F.
E. C.

February 25, 1904.

We should instruct Sir C. Eliot in this sense in reply to his telegram of the 11th February.

W. E. D.

Foreign Office, February 26, 1904.

The Law Officers consider that, on the whole, it is unnecessary and inexpedient to legislate.

They think Imperial legislation would be practically impossible unless some case of a glaring description, showing its necessity, could be produced; and as Imperial legislation is not at present, at any rate, within the range of practical politics, they consider that it would be objectionable from the point of view of symmetry and congruity to legislate for Crown Colonies by Ordinance or for Protectorates by Order in Council.

This view was originally expressed by the Solicitor-General at a Conference at which Mr. Bertram Cox, on behalf of the Colonial Office, and Mr. Hurst and myself were present.

They have since been confirmed by the Law Officers at a conference which I had with them yesterday, and in a short Memorandum (marked "B") on supply of coal, and dated the 25th February, 1904.

W. E. D.

Foreign Office, February 26, 1904.

Reply in wording of Law Officers' Memorandum.

C. H.

Foreign Office, February 26, 1904.

No. 16.

[February 25 and 29, 1904.]

(No. 1.)

The Earl of Cromer to the Marquess of Lansdowne.—(Received February 23.)

(Treaty.)
(Telegraphic.)

Cairo, February 23, 1904.

. . . . Egyptian Rules of Neutrality.

French translation is rather loose, but the two mean substantially the same thing. We hardly think a published alteration necessary.

Minutes.

Russo-Japanese War: Egyptian Rules of Neutrality.

With all respect to Lord Cromer, I do not think that "supplying *in* a place" means at all the same thing as "supplying *from* a place.

There is a very substantial difference indeed, as I pointed out in my previous Minute. It is not a mere question of verbal inaccuracy and loose translation.

For instance, contraband goods put on board a neutral vessel at Alexandria in the ordinary course of commerce by a private firm, and consigned to a hostile destination, are clearly included within the words "supplied . . . . *from* any place within the territorial jurisdiction of the Egyptian Government.

According to our view, however, such a proceeding is a perfectly legitimate commercial transaction, to be carried out subject to the risks of the ship being stopped on the high seas and taken in for adjudication.

In such a case, however, the contraband of war has clearly not been supplied "*dans* le domaine de la juridiction territoriale du Gouvernement Égyptien."

I must say, having regard to our own attitude on this matter, I regard the mistake as of very considerable importance, especially as the English version or counterpart is published in the "Journal Officiel du Gouvernement Égyptien," and may, therefore, be appealed to as authoritative.

Lord Cromer, moreover, speaks of the "French translation," which looks as though

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the Rules had originally been framed in English, in which case the mistake would be even more important than if the master version of the Rules had been (as I supposed was the case) in French, and the *English* translation, or translation *from* the French, had been "rather loose."

On a more careful consideration, however, of the language of Article 9, there arises an even more important point than the above-mentioned material difference between the two versions (English and French) of these Rules, and that is that both versions of that Article go *far* beyond the accepted English doctrine as to the supply of contraband by private individuals in the way of trade to a belligerent.

According to the more benignant (French) version of Article 9, it would be unlawful for and forbidden to a private firm trading at Alexandria (*e.g.*) to furnish contraband goods to the Agents of the Japanese Government *at* or *in* that place, to be by those Agents thence shipped on board a neutral merchant-vessel to their hostile destination.

This, of course, goes far beyond the limitations to the English doctrine of absolute freedom of commerce in contraband on the part of ***private*** individuals, subject to the ordinary risks of transit on the high seas.

W. E. D.

Foreign Office, February 25, 1904.

[See opinion on both points of the Law Officers, whom I have just seen at the House of Commons.]

W. E. D.

Foreign Office, February 25, 1904, 6·30 P.M.

Memorandum by Law Officers.

It appears to us that the difference between the English and French versions of Article 9 of the Proclamation of the 12th February, 1904, is material. The former prohibits the supply from any port, &c.; the latter prohibits only a supply to the belligerent in the port, &c.

But, apart from this, we desire to call attention to the wide scope of Article 9 in either version. The British doctrine (*i.e.*, that of His Majesty's Government) prohibits supply to vessels of war in British territory, and all fitting out or equipping of expeditions or vessels; it does not prohibit the sale of any articles, such as arms, &c., to Agents of belligerents within the neutral territory. Article 9 prohibits the sale of arms, &c., to Agents of belligerents in Egypt. This appears to us to be in excess of any rule of neutrality which has yet been recognized.

R. B. F.
E. C.

February 25, 1904.

(No. 2.)

The Earl of Cromer to the Marquess of Lansdowne.—(Received February 27.)

(No. 25. Treaty.)
(Telegraphic.) *Cairo, February* 27, 1904.

YOUR telegram of yesterday. Egyptian Rules of Neutrality.

Please telegraph text in English which you would propose in the place of the present Rule 9.

Minutes.

I am inclined to think it would be as well to withdraw it bodily. It would not be easy to modify it so as to make it conform to any procedure of this country.

Mr. Davidson.

W. M.

Foreign Office, February 27, 1904.

C. H.

I do not think we can advise that it should be bodily withdrawn, since if it were so withdrawn, there would be no rule to prevent supply of arms, &c., to a belligerent ship already existing, unless such supply constituted a building, an equipping, or an *altering* of such ship so as to increase its warlike force within the territorial jurisdiction of the Egyptian Government. The word "altering" applies to the ship itself apparently, and would hardly cover the shipment of a large quantity of ammunition on board her.

The difficulty might possibly be met by adding a few words to Rule 10, and omitting Rule 9, making then the present Rule 10, as altered, into Rule 9.

W. E. D.

Foreign Office, February 29, 1904.

The Attorney-General.
The Solicitor-General.

Memorandum by Law Officers.

We suggest that Rule 9 might be omitted, inserting in Rule 4, before "supplies," the words "arms, ammunition, equipment, or any."

We would further suggest that, in Rule 10, the words from "unless" (inclusive) to the end of the clause should be omitted, and the following substituted: "If such ship is intended for the service of either belligerent Power."

Perhaps the best plan would be to withdraw all the present Rules, and substitute Rules as altered.

R. B. F.
E. C.

House of Commons, February 29, 1904.

No. 17.

[March 7, 1904.]

The Earl of Cromer to the Marquess of Lansdowne.

(No. 20. Treaty)
(Telegraphic.) *Cairo, February* 23, 1904, 11·22 A.M.

THE "Smolensk," which passed southward a few days ago and received 2,400 tons of coal, is now in the Canal proceeding northward. Port authorities have been instructed, in the event of Captain asking for coal, to refuse it pending examination of question.

Russo-Japanese War: As to application of three months' rule respecting coaling of belligerents.

Please telegraph as soon as possible whether you consider three months' limit, which applies to Egyptian ports outside Canal, should or should not be applied to the Canal ports. It appears to us that it should be applied, in order to prevent belligerents making use of Canal ports as a base of operations.

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Minutes.

See telegram of the 19th February, sent after reference to Law Officers.

I think that the "extra Canal" Rule (No. 4), under which no further supply should be given for three months, should certainly be applied, in practice, to the Canal ports, and since the Law Officers consider that the "Smolensk" is within Rule 8, then she should be given no further supply of coal at Port Saïd.

W. M.

Foreign Office, February 23, 1904.

I do not think that the Canal ports are quite in the same position as ordinary neutral ports. One of the main objects of the Canal Rules is to clear the Canal of belligerent vessels as soon as possible, and they are therefore, with this end in view, given coal, not necessarily enough to take them to the nearest port of their own country or to some nearer neutral destination, but merely enough to take the vessel to "the nearest accessible port at which she can obtain the supplies" (including the coal) "necessary for the continuation of her voyage."

Under the Canal Rules, therefore, the supply of coal is more limited than under our own, or the "Egyptian-ports-proper" neutral Rules.

For instance, the "Smolensk" at Suez could only have enough coal to take her to Perim–Aden; but if Suez were an Egyptian port proper, she could have enough coal to take her to the nearest Russian port. So at Port Saïd she would only get enough coal to take her (say) to Alexandria, if she had passed the Canal previously. But at Alexandria she could have enough to take her to Libau, provided she had room to store coal for a 5,000-mile voyage in her bunkers.

It must also be remembered that, if the three-months Rule is to be applied to Canal ports, the result might be that a belligerent vessel which turned up at Port Saïd within three months of her having been coaled at either Port Saïd or Suez would have to be kept at Port Saïd until the three months had expired, thereby blocking the Canal, or, at any rate, unduly prolonging her stay at a Canal port.

On the whole, I think that it would be a mistake to apply the three-months Rule to the Canal ports.

If a case should arise in which there is good reason to suspect that the Canal is being used as a base of operations, and not merely in the course of *bonâ fide* and legitimate voyaging from the Mediterranean to the Pacific, or *vice-versâ*, then such a case would have to be dealt with on its merits or demerits.

It will be seen from the later telegram, just received from Lord Cromer, that this particular case is not now so pressing, as the "Smolensk" is found to have 1,500 tons of coal on board, and does not ask for more.

As soon as Lord Lansdowne has seen these Minutes, and added anything he wishes to them, I would propose to send them to the Law Officers, and to defer instructing Lord Cromer until we have obtained their views.

W. E. D.

Foreign Office, February 23, 1904.

It is now only the question of principle that has to be decided.

C. H.

Send to Law Officers at once.

L.

Mr. Davidson.

C. H.

Attorney-General.
Solicitor-General.

Would you be good enough to give your views on this question, so that Lord Cromer may be instructed as soon as possible. I think that all the necessary papers are put up herewith, but if you want any further information I will come down to the House of Commons.

W. E. D.

Foreign Office, February 23, 1904.

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Memorandum by Law Officers.—(Received March 7, 1904.)

It is clearly necessary to prevent the Suez Canal ports being used by war vessels of belligerents as a base of operations, as this would be an infraction of neutrality. It is with this object that the three-months Rule has been generally adopted, and we think that it would afford a good working rule as regards the Suez Canal ports. We therefore suggest that it would probably be convenient if it were adopted in practice for the purpose of the Suez Canal ports, subject to the exigencies of any special cases in which it may be necessary to prevent a block of the Canal.

R. B. F.
E. C.

[In Colonial Office letter of April 30, 1904.]

No. 17A.

[March 19, 1904.]

Law Officers of the Crown to Colonial Office.

Foreign Enlistment Act, 1870: Extension of operation of to new Colonies.

Sir, *Royal Courts of Justice, March* 19, 1904.

WE were honoured with your commands signified in Mr. H. Bertram Cox' letter of the 24th ultimo, stating that he was directed by you to request the favour of our Reports on certain questions which had arisen with regard to the application of "The Foreign Enlistment Act, 1870," to certain parts of His Majesty's dominions.

That the 3rd section of that Act (33 and 34 Vict., cap. 90) provided that the Act should be proclaimed in every Colony by the Governor thereof as soon as might be after he received notice of the Act, and should come into operation in that British possession on the day of such Proclamation.

That the Act when passed was sent out to the Governors of the British Colonies then in existence and was duly proclaimed and brought into operation, but that at various dates since that time new possessions had been acquired by cession or by conquest, and that the question had now arisen how far, if at all, the Act had been brought into operation in those Colonies.

That the British possessions to which Mr. Bertram Cox was to call our attention were Fiji, Ashanti, the Transvaal, the Orange River Colony, Griqualand West, Bechuanaland, Zululand, and Basutoland.

That Fiji was acquired by cession from the Chiefs and people of the islands on the 10th October, 1874, and was erected into a separate Colony by letters patent, dated the 2nd January, 1875.

That "The Foreign Enlistment Act, 1870," did not seem ever to have been proclaimed in Fiji, but that by section 26 of "The Supreme Court Ordinance, 1875," passed in that Colony, it was provided that the common law, the rules of equity, and the Statutes of general application which were in force on the 2nd January, 1875, should be in force in the Colony.

That you assumed that the Foreign Enlistment Act, which applied to all of His Majesty's subjects, was a Statute of general application within the meaning of the Ordinance, and that, therefore, that Act might be considered as being in force in Fiji, notwithstanding that it had not been formally proclaimed there, as prescribed by section 3 of that Act.

That Ashanti was annexed to, and became part of His Majesty's dominions under an Order in Council of the 26th September, 1901.

That no Proclamation under the Foreign Enlistment Act had been made within Ashanti, and that it was presumed that a Proclamation should be at once issued, unless, having regard to the length of time which had elapsed since the date of annexation, it was desirable to extend that Act to Ashanti by the passing of an Ordinance under the provisions of section 7 of that Order in Council.

That the Transvaal was annexed on the 1st September, 1900, and the Orange River Colony on the 24th May, 1900.

That a telegram was sent to Lord Milner on the 19th February last, instructing him to proclaim the Foreign Enlistment Act in both Colonies, if that step had not already been taken, but that there would be no difficulty in passing an Ordinance in each of those Colonies should we consider that the steps already taken were insufficient.

That Griqualand West was annexed to the Cape Colony by Act 39 of 1877, which came into operation on the 15th August, 1879.

That by a Proclamation dated the 28th September, 1870, the Foreign Enlistment Act was proclaimed in the Cape Colony, and that Mr. Cox was to inquire whether—under the Act of 1877, which annexed Griqualand West to the Cape Colony—the Foreign Enlistment Act came into effect within the Province of Griqualand West, or whether legislation was necessary.

That the Province of British Bechuanaland was annexed to Cape Colony by Act 41 of 1895, and that it was presumed that the provisions of section 2 of that Act brought the provisions of the Foreign Enlistment Act, which were—as already pointed out—at that time in force in the Cape Colony, into operation within British Bechuanaland.

That Zululand was annexed to Natal under the operation of letters patent of the 1st December, 1897, and the Zululand Annexation Act. That Mr. Cox was to refer

us to the Acts of the Colony collected under the title "Zululand" in the third volume of the Consolidated Statutes of Natal, and that he was to request us to report whether, under the provisions of those Acts, the Foreign Enlistment Act was in force within the Province of Zululand.

That Basutoland was annexed to the Cape Colony by an Act of the Colonial Legislature No. 12 of 1871, but that it was provided by that Act that it should not be subject to the general law of the Cape Colony.

That by Act No. 34 of 1883, which was assented to by an Order in Council, Basutoland was disannexed from the Cape Colony and put under the direct control of the High Commissioner for South Africa, who was empowered to make laws by Proclamation.

That no Proclamation bringing into force the Foreign Enlistment Act had apparently ever been passed, and that Mr. Cox was to inquire whether a Proclamation should be passed in the nature of an Ordinance bringing the Act into operation, or whether it should be proclaimed under the provisions of section 3 of the Foreign Enlistment Act.

That Mr. Bertram Cox was to request us to take these papers into our consideration, and report—

1. What was the proper meaning to be assigned to the expression "Statutes of general application" in section 26 of the Supreme Court Ordinance of Fiji, and whether, under that section, the Foreign Enlistment Act might be considered to be in force in Fiji?

2. Whether the Foreign Enlistment Act should be proclaimed in Ashanti, or whether an Ordinance should be passed declaring it to be in force within that territory.

3. Whether Ordinances should be passed in the Transvaal and Orange River Colony, bringing the Foreign Enlistment Act into force, or whether the Proclamation made by Lord Milner under section 3 of the Act would be sufficient to insure its taking effect within those Colonies.

4. Whether the Foreign Enlistment Act was in force within Griqualand West, Bechuanaland, Zululand, and Basutoland, and, if not, what steps should be taken to bring it into operation within those parts of His Majesty's dominions?

5. Generally.

We have taken the papers into our consideration, and, in obedience to your commands, have the honour to

Report—

1. That, in our opinion, the expression "Statutes of general application" in section 26 of the Ordinance referred to would include the Foreign Enlistment Act, which, by section 2, extends to all the dominions of His Majesty. We think, however, that, having regard to the third section of the Act, it should be proclaimed in Fiji.

2. In Ashanti we think that an Ordinance should be passed applying the Foreign Enlistment Act, and that, after the passing of the Ordinance, the Act ought to be proclaimed.

3. In the Transvaal and Orange River Colony we think that Ordinances putting the Act in force should be passed, and that then Proclamation should be again made.

4. In the case of Griqualand West, we think there should be legislation. We do not consider that it would be safe, having regard to section 27 of the Act of Annexation, to assume that the Foreign Enlistment Act came into force when that province was annexed.

In the case of British Bechuanaland no legislation is necessary, as the Act is already in force there.

As regards Zululand, there must be legislation under section 4 of the Colonial Act No. 37 of 1897.

In the case of Basutoland, a Proclamation in the nature of an Ordinance should be passed.

5. We have nothing to add.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON.

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[Home Office.]

No. 17^{B}.

See their letter of April 7, 1904.

[March 23, 1904.]

Case.

Russo-Japanese war: Torpedo-boat bought by foreigner [M. Fontaine] during progress of.

THE Secretary of State has received the following letter from Palmer's Shipbuilding and Iron Company (Limited):—

"Sir, "*Jarrow, March* 15, 1904.

"We have almost ready for sea a torpedo-boat destroyer which was built for the purpose of sale to the British Government, as she is similar in type to others built and building. The vessel has been offered to the Government, but as they wished certain alterations made which we could not conform to, we have been obliged to try and dispose of her elsewhere. We have had several offers for her lately, and we now have a firm offer from a gentleman who has done a large business in buying and selling vessels to the Turkish, Spanish, Argentine Republic, and other Governments. The vessel is unarmed, and will be delivered to the purchaser on the Tyne, but to what Power we do not know.

"We thought it advisable, owing to the present state of affairs in the East, to apply to you for a licence to sell and to dispatch the vessel from the Tyne, as she now lies without armament or arms of any kind, and as we wish to dispose of the business as early as possible, we should feel obliged by your granting the necessary licence.

"We have, &c.
"For Palmer's Shipbuilding and Iron Company (Limited),
(Signed)
"*Secretary.*"

A representative of the Company has been informed that the matter would be submitted to the Law Officers of the Crown, without whose advice the Secretary of State could not take action in the matter, and also that it was impossible for the Secretary of State to say at this stage what proof of destination of the torpedo-boat destroyer referred to the Law Officers would require.

The Company will therefore be prepared to furnish the Law Officers with such further information, and any other material they may require, in order to enable them to form an opinion as to the steps which should be taken with reference to the proposed sale.

The Law Officers will notice that the application made to the Secretary of State is one for a licence to sell and dispatch the vessel. Presumably the licence referred to would be a licence under section 8 of the Foreign Enlistment Act (33 and 34 Vict., cap. 90). Such licences, however, appear to be suitable for cases only in which ships are built, equipped, or dispatched with intent, or knowledge, or reasonable cause for believing that they are to be employed in the naval or military service of a belligerent. Presumably the Law Officers would not advise that a ship built with such intent or knowledge should be allowed to leave this country.

If the Law Officers are satisfied by inquiry that there is no doubt that the purchaser of the ship proposes to buy it on behalf of the Government of some country which is not at war with any friendly Power, it is requested that they will advise whether any further steps are required beyond a written communication from the Secretary of State to the effect that he sees no reason for interfering in the matter of the purchase or dispatch of the ship whether with or without armament.

If, on the other hand, they consider that there is reasonable and probable cause, within the meaning of section 23 of the Act, for believing that the ship is about to be dispatched contrary to the provisions of the Act, their advice is asked as to whether the Secretary of State should inform Messrs. Palmer that if the sale is completed it will be his duty to take proceedings under the said section with a view to the legal proceedings for the condemnation or release of the ship, provided for by that section, being instituted.

The Secretary of State will also be obliged if the Law Officers will advise generally on the case, and on the procedure to be followed by the Secretary of State.

Opinion.

The licence for the dispatch of the vessel to be employed in the service of a belligerent should not be granted.

The fact that such a licence has been applied for creates a strong suspicion that it is proposed to dispatch the vessel for service with a belligerent Power. It is for the Secretary of State to satisfy himself whether there is reasonable and probable cause for believing that this is so, and, if he is so satisfied, to exercise the powers conferred upon him by section 23 of the Act.

If Messrs. Palmer are able to give explanations which dispel the suspicion to which we have adverted, the Secretary of State should not exercise his powers under section 23, but we see no occasion for his sending any notice or formal intimation to this effect.

Messrs. Palmer appear to be disposed to treat the Secretary of State with the utmost frankness, but he must be, of course, careful to see that nothing takes place which would entitle either belligerent to complain of a breach of neutrality on the part of this country.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Law Officers' Department,
March 23, 1904.

No. 18.

[August 15, 1904.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, July 26, 1904.

Gentlemen,

Foreign Jurisdiction Neutrality Order in Council: as to extending to Protectorates, &c.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the accompanying draft of an Order in Council, entitled "The Foreign Jurisdiction Neutrality Order in Council."

"The Foreign Enlistment Act, 1870," applies only to the British dominions, and no means exist of enforcing the observance of neutrality during a war between foreign Powers, either by the inhabitants of Protectorates which are technically not part of the British dominions, nor by British subjects and other persons over whom His Majesty possesses jurisdiction in foreign countries, such as Turkey and China.

Lord Lansdowne considers it undesirable that this state of things should continue, and, after consultation with the Colonial Office, it has been decided that Orders in Council should be prepared to meet the above object.

His Lordship is informed that Mr. Secretary Lyttelton has already forwarded for your consideration the draft of an Order which enacts for the Protectorates (including those administered by this Department) provisions similar to those contained in "The Foreign Enlistment Act, 1870"; and the draft now inclosed has been prepared to effect the same purpose for the foreign Jurisdictions of the Crown.

The question, of course, arises whether there is any obligation on His Majesty to enforce neutrality on British subjects in such foreign countries, and whether it is not for the local Sovereign to do so; but Lord Lansdowne considers that, whatever may be the answer to the abstract question, it is desirable that machinery should exist enabling the British authorities to act where they consider it desirable.

The draft Order follows as closely as may be the wording of the Foreign Enlistment Act.

No clause, however, is inserted corresponding to section 14 of the Act, as, the jurisdiction of His Majesty being a personal one and not territorial, it does not appear that any vessel that would be illegal prize would be subject to that jurisdiction.

No provision for the award of compensation has been made, as it seems better that if any such payment is thought desirable in consequence of enforcing the Order, it should be made *ex gratia*.

A clause corresponding to section 17 has been omitted because it does not appear

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to be necessary, and provisions similar to section 18 of the Act already appear in the Orders in Council dealing with the particular jurisdictions.

I am to request that you will be so good as to take the inclosed papers into your consideration, and inform his Lordship whether the terms of the draft Order in Council are such as may properly be submitted to the King in Council for His Majesty's approval.

His Lordship will also be glad to be favoured with any general observations which you may have to offer.

I have, &c.
(Signed) ELDON GORST.

Report.

In our opinion the draft Order in Council, as altered and initialled by us, may properly be submitted to His Majesty for approval.* We presume that the effect of the omission of section 33 of the Foreign Enlistment Act has been considered—its omission creates a disparity between the effect of this Order and that of the Foreign Enlistment Act.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 15, 1904.

Annex.

*NOTE.—The following alteration, indicated in erased type, was made by the Law Officers :—

10. If any person within the jurisdiction of the Court, and without the licence of His Majesty, by adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the warlike force of any ship which at the time of her being within ~~the dominions of His Majesty~~ *the jurisdiction aforesaid* was a ship in the military or naval service of any foreign State at war with any friendly State, such person shall be guilty of an offence against this Order, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

No 19

[August 22-23, 1904.]

Foreign Office to Attorney-General.

Russo-Japanese war: "Askold' taking refuge at Shanghae.

Dear Mr. Attorney-General, *Foreign Office, August* 20, 1904.

I AM requested to send you these papers which deal with the "Askold," the Russian cruiser that got to Shanghae after the naval battle, a good deal knocked about. Lord Lansdowne would like your opinion.

My previous Minute referred to in the one inclosed is in Ireland, but the purport of it was that international law allowed a belligerent cruiser to effect repairs in a neutral harbour, provided they were limited to rendering her seaworthy, and did not enhance her fighting power; that a vessel that reached Shanghae might be assumed not to have entered with a Japanese vessel in hot pursuit, and that therefore by entry into neutral waters Japan was not robbed of a prize; that there was no reason to apply at Shanghae the rule of disarmament that would be enforced at Wei-hai Wei, and has been enforced at Kiao-chao, which are both close to the scene of the sea fighting; that

there was no reason why China should not apply to the "Askold" the rules she announced at the beginning of the war, which embodied the ordinary rule that a belligerent cruiser might use a Chinese port but must leave in twenty-four hours or as soon as necessary repairs were effected.

But there is the question which should come first: Are we in any way concerned at all?

Perhaps you would indicate your opinion whether if we are in any way concerned, what steps you think should be taken.

* * * * *

Very truly yours,
(Signed) C. J. B. HURST.

Annex.

The Marquess of Lansdowne to Mr. Campbell.—(Received August 19.)

(Telegraphic.) *Lauragh, August* 19, 1904.

SATOW'S telegram No. 176.

I should have thought responsibility lay entirely with Chinese, but if this is doubtful send papers to Attorney-General.

Minute.

Lord Lansdowne,

With reference to your telegram about the "Askold" at Shanghae, I felt no doubt that the responsibility was China's, but as Mr. Hurst seemed to think that, owing to the repairs being effected in a British-owned dock, and to our extra-territorial jurisdiction in China, the responsibility might be a divided one.

We decided to send the papers to the Attorney-General as you directed should be done if the case were not clear.

We also wrote Minutes drawing attention to the points involved.

After a further talk I had with him this morning, I think Mr. Hurst was ready to agree that, as there has been no indication whatever of a wish on the part of China to transfer the responsibility to us, it is not at all desirable that we should intervene.

But I believe it would be a good thing that we should be able to let Sir E. Satow know our view of the Case, as he *might* have to intervene later.

* * * * *

See telegram to Sir E. Satow, No. 123, August 26, 1904.

F. A. C.

Foreign Office, August 20, 1904.

Opinion of Attorney-General.

I think that this matter should be left to China to deal with.

China is responsible to Japan and to Russia for the observance of neutrality, and could not with truth allege that she has not the power to prevent the "Askold" from putting out to sea again after being equipped for warlike purposes.

No application has been made to Great Britain with regard to the action of British subjects, and the facts as to any such action are far from clear. The Order in Council applying the Foreign Enlistment Act is not yet in force in China, and I do not see that there is a case for advising China as to her action. She is mistress of the situation, and should be left to deal with it.

Of course circumstances might arise out of infractions of neutrality by British subjects in China which would give ground of complaint to China, and even to third Powers, and it is in view of such possibilities that the Order in Council is being passed; but such a case does not arise in the present instance.

It may be questionable whether any repairs at all should have been allowed at Shanghae, but this, as is pointed out in the Minutes of Mr. Campbell and Mr. Hurst,

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* The Order as issued is contained in the "London Gazette" of the 28th October, 1904. [Library No. 8276*.]

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depends on questions of fact, and these are not before me, nor in view of the attitude of Japan as to repairs, not by way of warlike equipment, could this question apparently arise.

R. B. F.

Newton, Nairn, N.B.,
August 22, 1904.

Attorney-General to Mr. Hurst.

(Private.)
Newton, Nairn, N.B., August 23, 1904.

My dear Hurst,

I sent off the papers with my note on them yesterday.

To-day I have yours with Satow's further telegram.

My impression is that it was a case of taking refuge from hostile pursuit—but I daresay I haven't all the facts—and that the vessels ought to have been interned at the end of twenty-four hours, without allowing delay for any repairs at all. However, the Japs do not appear to insist on this.

Satow's instructions to the Consul seem very sensible.

The news of a reference to Peking, which I see in this morning's papers, may make it necessary for Satow to take part in advising the Chinese Government as to their action. The situation may easily become a very troublesome one.

* * * * * *

I hope China will be firm. I daresay she wants backing.

Yours sincerely,
(Signed) R. B. FINLAY.

No. 20.

[August 26, 1904.]

Foreign Office to Attorney-General.

Dear Mr. Attorney-General,
Foreign Office, August 25, 1904.

Seizure of Russian destroyer "Reshitelni" at Chefoo by the Japanese.

LORD LANSDOWNE is anxious that you should see the "apologia" of the Japanese Government for the seizure by two torpedo-boats of the Russian destroyer "Reshitelni" in the harbour of Chefoo. You will see from the other papers that the Japanese Government were advised to restore the vessel, but have declined.

I inclose two packets of telegrams which contain the history of the incident, one set of telegrams from Satow at Peking, and the other to and from MacDonald at Tôkiô.

No action is contemplated unless you think it necessary, but, of course, any general observations would be welcomed.

Very truly yours,
(Signed) C. J. B. HURST.

List of Papers.

Sir E. Satow	(No. 168. Telegraphic)	August 12, 1904.
Ditto	(No. 170. Telegraphic)	„ 14, „
Ditto	(No. 171. Telegraphic)	„ 14, „
Ditto	(No. 174. Telegraphic)	„ 17, „
Ditto	(No. 175. Telegraphic)	„ 17, „
Sir C. MacDonald	(No. 212. Telegraphic)	„ 12, „
Ditto	(No. 217. Telegraphic)	„ 15, „
Ditto	(No. 219. Telegraphic)	„ 16, „
Ditto	(No. 223. Telegraphic)	„ 18, „
To Sir C. MacDonald	(No. 113. Telegraphic)	„ 21, „
Sir C. MacDonald (contains "apologia" of the Japanese Government)	(No. 227. Telegraphic)	„ 22, „
Sir C. MacDonald	(No. 229. Telegraphic)	„ 24, „
Ditto	(No. 231. Telegraphic)	„ 24, „

Opinion of Attorney-General.

I do not see that there is any case for interference by His Majesty's Government.

The facts are in dispute, but it would appear that the Japanese may have a very good answer. China seems to be quite unable to enforce the observance of her neutrality by Russian vessels taking refuge in her ports, and it is alleged that the "Reshitelni" was not in fact disarmed, that she was using Chefoo for purposes of communications as to the war, and that Chefoo had been systematically so used by the Russians.

As between Russia and Japan the capture was good; it is China only that could complain, and her inability to prevent her ports being used substantially as a base of operations by Russia may afford a complete answer to any such complaints.

A very similar question may arise if Kuropatkin is forced over the frontier, and General Ma proves unable to intern him.

R. B. F.

Bradbury Private Hotel, North Berwick,
August 26, 1904.

No. 21.

[September 22, 1904.]

(No. 1.)

Sir C. Hardinge to the Marquess of Lansdowne.—(Received September 17.)

(No. 129. Treaty.)
(Telegraphic.)
St. Petersburgh, September 16, 1904.

Russian Rules as to contraband of war: Articles of dual use, &c. Supplementary instructions.

COUNT LAMSDORFF informed me to-day officially that supplementary instructions have been sent to the Naval Commanders and to the Prize Courts defining the interpretation of section 10 of Article 6 of Regulations respecting contraband of war, which has in some cases been misinterpreted. According to new instructions the conditionally contraband nature of articles used for peaceful or warlike purposes according to circumstances and included under Article 6 is admitted, but articles of dual use, as explained in my telegram No. 117, Treaty, are not necessarily free from seizure and condemnation as contraband when addressed to private individuals in enemy's country, since such persons might be military or naval contractors.

I remarked that in such cases onus of proof would rest with the captor. Count Lamsdorff agreed, but added that it would be to the interest of the owner to disprove the charge. He observed that horses and beasts of burden are to be considered as absolutely contraband. This official statement practically cancels Count Lamsdorff's note to Sir C. Scott of 7th March.

Minutes.

This is only partially satisfactory. The principle for which both this country and the United States have so strenuously fought—viz., that food-stuffs are only to be considered contraband if intended for the enemy's *fighting forces* as distinguished from the *enemy country*—is now conceded by Russia, and, consequently, another link is added to the chain of international law. But, and this is after all in accordance with our own formula, it is for a Prize Court to investigate and decide what use the articles are to be put to, so that a ship conveying flour or provisions, *e.g.*, will still be subject to capture and adjudication by Prize Courts, and our shipping will still be put to some inconvenience.

It will be best to await the official note before offering fuller criticisms on the telegraphic summary. It will probably be desirable to publish the official note in the "Gazette."

The last sentence applies to the whole message, not to horses and beasts of burden

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only. They, apparently, are in no circumstances to be regarded as of dual use, which seems very absurd, as it is obvious that horses and mules may be employed for "perfectly peaceful purposes."

I fear that the *practical* effect of this concession, though undoubtedly valuable in principle, is not wholly satisfactory.

The *real* difficulty will be that our merchant-ships will still be taken, I fear, to a remote and inaccessible Prize Court for adjudication, and I can not see that the contention advanced in the passage marked on p. 2 of Lord Lansdowne's despatch No. 94, Treaty, is satisfied in any way.

How far that contention can be further pressed is a matter of some difficulty, as we have so repeatedly admitted for years past that the real destination of articles of *ancipitis usûs* can only be determined by a Prize Court.

I think we should still have to protest against vessels carrying provisions being even taken to a Prize Court, unless there is *primâ facie* evidence that the consignees are naval or military contractors. But the question still bristles with difficulties. Possibly the chief one might be got over if some sworn declaration accompanied the manifest that the consignees were neither naval or military contractors, and the captor at sea might take this as sufficient and satisfactory evidence.

I think some proposal on these lines might be made to the Russian Government, but I apprehend that Lord Lansdowne will probably wish to refer the matter for the opinion of the Attorney-General.

W. M.

Foreign Office, September 16, 1904.

On the whole—judging from this summary—the Russian reply seems to me more satisfactory than, at all events a little time ago, we were justified in expecting. That ships with any food-stuffs on board *may* still be seized and taken before a Court is true enough, but it remains to be seen how Russian cruisers will interpret the new instructions.

The text of the note will be here on Monday probably, and after Mr. Hurst has seen it we may be able to submit to you some suggestions as regards points to be referred to the Attorney-General or Law Officers.

F. A. C.

Foreign Office, September 17, 1904.

A good deal will, no doubt, depend upon the actual terms of the note, but it is clear that the Russian Government have abandoned the position from which we desired to drive them, and that articles *ancipitis usûs* are no longer to be dealt with as unconditionally contraband. The reservation apparently made by Count Lamsdorff—namely, that such articles should not be necessarily free from seizure and condemnation when addressed to private individuals in the enemy's country—does not seem to me to be, on the face of it, unreasonable. If the private individual was notoriously a military or naval contractor, it would be absurd to contend that the articles were not destined for the use of the enemy's forces. It is quite true, as Mr. Maycock points out, that it will still be for the Prize Court to decide as to the destination of the alleged contraband. If, therefore, the Russian cruisers exercise their right of capturing neutral vessels in large numbers and bringing them before the Prize Courts, our shipping will certainly be put to serious inconvenience; but that seems to me an inevitable, though no doubt deplorable, result of the prevalence of hostilities between maritime Powers; and I presume that if the right of seizure is exercised in cases where the charge can be made good, the owners and shippers concerned will have a right to claim damages. Much will, of course, depend upon the character of the Prize Court, and we may have something to say upon that subject after our recent experiences. I do not know whether a mere declaration that the consignees were neither naval nor military contractors would be accepted as sufficient evidence, but points of this kind will have to be considered by our Legal Advisers. All papers bearing upon this matter should be sent as they arrive to the Attorney-General, with whom I hope to be able to confer before long.

L.

Foreign Office, September 19, 1904.

(No. 2.)

Sir C. Hardinge to the Marquess of Lansdowne.—(Received September 20.)

(No. 124. Treaty.)

St. Petersburgh September 16, 1904.

My Lord,

WITH reference to my despatch No. 112, Treaty, of the 8th instant, I have the honour to report to your Lordship that Count Lamsdorff made an official communication to me to-day on the subject of contraband, and on the interpretation to be placed on the Rules published by the Russian Government on the 14th February of this year.

His Excellency stated that, owing to the decision of a Commission which had been formed under the Presidency of Professor Martens to study the question of contraband, supplementary instructions had been issued to the Naval Commanders and to the Naval Prize Courts defining the interpretation of section 10 of Article 6 of the Russian Rules which the Commission were of opinion had in some cases been misinterpreted. According to the instructions now issued, the conditionally contraband nature of articles used for peaceful or warlike purposes, according to circumstances and included under Article 6, was admitted, but the Russian Government could not admit that articles of dual use when addressed to private individuals in the enemy's country should be necessarily free from seizure and condemnation, since, as he had pointed out to me on a previous occasion, provisions and such articles of dual use, though intended for the military or naval forces of the enemy, would obviously under such circumstances be addressed to private individuals and not to the Government, thus defeating the object of the Regulations.

I told Count Lamsdorff that I presumed the new instructions covered all the articles of dual use mentioned in Article 6. His Excellency agreed, with the exception of their application to horses and beasts of burden, which, he said, it had been decided to regard as absolutely contraband. I also added that, in the event of the seizure of articles of a conditionally contraband nature addressed to private individuals in the enemy's country, the burden of proof would necessarily rest with the captor. He assented, with the observation that it would be equally to the advantage of the owner of the articles in question to disprove the charge that they were destined for the military or naval forces of the enemy.

Count Lamsdorff expressed the hope that this admission of the conditionally contraband nature of articles included in Rule 6 of the Russian Regulations respecting contraband of war would prove satisfactory to His Majesty's Government, and would tend to avoid many difficulties in the future.

I have, &c.

(Signed) CHARLES HARDINGE.

Minutes.

This merely extends the telegram received on Saturday, which has been fully minuted.

As I have already said, I can see nothing at present which will prevent our ships being taken off to Vladivostock.

Mr. Hurst.

W. M.

Foreign Office, September 20, 1904.

This is so, but the Russian answer, nevertheless, concedes the principle for which we have been contending as regards conditional contraband.

The Russians having now replied, the point is, are we to accept it, or try for anything more.

We might, I think, acknowledge the friendly spirit in which our representations have been met, and then point out that, in the case of articles of dual use, unless the supplementary instructions are interpreted in a liberal spirit by the Commanders of Russian cruisers, they will not prevent our vessels carrying such goods from being

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seized and taken before a Prize Court with all the hardship incidental thereto in the case of innocent ships, and inquire, or, indeed, urge, that where there is no absolute contraband of war on board, the ship should not be detained unless the Commander has some *good reason to suspect* that *ancipitis usûs* merchandize is, in fact, intended for the enemy's military or naval forces.

I do not think this would be inconsistent with the view we have held that in doubtful cases the question of ultimate destination must be decided by a Prize Court.

Mr. Hurst.

F. A. C.

Foreign Office, September 20, 1904.

I agree. I should like to see the words "definite evidence" substituted for "good reason to suspect." We ought, I think, to aim at the ships being allowed to pass, and not brought to a Prize Court merely because the goods are consigned to the enemy's territory. There should be some more definite circumstance to take hold of than that, but I can imagine a Russian Captain believing that he had "good reason to suspect" that rice consigned to Kobe was for the Japanese army, when there was in reality nothing whatever that could be pointed to beyond the destination of the goods.

I should like also to see some reference inserted as to compensation being granted where articles *ancipitis usûs* are brought in, and it is found that the captors cannot establish that they are for the naval or military forces of the enemy.

Article 30 of the Russian Prize Court Regulations contemplates indemnities being paid when it is recognized that the property was seized without sufficient reason.

Section 88 seems to show that the owner of the goods must initiate proceedings for the recovery of compensation, and the proceedings go on simultaneously with those initiated by the captor to secure the condemnation of the goods (section 89).

I do not know whether we have been advising parties interested to claim compensation under these sections, but their existence justifies His Majesty's Government in saying that they expect the Prize Courts to award compensation where goods are seized and their contraband character cannot be established.

On the more general question, whether the new Russian attitude is to be regarded altogether as failing to meet the objections that His Majesty's Government have raised or accepted, and efforts made to have safeguards attached, so as to make it tolerable to neutral shippers, as Mr. Campbell suggests, I would like to observe that, if it is rejected, I do not quite see what His Majesty's Government could demand instead of it.

We clearly cannot demand that, under no possible circumstances, can food-stuffs be contraband. Our history, our naval manuals, and our attitude during this war all prevent such a claim.

The old Rule, which our own Prize Courts worked out, and which was generally accepted for a long time, was that, to be contraband, food-stuffs must be consigned to a port of naval equipment (I am omitting, for the present, cases of a direct destination to the enemy's fleet).

This Rule was established in the days when there were no railways, and when it was practically certain that sea-borne provisions for a fleet fitting out at Spithead would be shipped to Portsmouth, and not to the Thames. Nowadays, the goods might just as well be sent to Newcastle.

It seems to me, therefore, that it will be impossible to maintain the old Rule. Foreign nations who have not got old Prize Court precedents to look to would not accept it, and I doubt whether the Admiralty would consider it was to our advantage to adhere to it.

There practically remains only the Rule of enemy destination, coupled with proof that the food-stuffs are for the naval and military forces.

The difference between this and the attitude now adopted by Russia is not one of principle. The point out of which difficulties might grow is the amount of proof required that the food-stuffs were intended for naval or military use before they could be condemned as contraband. It is important to maintain the doctrine that there must be more than the presumption or suspicion arising from the destination being in the enemy country before the goods can be condemned.

This, however, is really a question not of what the principle lays down, but of the spirit in which it is administered, and is, to my mind, no reason for rejecting altogether the new Russian interpretation.

C. J. B. H.

Foreign Office, September 21, 1904.

The Attorney-General to Foreign Office.

THE Russian answer as to food-stuffs seems to me to be in itself satisfactory.

We cannot properly contend that the mere fact that the consignee is a private person is to give immunity. On the other hand, it would be wrong and vexatious to take in vessels for adjudication merely because the destination is the enemy's country—there must be circumstances raising a reasonable suspicion that the food-stuffs are for the enemy's forces. I do not think that any general formula can be desired for this purpose—each case must stand on its own facts.

As regards horses, the war code of the United States treats them as absolutely contraband, and there is a good deal even in English writers in support of this view. I do not think we should be on strong ground in insisting that they are only conditionally contraband.

I suggest that we should accept the declaration as to food-stuffs as satisfactory; it is a great step in advance, and relates to a point of vital importance to this country. We might at the same time guard ourselves as to the evidence which is to justify the bringing in of the ship at its condemnation; it is for the captor to show adequate grounds of suspicion to justify the former, and to establish the fact of destination for enemy's forces to procure the latter.

R. B. F

Bradbury Private Hotel, North Berwick,
September 22, 1904.

No. 21A.

Customs.
[In Treasury to F. O.
September 9, 1904.]

[October 4, 1904.]

Commissioners of Customs to the Law Officers of the Crown.

Prohibition of sugar-sweetened products containing bounty-fed sugar.

THE International Convention relative to bounties on sugar, signed at Brussels on the 5th March, 1902, of which a print is herewith, provides in Article VII for the establishment of a Permanent Commission charged with supervising the execution of the provisions of the Convention, and contains an Article of which the first paragraph, as translated into English, is as follows:—

ARTICLE I.

The High Contracting Parties engage to suppress, from the date of the coming into force of the present Convention, the direct and indirect bounties by which the production or exportation of sugar may profit, and not to establish bounties of such a kind during the whole continuance of the said Convention. For the application of this provision, sugar-sweetened products, such as preserves, chocolates, biscuits, condensed milk, and all other analogous products containing, in a notable proportion, artificially incorporated sugar, are assimilated to sugar.

By "The Sugar Convention Act, 1903" (3 Edw. VII, cap. 21), passed to give effect to this Convention, it is provided in section 1 as follows:—

1. Where it is reported by the Permanent Commission that any direct or indirect bounty is granted in any foreign country on the production or export of sugars, His Majesty may, by Order in Council, make a prohibition Order, that is to say, an Order prohibiting sugar from that foreign country to be imported or brought into the United Kingdom, subject to any provision which may be made by Parliament, in

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lieu of such prohibition, to impose a special duty on such sugar in accordance with the Convention.

2. While a prohibition Order is in force, the laws relating to Customs shall apply as if the sugar in respect of which the Order is made was specified in the Table of prohibitions and restrictions inwards, contained in section 42 of "The Customs Consolidation Act, 1876."

By an Order in Council made under this section, and dated the 11th August, 1903, after reciting that it appears from the finding of the Permanent Commission that the said Permanent Commission had reported that a bounty on the exportation of sugars is granted in Denmark, Russia, and the Argentine Republic, it was ordered that from and after the 1st September, 1903, and subject to any such provision by Parliament as thereinbefore treated, all sugar from Denmark, Russia, and the Argentine Republic (not including molasses and sugar-sweetened products) shall, except in transit, be prohibited to be imported or brought into the United Kingdom, and, in relation to this Order, certain regulations were prescribed. The prohibition has been extended by an Order in Council dated the 23rd June, 1904, to sugar from the Dominican Republic.

The effect of the Act and Orders is that sugar from these four countries is liable to forfeiture under the Customs Laws on importation into the United Kingdom.

It will be observed that Article I of the Convention deals only with the suppression of bounties, and that for this purpose alone does the Convention specifically provide that sugar-sweetened products are to be assimilated to sugar. Article III contains an engagement to limit the surtax—that is to say, the difference between the rate of duty or taxation to which foreign sugar is liable and the rate of duty or taxation to which home-produced sugar is subject; but the Permanent Commission have decided that the rates of surtax fixed in this Article for raw and refined sugars respectively are not applicable to sugar-sweetened products.

There is no definition of sugar in the Act, and goods which, to a more or less extent, contain or are prepared with sugar are imported to a slight extent from Russia and the other three countries affected by the Order in Council, and to a considerable extent from countries which are not parties to the Convention—*e.g.*, the United States and Switzerland.

In order to ascertain what is the real scope of the Article I, it is necessary, in the first place, to determine how much per cent. of added sugar will bring any sugar products within the meaning of the words, as translated, "a notable proportion"; but this is probably a matter for the determination of the Permanent Commission, as it is obviously desirable that there should be uniformity of practice on this matter in all the countries which are parties to the Convention. There is nothing to show that it was ever the intention of the Convention that it should be applied to articles which contain only a small proportion of added sugar, and it is not thought that the Contracting States would support such a contention.

The quantity of sugar in goods imported into the United Kingdom has, of necessity, to be ascertained by the officers of Customs because, where there is not any fixed rate of customs duty imposed by law upon the goods by name, duty is charged under section 7 of "The Finance Act, 1901" (1 Edw. VII, cap. 7) by reference to the quantity of sugar contained therein.

It is thought to be not improbable that goods so imported may be manufactured from bounty-fed sugar. Condensed milk and chocolate are instances of goods imported from Switzerland to a large extent, and it is thought that they may be manufactured from Russian sugar. The quantity of sugar imported from Switzerland as contained in condensed milk, after allowing the quantity natural to milk itself, is about 40 per cent. of the bulk, and, in chocolate, varies from 41 to 76 per cent.

If imported goods are produced from bounty-fed sugar, there is a hardship upon the British manufacturer, *e.g.*, a confectioner or maker of sugar-sweetened goods, in the competition for sale of his goods, as he cannot obtain bounty-fed sugar, and it is suggested that sugar which is prohibited to be imported in the condition of sugar should not be free from the prohibition because it forms part of other goods in the preparation of which it has been used. In the case of the composite goods imported it would be impossible to separate the sugar from the other component parts of the goods.

As the importation of bounty-fed sugar is prohibited, such sugar, if imported, becomes forfeited, and it is, therefore, necessary to consider the position with regard to forfeited goods which are mixed with goods which are not forfeited. This matter was the subject of a decision in 1775, Rex *v.* Mawbey, reported in Lofft's Reports, p. 179. This case was decided upon the statute 1, Geo. III, cap. 1, against the distillation of wheat, and had reference to a seizure of 200 quarters of corn preparing for that use in the proportion of one-third wheat and two-thirds barley. At the trial before Lord Mansfield, a special verdict was given, and it was found (*inter alia*) that the wheat and barley were so mixed that it was impossible to separate them. The question whether the seizure was lawful was reserved and submitted to the Court. It was argued before Lord Mansfield and two other Judges when the point was taken, that there was no power to seize a mixture, but it was held unanimously that the seizure was lawful. This case has always been regarded as establishing the position that, if forfeited goods are mixed with goods that are not forfeited, so that the one cannot be separated from the other, the whole is forfeited.

It is probable that, notwithstanding the conclusion already arrived at upon Article III, as above mentioned, a proposal to adopt a limitation of surtaxes on sugar-sweetened products may be discussed at the meeting of the Permanent Commission, which is fixed for the 10th October next, and if a limitation is adopted it may become necessary to deal with the importation into the United Kingdom of these composite goods by legislation or some other means. There would be no difficulty in giving effect to a prohibition, but it would mean that the numerous products containing either a notable proportion or more than a certain percentage (as might be fixed by the Commission) of added sugar, and coming from countries which either give direct bounties or maintain a higher surtax than that fixed by the Commission, would have to be wholly excluded from the United Kingdom.

The questions upon which it is desired to obtain the opinion of the Law Officers are:—

1. Whether the word sugars, as used in the Sugar Convention Act, 1903, can be held to include the sugar contained in sugar-sweetened products, so that upon an Order in Council being made, prohibiting the importation of sugar (without, as in the present Orders, any words of exception excluding sugar-sweetened products) the officers of Customs would be justified in seizing as forfeited such imported goods, *e.g.*, Swiss milk and chocolate, as are referred to in the case if made with bounty-fed sugar; and

2. Whether, in the existing state of the law, an Order in Council can be made directly prohibiting the importation of sugar-sweetened products generally, or the importation of named sugar-sweetened products, or of sugar-sweetened products containing more than a given proportion of sugar by reason of the Permanent Commission reporting either that they contain bounty-fed sugar or that they are in receipt of a bounty arising from an excessive surtax or otherwise.

Opinion.

1. We think that the first question should be answered in the affirmative.

We understand from the instructions that the sugar exists as such in these products, and not in any new chemical combination, although it cannot for commercial purposes be separated from the other ingredients of the product.

If so, sugar on which a bounty has been paid is being brought into the United Kingdom, and the Act applies.

The difficulty arising on the language of the Ist Article is, we think, met by the consideration that the special definition of sugar for the purposes of this Article was wanted to meet the case of bounties being granted on the production or exportation of sugar-sweetened articles as such.

2. We think that the second question should be answered in the negative. The Act applies only to sugar.

If it be decided to issue an Order not exempting sugar-sweetened products, some notification to the trade of its scope and effect may be desirable.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 4, 1904.

No. 22.

[October 25, 1904.]

Foreign Office to Law Officers of the Crown.

Destruction and protection of Submarine Cables during war: Instructions to naval officers.

Gentlemen, *Foreign Office, September* 16, 1904.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit herewith a draft Memorandum dealing with the question of the protection of British submarine cables and the destruction in time of war of an enemy's cables, which the Lords Commissioners of the Admiralty propose to issue confidentially to His Majesty's fleet (Inclosure in Paper A).

It will be seen from the accompanying correspondence that, on the outbreak of the present war in the Far East, the attention of Naval Commanders-in-chief and Commodores commanding on foreign stations was drawn to the terms of the International Convention of 1884 for the Protection of Submarine Cables (Paper B). This Convention does not affect the freedom of action of belligerents (see Article XV and Lord Lyons' Declaration of the 14th March, 1884, p. 12), and the Lords Commissioners of the Admiralty felt that there were certain questions connected with the rights of belligerents and with the methods of procedure to be adopted by a neutral Signatory Power in regard to neutral vessels suspected of acting in the employment of belligerents on which naval officers should be furnished with clear instructions. These points are set forth in the Admiralty letter of the 18th February (Paper C), and the observations of this Department thereon are contained in the Foreign Office letter of the 26th February (Paper D). In this letter it was suggested that, in framing general instructions, it was desirable to be guided by the general principles indicated in your Report of the 15th August, 1900 (Paper E); and that the proper course would be to embody the substance of this opinion in a Memorandum for the guidance of Commanding Officers of His Majesty's fleets.

Since the instructions which have now been prepared are largely based on your opinion above mentioned, and in view of the great importance of the questions dealt with, the Lords Commissioners of the Admiralty are desirous that the Memorandum should be seen and approved by you before it is issued; and I have the honour to request that you will favour Lord Lansdowne with your opinion whether the terms of the instructions contained in the early part of the Memorandum are in the circumstances right and proper.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A)	Admiralty..	August 9, 1904.
(B.)	Submarine Cables Convention [Treaty. Library No. 743]	March 14, 1884.
(C.)	Admiralty..	February 18, 1904.
(D.)	To Admiralty	February 26, „
(E.)	Law Officers' opinion [in Confidential 7516]	August 15, 1900.
(F.)	Admiralty..	September 5, 1904.

Report.

1. We suggest some modification in the language of clause 3 of the Memorandum. Article X of the Convention can hardly be described as laying down the powers for the protection of cables; it merely provides for identification of offenders and securing evidence.

2. The letter (*c*) should be deleted in clause 4. The words to which it is prefixed do not form a third class, (*a*) and (*b*) being the first and second. They are in contradistinction to the preceding words as to territorial waters of a belligerent and the high

seas. We would also suggest that the words "and amount to act of hostility" in this clause should be omitted.

3. It might be more convenient to number the two cases dealt with in clause 5 as (*a*) and (*b*).

4. We would suggest that the language of clause 6 should be altered, somewhat as we have suggested in red ink* on the Memorandum. The Convention remains in full force except as against belligerents. We think the words "whether in the employ of one of the belligerents or not" would be better omitted. If a vessel is under a neutral flag she must be treated, for the purposes of the Convention, as a neutral, but a vessel for the time being in the service of a belligerent and flying his flag cannot be dealt with under the Convention, even if her so acting amounts to a breach of neutrality. The last three lines should be omitted. They go beyond the scope of Article X, and that Article may be left to speak for itself.

5. We suggest the addition at the end of clause 8 of the words which we have inserted in red ink.*

6. We have indicated for consideration some slight alteration in the language of the second sentence of clause 12.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 25, 1904.

Annex.

MEMORANDUM ON THE PROTECTION OF BRITISH SUBMARINE CABLES, AND ON THE DESTRUCTION OF AN ENEMY'S CABLES.

(I.) *The Protection of British Submarine Cables during Peace and in Time of War.*

General.

THE Commanding Officers of His Majesty's ships and vessels are given clearly to understand that the protection of British cables in peace as well as in war is a part of their duty, and that they must take such steps to this end as may be possible without detriment to the performance of their primary and more important duties during hostilities.

2. The position of all submarine cables is approximately shown on Admiralty Telegraph Chart No. 1188, as amended in accordance with the notices issued from time to time by the Hydrographer. On the Mediterranean, China, and North America and West Indies Stations, all ships are also supplied with special confidential cases containing all the detailed information on the tracks and landing places of foreign cables that is obtainable.† It is also the duty of Commanding Officers of His Majesty's ships and vessels to make themselves thoroughly acquainted with the details of the cable systems of the stations on which they may, from time to time, be serving.

(II.) *In Time of General Peace or of Wars in which Great Britain is Neutral.*

3. The powers vested in Commanding Officers of His Majesty's ships for the protection of cables in time of peace are laid down in Article X of the International Convention of 1884, a copy of which, Parliamentary paper, "Commercial No. 6 (1890), France, &c.," is attached.

4. As regards the control which may be exercised over cables by a neutral State in time of war between other Powers, a belligerent is held to be justified in cutting a submarine cable, either in the territorial waters of a belligerent or upon the high seas—

(*a.*) Between two stations of a belligerent;
(*b.*) Between a station of a belligerent and a station of a neutral;

but a belligerent is not held to be justified in cutting a cable—

(c.) Within the territorial jurisdiction of a neutral State.

(Such a proceeding would constitute a violation of the sovereignty of the neutral State, [and

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* Printed in *italics*.

† Information on the French cables on West Coast of Africa and on Cape Station is being furnished to His Majesty's ships.

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amount to act of hostility]. A war-ship of the neutral State finding a belligerent so engaged should strongly protest, and, if protest failed, would be justified in using force to protect the cable.)

5. Ordinarily a belligerent would not be held to be justified in cutting a cable—

(~~d~~.) (*a*.) Between stations of two neutral Powers; or
(~~e~~.) (*b*.) Between two stations of the same neutral Power, situate on different territories.

It cannot, however, be laid down as an inflexible rule that the right to cut a cable under the conditions stated in (~~d~~) (*a*) and (~~e~~) (*b*) should not be exercised; it might conceivably form a link of communication, interruption of which might be essential to the belligerent. Unless, however, it could be established by the belligerent that such cutting is necessary on warlike considerations and is not a purely wanton act, such action might well afford grounds for a claim for compensation against the belligerent State.

6. The Convention of 1884 cannot, therefore, be applied by neutrals *as against belligerents* within waters which are the scene of operations between belligerents, ~~except in so far as that~~ *but* a neutral war-ship finding a neutral vessel belonging to one of the Signatories to the Convention~~, whether in the employ of one of the belligerents or not,~~ attempting to tamper with a cable on the high seas may act in accordance with the instructions contained in Article X of the Convention ~~i.e., the offending vessel's nationality should be ascertained, and the proper representations made with a view to the case being adjudicated by the tribunals of the State to which she belongs.~~

(III.) *In Time of War*, i.e., *Great Britain Belligerent.*

7. The Convention of 1884 in no way affects the freedom of action of belligerents (*vide* Article XV, and the declaration made by Lord Lyons and embodied in the *procès-verbal* of the 14th March, 1884, p. 12 of the Parliamentary paper).

8. A neutral merchant vessel detected by a belligerent ship in cutting or damaging, or attempting to cut or damage, a cable is liable to search or detention as being actively employed in the service of the enemy. Any neutral merchant vessel, therefore, found hovering suspiciously near the track of a cable should be boarded to ascertain whether she is in any way fitted for picking up submarine cables, and her papers should be carefully examined. If all be in order, she should be watched, and if caught in the act of lifting or creeping for a cable without proper authority she should be captured *and brought before a Prize Court for adjudication.*

9. The operation of cutting a cable does not require that a vessel should be armed, and an enemy would be more likely to employ a vessel under a neutral flag, as all outward signs would be removed on the approach of a hostile ship.

10. An enemy might be expected to employ local agents, such as fishing vessels, to attack cables in shoal waters. This course might especially be pursued on the coasts of China, where the fishing population have repeatedly cut the Telegraph Company's cables for the mere sake of the iron and copper wire, and would possibly be ready to do so for hire.

Except by securing the influence of the Chinese coast authorities or by subsidising the fishermen themselves, it has not been found possible to find any safeguard against these attacks.

11. Given the necessary appliances, it is possible to cut a cable at any depth, and, therefore, an enemy's operations would not necessarily be confined to the terminal ends of a cable in shoal water, but might extend to positions on the line where there would be less probability of disturbance, and the damage would be more difficult to repair.

12. The damage that can be done to communications, and consequently the probability of attempts being made on a cable, varies greatly in different parts of the world.

Where there are ~~alternate~~ *alternative* routes it is evident that the [~~annoyance to the owners~~] *interference with communication* will not justify much risk or time in trying to cut only [~~a portion~~] (?) *one* of them.

13. To many British stations and possessions there are now several lines of cables on widely separated routes, and either attempts will not be made on them, or if made successfully the inconvenience will not be great, as it is improbable that they can all be interrupted at once. When, however, the communication is single or only double, or where the alternative cables lie near to one another, every vigilance is necessary to protect them.

14. The most favourable conditions for attacking cables are when they lie in fairly shallow water (less than 40 fathoms) on an even bottom, at some distance from the nearest landing station. This is especially the case where the cable or cables lie parallel to the coast.

The attacking ship dragging her grapnel in a direction at right angles to the shore has a fair chance of hooking and breaking the cable, and knowledge of the precise track of the cable is not so necessary as in other cases.

15. The cables to Gibraltar, westward of Tarifa Point, are so situated that if a ship were undisturbed it might, by dragging intelligently, destroy all five in half-a-day. The breaking of the first would, however, in this case convey warning to Gibraltar, and the enemy would run considerable risk.

16. The British cables running from Singapore to Hong Kong are also liable to interruption, as for many miles they lie in shallow water, though not near the shore.

In both these cases there are other lines of communication, though not British.

17. At any such points His Majesty's cruisers employed in protecting British commerce should, as far as possible, be specially careful to safeguard the cables against the operations of an enemy's ship, or of a neutral ship acting in the service of the enemy.

18. If possible, a ship of war should accompany a cable ship whenever she goes to effect a repair to an important cable during a period of hostilities, and Commanders-in-chief or other Senior Officers should endeavour to give effect to this arrangement if the circumstances permit.

(IV.) *The Measures to be taken to Cut the Enemy's Cable Communications in time of War.*

19. The tabular statement following, which has been drawn up on the assumption that Great Britain is at war with France, or with France and Russia, indicates the action which it is proposed should be adopted with regard to the cables communicating with the several French Colonies, and also with regard to the cables connecting Calais with Fanoe (Denmark), and Port Arthur with Chefoo.

20. It should, however, be clearly understood that the recommendations contained in this statement are not to be regarded as absolutely binding; and that it is left to the discretion of the several Commanders-in-chief to decide whether, in any particular case, the enemy's cable communications should be cut, and, if so, when and where the attempt should be made to do so.

21. As cutting operations may be necessary before a formal declaration of war, it may be considered desirable to make what secret preparations are possible during the period of "strained relations," in order that no time may be lost in carrying out the work, should a telegram be received from the Admiralty giving the requisite permission to commence cutting even before the declaration of war.

22. It is at the option of Commanders-in-chief to take the Officers Commanding His Majesty's ships under their orders into their confidence in regard to the contents of this Memorandum, and the arrangements they propose to make.

(V.) *Communications to French Colonies.*

Colony.	Line.	If Line passes British Territory.	Proposed Action.
Algiers and Tunis ...	7 lines from Marseilles...	No ...	Important to cut if possible, as there would then be left only the cable connecting Spain (assumed neutral) and Morocco; and even if this cable could be used it would scarcely be able to cope with all the telegraphic correspondence passing to and from North Africa in the event of operations off that coast, and the loss of their own cables would thus cause France considerable inconvenience.
Corsica	4 lines	No ...	Important to isolate when fleet move up off Toulon.
Dakar and West Coast Colonies, viz.:— French Guinea Ivory Coast Dahomey	3 lines (1 direct from Brest)	1 British	Desirable to cut line between Dakar and Brest; also that between Teneriffe and St. Louis. The English line between Fernando Noronha to St. Louis requires interrupting at the same time. The method to be left for consideration at the time. Land lines behind Sierra Leone also require attention, and might be interrupted by Colonial forces.
French Congo	... ...	Yes ...	No action necessary.
Madagascar	1 line starting from Mozambique	Yes ...	Important to isolate, as the island contains an important base which might be used by commerce raiders. Madagascar cable is dependent on British lines to complete connection with Europe, but its actual end is in Portuguese territory, and it would be impossible to insure non-dispatch of information from so-called neutral source in Mozambique.
Jibuti and Obok ...	... ...	Yes ...	No action necessary; new line under consideration.
Cochin China ... ... **Tonquin** ... ... **Annam**	1 line from Dutch Borneo	Yes ...	Desirable to cut between Pulo Condore and Saigon, as enemy would thus be dependent on Chinese land service, which is slow and not very reliable; also desirable to cut Tourane–Amoy line.
New Caledonia... ...	... ...	Yes ...	No action necessary.

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Colony.	Line.	If Line passes British Territory.	Proposed Action.
Martinique and Guadeloupe	1 cable connecting the two islands 2 others— 1 to Porto Plata in Hayti 1 to Paramaribo	No	Important to cut all three, as Martinique is a fortified base which might be used by commerce raiders.
French Guiana	...	...	Not necessary to consider.
St. Pierre	2 cables	No	Dangerous to cut without chance of damaging British cables.
Réunion	...	...	No line at present, but if cable communication should be established with Madagascar on the one side and Mauritius on the other, it would be desirable to cut both.

Important Lines in the event of War with Russia as well as France.

Lines.	If Line passes through British Territory.	Proposed Action.
2 cables of the Great Northern Telegraph Company (Danish) between Calais and Fanoe in Denmark	...	NOTE.—These cables have been laid down for the express purpose of enabling France and Russia to communicate without using land lines in Germany and Austria. Desirable to be cut.
Port Arthur–Chefoo	No	Desirable to cut, in order to delay information as to movements at Wei-hai Wei reaching Port Arthur. The cable office at Port Arthur would presumably be occupied by military, so that the cable would be useless to Great Britain, as we, on our side, could not occupy the office at Chefoo, which is in neutral territory.

(VI.) *Notes on Cable Cutting in general, and in special Instances.*

23. To destroy the enemy's submarine telegraphic communication in a prompt and efficient manner is by no means, in all instances, a simple or easy operation, even when the severance of one or two cables will effect it.

(*a.*) The depth of water;
(*b.*) The nature of the bottom;
(*c.*) The knowledge of the position of the cable;
(*d.*) The means at hand;

are all matters which greatly influence the feasibility of the undertaking.

(*a.*) In most cases breaking a cable in deep water at a considerable distance from the land is, from the British point of view, the best way of destroying an enemy's communications, because with even a partial British command of the sea, its repair would be a hazardous undertaking for the enemy's cable ship, whereas when cut near the land, repair is often easier.

Such breaking can, however, only be performed by a properly fitted cable ship.

Even if a man-of-war is supplied with the requisite length of wire hawser on suitable reels, and cutting grapnels, she has no means of managing it. The hawser may be paid out, but without dynamometers it is next to impossible to tell whether the cable has been caught, or broken, and the recovery of the weight of two or more miles of hawser would, in most ships, be impracticable.

For such work, therefore, a cable ship must be employed, and the presence of British cable repairing ships on most stations renders their aid, when required, comparatively simple.

In water up to perhaps 100 fathoms a man-of-war may, with a suitable grapnel, carry out the operation, but there are difficulties even in shallow water.

(*b.*) The nature of the bottom, it is evident, must largely affect the chance of grappling a cable.

Cables are, of course, laid wherever possible in smooth bottom for the sake of their own maintenance, but on some coasts this is not to be found, and on an uneven bottom the grapnel will jump.

(*c.*) Most cables to be cut will be foreign cables.

In many cases, the knowledge of the exact positions of these is wanting, and in such cases a considerable amount of time will be expended in finding them.

There are certain foreign cables laid by British Cable Companies, the line of which they have engaged not to divulge. But in case of war, this knowledge can probably be utilized if the Cable Company's ship is employed.

(*d.*) The means in possession of a man-of-war are her wire hawsers, steam capstan, and such grapnels as may be supplied, with such information as to the line of the cable as the telegraph charts may be able to convey.

24. In cutting a cable, the operation must be carried out with great deliberation.

The direction of the drag should be at as nearly right angles to the line of the cable as possible, and the speed of the ship when dragging should be less than a knot, or the grapnel will probably jump. This is very important.

Plenty of hawser should be paid out for the same reason.

A man sitting on the hawser over the side is the best means to ascertain when the cable has been caught, as he can tell by the variation in the vibration when the grapnel has hooked something that gives. Necessarily experience is here valuable.

25. When caught, it is in most cases necessary to lift the cable, firstly, to make sure that it is a cable, secondly, to ascertain that it is a working cable.

Dead cables or portions of cables are getting common, especially in the neighbourhood of landing places.

When a cable is repaired, a large piece is commonly cut out and is left on the bottom, and near many important cable landing places there are many dead lengths.

A practical illustration of this was given in the Spanish–American War, when the Americans cut cables several times outside Santiago, and never succeeded in interrupting one of the three working cables landed at that port. To avoid such disappointments is important.

26. The cable should therefore be lifted, and when cut, galvanometer tests should be applied to ascertain whether it is merely a short dead length or a working cable.

27. It follows that a position in moderately shallow water, some distance from the landing place, will give the best chance of breaking communication, because the probabilities of the cable having been repaired are not so great. Unless, however, the cable from its landing place runs along the shore, such positions are not generally to be found.

If the cable be not raised, the jerk of the grapnel catching something on the bottom and coming away may easily be mistaken for an indication that the cable has been caught and broken, especially when the operator is not skilled in the work.

28. Should a cable be attacked in its trench on dry land at the landing place, digging should be carried a foot or two below the first cable found, as there are instances of protection of the working cable from wilful injury by laying a dummy piece above the real cable.

29. See also "Torpedo Manual," vol. i, 1901, pp. 321 and 327, for further information.

(VII.) *Notes on particular Cables.*

30. *The Seven Cables from Marseilles to Algeria.*—To sever this communication effectually, it should be done in deep water by a cable ship. The Eastern Telegraph Company alone possess information on the position of at any rate parts of these cables, and could probably carry it out, the cable ship being escorted.

If broken near the shore at either end, the only places where these cables lie in shallow water, the possibility of repair is greater, but if attempted, the Marseilles end presents the best chance. Here all the cables converge, and, presuming that the command of the sea is sufficient to prevent attack, several ships might succeed in effectually breaking communication in a comparatively short time, and the prevention of repair could also be more easily carried out, as one squadron would suffice to watch all the cables.

31. *The Cables to Corsica* can probably only be satisfactorily cut in deep water, but at the French end the cable running from Antibes might be severed.

32. *The Cables to St. Louis, Senegal,* can be cut at about 6 miles from St. Louis, the water being shallow and the bottom smooth, but the position of these are only very imperfectly known.

33. *The Cables to Saïgon,* which come from Singapore and from Hong Kong, should be cut at some distance from the land and joined together by a telegraph ship, to afford an independent communication between Singapore and Hong Kong.

The Saigon–Haiphong Cable is not very important, but, if practicable, should be cut.

34. *The Mozambique–Madagascar (Mojanga) Cable* must either be attacked in deep water or near the Madagascar shore, where conditions are favourable, but the line of it is very doubtful.

At the Mozambique end it lies so close to the British cables to the Cape that attack would be dangerous.

35. *Martinique.*—A telegraph ship is necessary here.

The water is very deep close up to the Martinique shore, and success would be very doubtful.

36. *The Cable to Paramaribo* could be cut off Paramaribo, outside the territorial limits, in shallow water.

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No. 23.

[November 9, 1904.]

(1.)

Minutes.

Examination of vessels for contraband of war where her papers are incomplete.

A LETTER was received from the Liverpool Steam-ship Owners' Association on the 19th August last, inclosing copies of Resolutions passed by them with regard to contraband of war, and at the same time pointing out the difficulty of producing complete manifests and bills of lading in order to prove the nature of a neutral cargo, in view of the rapidity with which vessels are now loaded and sent to sea.

The question was referred to the Board of Trade and Admiralty, and a reply was received from the former Department, suggesting that the Russian Government should be urged to accept a declaration made by the master, and *visé* by a Russian or Japanese Consul. The view, however, taken by the Admiralty is that a declaration such as that suggested would not meet the requirements of the case, and that a belligerent has a right to ascertain the nature of a neutral cargo. They further consider that, in the case of a vessel having no document on board to show the character of her cargo (since the proposed declaration merely enumerates the ports of call, and declares generally that there is no contraband on board), the belligerent would insist on his right to examine the goods—a process which would in most cases involve taking the ship into port.

The annexed draft concurs in the Admiralty view, and explains the process of reasoning by which this Department have arrived at the same conclusion.

E. G. W.

The draft seems to me a good one, but this pronouncement of our views is of great importance. We do not, I understand, concur in the opinion expressed by the Board of Trade, and we contemplate writing a letter, which will be founded on this draft, not only to the Board of Trade, but to the Liverpool Steam-ship Owners' Association. It would, therefore, be as well to ask the Law Officers to look at the draft.

L.

November 7, 1904.

(2.)

Mr. Davidson to Attorney-General.

My dear Attorney-General, *Foreign Office, November* 8, 1904.

Lord Lansdowne spoke to me about this draft before he wrote his Minute of the 7th November, 1904.

The shipping community are, as you know, much exercised, and not unnaturally, with regard to this matter; and his Lordship is anxious to take every precaution before emitting any pronouncement such as that which is involved in the draft.

It seems better to ask you to look at it *before* it goes to the Admiralty than after it comes back from them, and also to request you and the Solicitor-General to be good enough to make any amendments which you may think desirable before it goes further.

Lord Lansdowne is anxious to deal with the matter—which has been some time on hand—as soon as possible, so that he will be obliged to you if you will give the papers such precedence in your consideration as you think is justifiable, having regard to other matters now before you.

Yours very sincerely,
(Signed) W. E. DAVIDSON.

(3.)

Attorney-General to Mr. Davidson.

My dear Davidson, *November* 9, 1904.

I return the draft letter to Admiralty, with some alterations by the Solicitor-General and myself.

Yours sincerely,
(Signed) R. B. FINLAY.

Annex.

Draft of Letter from Foreign Office to Admiralty.

Sir, *Foreign Office, November* , 1904.

I am directed by the Marquess of Lansdowne to acknowledge the receipt of your letter of the 21st ultimo, relating to the practice prevailing among ship-owners of sending vessels to sea without complete manifests and bills of lading.

Lord Lansdowne concurs in the view expressed by the Lords Commissioners that a general declaration such as that suggested by the Board of Trade could not meet the requirements of the situation. It appears to his Lordship that, according to the present usages of war, a belligerent is entitled to ascertain the nature and destination of the cargo of a neutral ship, and has, in fact, the right to form his own judgment as to whether ~~it~~ *the cargo* can, or cannot, be deemed to be contraband *for the purpose of determining whether the ship and cargo should be brought in for adjudication.* The proposed declaration merely enumerates the ports of call of the vessel, and affirms that there is no contraband on board. It does not state the nature of the cargo *nor the consignees* (in which case the belligerent would be at liberty to form his own opinion as to its contraband nature), but endeavours to decide the question for him; and if it were to contain the information desired, the time involved in its preparation would, as the Lords Commissioners justly remark, be as great as that consumed in drawing up an ordinary manifest.

Lord Lansdowne conceives that, as a general principle, it is reasonable that the rules of war at sea should, as far as possible, accommodate themselves to the general practice of the trading and shipping communities of all nations, and that it is ~~not competent for any Prize Regulations to direct that~~ *undesirable that* a vessel ~~shall~~ *should* be brought into a Prize Court ~~on the ground that her papers are incomplete~~ merely because she has not on board a document which is habitually left ashore.

The examination of a ship's papers is, however, a mitigation of the right of search, and, in the case of a vessel carrying no index to the nature *and consignees* of ~~her~~ *the* cargo, the belligerent might insist on his right to examine the goods—a process much longer, and therefore more expensive, to the ship-owner—and ~~one which~~ *if, as is usually the case,* it would be practically impossible thoroughly to carry out *such an examination* without conveying the ship into port, *he might take her into port, alleging as his justification the absence of papers affording any sufficient index to the nature and consignees of the cargo.*

The practice of leaving the manifest and bills of lading to follow by post does not appear to be universal, and, though such a course may be unobjectionable and even convenient in times of peace, his Lordship doubts whether ship-owners would be wise to press for the recognition, in time of war, of any such custom, even assuming it to exist.

GREECE.

No. 23A. [Colonial Office.]

[March 31, 1904.]

The Law Officers of the Crown to the Colonial Office.

Royal Courts of Justice, March 31, 1904.

Rights of Greece as to coasting trade of Australia.

Sir,

WE were honoured with your commands, signified in Mr. H. Bertram Cox's letter of the 12th instant, stating that, with reference to our Report of the 17th July, 1903, he was directed by you to request the favour of our report on certain questions which

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had arisen with regard to the rights of Greece under the Treaty of Commerce and Navigation of 1886 in respect of the coasting trade in Australia.

That Mr. Bertram Cox was to transmit to us a copy of that Treaty, together with correspondence which had passed between your Department and the Governor-General of Australia, the Foreign Office, and the Board of Trade.

That it would be seen that in the Navigation Bill, shortly to be introduced in the Commonwealth Parliament, clauses would be inserted which might affect the right of foreign vessels to engage in the coasting trade of Australia, and that the question accordingly arose whether the Anglo-Greek Treaty of 1886, or other similar Treaties on the part of two Australian States, must be held to confer on the other contracting party any right to engage in the trade between those two States, that trade having—since the passing of the Commonwealth Act—become part of the coasting trade of the Commonwealth.

That Mr. Bertram Cox was to request us to be good enough to take the papers into our consideration, and to report—

1. What were the rights of Greece under the Treaty of Greece of 1886, in the event of legislation by the Commonwealth of Australia to restrict the coasting trade of the Commonwealth to national vessels?

2. Whether the separate denunciation of the Treaty by the Australian Commonwealth in respect of all Australian States which had adhered thereto was permissible?

We have taken the matter into our consideration, and, in obedience to your commands, have the honour to

Report.

1. That, in our opinion, the rights of Greece could not be affected by legislation of the Commonwealth of Australia until the Treaty of 1886 is denounced or modified by agreement.

2. No. The Treaty is with His Majesty, and could only be denounced as a whole by His Majesty, unless the Greek Government consented to modify it by cancelling the adherence of the Australian States.

We have, &c.
(Signed) R. B. FINLAY.
EDWARD CARSON

JAPAN.

No. 24.

[January 18, 1904.]

Admiralty to Foreign Office.

(Confidential.)

Sir,

Admiralty, January 11, 1904.

Russo-Japanese war: Cruisers bought by Japan of the Argentine Government.

MY Lords Commissioners of the Admiralty having received information that the two cruisers lately purchased from the Argentine Republic by the Japanese Government will shortly be sailing from Genoa for Japan, desire me to request you will lay the following considerations before the Marquess of Lansdowne.

2. The two cruisers have not been commissioned as men-of-war, but are going out under the Japanese merchant flag, the captains being British subjects, and the crews also British to some extent.

In these conditions my Lords would be glad to know Lord Lansdowne's opinion on the following points:—

(i.) What would the status of these vessels be considered to be, if war should break out?

(ii.) In the event of war breaking out while they are on passage, would they be affected by the terms of the Neutrality Proclamation when issued, and, if so, in what way?

(iii.)—(*a*.) If after the date of issue of the Neutrality Proclamation, these vessels should arrive in a British port, would it be necessary for the authorities there to remove the British portion of the crew?

(*b*.) And if so, would this be done under the Foreign Enlistment Act?

(iv.) In the conditions mentioned in (iii), what would be the position if a Japanese naval crew desired to take over the vessel at a British port?

3. My Lords would be glad to receive information on the above points, in the event of naval officers being called on to act, as in the case of the Japanese torpedo gun-boat "Tatsuta," which was detained at Aden in 1894 on the outbreak of hostilities between China and Japan, and which presents certain points of similarity to the present case, though differing to the extent that the gun-boat was sailing under the Japanese man-of-war flag.

I am, &c.
(Signed) C. I. THOMAS.

Minutes.

A Memorandum is attached which states briefly the circumstances attending the case of the "Tatsuta."

The naval authorities at Aden held (27th August, 1894), that the "Tatsuta" was *not* in commission.

On the 21st August, 1894, the Law Officers reported:—

"The 'Tatsuta' appears to be a Japanese war vessel *in the command of a Japanese officer*,* and as such she cannot be boarded for any such purpose as suggested" [*i.e.*, to withdraw the British crew]. "We are of opinion that the continuance of the voyage by the British seamen does not constitute a continuance of equipping within the meaning of the Foreign Enlistment Act."

The next day, doubts having been raised as to whether she was commissioned, the Law Officers wrote:—

"The nationality of the captain would not in any way alter the opinion we have already given if the vessel is really a commissioned vessel of war.

"It does, however, suggest that she may not yet be commissioned, and the question *should be dealt with on that hypothesis*.

"Even then, we are of opinion that the British seamen could not lawfully be removed by use of force, though there would not seem to be any reason why they should not be told of the risks which they are likely to run of which they may by possibility be ignorant."

I imagine the four questions should be answered categorically as follows:—

1. If the vessels are not commissioned, they must be held to have the status of vessels of the Japanese mercantile marine.

2. The British subjects on board of them would be liable to the punishments provided by the Foreign Enlistment Act if convicted by a competent Court of an offence under that Act.

3. They could not properly be forcibly removed.

4. This is a point on which some difference of opinion arose between the then Lord Chancellor and the Law Officers (see Print Nos. 209 and 210, China and Japan), but if we followed the "Tatsuta" precedent, the course is indicated in No. 212.

Mr. Davidson. W. M.

Foreign Office, January 12, 1904. F. A. C.

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* This was not so, however.

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Memorandum.

The "Tatsuta," built by Sir W. Armstrong and Co., at Elswick, for the Japanese Government, was launched on the 6th April, 1894. On the 31st July of that year, the Customs reported that the vessel was about to sail at 2 P.M. on that day. They were informed, in reply, that, as no declaration of war had yet been made by China or Japan, there was no reason why, under present circumstances, the vessel should be detained.

On the 1st August the Japanese Government notified to foreign Powers that a state of war existed with China, and the Queen's Proclamation of Neutrality was issued on the 7th August.

The "Tatsuta" arrived at Port Saïd, and passed through the Suez Canal on the 19th August.

Meanwhile, the Chinese Government, through Sir H. Macartney, stated that if the vessel touched at Aden, application would be made to have British subjects removed from her.

Mr. Bertie, in his Minute recording the conversation, added that the Attorney-General, whom he had consulted, had expressed the opinion that, assuming the "Tatsuta" to be the property of the Japanese Government, and commissioned and commanded by a Japanese officer, and that part only of the crew consists of British subjects, nothing could be done.

A formal application for the withdrawal of the British portion of the crew of the "Tatsuta" was made by the Chinese Minister on the 20th August, and the Law Officers, on being consulted, expressed the opinion that no action could be taken in the sense desired by the Chinese Government.

On the 16th August the Governor of Aden telegraphed to the India Office, requesting instructions as to detention of the "Tatsuta" (in case she should call at Aden), and as to what quantity of coal should be allowed her. The India Office were informed in reply that the vessel should not be allowed to remain at Aden more than twenty-four hours, and that she should be allowed sufficient coal at Aden to carry her to Ceylon.

The "Tatsuta" arrived at Aden on the 25th August, commanded by a British subject, Captain Stranach.

The telegram from the Governor stated that the naval authorities at Aden ruled that she was *not in commission*, and that her crew, all British subjects, had been warned of the Proclamation of Neutrality (which contains the Foreign Enlistment Act), and the vessel directed to leave at 5 P.M. on the 27th.

This she was unable to do, owing to a portion of the crew refusing to proceed, and was taken possession of by the Senior Naval Officer at Aden.

The Law Offieers, on being consulted, urged that every care should be taken to prevent any recruitment or enlistment of men at Aden for service on board the "Tatsuta."

The Japanese Government having, meanwhile, requested that the vessel might be handed over to a duly-commissioned Japanese officer and crew to be taken to Japan, the request, after consultation with the Law Officers and with the Lord Chancellor, was complied with, provided the vessel were manned at Aden with a crew no more than sufficient properly to navigate the vessel, and that she would not, unless attacked, be used for hostile operations until her arrival in a Japanese port.

This undertaking was given by the Japanese Government; the "Tatsuta" handed over on the 14th January, 1895, and after docking for strictly necessary repairs at Bombay, the vessel arrived at Yokosuka on the 19th March.

E. G. W.

Foreign Office, April 22, 1898.

I think that the answers to these questions are as follows:—

(1.) So long as the vessels fly the Japanese mercantile flag they are presumably to be regarded as Japanese merchant-vessels.

If, and as soon as, a commissioned officer in the Japanese navy takes over command and hoists the Japanese Imperial flag and his pennant, the vessels will of course become Japanese public ships.

(2.) So long as they remain Japanese merchant-vessels I do not see how they, or the British subjects commanding them or serving as members of their crews, will come within the doctrine of the Proclamation of Neutrality or the provisions of the Foreign Enlistment Act. If after war breaks out, and while the vessel still flies the merchant flag of Japan, anything is done inconsistent with her merchant character those on board will incur responsibilities a good deal more serious than those which might, in other circumstances, attach to them under the Foreign Enlistment Act.

The vessel while flying the merchant flag is of course liable to be stopped on the high seas by a Russian war-ship, and taken in for adjudication, in which case, having regard to her obvious destination and the purposes for which she was evidently designed, she would no doubt be condemned and then utilized for the Russian navy. It is, however, questionable whether—as she is not now a Japanese public ship, and could not be captured by force after having struck her colours in combat to a public ship of the other belligerent—she could be immediately utilized as a Russian war-ship without adjudication and condemnation.

(3.) The answer to Question iii (*a*) and (*b*) is, No.

(4.) If we are to act on the precedent of the case of the "Tatsuta"—as I presume we are—we should allow her to be manned with a crew no more than sufficient properly to navigate the vessel, on the understanding that she would not, unless attacked, be used for hostile operations until after she had been navigated to a Japanese port. (See Lord Kimberley's note to Mr. Uchida of the 30th October, 1894.)

It is unnecessary to go into the question raised by Mr. Maycock as to some disagreement between the Lord Chancellor (Herschell) and the Law Officers—since this note was subsequent to the discussion between them, and is, moreover the authoritative utterance of Her Majesty's then Government on the question.

A merchant-vessel—if she chooses to do so—can resist capture by force at her own risk. She does not usually attempt to do so, because she would almost certainly be sunk, or otherwise seriously endangered, and the lives of those on board her put to great peril for no practical purpose.

This must, of course, go to the Attorney-General for his concurrence.

* * * * * *

I presume the Admiralty understand that if any of these British subjects enter the Japanese service *before* war breaks out, they will not commit a breach of the Foreign Enlistment Act by continuing such service. I know nothing of the facts, but it seems not unlikely that some of these men may already have done so.

W. E. D.

Foreign Office, January 13, 1904.

Question 1.—As these vessels are flying the merchant flag, they must be considered as waiving the right to any privileges granted to public vessels. But as they are apparently, in fact, the property of the Japanese Government, and proceeding to the East to take part in any war which may break out, having been built as vessels of war, they should, in the event of war breaking out while they are on the way to the East, be treated in neutral ports in the same way in which vessels of war are treated.

Question 2.—The terms of the Neutrality Proclamation as regards supply of

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coal, &c., to vessels of war should, in this event, be applied in the case of these vessels.

Question 3.—No.

Question 4.—The precedent of the "Tatsuta" should be followed.

I agree with Mr. Davidson's observations as to the bearing of the Foreign Enlistment Act in this case.

(Signed) R. B. FINLAY.

January 18, 1904.

No. 25

[February 16, 1904.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,

Foreign Office, February 3, 1904.

Further as to traffic between Yokohama and Yeddo, in British lighters.

WITH reference to the letter from this Office of the 16th January, 1903, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list on the subject of the prohibition by the Japanese Government of lighter traffic by foreigners between Tôkiô and Yokohama.

Your opinion with regard to the points at issue, forwarded to this Office on the 23rd February last, was communicated to His Majesty's Minister at Tôkiô, with instructions to make a representation to the Japanese Government in the sense of your Report, and to express the hope that they would see their way to accept the construction put by you on Article III of the Treaty of 1894, and that they would not interfere with the privileges as to lighter traffic between Yokohama and Tôkiô hitherto enjoyed by British subjects.

Sir C. MacDonald accordingly on the 15th May addressed a note to Baron Komura on the subject. (Inclosures in Paper A.) In one point, however, for the reasons stated in his despatch No. 70 (Paper A, printed as an Annex), he diverged from the lines laid down in your Report.

In his despatch No. 106 (Paper B) Sir C. MacDonald forwarded a copy of the reply which he received from the Japanese Government.

It will be observed that they reiterate their former arguments, viz.:—that coasting trade is not allowed to foreigners, that Tôkiô is not an open port, and that the Treaty of 1894 annuls utterly all previous Conventions and Treaties. They steadfastly refuse to acknowledge that continuity of rights which, Lord Lansdowne agrees with Sir C. MacDonald in thinking, was the object of the new Treaty and which seems amply provided for therein.

His Majesty's Minister at Tôkiô has expressed the opinion that, in the circumstances, no useful purpose would be served by continuing the controversy, and he has requested that he may be informed whether he should take any further action in the matter.

Lord Lansdowne has availed himself of the presence in England of Mr. A. B. Walford, who formerly practised as a barrister at Yokohama, and who has a special knowledge of Japanese law and of the question under discussion in the present controversy, to consult that gentleman on the subject, and his Lordship directs me specially to invite your attention to the Memorandum drawn up by Mr. Walford (Paper C), and to the arguments therein contained.

I am to request that you will take the papers submitted herewith into your consideration, and that you will favour Lord Lansdowne with your opinion as to whether any reply should be returned to the note from the Japanese Government, and, in the event of this being deemed advisable, as to the nature of any further representations which Sir C. MacDonald should be instructed to make.

I have, &c.

(Signed) F. A. CAMPBELL.

List of Papers.

Sir C. MacDonald	(No. 70)	May	26, 1903.
" "	(No. 106)	July	18, "
Memorandum by Mr. A. B. Walford		October	30, "
Law Officers' Report		February	23, "
Reference to Law Officers		January	16, "
Sir C. MacDonald	(No. 11)	February	17, 1902.
" "	(No. 94)	August	9, "
Treaty of 1894. (Library No. 957, Treaty.)			
Arrangements of 1867 (see Confidential 1579.)			
Sir C. MacDonald	(No. 121)	October	28, "
Treaty of 1858. (Library No. 433, Treaty.)			

Report.

We do not think that anything can be gained by replying at present to the arguments of the Japanese Government. Their note raises the question of construction of Article III of the Treaty of 1894, and, as the view of His Majesty's Government of the true construction of that Article has already been placed before the Japanese Government, there can be no object in restating it.

We have nothing to add to our previous Report, to which we adhere.

We think that the Japanese Government should be informed that His Majesty's Government adhere to their view and reserve their rights.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
February 16, 1904.

Annex.

Sir C. MacDonald to the Marquess of Lansdowne.

(No. 70.)

Tôkiô, May 26, 1903.

My Lord,

I HAVE the honour to transmit to your Lordship herewith copy of the note which, after some preliminary conversation with members of the Japanese Foreign Office, I have, as directed by your Lordship in your despatch No. 27 of the 11th March last, addressed to Baron Komura on the question of the restrictions imposed on lighter traffic between Tôkiô and Yokohama.

Your Lordship will perceive that in one not unimportant point I have ventured to diverge from the lines laid down by the Law Officers of the Crown. In the note addressed to them, inviting their opinion on the case, occurs the following passage:—"It is to be observed that the wording of Article XX is peculiar and explicit. It does not say that all privileges *whatsoever* shall cease; it specifies only those arising out of the extra-territorial jurisdiction. . . . ."

The Law Officers, in their reply, differ from this view. They state that they do not think that Article XX of the 1894 Treaty can be construed so as to limit its effect merely to matters of jurisdiction, but that it appears to have been intended to determine the previously existing Treaties.

Consequently, your Lordship desired me to inform the Japanese Government that, in the opinion of His Majesty's Government, the rights granted to foreigners, under the arrangements of 1867, coincided with the duration of those arrangements.

I would here beg to draw your Lordship's attention to my despatch No. 56 of the 2nd May, inclosing the draft of the Joint Case in the Perpetual Lease Arbitration proceedings, which will, by this time, be in your hands. In that despatch I intimated that Mr. Bonar would, with my full concurrence, submit to the Committee for the revision of the Joint Case the advisability of inserting a passage regarding the bearing of Article XX on the controversy. In this passage it will, doubtless, be argued that the specific confirmation of the perpetual leases carries with it the confirmation of arrangements on which these leases are based, and that such confirmation cannot be overridden by the general abrogation of pre-existing Agreements by Article XX. But it seems to me not improbable that it will be found desirable to argue, also, that Article XX was intended to abrogate the pre-existing arrangements only so far as they related to privileges appurtenant to extra-territorial jurisdiction. The former argument is not at variance with the Law Officers' Report on the lighter question, but the latter argument could hardly be used if this Legation had just informed the Japanese Government that, in the opinion of His Majesty's Government, Article XX could not be construed so as to limit its effect to the abrogation of such privileges.

I have therefore, in my note to the Japanese Foreign Office, omitted the position of the Law Officers' Report, which treats of the interpretation of the Article in question.

I have, &c.

(Signed) CLAUDE M. MACDONALD.

[INCLOSURE OVERLEAF.

1904

Inclosure.

Sir C. MacDonald to Baron Komura.

(No. 35.)

Your Excellency, *Tôkiô, May* 15, 1903.

I HAVE the honour to recall your attention to a matter which was under discussion between this Legation and the Imperial Foreign Office during the course of last summer, namely, the inhibition of the lighter traffic carried on by Messrs. Helm Brothers between Yokohama and Tôkiô.

The correspondence on this subject, terminating with your Excellency's note No. 71 of the 18th September last, was transmitted by me to His Majesty's Principal Secretary of State for Foreign Affairs, who referred it to the Law Officers of the Crown, with the result that I am instructed to complement my previous communications by the following arguments, bearing purely on the legal side of the question:—

By the Agreement of 1867, the right was granted to foreigners to reside in Tôkiô, and to convey their goods in lighters between that town and Yokohama. This right was held and enjoyed by them continuously up to, and even for some eight years subsequent to, the enforcement of the Treaty of 1894. It was first denied to them in the spring of 1902, on the ground, as your Excellency informed me, that Tôkiô was not an open port, and that the business, being one of transport to a port not opened to foreign commerce, was interdicted by that provision (Article XI) of the new Treaty, which excepts the coasting trade of each of the High Contracting Parties from the action of the Treaty, and that as Article XX annuls all previous engagements, the right granted by the Agreement of 1867 no longer existed, and the lighter traffic must therefore cease.

Basing themselves solely upon the true construction of Article III of the Treaty of 1894, by which it is concluded that the subjects of each of the High Contracting Parties shall have liberty to come with their ships and cargoes to all places, ports, and rivers in the dominions and possessions of the other which are, or may be, opened to foreign commerce, His Majesty's Government consider that Tôkiô should be regarded as a place open to foreign commerce to the extent to which it was so open before, viz., by traffic in lighters, &c., to and from Yokohama.

They maintain that there is nothing in the Treaty indicating any intention to limit the rights and privileges which previously existed at Tôkiô.

They therefore consider that British subjects are still entitled to the same privileges as to lighter traffic as existed before the Treaty.

The question has still one more aspect.

The right to bring in lighters goods which have been imported into a port open to foreign commerce appears to be incident to the right to trade, conferred by Article III of the Treaty, like the right to carry such goods by road to the place of trade, nor would the circumstances so created appear to constitute coasting trade within the meaning of Article XI.

This line of reasoning is not, however, one which I am at present concerned to emphasize.

But relying on the arguments which I have had the honour to submit to your Excellency, I am instructed to express the hope that the Imperial Japanese Government will see their way to accept the construction I have exposed of Article III of the Treaty of 1894, and will not interfere with the privileges as to lighter traffic between Tôkiô and Yokohama hitherto enjoyed by British subjects.

I take, &c.
(Signed) CLAUDE M. MACDONALD.

No. 26.

[May 11, 1904.]

(No. 1.)

Foreign Office to the Law Officers of the Crown.

Taxation of property in foreign Settlements in Japan: Cases, &c.

Gentlemen, *Foreign Office, December* 9, 1903.

WITH reference to your Report of the 13th August last, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you two copies of the Case and Annexes prepared for the Governments of Great Britain, France, and Germany, and of the Case of the Japanese Government,* in the arbitration respecting the taxation of property situate in the former foreign Settlements in Japan, and held under perpetual leases.

Mr. Walford is engaged on the preparatory work connected with the Counter-

Case of the three Governments, and a further communication will eventually be addressed to you on the subject.

I have, &c.
(Signed) F. A. CAMPBELL.

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* Not printed.

(No. 2.)

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, January* 25, 1904.

WITH reference to the letter from this Office of the 9th ultimo, I have the honour, by direction of the Marquess of Lansdowne, to transmit, for your information, two printed copies of a Memorandum drawn up by Mr. Walford to assist the Committee now sitting in Paris, on which he himself is the British Representative, in the preparation of the Joint Counter-Case for the Governments of Great Britain, France, and Germany in the arbitration with regard to the perpetual leases in the former foreign Settlements in Japan.

I have, &c.
(Signed) F. A. CAMPBELL.

(No. 3.)

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, April* 21, 1904.

ON the 9th December, 1903, I had the honour to transmit to you two copies of the Case and Annexes prepared for the Governments of Great Britain, France, and Germany, and of the Case of the Japanese Government in the arbitration respecting the taxation of property situated in the former foreign Settlements in Japan, and held under perpetual leases.

Printed copies of a Memorandum, drawn up by Mr. Walford to assist the Committee sitting in Paris, on which he was himself the British Representative, in the preparation of the Joint Counter-Case for the three Governments, were forwarded to you on the 25th January last.

I have now the honour, by direction of the Marquess of Lansdowne, to transmit two copies of the Counter-Case as finally settled by the Committee, and signed on the 20th ultimo by the British, French, and German Delegates.*

According to the terms of the Protocol, signed at Tôkiô on the 28th August, 1902,† the Counter-Cases should have been exchanged on the 28th May. As this would have necessitated the dispatch to Tôkiô of the Counter-Case of the three Governments by the middle of this month, no opportunity would have been afforded for consulting you on the subject; but the Japanese Government have requested that the time should be extended for three months, viz., until the 28th August, and His Majesty's Government and the French and German Governments have acceded to that request.

The extension of time has made it possible for his Lordship to refer the Counter-Case to you, but unfortunately the period allowed for its consideration is even now limited.

The new arrangement would, in any case, entail the dispatch of the Counter-Case to Tôkiô by the middle of June, but the French Government have expressed a desire to be able to finally put the printing in hand by the 15th May.

I have accordingly the honour to state that his Lordship hopes you will be able to inform him before that date whether you approve the Counter-Case.

The subject of the arbitration was fully described in the letter which was addressed to you from this Office on the 11th August, 1903.

I have, &c.
(Signed) F. A. CAMPBELL.

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* Joint Counter-Case in Sir E. Monson's No. 175, March 20, 1904 (Confidential, Library No. 8187*).

† Treaty, Library No. 1160

Report.

We have no observations to make upon this Counter-Case, which appears to us to be very well drawn.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
May 11, 1904.

No. 27.

[October 15, 1904.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, September* 28, 1904.

Leases in perpetuity: Appointment of Baron Descamps as Counsel for Japan.

I HAVE the honour, by direction of the Marquess of Lansdowne, to inform you that the Japanese Government have nominated Baron Descamps, who is a member of the Permanent Court of Arbitration at The Hague, to act as Counsel for Japan before the Tribunal constituted under the Protocol for submitting to arbitration certain questions as to the interpretation of the Treaties with regard to leases held in perpetuity.

The question whether a Member of the Permanent Court can properly act as Counsel or Agent for one of the litigants in a case which has been referred for arbitration to that Tribunal, was raised last year in connection with the claims of certain Powers against the Republic of Venezuela. M. Renault, one of the Judges of the Permanent Tribunal, was appointed to act as leading Counsel for the French Government. On that occasion the Counsel for Venezuela addressed a formal protest against the appointment to the Administrative Council of the Court, on the ground that such persons, owing to their presumed acquaintance with other Members of the Tribunal in advance of its meeting, and of their presumed fitness to express weighty opinions upon questions of international law, as attested by their appointment on the Permanent Court, might be supposed to possess certain advantages over Counsel not so situated, and this conviction might lead litigants to suppose that a proper protection of their interests required them to retain some member of the Court as Counsel in a given case.

The second objection, they maintained, was even more serious—that suspicion might attach itself to the proceedings before the Court, and that a decision in favour of a Member of the Court acting as Counsel in one instance might exert some weight when the gentleman who was Counsel yesterday, and received a favourable decision, is himself a Judge to-day, and the Judge of yesterday is appearing as Counsel before him.

The fact of M. Renault's appointment having been brought to the knowledge of His Majesty's Government, their views on the subject were expressed in a despatch (Paper B) to His Majesty's Minister at The Hague. Lord Lansdowne stated that the question whether the Members of the Court should be permitted to appear as Advocates before it was one of great general importance, on which it appeared desirable that a conclusive decision should, in the interests of the Tribunal, once for all be taken.

His Majesty's Government concurred in the opinion, which had already been expressed on behalf of the Venezuelan Government, that the practice was open to very grave objection. It was of the utmost importance that the impartiality of the Members of the Court who might be called upon to act as Judges should remain beyond all possibility of suspicion, and the force of the objections to their acting as Advocates was greatly increased by the fact that the number of possible litigants was limited, while the questions to be decided would constantly affect the interest of a large number or even of all those litigants. It followed that, unless precautions were taken to guard against such a contingency, Members of the Tribunal would continually find themselves called upon to deal as Judges with the interest of those who have been their clients in the not remote past, or may become their clients in the not remote future.

His Majesty's Minister was instructed to make a formal protest to the Council of the Bureau, on purely general grounds, against the employment of one of the Judges of the Permanent Tribunal as Counsel in the Venezuela Arbitration.

I am to remind you that this question was not overlooked during the discussions of The Hague Conference, and that Lord Pauncefote then expressed a strong view that no Member of the Court should practise as a Counsel before it. The Conference, however, failed to arrive at an agreement, and the Convention is silent upon the subject.

In the only other case which has yet come before The Hague Tribunal, viz., "The Pious Fund of the Californias," the Mexican Government appointed as their Advocate one of the Members of the Permanent Court, and thereupon the Government of the United States thought it prudent to adopt a similar course.

In the forthcoming arbitration, Great Britain, Germany, and France together form one party, and Lord Lansdowne therefore assumes that His Majesty's Government could not, without the consent of the other Powers, address a protest to the Tribunal against the employment of M. Descamps; but if a protest should be decided on, this objection could perhaps be avoided if the other Powers declined to concur by the communication being addressed to the Permanent Council by His Majesty's Government not as litigants in this particular Arbitration, but as signatories of the Peace Convention.

The Council would not, of course, of itself be competent to decide upon the issue involved; but the views of His Majesty's Government would be on record, and it might help to discourage the practice.

The first meeting of the Tribunal appointed to arbitrate on the question of the Japanese leases is fixed to take place on the 21st November next.

I am directed to transmit to you the papers noted in the annexed list, and to ask you to favour Lord Lansdowne, at your early convenience, with your opinion whether any, and if so what, steps should be taken in the present instance by His Majesty's Government, and with any observations of a general nature which you may be good enough to offer.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.)	Sir H. Howard..	(No. 107)	September 9, 1903.
(B.)	To Sir H Howard	(No. 64)	„ 29, „
(C.)	Sir H. Howard..	(No. 115)	„ 20, „
(D.)	Ditto	(No. 119)	„ 30, „
(E.)	Ditto	(No. 120)	„ 30, „
(F.)	Ditto	(No. 122)	October 5, „
(G.)	Ditto	(No 123)	„ 5, „
(H.)	Ditto	..	„ 16, „
(I.)	Ditto	(No. 133)	„ 28, „
(J.)	Ditto	(No. 136)	November 4, „
(K.)	Ditto	(No. 93)	June 29, 1904.
(L.)	Ditto	(No. 113)	August 22, „
(M.)	Ditto	(No. 120)	September 7, „
(O.)	Hague Convention (Treaty Series No. 9, 1901). Foreign Office Library, No. 1118, July 29, 1899.		
(P.)	Protocol of August 28, 1902 (Treaty Series No. 16, 1903.) Foreign Office Library, No. 1160.		

Report.

We agree with the view that His Majesty's Government could not, without the concurrence of France and Germany, raise objection to the appointment of Baron Descamps to act as Counsel for Japan in the pending arbitration. Unless, therefore, the other Powers agree to this course, we think that any representation or protest by His Majesty's Government should be of a general character, and without specific reference to the appointment of Baron Descamps.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 15, 1904.

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RUSSIA.

No. 28.

[February 19, 1904.]

The Law Officers of the Crown to the Marquess of Lansdowne.—(Received February 19.)

Supply of coal of Russian Volunteer Fleet during war.

1. IN our opinion, no general direction can be given as to whether ships of the Volunteer Fleet are to be considered as war-ships within the meaning of Rule 8 of the Notification issued by the Egyptian Government (10th February, 1904). Each case must be separately considered.

2. But as the ships are in the service of the Russian Government, and intended, if necessary, to be used for warlike purposes, we think that when they are being used for conveying munitions of war, or any goods which are intended for the use of the belligerent Power in carrying on hostilities, they would come within the definition in the said Rule.

3. On the other hand, when they are merely conveying ordinary merchandize in the way of general commerce, they should not be treated as war-ships within the definition.

(Initialled) R. B. F.
E. C.

Annex.

The Earl of Cromer to the Marquess of Lansdowne.—(Received February 11, 10 P.M.)

(No. 13. Treaty.)
(Telegraphic.) *Cairo, February* 11, 1904, 8.35 P.M.

ARRANGEMENT at Port Saïd is working smoothly as regards ships of war, but the Commander of one of ships of Volunteer Fleet refused to sign Declaration on the ground of her being a merchant-vessel. She was allowed to take 2,400 tons of coal. There can be no doubt whatever that she comes under Rule 8. She carried fifteen guns. I think Volunteer Fleet should be treated as ships of war. My only hesitation in giving orders to that effect arises from fact that these ships are apparently allowed to pass through the Dardanelles, so that, by treating them as ships of war here, some other important questions may be raised. I should be glad to have an early expression of your views.

Minutes.

We must refer as soon as possible to the Law Officers.

Would a Volunteer ship, fully equipped and armed for war, be allowed to pass through the Dardanelles?

Are we aware of any such cases?

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I am not at all clear that the questions (1) of allowing this vessel to pass the Dardanelles and (2) of allowing her coal under the Canal Rules are interdependent.

What the authorities who administer the Canal Rules have got to look to is the language of those Rules, and if, as Lord Cromer says, "there can be no doubt whatever that this vessel comes under Rule 8," I do not think that her Commander should have been allowed coal without signing the Declaration.

The question of the status of the Volunteer Fleet is a very complicated one, on which, in the very limited state of my knowledge on the point, I should not be justified in offering an off-hand opinion. But I do not understand that we have ever *acquiesced* in such vessels being allowed to pass the Dardanelles, although, of course, we have not resorted to force to prevent their so doing.

Moreover, the *Porte* have *not* treated them on the footing of merchant-vessels, but have always granted Iradés before they were allowed to pass.

The telegram says that the vessel "carried fifteen guns," from which, in ordinary circumstances, I should have inferred that the guns were mounted.

It is an odd phrase to employ with regard to guns which were purely cargo, and "carried" in the vessel's hold, and I think, perhaps, it might be safer to telegraph to Lord Cromer inquiring whether the guns were mounted, or whether they were merely cargo, and what other cargo the vessel had on board, what flag she flew, and whether the Commander had a Commission; also whether there were Russian troops on board, and whether she had an ordinary crew for a merchant-ship of her size.

In order to bring the vessel within Rule 8—which, as Lord Cromer *has* let her have the coal without signing the Declaration, we do not want to do if we can reasonably exclude her—she must be either a man-of-war, a transport, or a fleet auxiliary, &c.; and if she is a mere merchant-vessel laden with contraband cargo, not necessarily destined direct for the fleet, it seems possible that she may not come within the Rule.

If Lord Cromer had refused her coal, and the Commander had then signed a Declaration under protest, the situation would have been easier to deal with, but by allowing the Captain to have the coal *without signing the Declaration*, the ship has been treated as though she did *not* come within Rule 8, and as though the Captain's contention that she is a merchant-vessel were correct.

In these circumstances, I am inclined to think that we should seek for circumstances justifying their method of regarding *this particular ship*, and then, in the event of other vessels of the Volunteer Fleet appearing at Port Saïd, find discriminating circumstances in their case to bring them within the Rule. But I fear the case is a very difficult one to deal with, after what has occurred, in a thoroughly satisfactory or logical manner.

W. E. D.

Foreign Office, February 12, 1904.

The Marquess of Lansdowne to the Earl of Cromer.

(Treaty.)
(Telegraphic.) *Foreign Office, February* 12, 1904, 4·25 P.M.

Your telegram No. 13, Treaty: Coaling of volunteer steamer.

Were the guns mounted or carried in hold?

What was the nature of the cargo?

Were Russian troops on board, and were the crew of the ordinary number for a merchant-vessel?

What flag was the ship flying, and was the vessel in other respects equipped for war?

The Earl of Cromer to the Marquess of Lansdowne.—(Received February 14, 4 P.M.)

(No. 14. Treaty.)
(Telegraphic.) *Cairo, February* 14, 1904, 12.15 P.M.

Treaty: Your telegram 12th February.

Following from Consul at Port Saïd:—

"Volunteer steamer 'Smolensk,' guns not apparent. Cargo general; no troops; crew 176, not excessive for 12,000 tons; speed, 20 knots. Flying Volunteer Fleet flag, namely, bugle in middle of blue instead of in top of white band, as in merchant service. Instead of the usual route, straight from the Dardanelles, went towards Piræus for two torpedo-boats, which it convoyed here. Took 2,400 tons of coal and [left] with one of the torpedo-boats for Jibuti to join Admiral there. Is included in naval [group undecypherable] code under the Russian Navy."

Minute.

Mr. Davidson. W. M.

Foreign Office, February 15, 1904.

There would seem to be nothing inconsistent with the character of a merchant-vessel carrying contraband goods for the use of a belligerent in the conduct of the "Smolensk."

She is described as "convoying the torpedo-boats," but this does not seem to have been a convoying to protect them against hostile attack, but merely as accompanying the boats in order to protect them against the perils of the sea, and for the purpose of standing by them in heavy weather, &c.—in other words, what is technically known as "mothering" them.

There is, however, no doubt that practically she was in the service of the Russian Government, and I do not think that she ought to have been given coal if and when the Commander

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declined to sign the Declaration. A ship may be a merchant-vessel and yet be "employed by a belligerent Power as a fleet auxiliary" (see Rule 8), and I think the case might have been dealt with under this Rule, without contending that she either was or was not a merchant-vessel.

W. E. D.

Foreign Office, February 15, 1904.

How do we stand with regard to this question? Have we not referred to the Law Officers?

L.

Mr. Davidson considered it necessary to obtain further information than that contained in Lord Cromer's first telegram before referring the question to the Law Officers. He has now got all the papers, and will refer them at once to the Attorney-General.

C. H

Please let this be done *as soon as possible.*

L.

I had already sent the papers with a copy of this telegram, which were supplied to me by the Department, and a long Minute by myself, to the Solicitor-General.

I had previously ascertained from the House of Commons by telephone that the Attorney-General "would not be in attendance at the House to-day," so I fear that he is still unwell.

W. E. D.

Foreign Office, February 15, 1904.

L.

No. 29.

[March 11, 1904.]

Admiralty to Foreign Office.—(Received March 8.)

Admiralty, March 8, 1904.

Sir,

War with Japan: Supply of coal to Russian vessels, the Russians regarding coal as contraband.

I AM commanded by my Lords Commissioners of the Admiralty to request you will move the Marquess of Lansdowne, should he see no objection, to cause the Law Officers of the Crown to be consulted on the following point of international law which arises out of the conditions of the war between Japan and Russia:—

"The Governments of the two belligerents having proclaimed coal to be contraband of war (Russia absolutely and Japan conditionally), does this affect the position of Great Britain as a neutral Power, under the rules laid down in Foreign Office letter of the 10th February, 1904, whereby coal within certain limits and in certain conditions can be given to belligerent men-of-war in British ports?"

In other words, as regards Russian men-of-war, in respect of which this point can alone arise in present conditions, is the decision of the Czar to confiscate cargoes of coal carried in neutral merchant-ships as contraband of war consistent with a claim for Russian men-of-war destined for the Far East to take coal in a British port under the British rules?

I am, &c.
(Signed) C. I. THOMAS.

Minutes.

This is an interesting, and, so far as I know, a novel point. It has a bearing on the question propounded by Baron Gericke on the 16th February (print, § 2, p. 50), but we were unaware of the Russian Declaration then.

At first sight there would seem to be no connection between coal supplied by a neutral to the *public ship* of a belligerent, and a declaration by such belligerent that coal carried by a *merchant-ship* is contraband of war.

I presume, however, the underlying theory is that we are warranted in saying to Russia: "Since you will not allow British colliers to carry, either directly or indirectly, a commodity which may be utilized as a propelling force by the public ships of Japan, it follows that we shall not be observing our duties as neutrals to Japan by allowing your ships any coal at all."

But if this *is* the theory on which the proposition rests (and I can think of no other for the moment), then it would seem to follow that we should have to apply the same principle to Japanese ships, since one of the conditions in which the latter declare coal to be contraband is when it is destined for the enemy's navy.

Mr. Davidson.

W. M.

Foreign Office, March 8, 1904.

I do not understand on *what* theory the question rests; but we must consult the Law Officers about the matter, as we have promised the Admiralty to do.

We shall have, I think, to protest against the Russian claim to treat coal and food-stuffs as absolute contraband of war. Possibly the Admiralty think that our protest should take a retaliatory form, by denying their public ships a modicum of coal in our ports. But this—as it seems to me—would be a very impolitic proceeding.

W. E. D.

Foreign Office, March 8, 1904.

We do not think that coal should be refused to Russian vessels, unless it is determined to *retaliate* against Russia for treating coal as absolutely contraband—this, of course, would be a very serious step.

There is no connection between the two questions, unless Great Britain were prepared to adopt the view on which we understand China is acting—viz., that contraband should not be supplied at a neutral port. We presume that there is no intention of adopting this extension of the doctrine as to the duties of neutrals.

R. B. F.
E. C.

Foreign Office, March 11, 1904.

No. 30.

[March 25, 1904.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, March 12, 1904.

Gentlemen,

War with Japan: Russian rules respecting Contraband and other matters.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit, for your consideration, the papers noted in the accompanying list relating to the Rules respecting contraband and other matters which will be enforced by the Russian Government during the continuance of hostilities between that country and Japan.

I am to direct your attention more particularly to Rule 6 of the Russian Proclamation (Paper A), which defines the articles which are to be deemed contraband of war, and especially to the following sub-sections of that Rule, viz., (8) "Coal, naphtha, alcohol," &c., (9) "Articles and material for the installation of telegraphs, telephones, or for the construction of railroads," and (10) "Rice, provisions," &c.

I am to explain that, as the result of telegraphic correspondence with His Majesty's Ambassador at St. Petersburgh (copies of which are inclosed for convenience of reference—Papers B and C), it has been ascertained that the Russian Government evidently intend to treat coal as unconditionally contraband of war. This attitude on the part of the Russian Government is clearly not in harmony with the very emphatic and definite pronouncement to the contrary effect which was made by Count Kapnist, the Russian Delegate at the West African Conference of 1884, and which is quoted on p. 2 of the inclosed Memorandum (Paper D).

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His Majesty's Government have also made inquiry of the Governments of Austria-Hungary, France, Germany, Italy, and the United States as to the view taken by them of the Russian Proclamation, and a summary of their opinions will be found in the annexed telegrams from His Majesty's Representatives at Vienna, Paris, Berlin, Rome, and Washington (Papers E, F, G, H, I, J, K).

During the Franco-Prussian War of 1870, the German Government protested against the export of coal and other warlike stores from this country to France; and on the 11th August, 1870, a Circular was addressed to His Majesty's Representatives abroad, in the course of which the following passage occurs:—

"But even if this point were clearly defined, it is beyond dispute that the contraband character would depend upon the destination. The neutral Power could hardly be called upon to prevent the exportation of such cargoes to a neutral port; and if this be the case, how could it be decided at the time of departure of a vessel whether the alleged neutral destination were real or colourable?"

On the 15th September, 1870, a comprehensive reply was returned by Lord Granville to the Prussian Minister's complaints. With regard to the demanded prohibition of the export to France of arms, coal, &c., his Lordship said:—

"There is no doubt that the Executive has, under 'The Customs Consolidation Act, 1853,' the legal power to prohibit the export of contraband of war, but the highest authority can be adduced to show that such exportation is not forbidden by our municipal law, and it has not been the practice to prohibit it except when the interests of this country, as in the case of self-defence, are directly and immediately concerned in the prohibition."

The view taken by His Majesty's Government with regard to coal during the Franco-Chinese War of 1885 and the Spanish-American War of 1898 is summarized on pp. 1 and 2 of the Memorandum (Paper D) above referred to. In view of the fact that on no previous occasion has coal been classed as unconditionally contraband, Lord Lansdowne would be glad to be favoured with your opinion (1) whether His Majesty's Government should at once protest against this Proclamation, or whether they should wait until some specific cargo of coal has been condemned by the Russian authorities, and (2) if you consider that a protest should be made, what form it should take.

"(9) Articles and material for the installation of telegraphs, telephones, or for the construction of railroads."

There appears to Lord Lansdowne to be no reason whatever for including these articles unconditionally in contraband, and that, at most, they can only become so when there is reason to believe that they are intended to be employed to further belligerent operations.

"(10.) Rice, provisions, ... if they are transported on account of, or are destined for the enemy."

This sub-section as it stands is exceedingly difficult to construe. It appears from Sir C. Scott's telegrams (Papers B and C) that the Russian Government interpret the words "for the enemy," as meaning in this case "to Japan or to Japanese armed forces."

The Russian Regulations in regard to naval prizes (Paper L) do not appear to contain any provisions with reference to goods which are contraband only under certain conditions, and the answer of the Russian Government contained in the telegram (Paper C) suggests that they place the articles enumerated under section 6 (10) of the Proclamation in the same category as the contraband referred to in Article 2 (1) of the Russian Naval Prize Regulations, *i.e.*, goods which are absolutely contraband. A summary of the attitude of His Majesty's Government as regards the above category of contraband will be found on pp. 2, 3, and 4 of the Memorandum already alluded to (Paper D), and a further Memorandum (Paper M), also inclosed, deals generally with this question.

I am to invite your particular attention to the opinion, dated the 26th October, 1899, of the then Law Officers, which is quoted in Paper (M), and to the Lord Chancellor's opinion of the 9th November, 1899, of which a separate copy is annexed (Paper N).

I am to request that you will inform his Lordship whether, in your opinion, Article 6 (10) of the Proclamation is, as to food-stuffs, a departure from the general rule of international law, or whether the saving clause "if they are transported on account of, or are destined for the enemy," may be treated as sufficient to bring it into harmony with the rules which have been acted on by His Majesty's Government. If you consider that the sub-section is in any respect (*i.e.*, not only as to food-stuffs) contrary to the general practice of international law, I am to request that you will inform his Lordship what steps it would be advisable for His Majesty's Government to take in the matter.

I am to add that the Russian Prize Law Procedure Rules of 1895 will form the subject of a separate reference, which will be sent to you as soon as the necessary notes and Memoranda can be prepared.

I have, &c.
(Signed) C. HARDINGE.

List of Papers.

(A.)	Russian Proclamation (Confidential No. 8101*)		February	14, 1904.
(B.)	To Sir C. Scott	(Telegraphic)	March	3, „
(C.)	Sir C. Scott	(Telegraphic)	March	7, „
(D.)	Memorandum by Mr. Maycock (and Minutes)		March	1, „
(E.)	To His Majesty's Representatives at Paris, Berlin, Rome, Vienna, and Washington.	(Telegraphic)	March	4, „
(F.)	Sir E. Monson	(Telegraphic)	March	5, „
(G.)	Sir F. Plunkett	(Telegraphic)	March	6, „
(H.)	Sir M. Durand	(Telegraphic)	March	7, „
(I.)	Sir F. Bertie	(Telegraphic)	March	8, „
(J.)	Sir F. Lascelles	(Telegraphic)	March	8, „
(K.)	Sir M. Durand	(Telegraphic)	March	10, „
(L.)	Russian Regulations in regard to Naval Prizes (1895).*			
(M.)	Memorandum by Mr. Oakes		March	7, „
(N.)	Opinion of Lord Chancellor (Confidential No. 7356, p. 16) ..		November	9, 1899.
(O.)	Sir Robert Reid		February	22, 1904.
(P.)	To Sir Robert Reid		February	26, „
(Q.)	Sir E. Monson	(No. 12, Treaty)	March	11, „

Report.

1. Whether any protest should be sent in is, of course, a matter of policy, but, in answer to the question put to us, we say that, in our opinion, it would probably be better to protest at once against the *unqualified* treatment of coal as contraband of war. Coal is contraband if for the use of the enemy's war-vessels; but whether this is so or not is a question of fact in each particular case.

2. We think that the protest should call attention to the generally-recognized rule that coal is only conditionally contraband, and to the views previously enunciated by Russia.

3. Telegraphs, railway materials, &c., are also *ancipitis usûs.*

4. Head (10) as to rice, &c., is somewhat ambiguous, but it seems clear that the Russian Government regard it as making rice contraband if intended for Japan, apart from the question whether it is intended for the use of the Japanese forces. This seems to us to be inconsistent with the true view of international law. We do not think that the qualifying words at the end of the sentence can be relied on as bringing the rule into harmony with the view acted on by His Majesty's Government, particularly having regard to the expressed views of the Russian Government as to its interpretation.

The enormous importance to this country of maintaining the rule that food is not contraband unless the inference can be properly drawn that it is for the use of the enemy's forces, or of a besieged town, cannot be lost sight of in considering the propriety of sending a protest with reference to the proposed treatment of food-stuffs.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
March 25, 1904.

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* For original text, see inclosure in Sir C. Scott's No. 4, Treaty, of February 18, 1904.

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No. 31.

[May 31, 1904.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, May 9, 1904.

Further correspondence respecting status of Russian Volunteer Fleet.

WITH reference to your Report of the 19th February last (a copy of which is inclosed for convenience of reference, Packet B, No. 4), I have the honour, by direction of the Marquess of Lansdowne, to transmit to you the further correspondence, noted in the accompanying list, with regard to the status of vessels of the Russian Volunteer Fleet.

I am to invite your especial attention to the Memorandum exchanged with the Russian Ambassador on the subject (Packet A, Nos. 7 and 8), in the course of which the Russian Government draw an analogy between these vessels and the Royal Naval Reserve merchant cruisers held at the disposition of the Admiralty, and also to the Admiralty letter commenting upon this view (Packet A, No. 13); to the note addressed by the Russian Consul-General at Cairo to the Egyptian Government as to the treatment of vessels of the Volunteer Fleet in the Suez Canal and its ports of access (Packet A, Nos. 9, 10, 11); and to the protest made by the Acting Russian Consul at Singapore dealing with the action of the local authorities in the case of the steamship "Voronej" (Packet C, No. 6). I am also to call attention to the views expressed on the general question by Mr. Davidson, K.C., and Mr. Hurst, the Legal Adviser and Assistant Legal Adviser to this Department (Packet A, No. 6); and I am to request that, in taking these papers into your consideration, you will favour his Lordship with your opinion as to whether it is possible to lay down any general principle as regards the treatment of vessels of this category (*a*) under the Rules adopted by the Egyptian Government, and (*b*) under the British Rules, or whether each case should still, in accordance with the opinion already expressed in your Report of the 19th February last, be considered on its merits as it arises.

Copies of these Rules are inclosed for convenience of reference (Packet A, Nos. 1 and 2).

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.)—General.

1.	Suez Canal Rules (Confidential No. 8404, p. 73)		February	10, 1904.
2.	British Rules (Confidential No. 8404, p. 77)		„	10, „
3.	Memorandum, Mr. G. E. P. Hertslet		August	22, 1896.
4.	Confidential Memorandum	(No. 7781)	October	1902.
5.	Ditto ditto	(No. 7784)	„	„
6.	Minutes, Sir C. Hardinge and others		March	31, 1904.
7.	Memorandum given to Count Benckendorff		April	6, „
8.	Ditto given by ditto		„	13, „
9.	Lord Cromer	(No. 40. Telegraphic)	„	7, „
10.	To Lord Cromer	(No. 16)	„	15, „
11.	Lord Cromer	(No. 19. Treaty)	„	8, „
12.	To Sir C. Scott	(No. 29. Treaty)	„	13, „
13.	Admiralty		„	30, „

(B.)—Case of "Smolensk."

1.	Lord Cromer (and Minutes)	(Telegraphic)	February	11, 1904.
2.	To Lord Cromer		„	12, „
3.	Lord Cromer		„	14, „
4.	Law Officers		„	19, „
5.	To Lord Cromer	(Telegraphic)	„	19, „

(C.)—Case of "Voronej."

1.	Colonial Office		February	13, 1904.
2.	Ditto		„	23, „
3.	Memorandum, Sir T. Sanderson		„	15, „
4.	Colonial Office, with telegram [Straits Settlements]		„	18, „
5.	Sir T. Sanderson to Count Benckendorff		„	18, „
6.	Colonial Office		March	16, „
7.	To Sir C. Scott	(No. 20. Treaty)	„	30, „

Report.

We do not think it is possible to lay down any general principle beyond that indicated in our Report of the 19th February, nor, as to its application in each particular case, have we anything to add to that Report. This applies to the Rules of the Egyptian and the British Government alike.

As regards the despatch of the 7th April, 1904 from Consul-General Smith upon the facts as stated in the telegram, we think the ships should be treated as ships of war.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
May 31, 1904.

No. 32.

[June 3, 1904.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, May 9, 1904.

Russo-Japanese War. Use of Wireless Telegraphy.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers indicated in the accompanying list on the subject of the Declaration recently issued by the Russian Government to the effect that correspondents on board neutral vessels, who may communicate news to the enemy by means of improved telegraphic or other apparatus not yet provided for by existing Conventions, will, if such vessels are arrested off the coast of Kwantung or within the zone of operations of the Russian fleet, be treated as spies, and vessels having on board apparatus for transmitting messages by wireless telegraphy will be considered as lawful prize of war.

This Declaration, which was apparently directed against the action of the "Times" newspaper, on board of whose chartered steamer the "Haimun" an apparatus for the transmission of messages by the De Forrest system of wireless telegraphy has been installed, was communicated to the Foreign Office by the Russian Ambassador on the 16th instant (Paper (A)), and on the following day a letter was received from Mr. Moberly Bell, the manager of the "Times" (Paper (B)) drawing attention to it, and pointing out that, as the "Times" is the only newspaper employing a steamer with wireless telegraphic apparatus on board, the notice was obviously aimed at that journal.

Mr. Bell proceeds in his letter to put forward arguments to prove that the action of the Russian Government is neither justifiable nor necessary. He states that the "Haimun" is under the British flag, that the apparatus on board is the property of the "Times," and that their correspondent, Captain James, is a British officer. He argues that even if telegraphic apparatus is contraband of war, a question which he does not consider himself competent to discuss, contraband of war can only be seized when there is an intention of putting it at the disposal of a belligerent—and that in this case there is and can be no such intention. The apparatus consists of an instrument which is, and is bound to remain, on a British ship, and another instrument which is fixed on British territory at Wei-hai-Wei. Such information as Captain

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James can obtain he can only obtain from the Japanese, and he can only telegraph it to Great Britain viâ Wei-hai-Wei. If he desired to communicate with Japan he has no means of doing so through the apparatus, because he can only telegraph to one place, namely, Wei-hai-Wei. Mr. Bell considers the idea that the Japanese may want to intercept Captain James' information is ridiculous, because he is the correspondent with the Japanese forces, and it is from them that he gets such information as he sends.

Wireless telegraphy, Mr. Bell states, is not, and cannot be, used by any of the "Times" correspondents with the Russian forces; and they have no more power of communicating with Wei-hai-Wei by means of it than with St. Petersburgh.

Mr. Bell concludes by asking for information and advice in the matter.

A protest against the action of the Russian Government from the correspondent of the "Times" at Wei-hai-Wei was also published in the "Times" of the 19th April (Paper (C)).

Lord Lansdowne was advised that the arguments of Mr. Moberly Bell were far from conclusive.

It was evident that, even if the power of communication of the "Times" correspondent on board the "Haimun" were confined to communicating from any place within the zone of operations at which he chanced to be to Wei-hai-Wei, information as to Russian, as well as Japanese, movements, it might readily be used to the great detriment of Russia and to the great advantage of Japan.

It was not unnatural that the Russian Government, being well aware of the very general sympathy extended to Japan by the British nation, and being also aware that, owing to the expulsion of one of their correspondents last year, the "Times" newspaper was probably not well disposed towards them, might feel some difficulty in accepting any assurance from the managers of that newspaper that the information thus obtained would not be turned to an improper use. His Majesty's Government could, moreover, clearly not take upon themselves any responsibility, *vis-à-vis* of the Russian Government, for the *bona fides* of any newspaper in this regard.

His Lordship was further advised that, apart from any detriment to Russian interests which might be caused by communication between the "Haimun" and the private receiver of the "Times" at Wei-hai-Wei, it would be easy for the Japanese fleet to tune an apparatus so that it would be capable of intercepting and receiving messages sent by the apparatus now carried on board of the "Haimun," and in this case the Japanese fleet would practically be able to make use of the "Times" steamer as though she were a Japanese despatch-boat or cruiser employed in observation before Port Arthur or elsewhere within the sphere of warlike operations. It appeared to Lord Lansdowne, moreover, that the presence of a war correspondent furnished with an apparatus of this kind within the zone of operations would be in itself a matter of which either belligerent had a right to complain, and that, if the apparatus were so employed by a neutral on board a neutral vessel as *in fact* to result in placing information of the movements of one belligerent at the disposal of the other to the detriment of the former, the neutral person thus carrying the information would render himself liable to the most serious consequences.

The case would appear to differ little in principle from that of a neutral war correspondent who, without being actually attached to either belligerent, circulated within the theatre of war, and while clothed with neutrality picked up valuable information which he conveyed directly or indirectly to one of the combatants concerning the movements of the other.

In the present case the "Times" correspondent was apparently in a far more advantageous position in regard to Japan if he wanted to help her, and in a far more advantageous position also if he were willing to disserve Russia, than if he were on board the Japanese flag-ship and subject to censorship.

Before dealing with the question from a legal point of view, it was thought advisable to refer the matter to the Admiralty (see Paper (D)) for the opinion of the Lords Commissioners on the question of policy involved, having regard to the effect which any decision now arrived at might have on the interests of His Majesty's naval forces in the event of this country being engaged in hostilities.

The Lords Commissioners of the Admiralty expressed themselves in their reply (Paper (E)) as entirely in accord with the view taken by the Foreign Office, and, consequently, as not in sympathy with the action of the "Times" in chartering a vessel for the purpose of transmitting messages by means of wireless telegraphy, or with Mr. Bell's protest against the Russian Declaration.

Their Lordships added that if Great Britain were at war the presence of press steamers fitted with wireless telegraphic apparatus would, in their opinion, be so prejudicial to naval operations that it could not be tolerated, and it would be necessary to promulgate some such Notification as that now issued by the Russian Government, and urged the inexpediency of allowing the action of the "Times" to establish what would certainly prove to be a most inconvenient precedent.

The question of the possibility of intercepting messages sent by the De Forrest system from the "Haimun" to the station at Wei-hai-Wei was referred to the expert adviser of the Admiralty in matters connected with wireless telegraphy, who gave it as his opinion that, assuming that the Japanese were sufficiently advanced in this branch of science, it would be perfectly possible for them to intercept any such messages, since the "tuning" of the apparatus presented no serious difficulty to experts.

A communication has been received from the United States' Chargé d'Affaires (Paper (F)) stating that when acknowledging the Russian Declaration his Government added that they "do not waive any right they may have in international law in the case of any American citizens who may be arrested, or of any American vessels that may be seized under it."

On the 26th ultimo Lord Lansdowne informed the Russian Ambassador (Paper (G)) that the question, raised for the first time by this Declaration, will require careful examination at the hands of His Majesty's Government, and that, in the meantime, they must reserve any rights which they may have in international law in the event of arrests of British subjects or seizures of British vessels taking place under the Declaration.

I am to request you to take these papers into your consideration and to favour Lord Lansdowne with your opinion whether the Russian Circular affords any, and if so what, grounds for a protest by His Majesty's Government. Lord Lansdowne would also be glad to be furnished with any observations of a general nature which you may have to offer on the case.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A) Count Benckendorff	April 15, 1904.
(B.) Mr. Moberly Bell	April 16, „
(C.) "Times" extract	April 19, „
(D.) To Admiralty	April 22, „
(E.) Admiralty	April 22, „
(F.) Mr. White	April 21, „
(G.) To Count Benckendorff	April 26, „
(H.) Colonial Office	April 22, „
(I.) Admiralty	April 28, „

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, May* 24, 1904.

WITH reference to my letter of the 9th instant, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you two further letters which have been received from the Colonial Office, forwarding correspondence with the Commissioner of Wei-hai-Wei, dealing with questions which have arisen in connection with the establishment of wireless telegraphic communication between the British steamship "Haimun," which has been chartered by the "Times" newspaper, and the British dependency of Wei-hai-Wei.

It appears from the inclosures in the Colonial Office letter of the 30th April (Paper (A)) that the wireless telegraphic station was established at Wei-hai-Wei by the "Times," with the permission of the Government of the dependency, and that the Commissioner, who was absent from Wei-hai-Wei when the application was made, saw no objection to the erection of the apparatus.

On the other hand, the Commander-in-chief on the China Station considered that the transmission of messages for public use by wireless telegraphy from the sphere of operations, unrestrained by censorship, was inconsistent with the observance of neutrality, and should not be officially sanctioned.

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The Commissioner, having no precedent to guide him in deciding the question raised by the Admiral, has referred the matter home.

The correspondence inclosed in the Colonial Office letter of the 11th May (Paper (B)) has reference to the censorship of telegrams dispatched from the "Haimun."

Captain James, the special correspondent of the "Times," informed Mr. Lockhart that arrangements had been made for all messages to be censored by the Japanese. In reply to inquiries from the Colonial Office as to how and where the messages were censored, Mr. Lockhart stated that they were censored on board the "Haimun" by the Japanese officer who was always stationed on that vessel.

On receipt of this information a telegram was sent to His Majesty's Minister at Tôkiô (Paper (C)), asking whether he could obtain confirmation of it from the Japanese Government.

Sir C. MacDonald replied (Paper (E)) that the officer in question was in no way officially appointed by the Japanese Government, that he did not censor telegrams, and had not with him any Japanese cypher or code, and that he would be at once recalled if Lord Lansdowne desired. Sir Claude MacDonald added that he was a Japanese officer on half-pay, and a guest on board the vessel.

Mr. Moberly Bell, the manager of the "Times," stated, in reply to inquiries which had been made of him (Paper (D)), that he was not "officially" aware of the fact that there was a Japanese censor on board the "Times" steamer, though he thought it extremely probable, that press telegrams were not sent in cypher or code, and that, so far as he was aware, press telegrams only had been sent by wireless telegraphy.

In view of the difficulty of reconciling Captain James' statement with the information supplied by Sir C. MacDonald, the position of the Japanese officer on board the "Haimun" and the nature of the arrangements made for censoring messages dispatched from that vessel remain unexplained, and Mr. Moberly Bell's letter throws no light on the matter.

I am to inquire whether you are of opinion that the establishment of a wireless telegraphy station at Wei-hai-Wei constitutes a breach of neutrality, and whether the answer to the question submitted for your consideration in the Foreign Office letter of the 9th May is, in your opinion, in any way affected by the fact of the presence on board the "Haimun" of a Japanese officer, either as an official censor on behalf of the Japanese Government or as a private guest of the "Times" newspaper or of its correspondent.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.)	Colonial Office	.. ..	April 30, 1904.
(B.)	Ditto	.. ..	May 11, „
(C.)	To Sir C. MacDonald	(No. 85. Telegraphic)	May 16, „
(D.)	To Mr. Moberly Bell	.. ..	May 17, „
(E.)	Sir C. MacDonald	(No. 144. Telegraphic)	May 17, „
(F.)	Mr. Moberly Bell	.. ..	May 18, ,

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, May 30, 1904.

With reference to my letters of the 9th and 24th instant, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you a letter which has been received from the Admiralty,* inclosing a communication from Sir C. Bridge, late Commander-in-chief on the China Station, in which he gives his reasons for the objection taken by him to the establishment of a wireless telegraphy installation at Wei-hai-Wei.

I am to request that you will take Sir C. Bridge's letter into your consideration in connection with the papers forwarded to you in the letters from this Office above referred to.

I have, &c.
(Signed) F. A. CAMPBELL.

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* Admiralty, May 25, 1904.

Report.

In our opinion the Russian Circular does not afford any grounds for a protest by His Majesty's Government. In its terms the Circular only applies to correspondents on board vessels who transmit news *to the enemy* by means of wireless telegraphy, and it cannot, in our opinion, be contested that a belligerent is within his rights in preventing such transmission.

In reply to Mr. Campbell's further letters of the 24th May and of the 30th May, and inclosures, we are of opinion that the establishment of a wireless telegraphy station at Wei-hai-Wai does not *per se* constitute a breach of neutrality, though no doubt if it were allowed to be used as a means of communicating information to the enemy or were likely to be so used it might be regarded as inconsistent with the duties of neutrality.

We think that the presence on board the "Haimun" of a Japanese officer as an official censor would, from the Russian point of view, naturally tend to aggravate the case, and even if his presence is unofficial, it could not fail to give rise to suspicions. We think it open to serious objection that a British vessel so employed should have on board a Japanese officer in any official capacity.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 3, 1904.

No. 33.

[June 6, 1904.]

Foreign Office to the Law Officers of the Crown.

Russo-Japanese War.

Supply of coal to belligerent ships; their reception in British ports.

Gentlemen,
Foreign Office, June 3, 1904.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list with reference to the terms and conditions on which, during the continuance of the present hostilities between Russia and Japan, coal should be supplied to Russian public vessels visiting British ports.

On the outbreak of war between the two Powers, His Majesty issued a Proclamation of Neutrality (Paper (A)), dated the 11th February, 1904, together with Rules and Regulations for its observance, to Rule 3 of which I am to invite your especial attention. That Rule runs as follows:—

> "No ship of war of either belligerent shall hereafter be permitted, while in any such port, roadstead, or waters subject to the territorial jurisdiction of His Majesty, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer-named neutral destination; and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of His Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid."

On the 28th February last the Emperor of Russia issued a Proclamation declaring every kind of fuel, such as coal, naphtha, alcohol, and other similar materials, to be absolute contraband of war ("combustibles de tout genre, tel que: charbon, naphte, alcool, et autres matériaux semblables").

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Hitherto Russia had—so far, at any rate, as her most recent public declaration is concerned, not only not regarded coal as absolutely (as distinguished from conditionally) contraband, but had declined, in the most positive and clear terms, to consent to its treatment even as an article *ancipitis usûs*.

Count Kapnist, the Russian Plenipotentiary at the West African Conference held at Berlin in 1884, made the following declaration:—

> "Je dois faire une réserve toute spéciale quant au troisième alinéa de l'Article XIII, qui a trait aux objets considérés comme articles de contrebande de guerre. . . . . Je veux parler de la proposition Anglaise, ... dans laquelle la houille se trouverait rangée parmi les articles devant être considérés, en vertu du droit des gens, comme contrebande de guerre. . . . . Je dois déclarer, pour me conformer à mes instructions, que le Gouvernement Impérial de Russie n'accepterait en aucun cas une telle interprétation.
>
> "Sur ce point mes instructions sont péremptoires. Le Gouvernement que j'ai l'honneur de représenter ici refuserait catégoriquement son assentiment à l'Article d'un Traité, d'une Convention, ou d'un Acte quelconque qui impliquerait la reconnaissance de la houille ou du charbon comme contrebande de guerre.
>
> "Il n'y adhérait pas même sous la réserve d'une limitation de la portée d'un tel Article aux régions qui nous occupent, ou à n'importe quelle autre localité." (Protocole No. 5, séance du 18 Décembre, 1884.)

Up to the present time coal has, so far as is known, always been treated in modern wars as an article *ancipitis usûs*, and has been so regarded during the present hostilities by Japan, the other of the two contending nations.

I am next to invite your especial attention to the report by the Senior Officer at Portland of his interview on the 28th April last with the agent of Messrs. G. N. Collins and Co. with regard to the supply of coal to the Russian squadron which is expected at Portland towards the end of June on its way to the Far East (Paper (B)), and to the correspondence between this Department and the Admiralty (Papers (C), (D), and (E)), in which is discussed the question of the supply of coal to a whole fleet of war vessels, as distinct from a single vessel; and also whether the case is affected by the Russian declaration that coal is unconditionally contraband of war.

As much turns upon the exact wording of the British Rule, it may be well to give a short account of its origin.

So far as can be traced, the British Rules, as a whole (including that dealing with the supply of coal to belligerents), appear to have originated at a Conference held at the Foreign Office in January 1862, at which certain members of the Cabinet and the Law Officers of the Crown were present. The phrase "to the nearest port of her own country or to some nearer destination," as originally drafted, was "to the nearest point of their own country, or to some nearer destination." The former phrase has been invariably employed in the Rules issued in recent wars, but on the outbreak of the present hostilities between Russia and Japan the words "named neutral" were, with the concurrence of the Lord Chancellor and the Attorney-General, inserted after "nearer," and the phrase therefore now runs, "to the nearest port of her own country, or to some nearer-named neutral destination."

Lord Lansdowne is, moreover, advised that in the present state of our Statute Law some difficulty in enforcing the prohibition of the supply of coal to belligerent ships in British ports by private firms or individuals, either altogether or within certain prescribed limits, might be experienced, since the supply of coal to a belligerent does not appear to constitute any offence under the equipment section (section 10), and the definition of "equipping" given in the interpretation section (section 30) of "The Foreign Enlistment Act, 1870."

Should you share this opinion, the desirability of strengthening the Statute Law in this regard would seem to be worthy of serious consideration.

Copies in print of Declarations of Neutrality made by foreign Governments in the present war are also inclosed for convenience of reference. (Packet marked (F.))

Pending your reply to the questions subsequently submitted to you in this letter, no action has been taken by His Majesty's Government with reference to the Russian pronouncement in regard to coal, though a protest has been addressed to His Majesty's Ambassador at St. Petersburgh for communication to the Russian Government (Paper (G)) with regard to their declaration, which was also contained in the Imperial Order of the 28th February on the subject of rice and food-stuffs.

It is therefore very important that His Majesty's Government should, with the least possible delay, decide what attitude they should adopt with regard to the Russian declaration as to coal.

I am to request that you will take the various papers herewith into your consideration, and will favour his Lordship, at your earliest possible convenience, with your opinion on the following questions:—

1. What is the proper construction of the words "so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer-named neutral destination."

Are the words "some nearer-named neutral destination" referable solely to some such nearer neutral destination situate between the British coaling port and the nearest port of the vessel's own country, or must they be construed without any such limitation, and as comprehending every neutral port, in whatever direction, which is in actual mileage nearer to the British coaling port than is the nearest port of the vessel's own country?

2. If the latter interpretation be the correct one, should the language of the Rule be altered so as clearly to apply only to neutral ports between the British coaling port and the nearest port of the vessel's own country?

3. Should any distinction be made in regard to the limited facilities for coaling to be afforded in British ports between a single belligerent public vessel and an aggregation or fleet of such vessels?

4. Does the fact that the ultimate destination of such vessel or vessels is obviously to Japanese waters, to which at present the theatre of naval warfare is wholly confined, affect the question?

5. Assuming that vessels of a belligerent fleet—themselves with more or less empty bunkers at the time, but accompanied, as part of a concerted operation, by a number of coaling tenders fully laden—put into a British port, leaving the tenders in the offing, ought such vessels to be refused the modicum of coal indicated by the Rule? In other words, could they, the facts above mentioned being clearly ascertained, be said to be in need of coal within the meaning of the Rule?

6. Has the Rule embodying the principle of granting limited hospitality, by way of succour in cases of necessity or distress to the public vessels of a belligerent with whom Great Britain is at peace, any application at all where circumstances show that it is being taken advantage of in order to enable one belligerent to conduct hostile operations against another belligerent with whom Great Britain is equally at peace?

7. Does the supply of coal by private individuals to belligerent ships in British waters—if such supply be in excess of the limits prescribed by Rule 3—constitute an offence against the municipal law ("Foreign Enlistment Act, 1870," or otherwise) of this country? If not, is it desirable to strengthen that law in order to bring the case within its provisions?

8. Lord Lansdowne would also be glad to receive any other observations of a general nature which you think would assist His Majesty's Government in dealing with this most important question.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.) British Proclamation of Neutrality (Confidential No. 8076*) ..	February 11, 1904.
(B.) Inclosure in Admiralty letter	May 14, „
(C.) Admiralty	May 14, „
(D.) To Admiralty	May 18, „
(E.) Admiralty	May 30, „
(F.) Proclamations of Neutrality issued by Foreign States during the present hostilities (see Confidential No. 8279).	
(G.) To Sir C. Hardinge .. .. .. (No. 41. Treaty)	June 1, „
(H.) Packet of printed papers respecting coal (correspondence during present hostilities) (in Confidential No. 8404).	
(I.) To Sir M. Durand	June 1, „
(J.) Reports by the Law Officers of the Crown (seven, in print), July to August, 1870, and January 1885.	
(K.) Naval Prize Manual.	

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Report.

There is no obligation on the part of a neutral to receive into his ports vessels of war of a belligerent not in actual distress. He may forbid their entrance or impose such conditions as he thinks fit. The same treatment must, of course (apart from any special rights in this respect conferred by Treaty) be extended to the vessels of both belligerents.

The reason for the practice of admitting vessels of war into neutral ports while the troops of belligerents are excluded from neutral territory arises out of the exigencies of life at sea and the hospitality which it is customary to extend to vessels of friendly Powers. This principle does not extend to enabling such vessels to utilize a neutral port *directly* for the purpose of hostile operations. Indirectly, of course, every supply of provisions or coal to a belligerent vessel may facilitate its taking part in the war, but when the supplies are required directly for the purposes of hostilities, other considerations apply. As was stated in the Law Officers' Report of the 22nd December, 1884, with regard to the instructions to be issued in the case of the war between France and China: "The object should be to prevent such supplies as would assist the naval operations."

The rule on which Great Britain has hitherto proceeded as to the supply of coal to belligerent vessels is embodied in the third of the Rules and Regulations annexed to the Proclamation of Neutrality of the 11th February last, which is set out in Mr. Campbell's letter to us. It is in substantial conformity with all similar instructions issued since 1862, when the British Rule on this subject was first formulated.

Upon the construction of this Rule it is difficult, if not impossible, to say that under it, coal is to be supplied only for the purpose of reaching the nearest home port, or some neutral port on the way to the nearest home port. In its natural meaning the Rule applies to the case of a neutral port wherever situate so long as it is nearer to the port of supply than is the nearest home port. It has, we believe, always been so construed in practice, and the propriety of such a construction from a practical point of view is strongly insisted on by the Admiralty in their letter to the Foreign Office of the 30th December, 1903.

We cannot, however, help thinking that the framers of the Rule must have had primarily in view the case of a neutral port between the port of supply and the nearest home port of the vessel. The distance of the nearest home port might be such that enough coal could not be taken on board for the whole voyage and the words as to another nearer port might well have been introduced for the purpose of enabling the vessel on her way home to achieve the first stage of that voyage and then coal afresh at a nearer neutral port. It is difficult to see why, unless this was the object of the rule, these words as to neutral ports were confined to *nearer* neutral ports.

It appears to us to be clear that any coal which the vessel has already on board must be deducted in estimating under this Rule 3, the quantity to be supplied for the purpose of taking her to her nearest home, or nearer neutral, port, and we think that in the case of a belligerent vessel accompanied by a store-ship containing coal, the right to be supplied at a British port would not arise if such coal could be obtained from such store-ship, as it is obvious that in any such case there would be no necessity for the supply, and that it was being obtained only for the purpose of saving up the coal in the store-ship for use on a subsequent stage of the voyage or in hostile operations.

In the instructions issued by the United States with reference to the Franco-German war (Hertslet's "State Papers," 1870–71, Vol. 61, pp. 670—671) these words as to other neutral ports do not occur at all.

It may be a matter for consideration whether the Rules of His Majesty's Government should, at the next suitable opportunity, be amended by leaving these words out. Without them the Rule would enable the vessel to take on board coal enough to reach any neutral port on the way home in case the capacity of the vessel were insufficient to take coal for the whole voyage home. Such an amendment would follow the United States' precedent, but if, for any reason, it is thought desirable that some such words should be retained, it may deserve consideration whether words should be inserted to make it clear that the nearer neutral port must be on the way home. If an amendment is made it may possibly be well to add words to remove all doubts that the coal supplied is to be used only for the purpose of reaching the port in

question. Whether any such amendment should be made is a question of policy of great importance.

We do not think it would be practicable to frame instructions suitable for general use to the effect that coal is not to be supplied directly for the purpose of any hostile operations. Perpetual friction would arise in the working of such a rule as those who would have to administer it at British ports, all through the world, might not have the materials for rightly determining the purpose for which the coal was asked and very different views might be taken at different ports on the subject. We may refer, by way of illustration of the difficulties attending the attempt to frame a Rule upon any such lines, to the observations made by the Law Officers in their Report of the 28th January, 1885, upon the instructions which had been sent by the Colonial Office to Hong Kong and to the Straits Settlements.

The case, however, which is suggested in Mr. Campbell's letter as likely to arise is of a very special nature and seems to us to be outside the scope of the Rules as to coaling already issued by His Majesty's Government.

It is suggested that the Russian Fleet in the Baltic may desire to proceed eastward to Japanese waters for the purpose of taking part in the war and that with a view to facilitate this expedition, arrangements are being made by the Russian Government for a supply of coal to be ready at Portland to be put on board the ships of the Baltic Fleet which arrive there on their way eastward. In substance, this would be converting a neutral port into a depôt for the coaling purposes of a war-like expedition. We think that in such a case special instructions might properly be issued directing that Russian vessels taking part in such an expedition are not to be permitted to use any British ports for the purpose of coaling.

It is probably better to deal with the case in this way than, at the present moment, to make an amendment in the general Rule.

Of course, no such prohibition would affect the right of British merchants to supply coal to dealers at the ports of other neutral countries, even though such coal may be intended for the Russian Fleet if allowed to coal in such ports by the Government of the country. This country has never taken upon itself to prohibit the export of coal even if intended for use by belligerent vessels. Such export was not interfered with during the Franco-German war (Hansard (1870), 3rd series, vol. 203, columns 1094 and 1278), and we cannot advise any new departure in this respect.*

As we have above said, we think that His Majesty's Government may properly prohibit the supply of coal, under the suggested circumstances, in any British port. If, after such prohibition, British colliers left any British port for the purpose of supplying coal to the Russian Fleet outside the limits of the territorial waters, this might bring them within the terms of the Foreign Enlistment Act on the principle enunciated in 1870 by the then Attorney-General and by Mr. Gladstone, in answer to questions with regard to the supply of coal to the French Fleet (Hansard, *ubi supra*).

Every such case would, of course, have to be dealt with upon the facts which could be proved, but we think that it might be held to fall within section 4 of the Act.†

We think it right to add that as a mere matter of law the question of the supply of coal is not affected by the Russian declaration that coal is unconditionally contraband, nor would it be affected by any acquiescence by Great Britain in this new departure. Coal supplied to a belligerent man-of-war has always been, in the view of this country, contraband, but this has not affected the limited hospitality in the matter of coaling afforded to belligerent vessels coming into British ports. The attitude, however, lately assumed by the Russian Government in this matter may, no doubt, be usefully employed if any diplomatic correspondence should arise as to the treatment to be extended in the matter of coaling to Russian vessels.

We think that the observations which we have made above deal with most of the points which are raised in the letter of reference, but we think it better to add answers to the specific questions in their order.

1. We think that the words "some nearer-named neutral destination" cannot be

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* Hansard, 3rd series, vol 203, p 1094, contains the answer of the Attorney-General to Mr. Gourley's question of July 28, 1870, as to the carrying of coal to French or Prussian ports.

On p. 1278 is Mr. Gladstone's reply to Mr Stapleton's question of August 1, 1870, as to supplying the belligerents (*i e.*, the French and Prussian fleets) with coal.

† Accepting a Commission or engagement in the service of a belligerent without the licence of His Majesty. Foreign Enlistment Act, 1870, sec. 4.

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confined to ports situate between the British coaling port and the nearest port of the vessel's own country.

2. This is a question of policy, and we refer to what we have stated above on the subject.

3. No distinction can be drawn between the case in which vessels of the Fleet present themselves at the port at the same time, and the case in which they arrive successively, so long as they are acting in concert for the purposes of an expedition.

4. The fact that the destination is the seat of war is a most material circumstance. We should, however, point out that vessels may also take part in a war by proceeding to a destination which would enable them to intercept neutral vessels carrying contraband of war.

5. The vessels of the belligerent fleet having in attendance tenders laden with coal could not, under the circumstances stated, be regarded as entitled to coal within the meaning of the Rule.

6. We think not—for the reasons stated above.

7. We think that such supply of coal would constitute an offence under the Foreign Enlistment Act. On this point we agree with the opinion of the Law Officers, expressed in their Report of the 28th January, 1885.

8. We have nothing further to add.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 6, 1904.

No. 34.

[June 13, 1904.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, June* 8, 1904.

Sale of steam-ship "Teutonic" to a Russian.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list, which relate to certain telegrams (packet marked A) which have recently passed between Liverpool and Hamburg, and from which it will be seen that negotiations are in progress for the sale of the steamship "Teutonic," of the Oceanic Steam Navigation Company (otherwise known as the "White Star Line"), to a Count Stroganow, of St. Petersburgh.

Although the purchaser would appear to be a private individual, it can hardly be doubted that the ultimate destination of the "Teutonic" is the Russian Government, and her future employment that of a belligerent vessel in the hostilities now in progress between Russia and Japan; and the inclosed despatch from His Majesty's Consul at Riga (Paper B), relating to the purchase of passenger steamers by the Russian Government (amongst which is the "Fürst Bismarck," of the Hamburg-American Line), would tend to confirm this conjecture.

I am to invite your especial attention to the Admiralty letter of the 3rd instant (Paper D), in which copies are inclosed of two Agreements: the first, dated the 1st August, 1903, between the Admiralty and Board of Trade (as representing His Majesty's Government) and various British Companies, included in the so-called American "combine," one of them being the Oceanic Steam-ship Company; and the second, dated the 4th July, 1902, between the Admiralty and the Ocean Steam-ship Company.

I am to request that you will take these papers into your early consideration, and that you will favour his Lordship with your opinion on the following points:—

1. Whether the sale or transfer of the "Teutonic," if permitted by His Majesty's Government in the circumstances stated, would, according to admitted principles of international law, constitute a breach of neutrality on the part of this country towards Japan.

2. Whether, having regard to all the facts and circumstances of the case, the sale of the vessel would amount to a breach of section 8, sub-section 4 (or otherwise) of "The Foreign Enlistment Act, 1870;" and if the answer to this question should be in the affirmative, what steps, if any, should be taken by His Majesty's Government in the matter.

3. Whether, if the President of the Board of Trade should withhold his consent to the transfer of the "Teutonic," under Article 3 of the Agreement of the 1st August, 1903, it will become incumbent on the Admiralty, under Article 8 of the Agreement of the 4th July, 1902, to purchase the said vessel—a course which it appears that Department would not be desirous of adopting, as the "Teutonic" no longer fulfils the requirements laid down by the Admiralty in respect of speed.

4. Lord Lansdowne would at the same time be glad to be favoured with any observations of a general character which you may desire to offer on the papers now submitted to you.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.)	Home Office (with packet of four telegrams)	May 31, 1904
(B.)	Consul Woodhouse	May 21, ,,
(C.)	To Admiralty	June 1, ,,
(D.)	Admiralty (Inclosures: Copies of contracts)	June 3, ,,
(E.)	Memorandum by Mr. Maycock on case of a torpedo-boat destroyer built by Messrs. Palmer at Jarrow*	June 7, ,,

Report.

1. This question we answer in the negative. There is no admitted principle of international law of general application which would make the permission of the sale, in the circumstances stated, a breach of neutrality. It is not stated that there has been any accession, as between England and Japan, to the Rules embodied in the VIth Article of the Treaty of Washington, 1871, and, indeed, it does not appear clear, upon the facts before us, that even these Rules would apply to the present case.

2. We think that the sale of the vessel would, in the circumstances stated and in the absence of other facts putting a different complexion upon the case, amount to a breach of section 8, sub-section 4, of the Foreign Enlistment Act. The vessel should, therefore, upon the facts as they at present appear, in our opinion, be detained under the powers of the Act unless a satisfactory undertaking be given by the owners.

3. This question we answer in the negative. Article 8 of the earlier Agreement of the 4th July, 1902, provides that the Company shall not entertain any offer for sale without giving notice to the Admiralty and allowing the Admiralty the option of purchase, and that the failure to exercise such option shall amount to a consent to the sale. This Agreement does not impose upon the Admiralty any obligation to purchase.

The later Agreement of the 1st August, 1903, contains, in its 3rd Article, an unqualified Agreement by the Association not to transfer to a foreign registry without the consent of the Board of Trade, which, however, is not to be withheld unreasonably. This Article has no reference to the provisions of the earlier Agreement as to sale without the consent of the Admiralty, and cannot create any obligation to purchase.

4. Although the sale would not amount to an infraction of any generally admitted principles of international law on the subject of neutrality, any neglect to put in force the provisions of our Municipal Law would probably lead to remonstrances by any friendly Power thereby prejudiced.

While it cannot be conceded that there is any international obligation to enforce our Foreign Enlistment Act so far as it is in excess of the requirements of international law, it deserves consideration, as a matter of policy, whether its provisions should not be strictly enforced. We do not concur in the suggestion that the only remedy in case of infraction of the 3rd Article of the Agreement of the 1st August,

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* See Law Officers' Report of March 23 under "General."

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1903, is to be found under Article 1 of that Agreement. It appears to us that any such proposed infraction might, in a suitable case, be restrained by injunction.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 13, 1904.

No. 35.

[June 18, 1904.]

Foreign Office to the Law Officers of the Crown.

Gentlemen,
Foreign Office, April 14, 1904.

Russian Regulations as to naval prizes.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit, for your information, and for such observations as you may be good enough to offer, a translation of the Regulations issued by the Russian Government in regard to naval prizes, together with instructions on the procedure to be observed in stopping, examining, and seizing, and also in removing and delivering captured vessels and cargoes.

The portion of Article 2 of the General Regulations which refers to the confiscation of neutral merchant-ships for carrying certain articles or quantities of contraband is not in accordance with the usual practice of Prize Courts in such cases, the usual penalty for carriage of contraband being the confiscation of the contraband cargo itself, and the loss of the freight thereon, except under special conditions.

Again, Article 14 (p. 5), which provides for the handing over of contraband at sea, would appear to be a new departure. Delivery of the contraband does not seem to be compulsory—*i.e.*, if the captain of the ship declines to hand over the contraband, the vessel must be taken in for adjudication.

It would not be difficult to find arguments to show that this method of proceeding may, in cases in which the cargo was so loaded as to render it possible of adoption, be a distinct benefit to shipowners. The size of modern cargo-steamers is so great that they might prefer handing over a small quantity of contraband or suspected goods at once, to incurring the expense and delay of adjudication. Another possible case might be that of contraband fraudulently shipped under another name, which the innocent master of the merchant-vessel might well prefer to surrender when its true nature was discovered.

Article 21 (*Destruction of Prizes*).—This rule, as drafted, would appear to refer both to captures from the enemy and from the neutral. As regards capture from the enemy, the rule does not seem to go beyond what, in strict right, a belligerent may claim to do, and what may not be unreasonable for a country in the position of Russia, with no ports to which she can take prizes, and in view of the fact that neutral Powers in the main object to prizes being brought within their territorial waters.

On the other hand, as regards *neutral* vessels, this rule would appear wholly contrary to British practice, which is to treat the destruction of a neutral vessel as of itself sufficient to require full restitution, costs, and damages, on the principle that if a captured neutral vessel cannot be taken into port for adjudication, she should be released. The principle embodied in Article 40 (p. 21) is in direct contradiction of this doctrine.

Articles 22 (*p.* 6), *and* 42 (*p.* 22).—These Articles seem to be framed under the assumption that entry into a neutral port will not release the prize.

It appears to Lord Lansdowne not unlikely that it may be found impossible to maintain the rule that prizes must not be brought into neutral waters. Such prizes must be taken under their own steam to port for adjudication, as they cannot be towed; and, in the case of a lengthy voyage, this might necessitate their being permitted to recoal at a neutral port, unless the contraband cargo chanced to be coal. If this were not allowed, it would, for example, clearly be impossible for Russia to take into a port of her own a neutral vessel captured, say, off Hong Kong; since access to East Asian ports is at present prevented by the loss of the command of the sea in those waters, and consequently Libau would be the nearest Russian port available. It may be urged that it is obviously more to the advantage of a neutral Power to allow the prizes of a belligerent a modified use of its ports (*e.g.*, on the terms that ships of war are allowed to use them) rather than to leave the latter no option but the destruction of the neutral vessel before adjudication.

It cannot be expected that belligerent nations will recognize as binding on them a course of conduct with which it is impossible for them to comply; their responsibilities must be measured by what is possible.

Articles 22, 51, 56, 62, *and* 71, *and section* 43 (*p.* 22).—These Regulations provide for the constitution of Prize Courts on board the fleet, whether at sea or in harbour is not quite clear. They involve a departure from the general practice of nations. Lord Lansdowne, however, sees no cause for thinking that such Courts are to be made use of at present. The language of Article 71 appears to suggest that they are not to exercise any important jurisdiction over neutral property, other than release and sale by consent of parties interested.

If the constitution, situation, and procedure of these Courts be correct, it is difficult to see on what principle a substantial protest could be based on the fact that a belligerent Power erects its Prize Court of First Instance on a vessel, and not in a building; and Lord Lansdowne inclines to the opinion that any protest should be deferred until it can be shown that there is a palpable injustice.

Article 31, though somewhat obscurely drafted, seems to embody the principle that, in the event of a Russian war-ship violating the territory of a neutral State by capturing a vessel within the territorial waters of the latter, the matter is one for diplomatic negotiations between the two Governments, and not one for a Prize Court. This view is quite in accordance with the fundamental principles of international law.

Articles 50–57.—These Articles, relating to the constitution of Prize Courts, appear to Lord Lansdowne to be open to criticism. The Court consists not of a Judge, but of a Board of officials, and his Lordship feels great doubt whether the Courts so constituted will be found qualified to give a trustworthy and impartial decision on legal problems which may be very complex; the constitution of the Supreme Court of Appeal seems equally unsatisfactory.

The constitution of Admirals' Prize Courts is a matter of less importance, since they appear to be little concerned with neutral vessels and goods.

Article 60.—It is not clear under this Article whether parties may be represented by an agent or counsel specially qualified to conduct their case.

It appears, on the whole, to Lord Lansdowne that these Regulations generally do not call for immediate protest, except as regards the destruction of neutral vessels and the condemnation of neutral vessels carrying more than 50 per cent. of contraband; but it is a matter on which his Lordship would be glad to receive your views.

I am accordingly to request that you will favour his Lordship with your opinion—

1. Whether a protest should at once be made with reference to the provisions in the Regulations as to the destruction of neutral vessels, and as to their condemnation for carrying contraband amounting to more than half the cargo;
2. Whether a protest should at once be made with regard to other matters contained in the Regulations;
3. Whether, in your opinion, it might not, having regard to the conditions of modern maritime warfare, and especially to the universal use of steam power by public ships and the general adoption of that means of propulsion by merchant-vessels also, be desirable to modify the British rule that prizes may not be admitted to neutral waters, in view of the necessity for coaling, which did not exist when that rule was originally laid down; and
4. If so, whether the protest of his Majesty's Government against the destruction of neutral vessels would be accompanied by an intimation that they will not refuse a limited supply of coal or water to prizes on their way to adjudication, or claim their release if brought into their harbours.

In this connection I am to inclose a telegram which has since been received from His Majesty's Ambassador at St. Petersburgh, stating that the Russian Government propose to establish Prize Courts at Vladivostock, Port Arthur, Sebastopol, and Libau.

Lord Lansdowne presumes that His Majesty's Government have no grounds for objecting to the establishment of a Prize Court at Sebastopol, provided that its scope is confined to the adjudication of seizures in the Black Sea—a possible, though not likely, contingency. His Lordship, however, observes that the Russian Prize Regulations seem to contemplate (Article 15, p. 5) the detention of ships and goods under

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certain conditions by merchant-vessels, in which latter category the Russian Government claim to include vessels of the Russian Volunteer fleet.

In advising Lord Lansdowne on the points specifically mentioned, his Lordship will be glad if you will at the same time favour him with any observations of a more general nature which may occur to you on a perusal of the papers.

I am to add that the draft of this letter has been submitted for the approval of the Lords Commissioners of the Admiralty, who concur generally in its terms. (See Admiralty to Foreign Office on the 8th April, 1904.)

I am, &c.
(Signed) CHARLES HARDINGE.

List of Papers.

Russian Naval Prize Regulations (translation).	Date of confirmation	March 11, 1895.*
Sir C. Scott	(Treaty. Telegraphic)	March 27, 1904.
Ditto	(Treaty. Telegraphic)	March 18, „
Admiralty	.. .. ..	April 8, „

Report.

1. We do not think that the provisions as to destruction of captured vessels are meant to refer to neutral vessels seized for carrying contraband. We think, however, it might be well that His Majesty's Government should inform the Russian Government that they so read the Article.

We think that the provisions as to condemnation of the vessel carrying contraband go too far, as they might apply where there was no complicity. We think that a protest may properly be addressed to the Russian Government on this point.

2. No other protest appears to be at present necessary.

3. We do not think that the British Regulations against carrying prizes into British ports are to be read as prohibiting prizes putting into such ports if in want of supplies. We may refer to the observations on the similar Regulations of 1870 made by the then Law Officers of the Crown, which are quoted in the despatch of the Admiralty in November 1870 ("State Papers" 1870–71, vol. lxi, p. 1093). We do not think that any modification of the British rule is necessary. It is directed against the lax practice which formerly prevailed of utilizing neutral ports for keeping prizes pending adjudication—not against the extension of hospitality to prizes in need of it on their way to the port of adjudication.

4. We do not think any such intimation desirable.

5. We do not think that any objection can be made to the establishment of a Prize Court at Sebastopol taken by itself.

We have no further observations to add.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
June 18, 1904.

No. 36.

[July 2, 1904.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, June* 10, 1904.

Seizure of "Frankby" by Russian Squadron.

I HAVE the honour, by direction of the Marquess of Lansdowne, to inclose, for your consideration, the accompanying correspondence with Messrs. MacVicar, Marshall, and Co., with regard to a claim for 834*l*. 17*s*. 3*d*. made by them against the Russian Government for the seizure and detention of the steam-ship "Frankby" by the Russian squadron in the Gulf of Suez on the 21st February last.

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* For original text see Sir C. Scott's No. 4, Treaty, of February 18, 1904.

It will be observed from the statement setting forth the facts on which the claim is based, that the "Frankby" sailed from Barry, South Wales, on the 3rd February, 1904, with a cargo of coal for Japan. She left Suez on the 18th February, and, while proceeding through the Red Sea, was met and stopped by a Russian squadron, which she was ordered to follow towards Suez. After stopping several times, and anchoring for an hour south of Ras Gharib, the "Frankby" was finally directed to anchor about 20 miles from Suez, and on the 28th February was released. In order to procure the necessary coal and stores for continuing her voyage, she put into Suez, which port she finally left on the 29th February.

As some doubt existed as to the exact position of the "Frankby" at the time of her seizure, Messrs. MacVicar, Marshall, and Co. were requested to ascertain from the master whether the vessel was within or without the territorial waters of Egypt when she was stopped by the Russian squadron. As a result it has now been ascertained that on the 21st February, the date of her seizure, the "Frankby" was on the high seas.

It will, however, be seen from the letter from Messrs. MacVicar, Marshall, and Co., of the 19th May, that on the 24th and 25th February, the "Frankby" while in company with the Russian squadron, was within Egyptian territorial waters.

I am to request that you will take these papers into your consideration, and will favour Lord Lansdowne with your opinion as to—

1. Whether there is a case for formal representation to the Russian Government by His Majesty's Government on behalf of Messrs. MacVicar, Marshall, and Co., and

2. If so, on what grounds their claim can most advantageously be supported.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.)	Messrs. MacVicar, Marshall, and Co.	April 21, 1904.
(B.)	Ditto (with statement of claim and vouchers, &c.) ..	April 30, „
(C.)	Ditto	May 19, „

Attorney-General's Opinion.

In my opinion this is not a case for formal represention to the Russian Government on behalf of Messrs. MacVicar, Marshall, and Co.

War was known to be imminent when the vessel left Barry, and had broken out ten days before she left Suez. Having regard to the destination of the vessel and the nature of the cargo, the Russians were quite entitled to take the vessel and cargo to Sevastopol for adjudication. If they had done so I think that the cargo, and probably the vessel, would have been condemned. I do not think that Messrs. MacVicar, Marshall, and Co. can properly complain of the lenity of the Russian Government in releasing their vessel, nor do I think that the delay forms a substantial ground of complaint.

If the facts led to the inference that the vessel was stopped by the Russians, not with the intention of sending her in for adjudication, but merely for the purpose of inflicting annoyance by detention, the case would assume another aspect. But it would be difficult in any case to prove this, and there is nothing in the facts before me to justify any such inference.

Messrs. MacVicar, Marshall, and Co. appear to me to have got very easily out of an awkward situation, and I cannot advise that their case should be taken up by His Majesty's Government.

(Signed) R. B. FINLAY.

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Solicitor-General's Opinion.

In my opinion a formal representation should be made to the Russian Government on behalf of Messrs. MacVicar, Marshall, and Co.

It was the duty of the Russian squadron upon seizing the "Frankby" either at once to release her or to take her before a Prize Court for adjudication without any unreasonable delay, but they were not justified in detaining her for several days.

It will no doubt be contended by the Russian Government that the release was granted *ex gratia*, and that the document signed by the captain relieves them from liability for damages; but I think that such a contention is not a sound one, as the captain was not a free agent in the matter.

It may be that the Russian Government will be able to satisfy His Majesty's Government that the case might be looked upon as one of lenient rather than improper treatment, but I think, under the circumstances attending this war, it is important that His Majesty's Government should give no countenance to the practice of seizing and detaining neutral ships as a punishment, when there may be no intention of taking them before a Prize Court.

(2.) I think the claim should be based upon the grounds above stated.

(Signed) EDWARD CARSON.

Royal Courts of Justice,
July 2, 1904.

No. 37.

[August 11, 1904.]

Messrs. M. Samuel and Co. to the Marquess of Lansdowne.

Your Lordship, 19–21, *Billiter Street, London, August* 9, 1904.

"Thea" sunk by Russians during war. Owners hold charterers responsible for carrying contraband.

WE have the honour to inform you that the German steamer "Thea" was chartered by our Japan firm, Messrs. Samuel, Samuel, and Co., for coasting employment in Japan, and that she was not to be used for the conveyance of contraband of war.

It appears, from reports received, that the vessel was sunk by the Vladivostock squadron on the 25th July, without any official inquiry as to the nature of her cargo. The Prize Court is reported to have subsequently held an inquiry and decided that, owing to the nature of the steamer's cargo, the Russian cruisers were justified in sinking the boat.

The owner writes that, under these circumstances, he will hold Messrs. Samuel, Samuel, and Co. responsible for the loss sustained in consequence of the sinking of the steamer.

We have not, as yet, received any particulars with regard to the seizure from our Japan friends, but in the meantime have the honour to request that your Government will hold the Russian Government responsible for this illegal act, as we maintain that the Russian war-ships had no right to sink the steamer without an inquiry being first made by the Prize Court as to the nature of the cargo.

We remain, &c.
(Signed) M. SAMUEL AND Co.

Minutes.

Under these circumstances ought we not to put in a protest as in the case of the "Knight Commander"?

E. G.

It appears that the "Thea" was chartered by Messrs. Samuel from her German owner, and that during the pendency of the charter-party she was sunk by a Russian man-of-war on grounds similar to those by which the Russian Government seek to justify the sinking of the "Knight Commander." In these circumstances it seems to me (1) that the owner cannot hold Messrs. Samuel responsible for the destruction of his vessel; and (2) that even if he could do so on the ground that the sinking of the "Thea" was the natural consequence of some breach of the charter-party on the part of Messrs. Samuel it would not be a case for His Majesty's Government to represent to the Russian Government.

So far as the ship is concerned His Majesty's Government have nothing to say in the matter one way or the other. So far as British-owned cargo is concerned, His Majesty's Government might, on the ground that the sinking of the vessel was unlawful, present a claim for compensation.

W. E. D.

Foreign Office, August 10, 1904.

I agree as to the course to be taken.

There is at present nothing to show that the loss falls on Messrs. Samuel as between them and the German owner, and *primâ facie* it is for the German Government to take action.

R. B. F.

August 11, 1904.

E. G.

No. 38.

[August 15, 1904.]

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, July* 29, 1904.

Russo-Japanese War.

Transmission of cypher telegrams by belligerents over neutral cables.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit, for your consideration, the accompanying letter from Sir Spencer Walpole, K.C.B., with its inclosures (Paper A), with reference to the dispatch of cypher telegrams over the Pacific Cable.

I am to explain that the ownership of the Pacific Cable is distributed between the Government of this country and those of various Colonies, but that the use of the cable is open to the public at large at a fixed tariff; the management of the cable is intrusted to a Board, of which Sir S. Walpole is Chairman. (See 1 Ed. 7, c. 31, and 2 Ed. 7, c. 26.)

There is an operating station for the cable on Fanning Island, in the Pacific, where a superintendent and a small number of employés are maintained, and Sir S. Walpole thinks it likely that, in the event of the Baltic Fleet being sent to the Far East viâ Cape Horn, the Russians might desire to send telegrams by the cable in cypher, and is anxious to provide the staff at Fanning Island with the necessary instructions.

The rights and duties of neutrals with regard to the use of submarine cables for the dispatch of messages by belligerent cruisers were considered by your predecessors at the outbreak of the Spanish-American War, and a copy of their opinion (Paper B) is inclosed; instructions (Paper C) in accordance with that opinion were subsequently forwarded to all the Colonial Governors.

The Pacific Cable, however, was not constructed at that time, and no further instructions have since been issued.

Your recent opinion on the carriage of goods for belligerent forces over a State railway belonging to a neutral Power is also inclosed (Paper D), as the question raises somewhat similar considerations to those applicable to the use by belligerents of Government cables.

I am to request that you will take the papers into your consideration, and will favour Lord Lansdowne with your opinion whether the instructions to be sent to Fanning Island should follow the lines of those issued in 1898, omitting the last paragraph, or whether you consider that any, and, if so, what modifications should be introduced.

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His Lordship would also be glad to be favoured with any general observations which you may be good enough to offer on the papers submitted herewith.

I have, &c.
(Signed) ELDON GORST.

List of Papers.

(A.) Sir Spencer Walpole	July	22. 1904.
(B.) Law Officers' Report (Confidential No. 7199, p. 74)	May	7, 1898.
(C.) Circular to Governors of Colonies (Confidential No. 7267, p. 321)	May	17, 1898.
(D.) Law Officers' Report (China)	April	6, 1904.

Report.

We think that the rules laid down in the Circular of the 17th May, 1898, and marked (*a*), (*b*), and (*c*),* would be the proper instructions to send to Fanning Island in answer to Sir Spencer Walpole's letter.

We should add, however, that the mere announcement of the arrival of the fleet at Fanning Island may be of the greatest value for the purposes of the campaign. Such an arrival would, from any ordinary port, be made known by the ordinary channels of information. If the circumstances at Fanning Island are such that it might not be made known except by message from the fleet, we think that to permit any, even the most innocent, messages might be giving valuable assistance to one belligerent.

We are not in possession of the facts sufficiently to enable us to advise on this possible aspect of the case.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 15, 1904.

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* Annex.

(*a*.) A belligerent man-of-war should be prevented from using the telegraph for the purpose of sending, whether in cypher or otherwise, messages, of which the object is to direct or influence warlike operations.

(*b*.) A belligerent man-of-war may, however, use the telegraph for messages which do not relate to the proceedings of the belligerents, or for messages which are not in cypher narrating past operations and *bonâ fide* intended for general publication as news.

(*c*.) The officers in command of belligerent men-of-war should be informed that it is a condition of their being permitted to use a Colonial port that they shall abstain from transmitting or procuring the transmission of any telegrams which concern the conduct of warlike operations.

No. 39.

[August 25, 1904.]

(No. 1.)

Colonial Office to Foreign Office.

(Confidential.)

Sir, *Downing Street, August* 12, 1904.

Vessels of Russian Volunteer Fleet: Treatment of in Straits Settlements.

I AM directed by Mr. Secretary Lyttelton to transmit to you, for the consideration of the Marquess of Lansdowne, a copy of a telegram from the Governor of the Straits Settlements respecting the attitude to be adopted towards vessels of the Russian Volunteer fleet.

The despatch of the 15th July, referred to in the telegram, was one forwarding copies of your letter mentioned above, and of the Foreign Office Memorandum of the 18th June referred to in the despatch to His Majesty's Ambassador at Constantinople, which formed an inclosure to that letter.

I am, &c.
(Signed) C. P. LUCAS.

Inclosure.

Sir J. Anderson to Mr. Lyttelton.

(Telegraphic.) P. [*Received August* 10, 1904.]

REFERRING to your Secret despatch of 15th July. Is it recognized by His Majesty's Government that a Russian Volunteer vessel may enter a colonial port as a merchantman, take a cargo on board of warlike material and armament, and when immediately outside colonial waters can claim to be a commissioned vessel? We have no means of ascertaining the nature of the cargo taken on board. Unless we are assured that a vessel claiming to be a merchant-vessel will not alter her character until a Russian port is reached, I submit that it is my duty to search her, and also all cargo put on board here, in order that a breach of the Foreign Enlistment Act may be avoided.

Minutes.

In the Memorandum given to Count Benckendorff on the 18th June, Lord Lansdowne stated that so long as the Volunteer fleet vessels are not commissioned or fitted out for a warlike purpose we had no desire to interfere with them, by which I understand that they are to be treated as merchant-ships pure and simple (*See* Part I, No. 754).

See also despatch to Sir N. O'Conor No. 23 of the 7th July (No. 27), which was sent to Colonial Office, and by them to Singapore.

Since then, however, events have occurred which were not then anticipated—*i.e.*, the assumption of the status of a "public ship" by a Volunteer fleeter, after passing through the straits as a merchantman.

These circumstances have led, *inter alia*, to instructions being sent to Singapore and other places in the East not to give them any coal, as a sort of punitive measure.

We may hope that, after the verbal assurances given at Constantinople and St. Petersburgh, these changes of status may not recur. If they do, it is a matter for His Majesty's Government to deal with rather than Singapore.

If a Volunteer fleet ship came to Singapore flying the Imperial flag and claiming the status of a public ship, it would infringe the Foreign Enlistment Act to increase her armaments.

If she arrived in the garb of a merchantman, it would be no breach of the Act for her to take warlike stores on board, and what she might do *after* leaving Singapore does not concern Singapore. But, under the instructions sent on the 14th July, she cannot have coal.

If I had been here at the time those instructions were sent, I should have ventured to suggest that they should apply to the "Smolensk" and "Petersburg" only, rather than to the Volunteer fleet generally, as, if a Volunteer fleet ship (other than those two) is refused coal, and is *not* got up as a public ship, the Russians will make a grievance of it.

I am not quite sure as to the best answer to Sir J. Anderson's inquiry. How would it be to say that His Majesty's Government trust the contingency he apprehends may not recur, but that the ships should be dealt with according to the character they assume on arrival, and the flag they fly? The character they may subsequently assume does not concern the Colony, but is a wider question, which would have to be considered if and when it arose.

Mr. Hurst. W. M.

Foreign Office, August 18, 1904. F. A. C.

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I understood that, by arrangement between Russia and Turkey, no more Volunteer cruisers were to pass the Dardanelles under the mercantile flag without an assurance from Russia that that flag would be maintained till the end of the voyage.

Is this not so ?[*]

If it is, and if the arrangement is satisfactory to this country, I think we can give Sir J. Anderson a categorical answer.

The Volunteer fleet will be divided into three classes :—

(*a.*) The "Smolensk" and the "Petersburg."

(*b.*) Vessels coming from the Black Sea under the mercantile flag, but having proceeded to the end of their voyage, and been commissioned as war-ships in a Russian port.

(*c.*) Vessels flying the mercantile flag.

I think I have seen an opinion expressed by the Attorney-General that the procedure detailed in (*b*) is permissible.

Instructions have already been sent to Sir J. Anderson to refuse coal to a vessel of the Volunteer fleet, and to refer home; but this telegram raises other questions, viz., the right to search vessel and cargo to prevent a breach of the Foreign Enlistment Act.

If the vessel comes into Singapore flying the Russian naval flag, she must be either (*a*) or (*b*). (*a*) are believed to be going home viâ the Cape, and should, I suppose, be refused any sort of supplies anywhere; consequently, they are not likely to enter any British port.

(*b*) will be duly commissioned ships, therefore the Foreign Enlistment Act will not apply; at any rate, there could be no question of searching.

(*c.*) If the vessel is flying the mercantile flag, she must be treated as a merchantman for all purposes, so long as the Russian assurances hold good.

(*c*) is the only class referred to in Sir J. Anderson's telegram, and therefore all the answer needed seems to me to be that Russia has given such assurances, and therefore there will be no need to fear a breach of the Foreign Enlistment Act.

C. J. B. H.

Foreign Office, August 20, 1904

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[*] Yes, they gave a general assurance verbally.

W. M.

Qy. Reply accordingly. The "Smolensk" and "Petersburg" are now out of the way, and there seems now no reason to fear a Volunteer fleet vessel taking on board munitions of war at Singapore as a merchantman, and then transforming herself into a cruiser.

F. A C.

Foreign Office, August 20, 1904.

We need not trouble ourselves about class (*a*).

As to (*b*), I should not like, unless I were fortified by the Attorney-General's opinion, to lay down that a Volunteer fleet vessel which had come out of the Black Sea flying the merchant flag had a right, while war was in progress, to convert herself, even in a Russian port, into a warlike vessel; but I don't think the point really arises on this paper. It is, however, I think, clear that a vessel belonging to class (*b*) must be treated as an ordinary ship of war, and that, in regard to *coaling*, she will be subject to the new Admiralty instructions.

Vessels falling under class (*c*) are those to which the assurances [state briefly] recently given by the Russian Government have reference; but as there may be a doubt as to the character of the vessel I should say that the captain should be required to sign a declaration as to the destination of the ship and the nature of her employment

throughout the whole of her intended voyage, before she is allowed coal or any other facilities. I am, of course, assuming that the vessel is a merchantman known to belong to the Volunteer fleet, and not an ordinary merchantman.

The answer to Sir J. Anderson's first question is, of course, in the negative.

Unless the matter is very urgent, I should like the Attorney-General to be consulted.

L.

Foreign Office, August 23, 1904.

I approve of the proposed despatch, with the addition of a few words which I have pencilled in at the end.

I do not think that it can be admitted that a vessel adapted for warlike purposes, as those of the Volunteer fleet are, can, after passing the Bosphorus as a merchantman, be commissioned for war on reaching a Russian port. The case might be different with an ordinary merchant-vessel which afterwards, in a Russian port, underwent structural alterations, adapting her for war, in a Russian port. I should be disposed to say that a vessel of the Volunteer fleet which gets through the Bosphorus under the merchant flag should not become a vessel of war till she has returned to the Black Sea. But the point does not arise on the telegram from Sir J. Anderson.

R. B. F.

August 25, 1904.

(No. 2.)

Foreign Office to Colonial Office.

Foreign Office, August 26, 1904.

Sir,

I HAVE laid before the Marquess of Lansdowne your letter of the 12th instant, inclosing a telegram from the Governor of the Straits Settlements respecting the treatment in that Colony of vessels of the Russian Volunteer fleet.

I am directed by his Lordship to state in reply, for the information of Mr. Secretary Lyttelton, that, as the questions raised by Sir John Anderson involved points of some difficulty, his Lordship considered it advisable to consult His Majesty's Attorney-General before replying.

Lord Lansdowne is of opinion that the answer to Sir John Anderson's first question is clearly in the negative.

With regard to the concluding portion of the telegram, the position is somewhat modified by the assurances that have been given to the Porte by Russia that vessels of the Russian Volunteer fleet passing the Dardanelles under the mercantile flag will not change that flag or take belligerent action until the end of the voyage, but his Lordship considers that as there may be a doubt as to the character of the vessel, the captain should be required to sign a declaration as to the destination of the ship and the nature of her employment throughout the whole of her intended voyage before she is allowed to ship cargo, or take coal, or is given any other facilities.

If this course were adopted it would probably be found unnecessary to put in force the special powers given by the Foreign Enlistment Act [*and it is not desirable to do so*[*]].

I am, &c.

(Signed) F. A. CAMPBELL.

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[*] Added by the Attorney-General.

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No. 40.

[June 22 to August 29, 1904.]

(No. 1.)

Prince Louis of Battenberg to Foreign Office.

Admiralty, June 17, 1904.

Dear Sir Thomas,

Russian Port Arthur fleet: procedure should it take refuge at Wei-hai Wei.

APROPOS of the telegram from Pakenham, through Sir C. MacDonald, of the possibility of the Russian Port Arthur fleet, on that place falling, taking refuge at Wei-hai Wei. The more I think of it the more I feel that it is likely. In any case our Commander-in-chief in China (Naval) should have precise orders as to what to do under such circumstances.

Lord Selborne and the other members of the Board are away, so I am writing to you on my own account to save time, and anticipate any official application from here to Foreign Office which may follow.

If the Russians do bring the remnants of their fleet, after running the Japanese naval gauntlet, into our port, it would presumably be an analogous case to that of Bourbaki's army in Switzerland in 1870. What should we do? Should we clear out the crews, house them on shore after taking charge of their movable arms and ammunition, and place "ship-keepers" on board the ships? Would the ultimate ownership of this fleet be decided by the terms of peace, or would we, *eo ipso*, hand them back to Russia after the war?

I assume that if they come to Wei-hai Wei for this express purpose, we cannot well refuse, and could not well drive them to sea and into the arms of the Japanese fleet waiting outside after twenty-four hours.

Believe me, &c.

(Signed) LOUIS BATTENBERG.

Minutes by Mr. Davidson.

I should have thought that it was not very likely that the Russian fleet would have attempted to take refuge at Wei-hai Wei; but desperate cases sometimes evoke the employment of desperate remedies, and possibly if they found themselves hotly pursued by the Japanese fleet and with the certainty of destruction by, or surrender to, a superior force before them if they kept in the open sea, they might turn aside as a last resource into neutral territorial waters in the hope thereby, to some extent, to embarrass the pursuing fleet and to alleviate their own ultimate fate.

Assuming that, *dum fervet opus*, they should be so minded, it is quite certain that we have no forces on the spot which could prevent them from carrying out their intention—unless of course the China squadron could be got to Wei-hai Wei in time and it were worth while to withdraw it from elsewhere on the chance of its being required for this purpose.

It is however also, as it seems to me, quite certain that the Japanese Admiral would not pursue the Russian fleet into British territorial waters, or in any way knowingly violate those waters by firing across or into them, &c.

The practical question remains as to what should be done if the Russian fleet should once enter British waters and refuse to go out again into the jaws of the enemy who will be awaiting them outside.

Prince Louis seems to think that the treatment of Bourbaki's army would afford a precedent in this case; but I venture to doubt whether the cases are really quite similar, and whether analogies drawn from land warfare can safely be applied in regard to sea warfare, which differs from war on land in many important essentials. At sea the theatre of war is the high seas, which are the common property of all mankind, and retreat is open to an inferior fleet, which is being pressed, in many different directions. On land a retreating army is bound to follow the line of least resistance, and that line can be, to a great extent, dictated by the pursuing enemy, so that at last it leads to a neutral frontier.

There is, so far as I can discover at a few hours' notice, no precedent at all for interning a *fleet* of ships in a neutral port. It must be remembered that if there *be* any analogy between war-ships and fighting appliances on land, then our ships are to be compared to fortresses.

Land fortresses, being incapable of movement, cannot be interned in a neutral State; but these sea fortresses, which battle-ships (and also other war-ships in smaller degree) really are, can be so interned.

There is a great distinction between the internment of these floating fortresses and the internment of the men who man them.

So long as the men are put out of action till the end of the war it is rather a convenience than otherwise to the belligerent which drove them over the neutral frontier that they should be put out of action in that manner. But the interning of a floating fortress or battle-ship (as distinct from the crew which manned her) would deprive the successful belligerent of the legitimate fruits of his victory, and of the chance which he had almost reduced into possession, of capturing the vessel and using her in his own service for the rest of the war.

It would plainly be most unfair to the Japanese fleet that a number of Russian vessels, of which they were in hot pursuit and on the eve of capture, should be able to secure internment for the rest of the war by the expedient of taking refuge in neutral waters.

As for the twenty-four hour rule, I do not think that it was meant to apply or that it ought to be applied to a case like this.

It seems to me that if the Russian fleet, as a whole, attempts to enter British territorial waters with the palpable object of escaping capture by their enemy—this is an improper use of neutral territorial waters which we have not only the right to prevent, but also a duty to prevent.

The case of an individual ship in a sinking condition, making good her escape into a neutral port, is not at all analogous to that of a whole fleet making use of neutral waters in order to avoid defeat and capture by a very superior enemy force.

By allowing such a fleet to enter neutral waters, the neutral would be giving one belligerent very material aid and assistance—as against the other—and not merely affording such small succour as the dictates of humanity suggest.

I understand that the China fleet, or a strong squadron of it (four battle-ships and four cruisers) is already under orders to proceed to Wei-hai Wei at the end of the month. In these circumstances it might be well to expedite their movements as much as possible so that they may arrive there somewhat earlier.

Subject to the opinion of the Law Officers, I think, as at present advised, that the Russian fleet ought not to be allowed, in the circumstances indicated by Prince Louis of Battenberg, to enter British territorial waters, that if they succeed in doing so they ought to be directed to leave at once, and that if they do not leave we are entitled, and also in strictness possibly even bound, to turn them out by force.

Short of that, I think, if they preferred, instead of going out to fight again, that their crews should be interned and their ships handed over to the Japanese. We need not object to that solution, which doubtless the Japanese would accept.

In any case, if they refused to leave after warning and we did not wish, either for reasons of policy or otherwise, to compel them by force to do so, we should clearly, I think, as a minimum measure, be obliged to intern the ships till the end of the war, when their ultimate disposal would no doubt be dealt with in the terms of the Treaty of Peace.

W. E. D.

Foreign Office, June 18, 1904.

See the Attorney-General's letter to me of to-day's date, with which the Solicitor-General agrees.

The prohibition of the use of Nassau and the ports of the Bahamas by either the Federal or Confederate ships during the War of Secession, was made as soon as it was recognized that a state of belligerency existed, on the 31st January, 1862.

(See "State Papers," vol. li, p. 265.)

W. E. D.

Foreign Office, July 1, 1904.

[The substance of the above was referred to the Law Officers in a private note.]

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(No. 2.)

Solicitor-General to Mr. Davidson.

Dear Davidson, *June* 22, 1904.

THE Attorney-General says that late last year he wrote an opinion on the question of allowing Russian vessels to stay at Malta for repairs, and which has a bearing on the present question. Could you let me have the papers?

I think there was a question in China of a Russian vessel which refused to leave as the Japanese were watching for it, and some arrangement as to dismounting the guns was arrived at. Have you any information on this at the Foreign Office—it might be useful?

Yours sincerely,
(Signed) EDWARD CARSON.

(No. 3.)

Mr. Davidson to Solicitor-General.

My dear Solicitor-General, *Foreign Office, June* 23, 1904.

HERE are the papers which the Attorney-General wants.

I don't know how far you will agree, but it seems to me that the case of a whole Russian fleet taking refuge in British territorial waters in order to escape the hot and instant pursuit of a greatly superior Japanese force is a totally different thing from a belligerent torpedo-boat putting into a neutral port in order to obtain some small repairs which may be necessary in order to enable her to continue her voyage and keep the sea.

If we let the Russian fleet in and the Japanese fleet stays outside, what are we to do if, after the expiration of the allotted time, the Russian fleet remain passively inactive, and refuse to get up steam or weigh anchor? Are we to turn them out by force into the maw of the Japanese fleet?

It would place us in a very inconvenient predicament.

Yours very sincerely,
(Signed) W. E. DAVIDSON.

(No. 4.)

Attorney-General to Mr. Davidson.

My dear Davidson, *July* 1, 1904.

IF the contingency should occur that the Russian fleet, pursued by the Japanese, takes refuge in the harbour of Wei-hai Wei, I think the Commanding Officer should be notified that he must either leave Wei-hai Wei at the expiration of twenty-four hours or remain interned there for the remainder of the war. This course would be analogous to that pursued by His Majesty's Government with regard to the gun-boats proposed to be docked at Malta before the commencement of the war and by China with regard to the Russian gun-boat at Shanghae during the war. It is an application to vessels of war of the principles applied to the armies of belligerents with their artillery, &c., entering neutral territory subject to the relaxation as to twenty-four hours' stay which usage has established in the case of vessels. It would, of course, be necessary to have a sufficient force at hand to see to the fulfilment of the terms imposed upon the Russian fleet.

It was open to His Majesty's Government to have forbidden access to Wei-hai Wei by war-ships of either belligerent, as was done by Great Britain with regard to the Bahamas during the War of Secession, and by Austria with regard to Cattaro during the Crimean War.

Such a prohibition might still be issued by His Majesty's Government, and its justification might be found in the proximity of Wei-hai Wei to the belligerents, as in the case of Cattaro and the Bahamas. It is, however, a grave question of policy whether such a prohibition should be issued at a time when it would probably operate against the Russians only. It is, moreover, doubtful whether such a prohibition would prevent the Russian fleet, if pursued by the Japanese, from taking refuge in Wei-hai Wei, and it would be a difficult and ungracious task to exclude them by force. It is, indeed, open to doubt whether such a prohibition could properly be enforced against vessels taking refuge in neutral waters from hostile pursuit. In the analogous case of troops taking refuge in neutral territory it would be a very strong measure to refuse them entrance and throw them back into the power of the pursuing army. The question is really one of policy.

Yours sincerely,
(Signed) R. B. FINLAY.

I agree.

(Signed) EDWARD CARSON.

(No. 5.)

Memorandum by the Attorney-General respecting Wei-hai Wei.—(Received July 28.)

WEI-HAI WEI must be considered as being at present a British port.

Three propositions are submitted with regard to hostilities in the ports of a neutral Power:—

1. It is not only the right, but also the duty of the neutral Power to prevent such hostilities.

2. There may be circumstances which disentitle the belligerent whose vessels have been captured in neutral waters to demand that the neutral Power should have the wrong redressed.

3. Under no circumstances should the neutral Power authorize the commission of hostilities in its waters.

Proposition 1. The first of these propositions is laid down by almost every writer on international law, and although up to past the end of the eighteenth century the rule was frequently violated in practice ("International Public Law," by Harris Taylor, p. 699, paragraph 640), it is not now open to dispute.

I quote only a few passages:—

> "It is not only the right of the neutral State to protect the property of the belligerents when within the neutral jurisdiction, but it is a part of the duty of neutrality to defend such property while under neutral protection, and to punish any and every offence against the rights of neutrality, even, if necessary, by resort to force."—(Halleck's "International Law," 3rd edition, Sir S. Baker, vol. ii, p. 171.)

> "L'État neutre doit s'opposer sur son territoire à tout acte qui serait l'accomplissement, la continuation, ou la préparation d'une opération de guerre de la part des belligérents."—(Despagnet, "Droit International," p. 694, Article 676.)

> "L'État neutre n'a pas seulement le droit de voir respecter son territoire par les belligérents; il a le devoir de le faire respecter. Il manquerait à l'impartialité; il favoriserait l'une des Parties en guerre, s'il tolérait que l'autre y accomplît ou y préparât des actes d'hostilités.

> "L'État neutre doit donc s'opposer, au besoin par la force, à ce que ses eaux territoriales ou ses ports deviennent le théâtre de combats ou de captures. Il doit, si sa neutralité est violée, demander réparation à l'État belligérent en faute."—("Le Droit de la Guerre Maritime," Dupuis, paragraph 320, p. 429.)

The following passages may also be referred to in support of the proposition that it is the duty of the neutral State to enforce respect for the neutrality of its waters and to exact reparation if it be violated:—

"Wheaton's International Law," 3rd English edition, pp. 567–569, paragraph 431.
Ortolan: "Diplomatie de la Mer," pp. 288 and 289.
Rivier: "Droit des Gens," vol. ii, pp. 401 and 402.
Such references might be multiplied almost indefinitely.

Proposition 2. There are, however, circumstances which may disentitle the belligerent whose vessel has been captured in neutral waters to appeal to the neutral for redress.

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If the captured vessel herself began hostilities in neutral waters, it was decided by the Supreme Court of the United States in the case of "The Anne" (3 Wheaton, at p. 447) that the capture which ensued was not an injury for which redress could be sought from the neutral Sovereign.

In like manner in the case of "The General Armstrong," an American vessel which had been captured by the British in Portuguese waters, the President of the French Republic, by his Award, disallowed the claim of the United States against Portugal upon the ground that "The General Armstrong," though it had not initiated hostilities, had, instead of at once appealing to the protection of the Portuguese Governor, resisted force with force, and had so disentitled the United States' Government to claim that redress from the Portuguese to which it would otherwise have been entitled. (Ortolan: "Diplomatie de la Mer," vol. ii, pp. 300–301, and Appendix No. XXVI, pp. 547 and 548.)

In like manner it may be reasonably contended that a belligerent who has entered the port of a neutral Power in defiance of a prohibition reasonably issued is not entitled to demand that the neutral State should afford its ships protection or exact reparation if they are attacked.

All such cases may be regarded as falling within the qualification of the general rule which is indicated by Mr. Hall in the following passage in his work on International Law, 5th edition, p. 625:—

> "A neutral State which overlooks such violations of its neutrality as it can rightly be expected to prevent, or which neglects to demand reparation in the appropriate cases, becomes itself an active offender. It is bound, therefore, to give satisfaction in some form, if satisfaction be required, to the belligerent whose interests have been prejudiced by its 'lâches.'"

In such cases the neutral State can hardly rightly be expected to take measures to prevent such violations of neutrality, nor can such cases be regarded as appropriate for a demand by the neutral for reparation.

Proposition 3. With regard to Wei-hai Wei, however, the real question is not what would be the rights of Russia if the Japanese were without any communication with Great Britain to follow the Russians into British waters and to capture them there.

Japan would not conduct hostilities in British waters unless she had the consent, express or implied, of Great Britain, and certainly no one in Europe would believe that such action on her part was without the authority of her ally.

Ought Great Britain to authorize such action by Japan?

It deserves consideration whether she should, in view of her duties to Russia, to other neutrals, and to herself:

As regards Russia—to authorize expressly or impliedly the entry by the Japanese into a British port, and the capture of the Russian fleet there would be an act inconsistent with neutrality—

> "It is," says Professor Lawrence ("Principles of International Law," 3rd edition, p. 535), "a grave error to suppose that neutrals are endowed with large privileges and armed with large powers to use or toss away as they please. Their duty is to indicate their neutrality. Respect for it is not a matter between them and the offending belligerent only. It concerns the whole family of nations, and most of all the Power which is most likely to be injured by a failure to insist upon it."

To authorize such action by Japan at Wei-hai Wei is a very different thing from a mere failure to prevent it.

As regards other neutral countries—if there are any merchant-vessels under the flag of such countries in Wei-hai Wei they might be injured during the fight that would follow upon an entry by the Japanese for the purpose of seizing the Russian fleet, and the same thing might happen to war-vessels of other neutral Powers if they chanced to be there. It is not easy to see what answer this country would have to a demand for compensation for damage so occasioned. Every Power is bound to keep order in its own ports, and would be liable to other Powers for any failure in this respect.

As regards Great Britain herself, a battle could not take place in the harbour of Wei-hai Wei without danger of damage to British vessels in the harbour and to British property on shore. The danger of such damage is one of the reasons given for a strict enforcement of neutrality in neutral waters.

But apart from the danger of such material damage, it may deserve consideration whether it is consistent with the position of this country as a Great Power to set the example for the first time of authorizing the use of its waters for the purpose of hostilities.

What, then, should be done in the perhaps improbable event of the Russian fleet taking refuge in Wei-hai Wei?

It is submitted that the proper course is that the ships and their crews should be interned for the rest of the war. Bluntschli ("Droit International Codifié," 5e édition, Article 777) draws no distinction in this respect between the case of war-ships and troops taking refuge in neutral territory, and there does not appear to be any difference in principle between the case of war-vessels and that of the artillery of a refugee army which might be of the greatest possible service to the pursuers if it fell into their hands. Such internment would put the ships out of action for the rest of the war, and Japan, if successful, might make it a term of the Treaty of Peace that they should be surrendered to her.

As, in the supposed case, the Russian fleet would have to come to Wei-hai Wei in the face of our prohibition, the internment might take place at once without their being given the option of leaving within twenty-four hours, which would otherwise be accorded.

(Initialled) R. B. F.

(No. 6.)

Admiralty to Foreign Office.

Admiralty, July 28, 1904.

Sir,

I AM commanded by my Lords Commissioners of the Admiralty to transmit, for the information of the Secretary of State for Foreign Affairs, copy of a telegram of this date—No. 199—which has been sent to the Commander-in-chief, China, at Wei-hai Wei.

I am, &c.
(Signed) EVAN MACGREGOR.

Inclosure.

Admiralty to Vice-Admiral Sir G. Noel.

Admiralty, July 28, 1904.

(Telegraphic.)

THE moment has now come for you to return to Wei-hai Wei immediately with the fleet.

Both the Russian and the Japanese Governments have been informed that their ships will under no circumstances be allowed to enter Wei-hai Wei while the war lasts. You are, therefore, to use all the means in your power, except force, which in this case you are on no account to use, to prevent their entering; and, if you see any Russian or Japanese ship approaching Wei-hai Wei with a view to entering the harbour or the territorial waters, you must, if possible, communicate with her and explain both that Wei-hai Wei is closed to her and all belligerent ships and also that the certain penalty for an infringement of the Order will be that you will intern the crew and yourself take charge of the ship without giving her any option of leaving within twenty-four hours. If, notwithstanding, any Russian or Japanese ships do enter the harbour or the territorial waters of Wei-hai Wei, you are accordingly to immediately yourself take charge of the ships and to intern the crews, and no option is to be given them of leaving Wei-hai Wei within twenty-four hours.

In the case of a ship which is actually in danger of sinking, you may admit her into the harbour or territorial waters at your own discretion, but you must take charge of the ship and intern the crew just the same.

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(No. 7.)

Mr. Hurst to the Attorney-General.

Foreign Office, August 27, 1904.

Dear Mr. Attorney-General,

THE Admiralty have been consulted as to the points you raised about belligerent war-ships entering Wei-hai Wei and the issue of a Proclamation by the Commissioner on the lines of that issued in the Bahamas.

Their reply has now been received, and they are anxious that no fresh instructions should be issued.

Before the letter goes to Lord Lansdowne, Mr. Campbell would like you to see it, in case you still fear that the instructions are not quite adequate.

Very truly yours,
(Signed) C. J. B. HURST.

(No. 8.)

Attorney-General to Mr. Hurst.

Bradbury Private Hotel, North Berwick,
August 28, 1904.

(Private.)

My dear Hurst,

I AM afraid we may get into a mess over the directions if something is not done.

The telegram No. 199 was sent in an emergency, to meet the case then apprehended.

Even Lübeck—which Perels, I think unjustly, attacks for undue stringency (French translation by Arendt, pp. 244–245)—exempted vessels in distress from sea perils. Kaltenborn's monograph on the Lübeck case ("Kriegschiffe auf neutralem Gebiet") is worth looking at on the whole subject.

Yours always,
(Signed) R. B. FINLAY.

Annex (A).

Minute by the Attorney-General.

I THINK that the question of these directions should be further considered.

The directions in telegram No. 199 (28th July, 1904) were drawn up in view of the emergency, which was then apprehended, that the Russian fleet might seek refuge from Admiral Togo at Wei-hai Wei.

The question, I suggest, is whether, when the immediate danger of such a contingency shall have passed away, the directions are in a form suitable for use during the remainder of the war.

They enjoin that, in the case of a ship which is actually in danger of sinking, the Commander-in-chief may admit her at his discretion, but he must take charge of the ship and intern the crew.

This is quite applicable to the case then in contemplation, viz., vessels taking refuge from a victorious enemy and damaged in the conflict.

But is it intended that a belligerent vessel, whether Russian or Japanese, which has, say, touched a rock, and necessarily puts into Wei-hai Wei for safety, is to be disarmed, and, with her crew, detained for the rest of the war?

Any such claim would give rise to the strongest remonstrances, and I cannot see on what ground a position so inconsistent with the comity of nations could be defended. To impose the penalty of internment on a vessel seeking asylum under such circumstances merely from perils of the sea is, so far as I know, without precedent, and it is certainly inconsistent with international usage.

I am far from suggesting that the Bahamas precedent should be followed in its entirety. It seems to be quite proper to retain internment for cases in which vessels are seeking the safety of neutral waters in flight before the enemy. And it may well be that the Bahamas precedent should not, for special reasons, be followed throughout

in other respects. What I submit for consideration is that the directions, framed for a particular emergency, should be recast, in view particularly of the necessity of making some discrimination in respect of vessels in distress from sea perils, if they are to govern our action at Wei-hai Wei during the ensuing period of the war.

R. B. F.

Bradbury Private Hotel, North Berwick,
August 29, 1904.

(No. 9.)

Foreign Office to Admiralty.

(Confidential.)

Foreign Office, September 6, 1904.

Sir,

THE Marquess of Lansdowne has had under his careful consideration your letter * * * on the subject of the treatment to be accorded to any Russian or Japanese war-ships seeking asylum in the harbour or territorial waters of Wei-hai Wei. You express the conviction of the Lords Commissioners of the Admiralty that any modification in the clear and precise orders already issued to the Commander-in-chief would be extremely undesirable, and, in practice, would result in confusion and complications.

Before replying, Lord Lansdowne considered it advisable to submit your letter to the Attorney-General and to obtain his opinion.

I am now directed to point out that the instructions issued on the 28th July to the Commander-in-chief were drawn up in view of the emergency which was then apprehended that one of the belligerent fleets from Port Arthur might be driven, as the consequence of a naval encounter, to take refuge at Wei-hai Wei, and that, were it closely pursued by the other, active hostilities within British territorial waters might result—a contingency which it was most desirable to avert.

Lord Lansdowne would, however, suggest, for their Lordships' consideration, the question whether, now that the immediate danger of such a contingency has passed away, the orders issued to the authorities at Wei-hai Wei are in a form suitable for use during the remainder of the war. They enjoin that, in the case of a ship actually in danger of sinking, the Commander-in-chief may admit her at his discretion; but he must take charge of the ship and intern the crew for the remainder of the war. It appears to Lord Lansdowne that these conditions are quite applicable to the case then in contemplation, namely, that of vessels damaged in the conflict and taking refuge from a victorious enemy; but that if a Russian or Japanese ship, which, in the ordinary course of cruising, struck upon a rock or was caught in a gale, were refused shelter at Wei-hai Wei, or elected to continue her voyage in preference to disarmament, with the result that she foundered with all hands, His Majesty's Government would be placed in a position of great difficulty. In such circumstances a refusal to grant the usual measure of hospitality, or an enforcement of the penalty of internment, would be inconsistent with the comity of nations, and would certainly give rise to the strongest remonstrances. Lord Lansdowne is, moreover, advised that vessels in distress from perils of the sea are exempted from the penalty of internment, according to all writers on international law, and that no precedent can be found for so strict an interpretation of the duties of neutrals. I am to invite a special reference to pp. 244–45 of Arendt's French translation of Perel's "Manuel de Droit Maritime International," where he discusses the Ordinance issued by the Senate of Lubeck in the war of 1848–50 between Denmark and Schleswig-Holstein, and also to Kaltenborn's monograph ("Kriegsschiffe auf Neutralen Gebiet") on the same subject.

It is not contended that the precedent of the Bahama Islands should be adopted in its entirety, and it appears to Lord Lansdowne that it would be quite proper to allow the instructions as to internment to hold good in cases in which vessels are seeking the safety of neutral waters to avoid capture by the enemy; but I am to suggest that, having regard to the desirability of making some discrimination in favour of vessels which are merely in distress from sea perils, the directions framed for a particular emergency should be re-cast, if they are to govern the action of His Majesty's Government at Wei-hai Wei during the remaining period of the war.

I am, &c.
(Signed) F. A. CAMPBELL.

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(No. 10.)

Admiralty to Foreign Office.

(Confidential.)

Admiralty, October 10, 1904.

Sir,

I AM commanded by my Lords Commissioners of the Admiralty to transmit, for the information of the Secretary of State for Foreign Affairs, copy of a telegram, dated to-day, sent to the Commander-in-chief, China, verbal concurrence having been obtained from the Foreign Office.

I am, &c.
(Signed) EVAN MACGREGOR.

Inclosure.

Admiralty to Vice-Admiral Sir G. Noel.

(Telegraphic.)

Admiralty, October 10, 1904.

REFERRING to Admiralty telegram of the 28th July, it has now been decided by His Majesty's Government that, should a vessel belonging to either belligerent put into Wei-hai Wai from stress of weather, and not for the purpose of escaping the enemy, she is not to be interned, and the usual instructions as to belligerents visiting neutral ports observed. The facts of each particular case to be decided upon by you or the Senior Naval Officer present.

No. 41.

[September 2, 1904.]

Mr. Hurst to Sir R. Findlay.

Dear Mr. Attorney-General,

Foreign Office, August 31, 1904.

* * * * * *

Coaling of vessels of Russian Volunteer fleet at Zanzibar. International position of that State

A telegram has been received from Mr. Cave (British Agent at Zanzibar) reporting that two vessels had been sighted lying off Zanzibar and believed to have coal for Russian Volunteer fleet cruisers.

Anxious to know what steps he should take if Russian war-ships attempt to coal in Zanzibar waters, he suggests he should object to coaling within them, but take no action if the coaling goes on outside territorial waters.

Zanzibar does not issue a Proclamation of Neutrality when a war breaks out. At the beginning of this present war no coaling rules were published there, nor were instructions sent to the officials either then or in July, when the most recent interpretation of the rules was communicated to the Colonies and other possessions.

When the "Smolensk" recently reappeared in African waters, however, it was thought desirable to send to Zanzibar the orders issued to certain ports in July during the "Malacca" crisis not to give any coal to vessels of the Volunteer fleet, but to refer home for instructions at once.

This produced the following telegram from Mr. Cave:—

"*Mr. Cave to the Marquess of Lansdowne.*—(*Received August* 24, 4·45 P.M.)

"(Treaty.)
"(Telegraphic.)

"*Zanzibar, August* 24, 1904, 4·35 P.M.

"In the eventuality of Russian Volunteer steamer wishing to coal here, they would probably endeavour to obtain supply from French firm here, and there is every reason to believe that French Consul would put forward pretensions that this firm has a right to furnish supplies sufficient to carry steamer to the nearest port of its own country. If this should occur should strong line be taken up?"

The answer sent was as follows:—

"*The Marquess of Lansdowne to Mr. Cave.*

"(Treaty.)
"(Telegraphic.)

Foreign Office, August 28, 1904, 11 A.M.

"Your telegram 24th August.

"Having regard to doubts as to status of Volunteer fleet steamers, Zanzibar Government will be fully justified in refusing them leave to coal, until we have been made aware of the precise circumstances under which any particular vessel has applied. We shall support them in so acting."

The present telegram (received 26th August) raises the general question of coaling, and it becomes necessary to determine what rules, if any, are to be enforced.

If the coal is intended as a supply for Russian cruisers, it will be drawn on by any that require it, whether Volunteer fleet vessels or not.

As I have said above, no notification has been made as to the limits within which war-vessels may use Zanzibar waters or take in supplies of coal.

Are we to enforce the stringent British rule as interpreted by the July instructions?

If so, it must be enforced on all alike—French, Germans, &c.—who may desire to supply coals to a Russian ship.

Our rule is more stringent than that enforced by France. What the German rule is we do not know, and the question is—

1. Should we be entitled to interfere with the freedom of trade engaged under Treaty with Zanzibar by France and Germany by enforcing on behalf of the Sultan a more stringent rule than is applied to Frenchmen and Germans in their own country?

I inclose in this connection a Report you gave on a somewhat analogous case that arose in China when China attempted to forbid the export of contraband altogether.

2. Would it be desirable that the Sultan should issue at this late stage of the war a set of coaling rules?

3. If no notification or rules are issued, to what extent should we be entitled to go beyond the rule that is universally recognized in international law, that neutral territory must not be made a base of operations?

4. Lastly, there is the question should we be entitled to stop the use of Zanzibar waters by colliers habitually using those waters, but actually delivering the coal to the cruisers (whether genuine or Volunteer fleet) on the high seas?

I add a separate Memorandum explaining the present international position at Zanzibar, which I hope may be adequate.

Very truly, &c.
(Signed) C. J. B. HURST.

Inclosure.

Memorandum respecting the Position of Zanzibar.

ZANZIBAR was independent till 1890, but all European Powers had Treaties with her which gave them extra-territorial rights. In 1890 Great Britain declared a Protectorate which has been specifically recognized by France and Germany in Treaties, and acquiesced in by other Powers.

By Article 2 of an Agreement of the 14th June, 1890, the Sultan of Zanzibar "agrees that all his relations, of whatever sort, with foreign Powers shall be conducted under the sole advice and through the channel of His Majesty's Government."

By Article 1 he accepted the British Protectorate.

The Treaty rights of foreign Powers were not affected by this arrangement.

By the Samoa Agreement of 1899 Germany renounced her right of extra-territoriality in Zanzibar, but such was not to become effective till other Powers abandoned theirs.

France has agreed to close her Consular Court and recognize the British Tribunals on the 15th September of this year. Italy has agreed to the cesser of her Consular

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jurisdiction, and negotiations with other Powers (excluding those, like Russia, whose rights of jurisdiction, depends on most-favoured-nation clauses) are in progress.

Trade rights, however, will not be effected.

C. J. B. H.

Foreign Office, August 31, 1904.

Memorandum by Sir R. Findlay.

I ASSUME that it is intended to adhere to the policy laid down in Lord Lansdowne's telegram to Mr. Cave of the 28th August as to the Volunteer fleet, and that the questions now put relate to the general question of coaling apart from the special status of the Volunteer fleet.

Question 1.

Treaty rights to trade in Zanzibar must be subject to any restrictions which the Sultan thinks desirable to preserve his neutrality, so long as such restrictions are in themselves of a reasonable nature.

Moreover, the question here is not so much of the right of French and German merchants to supply coal as of the right of the belligerent vessel to use Zanzibar for coaling purposes.

I do not think that the Treaties bind Zanzibar to extend to French and German merchants the same liberty to supply coal which they would enjoy in their own countries respectively. They must submit to whatever Regulations are reasonably required, having regard to the circumstances of Zanzibar.

How far His Majesty's Government should proceed in the way of restricting coaling facilities there by their advice to the Sultan is a question of policy.

Question 2.

I regard the new coaling Rules of His Majesty's Government as reasonable in themselves, but should think it very doubtful whether, as a matter of policy, it is desirable that the Sultan should be advised to adopt them at present.

Having regard to the conflict of interests at Zanzibar, it is possible that other Powers might contend that they are unreasonable. The British Rules as to coaling have always been more severe than those of other countries except the United States, and they are now still more stringent.

I should be disposed to say that it would be better at present to go on without any special Rules, and, while preventing any action which is an infringement of general international law, to reserve for future consideration the question of any and what Rules if circumstances should arise making more specific Regulations necessary.

Question 3.

In the absence of Rules, I think that in the matter of coaling the principle of not allowing neutral territory to be made a base of operations should be applied in Zanzibar.

Question 4.

This question must be answered, in my opinion, in the affirmative. In the case supposed, the Russians would be using Zanzibar as a base of operations for the colliers kept there to attend on their cruisers.

(Initialled) R. B. F.

September 2, 1904.

No. 42.

[September 9, 1904.]

Foreign Office to Sir R. Finlay.

Dear Mr. Attorney-General, *Foreign Office, September* 8, 1904.

Russian colliers passing Dardanelles to wait on the "Teretz."

A RATHER difficult question has arisen with regard to the Dardanelles, upon which Lord Lansdowne would be glad to have your opinion.

The papers about everything to do with the Dardanelles are so voluminous that we should have preferred to make it the subject of the usual official reference if there were time, but unfortunately it is a matter that does not admit of very great delay.

A Russian cruiser called the "Teretz" is on her way from the Baltic, and is believed to be going to the Red Sea. She left Lisbon (it now appears) on the 6th September.

Some of the vessels of the Volunteer fleet now in the Black Sea are suspected of being under orders to join her; they are laden with coals, and would provide her with the fuel necessary to enable her to conduct operations there. They have left Sevastopol and are now lying at Odessa, so far as can be told, ready to start when ordered.

The question is, are we entitled to make the Porte refuse to allow them to pass through the Dardanelles?

You will remember that the Porte now compels Russia to undertake that a Volunteer fleet vessel passing the Dardanelles under the mercantile flag shall continue to fly that flag till the end of her voyage, and will not undertake belligerent action.

Assuming that this undertaking will be respected, the question still remains whether a Volunteer fleet vessel laden with coal for the use of a Russian cruiser legitimately at work in the Red Sea, and while flying the mercantile flag, is "a ship of war" within the meaning of Article I of the Convention of Paris of 1856.

I have not been able to find any case very precisely in point.

Correspondence and protests relating to men of war (*i.e.*, fighting ships) that for some reason or other were allowed to pass the Dardanelles does not seem to me to be in point, but I may say that there are one or two cases where a war vessel has been granted a Firman without anybody objecting, if wholly unarmed and employed on a peaceful errand—*e.g.*, Her Majesty's ship "Ariadne" in 1869, fitted up as a yacht and wholly unarmed, carrying the Prince and Princess of Wales, and one or two other instances.

There has also been from time to time correspondence about vessels of the Volunteer fleet carrying troops, either as drafts or as guards to convicts, and the attitude seems generally to have been taken by His Majesty's Government that such vessels were not allowed by the strict letter of the Treaties to pass; but there is this distinction, I think, between that case and the present: a transport full of armed men is a unit capable of fighting, *i.e.*, capable of endangering the peace of Turkey, a cargo of coal by itself is not. I am bound to say, however, that the attitude of His Majesty's Government to the passage of the Volunteer fleet vessels during the last fifteen years seems to have been rather wanting in definite purpose, and I am not sure that I quite understand it.

It is a little difficult to find a valid reason why the fact that Russia is at war with Japan but at peace with Turkey should affect her rights in the Dardanelles, and should limit them more closely than when she is at peace with everybody. We have never, so far as I know, objected to the Volunteer fleet vessels carrying coal through the Dardanelles.

You will see in the Memoranda that I inclose that in 1813 we considered ourselves entitled to obtain supplies of corn for our troops through the Dardanelles; but these would presumably have been carried in ordinary merchant-vessels; however, it seems to show that the vessel does not infringe the Rules of the Dardanelles by reason of her carrying supplies for a belligerent, and one of the ways in which the question in this case may be put is, whether these vessels are doing anything more than carry supplies for a belligerent.

The fact that, if, when they arrive at the Canal, they are shown to be fleet

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auxiliaries they will be treated as war ships, and limited in their coaling facilities under the Canal Rules, seems to me to raise different questions—I cannot see why a vessel may not be a fleet auxiliary when she reaches Port Saïd, without being a "ship of war" when she passed the Dardanelles.

You will, I am afraid, think I am sending you a most alarming number of printed documents, but the difficulty has been to make a selection; and the reason why I send the largest is because it contains the Protocols in English instead of in French, as they are printed in the State Papers.

Very truly, &c.
(Signed) C. J. B. HURST.

Memorandum by Sir R. Findlay.

I THINK that the vessels of the Volunteer fleet, flying the merchant flag and under the engagement referred to, cannot be treated as ships of war within the meaning of the Treaty of 1856 merely because they carry coals to be used by Russian cruisers.

They should, however, be treated as belligerent vessels as regards coaling facilities.

Both these questions were considered in August in consultation between the Prime Minister, Lord Lansdowne, the Lord Chancellor, and myself, and the conclusions above indicated were arrived at. I think them correct on the ground that vessels which are merely colliers in attendance upon cruisers are not themselves ships of war under the Treaty, but they are engaged in belligerent operations, and therefore subject to the Coaling Regulations.

R. B. F.

Bradbury Private Hotel, North Berwick,
September 9, 1904.

No. 43.

[September 23, 1904.]

(No. 1.)

Foreign Office to the Attorney-General.

Dear Mr. Attorney-General, *Foreign Office, September* 22, 1904.

Russo-Japanese War. As to protesting against coal being absolutely contraband

THE contraband negotiations with Russia have entered on a new phase, as we are now told that coal remains unconditionally contraband. Mr. Campbell has asked me to send you these papers as the situation will have to be carefully considered, and he feels sure that Lord Lansdowne would like to have your observations as to what ought to be done.

Very truly yours,
(Signed) C. J. B. HURST.

(No. 2.)

Memorandum by the Attorney-General.

THE greater number of the articles mentioned in clause 6 have been generally recognized as absolutely contraband.

His Majesty's Government will, I presume, adhere to the protest already made as to coal being put in this category. This, however, is not so important from our point of view as the question of food-stuffs, as to which the admission made is of great value.

(Initialled) R. B. F.

Balmoral Hotel, Edinburgh, September 23, 1904.

Annex.

VI. The following articles are deemed to be contraband of war:—

1. Small-arms of every kind, and guns, mounted or in sections, as well as armour-plates;
2. Ammunition for fire-arms, such as projectiles, shell-fuses, bullets, priming, cartridges, cartridge-cases, powder, saltpetre, sulphur;
3. Explosives and materials for causing explosions, such as torpedoes, dynamite, pyroxyline, various explosive substances, wire conductors, and everything used to explode mines and torpedoes;
4. Artillery, engineering and camp equipment, such as gun carriages, ammunition waggons, boxes or packages of cartridges, field kitchens and forges, instrument waggons, pontoons, bridge trestles, barbed wire, harness, &c.;
5. Articles of military equipment and clothing, such as bandoliers, cartridge boxes, knapsacks, straps, cuirasses, entrenching tools, drums, pots and pans, saddles, harness, completed parts of military uniforms, tents, &c.;
6. Vessels bound for an enemy's port, even if under a neutral commercial flag, if it is apparent from their construction, interior fittings, and other indications that they have been built for warlike purposes, and are proceeding to an enemy's port in order to be sold or handed over to the enemy;
7. Boilers and every kind of naval machinery, mounted or unmounted.
8. Every kind of fuel, such as coal, naphtha, alcohol, and other similar materials.
9. Articles and material for the installation of telegraphs, telephones, or for the construction of railroads.
10. Generally, everything intended for warfare by sea or land, as well as rice, provisions, and horses, beasts of burden and others which may be used for a warlike purpose, if they are transported on the account of or are destined for the enemy.

No. 44.

[September 30, 1904.]

Foreign Office to the Attorney-General.

Dear Mr. Attorney-General, *Foreign Office, September* 29, 1904.

German colliers at Teneriffe for Russian war vessels.

LORD LANSDOWNE would like you to see this telegram about the vessels (German) that have arrived at Teneriffe with coal that is believed to be for the Russian ships.

It seems to me that the following sentence from the Chancellor's judgment in Powell *v.* Kempton Park Racecourse Company (1899 A.C. 143, at p. 160) is instructive in connection with the interpretation of these words—"employed in the military or naval service":—

"It is . . . the character of the use as a use by some person having the dominion and control over the place, and conducting the business of a betting establishment with the persons resorting thereto."

The Russians do not seem to me to "employ" or "use" the ship merely because they own the coal she is carrying: there must be something more.

Whether neutrality necessitates the strict enforcement of the Foreign Enlistment Act in this case is another matter, but, if the colliers are in Russian employment, it would have to be considered whether they were making British ports a base of supplies.

I am also to send you a despatch from St. Petersburgh on the contraband questions, viz., about the status of coal and cotton.

Very truly yours,
(Signed) C. J. B. HURST.

Memorandum by the Attorney-General.

I AGREE with the view expressed in the Report of the Law Officers, dated the 25th July, 1870. I think that the result would be the same, even in the absence of a charter to the belligerent Government, if the bargain was that the colliers should attend on the fleet for the purposes of coal supply. It may be a nice question of fact whether in any particular case there is to be such an attending on the fleet. It appears to me that the delivery of coal to a fleet at sea would, ordinarily speaking, involve such an attending on the fleet, and that there might be an infringement of the Foreign

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Enlistment Act, even if the collier were in no other sense put under the orders of the belligerent than by being instructed to wait upon his fleet for this purpose.

I agree with Mr. Hurst's suggestion as to the steps to be taken by way of precaution in the future. Some case will, no doubt, be necessary to see that the assurances given as to the nature of the work on which such colliers are to be employed can be relied on.

(Signed) R. B. FINLAY.

Rusack's Marine Hotel, St. Andrew's, N.B.,
September 30, 1904.

No. 45

[October 5, 1904.]

Foreign Office to the Attorney-General.

Foreign Office, October 4, 1904.

"Smolensk" and "Petersburg": Conversion into war-vessels after leaving Black Sea.

Dear Mr. Attorney-General,

A STATEMENT in a Russian newspaper article sent home by Sir C. Hardinge has given rise to some discussion here as to whether the "Smolensk" and the "Petersburg" can be converted into recognized war-ships at Libau, and we are somewhat puzzled by an apparent discrepancy between a telegram sent to Sir N. O'Conor at the beginning of August, and in the terms of which Lord Lansdowne believes you concurred, and the opinion that you gave on the 25th August in connection with a telegram from Sir John Anderson as to the treatment to be meted out to Volunteer fleet vessels in general at Singapore.

We have not at any time told the Russian Government that the "Smolensk" and the "Petersburg" must be sent back to the Black Sea, even when we understood that the orders conveyed to them by the British cruisers directed them to return to the Baltic, and might consequently be taken to have known whither they were being sent.

The views contained in your Minute of the 25th August were owing to my having expressed the opinion that Sir John Anderson might safely treat Volunteer fleet vessels as war-ships or merchantmen according to the flag they were flying, as in view of the assurances demanded by the Porte before they were allowed to pass the Bosphorus, they would not be flying the naval flag unless they had completed their merchant voyage and been commissioned as war-ships in a Russian port—a proceeding I understood you to consider legitimate, but I gather that I went too far.

The probability of the two notorious Volunteer fleet vessels being converted at Libau makes it necessary to consider the question.

Very truly yours,
(Signed) C. J. B. HURST.

The Attorney-General to Foreign Office.

Bradbury Private Hotel, North Berwick,
October 5, 1904.

My dear Hurst,

THE question under what circumstances a vessel which has got through the Bosphorus as a merchant-vessel is entitled to assume the character of a war-vessel, to my mind, turns largely on what was in fact her true character when she passed through the Bosphorus.

If she was genuinely a merchant-vessel requiring structural alteration to convert her into a vessel suitable for warlike purposes, her passage was rightful, and I cannot see any objection to her being subsequently fitted out and armed as a cruiser. The work of conversion could, of course, only be effected in a Russian port.

But if she were in fact fitted out as a vessel of war when she passed the Bosphorus, though her guns were in the hold, and was intended to be used as such when she got through, her passage was wrongful. She gets through by falsely representing that she was a merchant-vessel, when, in fact, she was a war-vessel, and to be used as such. I think, as at present advised, that we cannot well make a general admission that such a vessel can legitimately act as a man-of-war merely because she has reached Libau. The character of the vessel itself is not changed there, even if the commission is issued there.

In strictness, such a vessel may be held to the representation that she is a merchant-vessel, by which she got through the Straits—otherwise she is permitted to take advantage of her own fraud.

Equipment of the vessel for war in a Russian port seems to me an important element. The mere issuing of the commission leaves the vessel as she was when she passed the Bosphorus.

The "Smolensk" and "Petersburg" would appear to have been really war-vessels when they passed the Bosphorus as merchantmen. But I feel the full force of the observations on the question of policy as to the difficulty of insisting, after what has occurred, that these vessels shall not be recognized as war-vessels even after their return to Libau. The general question is a very important one, and possibly Lord Lansdowne might think a formal reference to the Law Officers desirable.

The view which I have above suggested does not appear to be necessarily inconsistent with the language of the telegram of the 2nd August, 1904, from the Marquess of Lansdowne to Sir N. O'Conor. My impression is that this telegram was sent after some conversation on the subject, in which I took part [Yes.—L.]. The distinction, however, which I have indicated in this letter was not so clearly present to my mind when this subject was first broached. I looked it up and had some conversation on it with the President of the Board of Trade a little later, before I left London in the middle of August.

Believe me, &c.
(Signed) R. B. FINLAY.

Minutes.

Mr. Campbell,

I annex the Attorney-General's answer about the fitting out of the Volunteer Fleet vessels as war-ships at a Russian port.

Any representations to be made with regard to these two vessels—now approaching Libau—would, I suppose, have to be made at once. The formal reference to the Law Officers would mean that the whole question would be thoroughly studied on their return to London, and it would be some time before the Report would be received.

[This opinion of the Attorney-General shows, I think, that His Majesty's Government would be entitled, if they thought it wise to do so, to say that the "Smolensk" and the "Petersburg," having passed the Dardanelles fraudulently, will not be recognized at any time in the future (and whether recommissioned or not) as war-ships.]

They would have in fact either to go back to the mercantile flag or lie and rot in Russian ports.

I think it would be well to refer the whole question formally to the Law Officers. The Attorney-General is extremely kind about answering these questions that are sent to him informally; and where the questions are difficult he ought, I think, to have, especially where he hints it himself, an opportunity of more thoroughly considering them.

C. J. B. H.

Foreign Office, October 7, 1904.

As regards the first part of the Attorney-General's Memorandum, no structural alterations are probably required to convert a Volunteer Fleet vessel into a cruiser; outwardly, at all events, they are said to be indistinguishable from a man-of-war.

With reference to the paragraph I have marked in blue in Mr. Hurst's minute,[*] there must come a time in the future when the "Smolensk" and "Petersburg" will have purged their offence of getting through the Dardanelles under false pretences; and when His Majesty's Government could no longer refuse to recognize them as commissioned war-ships, *e.g.*, suppose them to be now employed as genuine merchantmen, and that in this capacity they several times enter, and emerge from the Black Sea, finally arriving at Libau (say) eighteen months or two years' hence, it can hardly be contended that the Russian Government would not then be

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[*] Printed within brackets.

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entitled to issue commissions to them. If this be granted, the question arises as to how long their punishment—as it were—is to last. It cannot last for ever. They have been sent back to the Baltic in disgrace, and to address any further communication to Russia about them at present would seem to me very impolitic.

But if Lord Lansdowne should think otherwise, he will, no doubt, like to have a formal reference made to the Law Officers before action is taken.

F. A. C.

Foreign Office, October 8, 1904.

I see nothing for it but to ask the Law Officers for their deliberate opinion.

I remain of the opinion which I have already expressed, that if the question be dealt with merely as one of policy, we could scarcely contend that these vessels were on account of their original offence to be for ever disqualified from taking part in military operations.

But we should have all the guidance available as to the legal aspects of the case.

L.

Foreign Office, October 9, 1904.

A formal reference to the Law Officers should, I think, now be put in hand. My own view, such as it is, has been and is that we cannot reasonably maintain, either having regard to considerations of policy or merely to considerations of international law, that the initial fault of these vessels has put them, beyond all recall, out of action for the rest of the war.

It seems to me that the limit of our contention in this direction should be that the original fraud vitiated the whole of their proceedings as alleged men-of-war during the continuance of the voyage, which began by their fraudulent issue through the Dardanelles under the guise of merchant-vessels.

If they terminate their present voyage in a Russian port outside the Black Sea, *e.g.*, at Libau, and there fit out and are commissioned as Russian men-of-war, I do not think that we ought to protest as a matter of policy, or should stand on very firm ground—*quâ* matter of law and abstract argument—if we did so protest. I do not, however, think that a ship which has issued from the Black Sea as a merchant-ship, can, during the pendency of her then voyage, be commissioned as a Russian public ship* *either on the high seas* or in a non-Russian port.

We could, surely, however, not successfully maintain that a Russian merchant-vessel sailing from Odessa to Libau with a general cargo through the Sea of Marmora could not, after her arrival at Libau, be fitted out and commissioned at that port as a Russian public vessel. The general cargo and voyage to Libau might doubtless be merely devices to extricate her from the *mare clausum* of the Euxine, and to render her subsequently available as a man-of-war, but I think they would be devices which we could not defeat.

Going a step further, and assuming that a line of subsidized Russian mail steamers, which might be called upon for service as armed cruisers in time of war, ran between Odessa and St. Petersburgh, I do not think that we could object to such vessels being commissioned at St. Petersburgh, and taking their guns and ammunition on board there, as men-of-war, merely because they had left Odessa after war had broken out, and passed the Straits as merchant mail-steamers in pursuance of their ordinary avocation as such.

There comes a point, of course, where the line must be drawn, and it is not difficult to say that the "Smolensk" and the "Petersburg" clearly sailed over that line, although it is not easy to locate the exact spot at which it ought to be drawn.

W. E. D.

Foreign Office, October 11, 1904.

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* Probably, however, if another Russian man-of-war took out the commission and handed it over on behalf of the Russian Government to the Russian merchant-vessel on the high seas, which as the common property of all nations such a proceeding

could not be impeached. But a commissioning within the territorial waters of some Power other than Russia would be a proceeding taken altogether outside of Russian jurisdiction, and within the exclusive jurisdiction of the other Power.

However, the question is in some obscurity, and I have been unable to find any definite authority on this point. It is not necessary for the moment to lay down any rule on it; and perhaps, having regard to the position of our own subsidized merchant cruisers, and the possible desirability which may arise hereafter of commissioning them in a foreign port, should war break out while they are on a voyage, it will be more convenient to leave it undecided and open.

W. E. D.

No. 46.

[October 28, 1904.]

(No. 1.)

Customs to Foreign Office.—(Received October 25.)

(Confidential.)

Custom-house, London, October 24, 1904.

War with Japan: Colliers loading in England for use of Russian war vessels.

Sir,

I AM directed by the Board of Customs to acknowledge the receipt of Mr. Campbell's letter . . . . . . relative to the position of colliers loading coal in this country for the use of Russian war-ships, and to transmit, for the information of the Secretary of State for Foreign Affairs, with reference thereto, the inclosed copy of a report by the Solicitor of this Department, in the terms of which the Board concur.

It will be seen from that report that, under the law as it now stands, this Department would have no power to detain a vessel until the master gave assurances that she was not under charter to a belligerent Government. The Board will be prepared, however, should the Secretary of State so desire, to issue instructions to their officers to inquire, in all cases of the clearance of a vessel with coal under suspicious circumstances, whether the port or place named in the official documents as the destination of the vessel is the port or place at which the cargo is to be discharged or is a port of call only, or whether the vessel is proceeding to sea with open or sealed orders. Should the result of the inquiry be such as not to allay the suspicions entertained regarding the cargo, the facts could be at once communicated to the Foreign Office for such directions as the Secretary of State might see fit to give. Pending the receipt of such directions, however, the Board could not, as already indicated, order the detention of the vessel or cause clearance to be withheld.

In the event of the detention of a vessel being ordered by the Secretary of State under circumstances of this nature, it would be desirable that the Admiralty should be ready to render assistance to prevent the forcible departure of the vessel, if necessary.

I am to add that the Board are taking steps to ascertain as far as possible what cargoes of steam coal are suspected of being shipped at the present moment for the use of the Russian fleet, and that they hope to communicate the result to-morrow.

I am, &c.

(Signed) R. HENDERSON.

Inclosure.

Report by the Solicitor of Customs.

THERE has not been any Proclamation or Order in Council under section 8 of "The Customs and Inland Revenue Act, 1879" (42 & 43 Vict., cap. 21), prohibiting the exportation of coal, which, it seems to me, especially in view of the opinion given by the Law Officers on the 25th July, 1870, might be held to fall within the expression "naval stores," as used in that section. In the absence of such a Proclamation or Order in Council, there is not, in my opinion, any power to refuse clearance to a ship carrying coal, and it seems to me that, if coal is to be regarded as contraband of war,

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it merely stands in that position, so that a person who ships coal does so at the risk of having the coal seized and the ship adjudged as a prize.

With regard to the requirements of the Customs Law in reference to obtaining clearance, section 101 of "The Customs Consolidation Act, 1876" (39 & 40 Vict., cap. 36), requires the master of every ship, in which any goods are to be exported from the United Kingdom to parts beyond the seas, or his agent, to deliver an entry outwards of such ship verified by his signature in the form No. 6 in Schedule B to the Act, and containing the several particulars indicated in or required thereby. One of these particulars is the destination of the ship, and it is obvious that the true destination should be stated.

The master is also required to make a declaration, in the presence of the Collector, or some other officer of Customs, in reference to the ship, in which the ship's name and destination have to be inserted, and in this document he declares that the particulars given are true. The master or other person authorized in writing by him is also required by section 128 of the Act to attend before the Collector, or other proper officer of Customs, and to answer all such questions as may be demanded of him concerning the ship, the cargo, and the voyage. In ordinary circumstances, I think that such statements in the entry and declaration as do not require explanation must be accepted as true, and that, unless the Collector or other officer, to whom the entry and declaration are delivered, has substantial grounds for believing any such statement made to be incorrect, there can be no inquiry merely with a view to test the accuracy of it. If it should transpire that there had been a misstatement, in any instance, then the master would be responsible, either under section 132, for the departure of the ship without being duly cleared, or under section 168, for making a false declaration or not truly answering a question.

If a vessel laden with coal is duly entered outwards for a definite destination, it would, in my opinion, be difficult, if not impossible, for the Collector or other officer of Customs to require the master to give assurances that the vessel is not under charter to a belligerent Government, and that her cargo will not be employed for coaling belligerent war-ships at sea, but if the circumstances are suspicious, it would, I think, be possible for him to inquire whether the port named as the destination of the ship is the port at which the cargo is to be discharged, or a port of call only, or whether the ship is proceeding to sea with open or sealed orders.

If such question is asked, and an answer is refused, or the answer given is such as to create any suspicion, or, in fact, suggests that the coal will or may be used for a belligerent ship, the Foreign Office could be at once informed of the facts with a view to such action being taken as that Office may think expedient.

I do not however, think that clearance could be refused, pending instructions from the Foreign Office, but upon this point I will, if desired, consult the Law Officers.

(Signed) N. J. HIGHMORE.

October 24, 1904.

Minutes.

We should communicate this correspondence to Admiralty sooner or later.

The question is shall we ask them to issue the instructions they are prepared to give?

W. M.

Foreign Office, October 25, 1904.

A copy of this letter might be sent to the Admiralty at once for their information.

If the instructions suggested were given by the Customs, we might no doubt obtain useful information; but it appears that whatever answers are given by the shipmaster as to where the coal is to be discharged, there is no power of refusing clearance or of detaining the vessel.

I think we should refer to the Attorney-General (with any observations Mr. Davidson may have to offer) with reference to his opinion of the 30th September.

F. A. C.

Foreign Office, October 25, 1904.

I rather think that it will be better to refer the papers to the Attorney-General at once, and to defer making any communication to the Admiralty until we have obtained his views.

I think that it is clear that a clearance could not be permanently refused to a vessel merely because she refused to give an undertaking which is not imposed by, or justified under, the Customs Law as a condition precedent to the grant of a clearance.

At the same time, the refusal of a vessel to give an undertaking in the terms mentioned (and to avail herself of an opportunity which is afforded her as much in her own interest as in that of the public) would naturally give rise to the suspicion that she might have the intention to violate the provisions of the Foreign Enlistment Act.

In such circumstances, I should have thought that there would have been nothing unreasonable on the part of the local Customs authorities if they suspended the issue of the clearance until they had had time to communicate with, and receive instructions from, head-quarters.

I cannot conceive any ship with *bonâ fide* neutral intentions refusing to give the required assurance; on the other hand, the refusal to give the assurance asked for would be *primâ facie* evidence of unlawful intentions and justification for further detention and ultimate prosecution, if that were eventually decided on.

I do not think that a vessel which refused to give such an assurance, and which was consequently detained temporarily without a clearance, would obtain serious damages in respect of such detention if an attempt were made to impeach it in a Court of Law.

On the other hand, if such an assurance were given, it would, in the event of the assurance being subsequently broken, afford some answer on the part of His Majesty's Government to the belligerent who subsequently complained, while the refusal to give it would afford some considerable justification for the institution of a prosecution under the Foreign Enlistment Act.*

The question is no doubt largely one of policy; but, on the whole, I think that it is to our interest to endeavour, within the limits I have mentioned, to obtain such assurances.

W. E. D.

Foreign Office, October 26, 1904.

* I take it this is the real point ultimately—whether a prosecution under the Foreign Enlistment Act would have a reasonable chance of success.

F. A. C.

Foreign Office, October 26, 1904.

The Attorney-General should see these papers at once. He will, I dare say, be good enough to speak to me about them.

L.

(No. 2.)

Customs to Foreign Office.—(Received October 26.)

Custom-house, London, October 25, 1904.

Sir,

IN continuation of my letter of yesterday's date, I am directed by the Board of Customs to transmit, for the information of the Secretary of State for Foreign Affairs, the inclosed copies of reports which they have received from the Collectors of this revenue at Cardiff, Newport, and Port Talbot, relative to certain cargoes of coal which it is suspected are destined for Russian war-vessels. It will be observed that no definite reasons for the suspicion are furnished by the officers, who can only be guided in the matter at the present stage by the rumours current among local shippers.

I am to add that the Board have instructed the Collectors to report immediately any special circumstance which may come to their knowledge in regard to those vessels named in the lists which have not yet left this country, and the same will be

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communicated to you without delay; but, as pointed out in my letter of yesterday, no steps would be taken by this Department to withhold clearance of the vessels so long as the usual Customs requirements are duly met.

I am, &c.
(Signed) R. HENDERSON.

[Inclosure not printed.]

Minutes.

Pretty extensive. F. A. C.

I don't see that we can do anything at present.

It is, however, conceivable in certain contingencies, which we trust will not arise, that we might within the next few days wish to stop such of these vessels as have not already sailed, and the coal on board of which is probably Russian property.

W. E. D.

Foreign Office, October 27, 1904.

We had better send a copy to Admiralty. F. A. C.

We may have to warn them, *anyhow*, that such operations are illegal. Attorney-General to see. L.

(No. 3.)

Messrs. Woods, Tylor, and Brown to Foreign Office.—(Received October 26.)

44, *Leadenhall Street, London,*
October 25, 1904.

Dear Sir,

IN this morning's "Standard" we read that the British steamer "Roddam" is lying at Vigo with a cargo of coal on board for the Russian Baltic fleet.

Some time ago we were approached by brokers here, who were indirectly acting for the Russian Government, asking if we would offer our boats at a remunerative rate of hire, to follow the Russian fleet with coal supplies, but we refused to entertain this business.

We respectfully call your attention to the above case of the "Roddam," and ask you if, under the existing circumstances, it is permissible for British owners to charter their boats for such purposes as following the Russian fleet with coal supplies.

Yours respectively,
(Signed) WOODS, TYLOR, AND BROWN.

Minutes.

Should we decline to advise, or write something calculated to alarm all persons engaged in this sort of business? It seems a favourable opening, if it is deemed politic to take advantage of it.

Mr. Davidson. W. M.

Foreign Office, October 26, 1904.

Following the fleet with coal supplies would surely bring them within the meshes of the Foreign Enlistment Act. L.

Foreign Office, November 1, 1904.

(No. 4.)

Minute.

Attorney-General,—

COLLIERS for Russian fleet.

Please see three papers:—

(A.) Report from Customs.
(B.) Report also from Customs as to number of ships taking coal on board.
(C.) Inquiry from Messrs. Woods as to legality of such proceedings.

L.

Foreign Office, October 27, 1904.

(No. 5.)

Memorandum by the Attorney-General.

I THINK that the answer to the letter of Messrs. Woods, Tylor, and Brown is that it is not permissible for British owners to charter their boats for the purposes mentioned. It might be added that before interfering in any particular case evidence of the intent so to employ the vessel would be necessary.

I cannot see that there is on these papers any evidence that would justify proceedings. There is suspicion—and it may be reasonable suspicion—but there is nothing in the nature of proof. I cannot recommend interference on these materials with any of the vessels named.

The officials at the ports should make inquiries, as far as possible, about any suspicious cases, and at once call the attention of the Foreign Office to any case in which there appear to be any materials which would justify action.

(Initialled) R. B. F.

October 28, 1904.

No. 47.

[October 29, 1904.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, October 18, 1904.

Gentlemen,

"Peterburg," "Smolensk," and other vessels of Volunteer Fleet. Commissioning of as ships of war after leaving Black Sea.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you, for your consideration, a despatch from His Majesty's Ambassador at St. Petersburgh (Paper A), inclosing an article which has appeared in the "Novoe Vremya" commenting on the proceedings of British cruisers, and on the attitude of the Egyptian authorities, towards the Russian Volunteer ships "Smolensk" and "Peterburg," and to invite your attention to the concluding sentence of that article which suggests that these two vessels, which have now arrived at Libau, are to be there commissioned in proper form as ships of war.

As you are aware, the action of these vessels (which, after emerging from the Black Sea under the mercantile flag, but with guns and warlike equipment in their holds, and proceeding to Suez, were armed and commissioned for the purpose of scouting for merchant-vessels carrying contraband) has formed the subject of considerable correspondence between His Majesty's Government and that of Russia, and, as a result of the negotiations between the two Governments, the vessels have received orders conveyed, at the request of the Russian Government, by one of His

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Majesty's ships, to repair to Libau. The question now arises whether, if they are recommissioned at that port, they should be recognized as regularly constituted ships of war.

I am further to call attention to two telegrams, to and from His Majesty's Ambassador at Constantinople, dated the 2nd August (Papers B and C), in which it is stated that the Ottoman Government have, since the passage of these two ships, demanded, and, it is understood, received, verbal assurances from the Russian Government that "vessels of the Russian Volunteer Fleet, after passing the Straits under the commercial flag, shall not hoist the war flag nor commit any belligerent act *until the end of their voyage*." The concluding words of the Turkish telegram quoted in the message from Sir N. O'Conor appear to Lord Lansdowne to be ambiguous. His Lordship, as at present advised, is inclined to think that these vessels cannot be accorded the right to transform themselves into ships of war until they have visited some other Russian port outside the Black Sea and there received their equipment and commissions; but the opinion has also been expressed that such recognition should not be accorded until the vessels have again returned to the Black Sea.

Hitherto His Majesty's Government have refrained from insisting that the "Peterburg" and "Smolensk" should be sent back to the Black Sea. It was, however, understood that the orders delivered to them by His Majesty's ship "Forte" directed them to return to the Baltic, and it might consequently be argued that His Majesty's Government were aware, and had accepted without protest knowledge of the fact that their ultimate destination was not to the Black Sea.

Lord Lansdowne is disposed to think that it may be difficult to maintain, having regard to considerations of policy, that the initial fault of these vessels has put them, beyond all recall, out of action for the remainder of the present war. It would seem more reasonable to contend only that their original fraud vitiated the whole of their proceedings as alleged men-of-war during the continuance of those particular voyages which began with their fraudulent issue through the Dardanelles under the guise of merchant-vessels, and that a ship which has issued from the Black Sea as a merchant-vessel cannot, during the continuance of that particular voyage, be commissioned either on the high seas or in a non-Russian port as a Russian public ship.

It appears to Lord Lansdowne that there would in practice be great difficulty in maintaining the view that a Russian merchant-vessel bound from Odessa to Libau, viâ the Sea of Marmora, with a general cargo, could not, after her arrival at Libau, be fitted out and commissioned as a Russian public ship, even although the general cargo and the voyage to Libau were merely devices to extricate her from the Black Sea and to render her subsequently available as a man-of-war.

Similarly, assuming that a line of subsidized Russian mail-steamers (liable to be called upon for service as armed cruisers in time of war) ran between Odessa and St. Petersburgh, it would not, as it seems to his Lordship, be easy to take exception successfully to such vessels being commissioned at the latter port, and taking guns and ammunition on board there, merely because they had left Odessa after the outbreak of war, and had passed the Straits as merchant mail-steamers in pursuance of their ordinary avocation as such.

I am to request that you will take the inclosed papers into your consideration, and that you will favour his Lordship at your early convenience with your opinion—

1. Whether, in the event of the "Smolensk" and the "Peterburg," or either of them, being recommissioned, &c., as public ships at Libau or some other Russian port outside the Black Sea, without having previously returned thereto, His Majesty's Government would be justified in notifying to the Russian Imperial Government that they were unable to recognize these vessels, in virtue of a commission conferred in such circumstances, as duly constituted ships of war.

2. Should your answer to question 1 be in the affirmative, whether, if these vessels should return to the Black Sea and the Russian Government should dispatch them or other ships of the Russian Volunteer Fleet through the Dardanelles under the guise of merchantmen and under the merchant flag, though carrying in their holds the armament and equipment of men-of-war, His Majesty's Government should, in the event of such vessels being commissioned on their subsequent arrival at a Russian port, outside the Black Sea, notify to the Russian Government that they are unable to recognize them as duly constituted war ships.

3. Should you, in either or both cases, consider that a notification to the Russian Government would be desirable, his Lordship would be glad to be favoured with your further advice as to the terms in which such notification could most advantageously be couched.

4. His Lordship would also be glad to be favoured with any observations of a general character which you may be good enough to offer on the papers now submitted to you.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.)	Sir C. Hardinge .. .. (And Minutes.)	(No. 132. Treaty)	September 26, 1904.
(B.)	Sir N. O'Conor ..	(No. 9. Treaty. Telegraphic)	August 2, ,,
(C.)	To ditto	(No 10. Treaty. Telegraphic)	August 2, ,,
(D.)	Mr. Hurst to the Attorney-General		October 4, ,,
(E.)	The Attorney-General to Mr. Hurst .. .. .. (And Minutes.)		October 5, ,,
(F.)	Sir C. Hardinge .. .. .. (Sent to Law Officers, October 26.)	(Telegraphic)	October 25, ,,
(G.)	Admiralty.. .. .. (Sent to Law Officers, October 29.)		October 27, ,,

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Report.

As the passage of vessels of war through the Dardanelles and Bosphorus is forbidden by Treaty, the question in each case must be what was, in fact, the character of the vessel at the time when she passed through the Straits.

Any vessel which is genuinely a merchant-vessel may, with perfect propriety, be brought through the Straits, and no objection could be raised to the subsequent equipment and commissioning of this vessel in a Russian port as a ship of war. It would make, in our opinion, no difference even if there were, at the time she was brought through the Straits, the intention by such equipment and commission, afterwards to convert her into a ship of war. The passage of the Straits is forbidden only to a vessel which is then a ship of war. If the vessel was a ship of war at the time of her passage, and was allowed to pass through on the representation that she was a merchantman, her passage was wrongful, and we cannot see that the mere fact that she is afterwards commissioned as a vessel of war at a Russian port can make it right for her to take part in the war. *Ex hypothesi*, she would have remained in the Black Sea but for her representation that she was a merchantman, and it appears to us that she ought to retain that character during the war which was in progress when she so made her exit. If she retains her mercantile character she may return to the Black Sea, and then be converted into a ship of war, but would, of course, be confronted with the old difficulty if she attempted again to pass the Straits.

Whether a particular vessel is a ship of war may be a somewhat difficult question of fact in particular cases. If, as suggested, the vessels of the Volunteer Fleet are, in their structure, adapted for carrying guns and carry guns in their holds which can be mounted when the Straits are passed, we should say that they ought to be regarded as ships of war.

We answer the questions put as follows:—

To the First Question.—We think that in the event of the "Smolensk" or "Peterburg" being recommissioned as ships of war at Libau, His Majesty's Government would be justified in notifying to the Russian Imperial Government that they were unable to recognize these vessels as duly constituted ships of war. There can be no question of these vessels returning to the Black Sea if, as we understand is the case, they have flown and are now flying the flag of Russian men-of-war. In this respect, their case is even weaker than it would have been if they had adhered to the mercantile flag until they reached Libau.

To the Second Question.—As we have already indicated, we do not think that the case of the return of these two vessels to the Black Sea can arise. As to the general question put under this head, we think that in the case supposed, His Majesty's Government would be justified in notifying to the Russian Government that they cannot recognize such vessels as duly constituted ships of war.

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For the reasons indicated in the earlier part of this Report, we do not think that the mere issue of a Commission at a Russian port is, for this purpose, enough. It is necessary that by equipment there the vessel should have been transformed into a ship of war, and apparently the vessels of the Volunteer Fleet, being already vessels of war, would require no such transformation.

Whether such notification should be made in either, or in both, of the cases mentioned in the first and second questions, is a matter of policy. As indicated in your Lordship's Minute of the 23rd August, 1904, it might be dangerous to admit that a Volunteer Fleet vessel which had come out of the Black Sea flying the merchant flag had a right while the war was in progress to convert herself, even in a Russian port, into a warlike vessel. On the other hand, although the telegram of the 2nd August, 1904, to Sir Nicholas O'Conor mentions equipment in a Russian port as necessary for this purpose (a fact which is perhaps overlooked in some of the discussion which has taken place on this point), such equipment seems hardly applicable to vessels of the Volunteer Fleet if we are right in the view which we take as to their structure and armament. The effect of any such notification at the present crisis upon Russia on the one hand, and upon public opinion in England on the other, may be of importance.

To the Third Question.—If it should be determined that any such notification should be sent, its terms should be based upon the considerations contained in the general observations which we have prefixed to our answers to the specific questions.

To the Fourth Question.—We have no further general observations to make on the questions in Mr. Campbell's letter of the 18th instant.

With regard to the further papers containing the letter from the Admiralty of the 27th instant, which suggests that a warning should be addressed to the Turkish Government with regard to the eight Volunteer steamers now in the Black Sea, this again raises a question of policy.

We think that the suggestion of the Admiralty deserves careful consideration. Upon the facts stated, these vessels appear to be in reality ships of war, requiring no further equipment to act as such; and it appears to us that it would be dangerous to admit that by merely sailing round to Libau, and there receiving their Commissions, they can lawfully assume the character of public belligerent vessels. Possibly, having regard to what has occurred in the cases of the "Smolensk" and "Peterburg," the Turkish Government may see their way to prevent their exit.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Law Officers' Department,
October 29, 1904.

No. 48.

[November 10, 1904.]

Foreign Office to Law Officers of the Crown.

Foreign Office, October 25, 1904.

Further respecting rumoured transfer of "Teutonic" to foreign flag.

Gentlemen,

WITH reference to your Report, dated the 13th June last, relating to certain negotiations said to be then proceeding for the sale of the steam-ship "Teutonic," of the White Star Line, I have the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list, from which it will be observed that His Majesty's Government have reason to believe that fresh negotiations are now in progress for the sale of that vessel.

I am to invite your attention to the correspondence which has passed between this Department and the Admiralty (Papers B and C) with regard to the powers of the White Star Company to dispose of the vessel under the two Agreements between the Company and His Majesty's Government, copies of which documents are inclosed for convenience of reference (Papers D and E).

A copy of the Report furnished by you on the 13th June last is also inclosed (Paper F).

I am to request that you will take these papers into your consideration, and that you will favour his Lordship with your opinion—

1. Whether, under the Subvention Agreement between the White Star Company and the Admiralty, the former have power to dispose of the "Teutonic" without the consent of His Majesty's Government prior to the 1st April, 1905, the date on which, under notice given to the Company by the Admiralty, this Agreement will terminate.

2. Whether, in view of the fact that, by clause 8 of the Agreement, the Company undertake not to transfer the "Teutonic" to a foreign flag without the previous consent in writing of the Admiralty, and in view of the opinion expressed by you in your Report of the 13th June last as to the remedy existing in case of attempted infraction of a like stipulation in the Agreement with the American "combine," any similar power of restraint is possessed by the Admiralty under clause 8 of the Subvention Agreement.

3. Lord Lansdowne would also be glad to be favoured with any observations of a general character which you may desire to offer on the papers now submitted to you.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.)	Translation of telegram to General Director Ballin, Hamburg .	October 9, 1904.
(B.)	To Admiralty	October 14, „
(C.)	Admiralty	October 20, „
(D.)	Agreement of July 4, 1903.	
(E.)	„ August 1, 1903.	
(F)	Law Officers' opinion	June 13, „

Foreign Office to Law Officers of the Crown.

THE Under-Secretary of State for Foreign Affairs presents his compliments to the Law Officers of the Crown, and, with reference to Mr. Campbell's letter of the 25th ultimo, relating to the negotiations reported to be now in progress for the sale of the steam-ship "Teutonic," has the honour, by direction of the Marquess of Lansdowne, to inclose a telegram which has been obtained, under the warrant of His Majesty's Secretary of State for the Home Department, and which refers to negotiations suspected to be in progress for the sale of the steam-ships "Teutonic," "Majestic," and "Aurania."

It is requested that this telegram may be taken into consideration together with the papers already before them, and that the Law Officers will favour Lord Lansdowne with their opinion in the matter at their early convenience.

Foreign Office, November 8, 1904.

Report.

1. It is clear that the fact of notice having been given to determine the Agreement does not affect the right of His Majesty's Government until the date specified in that notice, the 1st April, 1905, shall have arrived.

The provisions of clause 8 are by no means clear, but we think that, upon the whole, the provision in the first sentence against transfer to a foreign flag should be read as including a proposed sale to a foreign Company or person, as that would involve the vessels being put under a foreign flag.

We should point out, however, that, even on this construction, the provisions of the first sentence against transfer to a foreign flag might be avoided by selling to a British subject, in which case the sale could not be stopped unless the Admiralty chose to purchase, and the British purchaser might afterwards resell to a foreign Company or person.

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Upon the whole, we think that the Company have not power, under clause 8, to sell to a foreign Company or person direct without the consent of the Board of Admiralty.

2. We answer this question in the affirmative. We read the third sentence of clause 8, although its wording is somewhat peculiar, as meaning that, in the case of a sale or transfer which is rightfully carried out in accordance with the terms of the first and second sentences of clause 8, the Company shall be bound to substitute other vessels under clause 10 under pain of the forfeiture of one year's subvention without prejudice to any other remedy.

3. The only general observation which we have to make is that the use which may be made in this connection of clause 3 of the Agreement of the 1st August, 1903, may deserve consideration. Its provisions to guard against transfer to a foreign flag seem to be at once clearer and more comprehensive than those of clause 8 of the other Agreement.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 10, 1904.

[Post Office.] *No. 48A.*

[November 17, 1904.]

Post Office to Foreign Office.—(Received October 25.)

General Post Office, October 24, 1904.

Sir,

Stoppage of mail-packets by Russian war-ships. Donald Currie's questions.

WITH reference to your letter of the 10th May last, concerning the stoppage of the packet "Osiris" by a Russian cruiser in the Mediterranean, I am directed by the Postmaster-General to acquaint you, for the information of the Secretary of State for Foreign Affairs, that Messrs. Donald Currie and Co., the Managers of the Union Castle Steam-ship Company, have applied to this Department for instructions as to what action should be taken in the event of the stoppage of any of their mail-packets by Russian war-ships. Messrs. Currie inquire whether, in such a contingency, the captains of their packets should raise a formal protest (*a*) against any attempt to overhaul the mails, or (*b*) against any attempt to remove bags of correspondence from a mail-packet; and perhaps the Marquess of Lansdowne will be so good as to advise Lord Stanley what reply should be sent to these inquiries.

I am, &c.
(Signed) H. BABINGTON SMITH.

Minutes.

Mr. Davidson.

W. M.

Foreign Office, October 26, 1904.

I should have said both (*a*) and (*b*) were *covered* by our letter of the 10th May, which went pretty fully into the whole question.

F. A. C.

Foreign Office, October 27, 1904.

It is quite clear that they are entitled to satisfy themselves in the ordinary way, and with certain limitations (*i.e.*, not "breaking bulk," &c.) as to whether belligerent despatches are on board (*a*).

It is also clear that in no circumstances can they remove the suspect or tainted documents from the ship (*b*).

This, I think, the Russian Government has practically admitted with regard to the case of the mail bags which they took off the German mail-steamer, and subsequently put on board a British mail-steamer.

(I haven't got the papers here, and cannot therefore cite the reference, but the case is well known to the Treaty Department.)

W. E. D.

12 A *Lower Grosvenor Place,*
November 6, 1904.

Lord Lansdowne,

We suggest that the draft should be modified in the sense of the rider we have annexed to it.

No exemption for mail-steamers has yet taken its place in international law, and in point of law the mail-steamer must be taken in for adjudication in respect of one despatch of a contraband nature, although it would be infinitely more convenient for every one that the despatch should be removed, and the vessel allowed to proceed.

But we think that there is a tendency to relax the rules of law in the case of mail-steamers, and we suggest for consideration the possibility of giving an answer somewhat in the spirit of that given in the House of Commons with reference to the stoppage of the "Osiris."[*]

R. B. F.
E. C.

November 17, 1904.

Annex.

Draft of Letter from Foreign Office to Post Office.

Foreign Office. November 18, 1904.

Sir,

I AM directed by the Marquess of Lansdowne to acknowledge the receipt of your letter of the 24th ultimo, with regard to inquiries made by Messrs. Donald Currie and Co. as to what steps should be taken by the captains of their mail-steamers in the event of their stoppage by Russian war-ships.

In reply, I am directed to refer to the statement of the rules of law on this subject in the letter from this Department of the 10th May last relating to the detention of the P. and O. steam-ship "Osiris." I am to add that there is not by international law any right to remove bags or letters from a mail-packet, as no modification has been established of the rule of law which requires that a vessel carrying contraband must be brought into port for adjudication.

Belligerent rights in the case of mail-steamers should, however, be exercised with the utmost consideration, as the inconvenience caused by their stoppage and detention is extreme.

Messrs. Currie cannot be advised by His Majesty's Government as to the propriety of their making through the captain of the mail-steamer a protest in any particular case.

No. 49.

[November 25, 1904.]

Foreign Office to Law Officers of the Crown.

Foreign Office, November 14, 1904.

Gentlemen,

Coaling of Russian Fleet by "Roddam" at Vigo.

I HAVE the honour, by direction of the Marquess of Lansdowne, to inclose for your consideration a letter from the Commissioners of His Majesty's Customs, forwarding copies of papers relating to the clearance of the British vessel "Roddam" with a cargo of coal; which cargo, though apparently at first destined for St. Vincent and later on for Teneriffe, would seem to have been finally consigned to Vigo, at which latter port it is stated to have been transferred to the Russian fleet.

Previous correspondence in print respecting the question of the chartering of

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[*] This refers to Sir Charles Palmer's question of the 10th May, 1904, which, however, does not specifically mention any particular mail-ship.

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vessels for the purpose of coaling belligerent ships outside British territorial waters is also inclosed for convenience of reference.

Lord Lansdowne, as at present advised, is disposed to think that it would be undesirable to institute proceedings in the present instance unless it is clearly incumbent upon His Majesty's Government to take this course. In his Lordship's view the line dividing ordinary cases of traffic in contraband of war between neutral traders and belligerents, from cases in which the neutral trader attends a belligerent fleet, and permits his vessels to become store-ships in the employment of the belligerent is not easy to draw; and his Lordship considers that as, in a case of this kind a jury would probably not be very ready to convict, the risk of an abortive prosecution is therefore particularly to be guarded against, and that it would consequently be both unwise and impolitic to institute proceedings unless on very clear and sufficient evidence that an offence has been committed.

I am to request that you will take this matter into your consideration and will favour his Lordship with your opinion whether, on the facts disclosed in the letter from the Board of Customs, there is sufficient evidence showing that the "Roddam" was instructed to wait upon the Russian fleet and to supply coal as required, to justify or require the institution by His Majesty's Government of proceedings under the provisions of "The Foreign Enlistment Act, 1870."

Lord Lansdowne would be glad at the same time to be favoured with any observations of a more general nature which you may desire to offer on the subject.

I am, &c.
(Signed) F. H. VILLIERS.

Foreign Office to Law Officers of the Crown.

MR. CAMPBELL presents his compliments to the Law Officers of the Crown, and, with reference to his letter of the 14th instant, has the honour, by the direction of the Marquess of Lansdowne, to transmit, for their information, a despatch from His Majesty's Consul at Dakar, reporting the arrival at that port of colliers stated to be in attendance on the Russian fleet.

It is requested that this despatch may be taken into consideration together with the other papers now before the Law Officers; and that his lordship may be favoured with their opinion upon the whole question of the supply of coal by British colliers to the Russian fleet at their earliest convenience.

Foreign Office, November 22, 1904.

List of Papers.

Board of Customs, November 8, 1904.
Printed Correspondence respecting Chartering of Vessels for Coaling Belligerent Ships outside Territorial Waters, 1870–1904.
Consul Cromie, No. 42, Africa, November 8, 1904.

Report.

In our opinion upon the facts disclosed in the letter from the Board of Customs, and the fact that the "Roddam" did attend upon the Russian fleet at Vigo, there is some evidence to support a prosecution under "The Foreign Enlistment Act, 1870." The case is, however, far from clear. There is no obligation upon His Majesty's Government to institute such proceedings, and whether His Majesty's Government should do so is a question of policy. An abortive prosecution would be very unfortunate, and its institution against a British firm might lead to great pressure upon His Majesty's Government to detain German vessels loading in British ports presumably for the same purpose.

If a strong and clear case presented itself, it might be proper to prosecute in indication of our neutrality and in justice to those British ship-owners who have refused such lucrative but unlawful employment.

We cannot advise a prosecution in this case.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 25, 1904.

No. 50.

[December 21, 1904.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 16, 1904.

Gentlemen,

Vessel carrying contraband: as to her continued liability to seizure.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit, for your consideration, two letters which his Lordship has received from the North of England Protecting and Indemnity Association, (*a*) asking for an expression of the views of His Majesty's Government on the question of a vessel's continued liability to seizure by a belligerent in consequence of her having carried a contraband cargo on a previous voyage; and (*b*), inquiring whether certain suggested alterations and extensions of the Rules of the Association with regard to contraband are in conformity with the views of His Majesty's Government on the subject.

I am also to inclose the draft of the reply which his Lordship proposes to return to these inquiries, and to request that you will take the matter into your consideration, and will favour Lord Lansdowne with your opinion as to whether the terms of the proposed answer are right and proper.

His Lordship would also be glad to be favoured with any observations of a general nature which you may desire to offer upon the papers now submitted to you.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

North of England Protecting and Indemnity Association	..	August 25, 1904.	
" "	..	November 10, 1904.	
" "	..	November 25, 1904.	[Sent to L.O. Dec. 2.]
Draft reply.			

Report.

We have indicated in black ink* upon the draft reply initialled by us some suggestions for consideration.

We think that, upon the whole, it would be better to avoid any reference to the Standing Interrogatories. We are by no means satisfied that these Interrogatories are not, upon this point, right; as the nature of the enterprises upon which the ship has been employed in the past may, in case of doubt, throw light upon the character of the adventure immediately in question. We think, however, that it is not desirable that the Foreign Office should express its views upon this subject, as the matter is one of some delicacy, and any expression of opinion might lend itself to misunderstanding and possible misrepresentation abroad, if the letter should be published.

(Signed) R. B. FINLAY.
EDWARD CARSON

Royal Courts of Justice,
December 21, 1904.

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* Printed in italics

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Annex.

Foreign Office to the North of England Protecting and Indemnity Association.
[*Sent December* 23, 1904.]

Foreign Office, December , 1904.

Sir,

THE Marquess of Lansdowne has had under his consideration your letter of the 25th August last, asking for an expression of the views of His Majesty's Government on the question of a vessel's continued liability to seizure by a belligerent in consequence of her having carried contraband cargo on a previous voyage.

I am to express his Lordship's regret that your letter should have remained so long unanswered, and to explain that, as the case of the "Allanton," to which special reference is made in your letter, was still before the Prize Courts, it was considered preferable to defer replying until His Majesty's Government were aware of the decision of the Admiralty Council at St. Petersburgh.

It will, no doubt, be satisfactory to the Association to observe that the Court of Appeal has reversed the decision of the Vladivostock Prize Court, thereby disposing of the question so far as the "Allanton" is concerned. With regard to ~~the general question~~, *your further inquiry*, Lord Lansdowne ~~would deprecate any public discussion upon the subject, in view of the fact that the "Standing Interrogatories" which are administered under the British Prize Court Procedure, are apparently intended for the express purpose of eliciting information as to the behaviour of prizes during their previous voyages. In these circumstances, his Lordship thinks that it might be better, from the point of view of your Association, not to raise the question,~~ *does not think it desirable to enter into a discussion of the general question of the possible appeal in such cases of carriage of contraband on a previous voyage.*

I am also directed by Lord Lansdowne to acknowledge the receipt of your further letters of the 10th and 25th ultimo, and to inform you that the points raised therein are matters for the consideration of your Association in consultation with their own legal advisers, and that his Lordship is unable to undertake the responsibility of advising the Directors with regard to the scope and drafting of proposed alterations or extensions of the Association's Rules.

R. B. F.
E. C.

No. 51.

[December 26, 1904.]

Mr. Cave to the Marquess of Lansdowne.—(*Received December* 6, 12·30 P.M.)

(Treaty.)
(Telegraphic.)

Zanzibar, December 6, 1904, 11·10 A.M.

* * * * * *

Russo-Japanese war: Coaling of Russian fleet at Zanzibar.

In view of possibility of portion of Baltic fleet now at Jibuti calling at Zanzibar for coal, I request instructions as to whether any objection is to be taken to their obtaining supplies from, firstly, English, secondly, French coaling firm so long as they do not make Zanzibar a base of operations. The expression in the Declaration of Neutrality, "nearest port of her own country," is defined in Admiralty instructions as inclusive of a colonial port, and, consequently, even if Declaration can be held to apply to a British Protectorate, the Russian ships, whatever their destination, can press the demand for as much coal at Zanzibar as they can carry.

Minutes.

The telegram he refers to is No. 11 in Section 20 of Print, but has no particular bearing on the points now raised, and which are very difficult. [This refers to Foreign Office telegram to Mr. Cave of the 7th September.]

The following papers have an important bearing on them:—

Print, Section 18, No. 88, and Minutes.

Print, Section 19, No. 9, and Minutes; No. 47* (to Attorney-General); No. 74 (from Attorney-General).

At that time we were dealing with the two Volunteer fleet ships, now with the Baltic fleet. Moreover, since that date the Order in Council of the 24th October has

been issued and was sent to Zanzibar on the 7th November, so it either has just got there or will shortly do so.

Mr. Cave, in alluding to the Declaration of Neutrality, means the letter to Departments, but the rules therein laid down do not apply to Zanzibar.

It appears to me that, as regards British coaling firms, we can deal with them now just as if they were in the waters of a British Colony. Possibly with foreigners too; but this is thinner ice. See Mr. Hurst's Memorandum of the 27th August.

The whole question, as the Attorney-General has said, is largely a matter of policy.

No coaling rules have been made for Zanzibar, nor has any Proclamation been issued there.

Can we, or should we, as the Protecting Power, put in force the new British principles in Zanzibar, and also orders like those in Colonial Office of the 2nd December to Colonies?

W. M.

Foreign Office, December 5, 1904.

In my opinion, based chiefly on the Attorney-General's Memorandum of the 2nd September (p. 59 of Section 19 of Print), we should be justified in advising Zanzibar to adopt our rule, and give no coal to a belligerent war-vessel on her way to the seat of war, and that this should be made applicable to French (or other foreign) coal merchants as well as British.

The Attorney-General then thought that it was very doubtful whether, as a matter of policy, we should advise the Sultan to adopt our new rules, on the ground that other Powers might contend that they were unreasonable; and probably Lord Lansdowne would like to know whether he is still, after the lapse of three months, of the same opinion.

I should be inclined to the view that, if we are legally on firm ground, it is reasonable that we should advise the Sultan to take the course which, after full consideration, we have thought right to adopt ourselves.

F. A. C.

Foreign Office, December 6, 1904.

I agree generally, but there are some special difficulties with regard to Zanzibar, as distinguished from other British Protectorates in Africa.

I think it is pretty clear that we should advise Zanzibar to adopt our rule, and, in case of need, to publish a Notice or Proclamation to that effect, which it will be incumbent on all Zanzibaris to observe, and of which infringements by persons amenable to the jurisdiction of the Sultan will be punishable in the Sultan's Courts.

British subjects and protected persons will, of course, be punishable in His Majesty's Court.

There is, however, another class of persons at Zanzibar who are at present justiciable neither in the Sultan's Court nor in the British Court. I allude to the subjects of Powers such, for instance, as Germany, who have not yet surrendered their extra-territorial jurisdiction.

These persons, if punished at all for a breach of the Sultan's Proclamation, will have to be punished by the German Court; and I am not satisfied that in practice, however it may be in theory, this method of restraint will be found thoroughly adequate.

It may therefore be desirable to take, as far as is possible, special precautions to prevent any breach of the Proclamation from taking place, and that can best be done by preventing any vessels from using, or from enjoying the hospitality of, the Sultan's port unless they give an undertaking not to infringe his Proclamation.

If, after such an undertaking has been given, a German shipper or a merchant-vessel owned by a German ship-owner should attempt to infringe it, then, I think, the Sultan's officials could prevent the infringement which was contemplated by using force sufficient for the purpose.

If the aggrieved German instituted proceedings against the Sultan's Government he would have to lay them in the Sultan's own Court, and the plea in reply thereto would be by alleging that what was done was an Act of State. Such a plea would be a complete answer to any one not a subject of the Sultan (and possibly *might* be according

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to the law and usage of the Zanzibar Constitution—in so far as it possesses such a thing—an answer to one of the Sultan's subjects).

Force cannot be used in the case of a man-of-war or public ship, but such ships would only be admitted to the hospitality of the port on the distinct understanding that they will not use the port as a warlike base.

If there is reason to apprehend that Zanzibar may be tentatively approached for coaling or supply purposes by the Baltic fleet or by tenders and store-ships under the orders of that fleet, we must make up our minds on this question so as to be able to deal with it at once when the necessity arises, and I suggest the best means which occur to me for dealing with it.

W. E. D.

Foreign Office, December 24, 1904.

I sent these papers to the Attorney-General at Nairn, whence he has returned them to me with a Memorandum (herewith) dated the 26th December, 1904.

The Memorandum is, I think, in general accord with my Minute, and if it becomes necessary to induce the Sultan to take any active steps at Zanzibar, I believe that the Attorney-General would agree in the course which is suggested in the Minute to meet that contingency.

It is well to be prepared beforehand for such an emergency, but there seems to be very little prospect now of the Baltic fleet—or of its coal tenders—going near Zanzibar, and unless such prospect becomes imminent I think Mr. Cave had better not approach the Sultan in the matter.

W. E. D.

Foreign Office, December 29, 1904.

Mr. Hurst has seen the papers, including the Attorney-General's Minute, and agrees in this view.

W. E. D.

Foreign Office, December 29, 1904.

No question now arises of the use of Zanzibar as a "base of operations," unless possibly by the accompanying colliers if they repeatedly came to the port to fill up for the fleet—this should not be permitted.

The question is whether the fleet *en route* for the theatre of war should be allowed to coal at Zanzibar.

I do not think it desirable to issue now a new set of coaling rules, professedly general, but really intended to meet this emergency.

There may, however, be strong grounds of policy for advising the Sultan to refuse coaling facilities in this very special case. This is not the case of one vessel asking for the usual hospitality in the matter of coaling, but of a whole fleet engaged in a hostile expedition. It was at one time proposed (in Law Officers' Report of the 6th June last) that this should be dealt with in British ports as a special case to which the ordinary practice as to coaling should not be extended, and it seems to me that the Sultan might be advised to deal with it on this ground, if it is considered expedient so to do.

The question is rather of the terms of admission of the war-vessels and the accompanying colliers to Zanzibar waters than of the rights of trade of Germans or others enjoying extra-territorial jurisdiction in Zanzibar itself.

Questions might no doubt arise with Russia, and also with Germany, as respects German colliers, and the case in the present state of international law as to coaling may give rise to difficulties. But, on the other hand, it might excite just remark if, in a country entirely under British influence, an expedition of this sort were allowed to equip itself with coal so as to reach its striking point in Japanese waters.

R. B. F.

December 26, 1904.

As there would seem to be now little danger of the Baltic fleet putting into Zanzibar, instructions in the sense of these Minutes might be drafted and sent by mail.

F. A. C.

Foreign Office, December 30, 1904.

Draft instructions accordingly and let me see.

L.

Foreign Office, December 31, 1904.

SIAM.

No. 52.

[July 19, 1904.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 30, 1904.

Rex *v.* Tilleke and Mong Ong.

Gentlemen,

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, the papers as noted in the accompanying list respecting the trial and conviction before Mr. H. P. Wilkinson, Acting Judge of His Majesty's Court for Siam, of Mr. A. F. G. Tilleke, and of one Mong Ong, on a charge of receiving stolen property, and the subsequent quashing of the conviction on appeal by the Supreme Court at Singapore.

Mr. A. F. G. Tilleke is a Congolese gentleman of some prominence in Bangkok, and is the proprietor of the "Siam Observer."

The original trial terminated on the 17th October, 1903, after having lasted eleven days.

At the conclusion of the evidence the Jury returned the following answers to the questions put by the Judge.

In the case of Tilleke:—

1. That he knew the goods were stolen between the 23rd and 28th July, 1903;
2. That he was in constructive possession of the goods taken to his house on the 28th before that date, and in actual possession on and after that date;
3. That it was his intention to pay money for the goods.

In the case of Mong Ong:—

1. That he knew the goods were stolen;
2. That he was in constructive possession of them;
3. That he intended to make profit for himself by their sale.

Mr. Wilkinson treated these answers as equivalent to a verdict of guilty against both prisoners, and he sentenced Tilleke to six months' and Mong Ong to twelve months' imprisonment.

Both Mr. Tilleke and Mong Ong appealed to the Supreme Court at Singapore for a reversal of these Judgments under Article 70 (2) of "The Siam Order in Council, 1903," and difficulties occurred from the outset with regard to the Crown's being represented at Singapore as Mr. Tilleke succeeded in retaining almost the entire bar of the Straits Settlements.

Mr. Wilkinson received the notice of appeal, and telegraphed to Mr. Collyer, the Attorney-General, inquiring whether he would accept a retainer on behalf of the Crown.

Mr. Collyer at first refused to comply with the request, alleging that under the terms of his appointment he was unable to accept private practice.

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The appeal being the first to the Supreme Court at Singapore from the Court for Siam, newly constituted and acting under the provisions of a new Order in Council, it was a matter of some special importance that the Crown should be adequately represented, and that all that could be properly said in support of the conviction and of the law, as laid down by Acting Judge Wilkinson, should be placed before the Supreme Court by a competent authority.

The Secretary of State for the Colonies was accordingly requested to instruct Mr. Collyer to appear on behalf of the Crown, and to accept instructions sent to him through His Majesty's Legation at Bangkok. The date fixed for the hearing of the case on appeal was the 22nd February.

It will be seen from Mr. Wilkinson's despatch No. 8 of the 3rd March that on the 13th February the record of the case was posted to the Registrar of the Supreme Court, and a copy to the Attorney-General, Singapore, both being informed by accompanying letters that the appeal papers then sent were not complete as the Judge's observations were not ready, but would be sent as soon as possible. The Attorney-General was at the same time asked to apply, if necessary, for an adjournment. On the 18th February His Majesty's Chargé d'Affaires at Bangkok telegraphed to the Attorney-General of the Straits Settlements that the Judge's observations would be dispatched to the Court and himself on the 21st instant, and he was instructed to take steps to postpone the trial till after their arrival. The observations of the Judge were accordingly posted on the 21st February to the Registrar of the Supreme Court at Singapore for the use of the Judges and copies to the Attorney-General. On the 18th February, Mr. Collyer, with counsel for the defence, applied to the Chief Justice of the Straits Settlements for an adjournment, which was refused. It appears that at the time of such application and refusal the documents dispatched from Bangkok on the 13th February had not arrived at Singapore. On Friday, the 19th February, the documents first dispatched appear to have arrived in Singapore. On the afternoon of Saturday, the 20th February, Mr. Justice Law, one of the Judges forming the Court of Appeal, arrived in Singapore from Penang. On Monday, the 22nd February, the Appeal Court sat, and at once heard the appeal in Rex *v.* Tilleke, and on the 23rd February, that in Rex *v.* Mong Ong.

It appears impossible that the documents first dispatched which arrived on Friday, the 19th February, consisting of the record of a trial which had lasted for eleven days, of the application for and grounds of appeal filed, the exhibits and statements of case can have been fully perused by either the Judges of the Court of Appeal or the Attorney-General.

At the time of the hearing, Mr. Wilkinson's observations were, as the Court then knew, on their way to Singapore.

It will be seen from the report furnished by Mr. Collyer that when he applied for a postponement on the 18th February he met with a refusal, no other day but the 22nd being available for the three Judges to sit together. The same day, however, an unfortunate mistake occurred in the decoding of the telegram from Bangkok instructing Mr. Collyer to obtain a postponement of the trial. The telegram was decoded for Mr. Collyer at the Colonial Secretary's office and was there stated to be to the effect that he should "take no steps" to postpone the trial. He subsequently learnt that "take no steps" was an error and that the telegram really ran, "take steps."

Mr. Tilleke's case came on for hearing first, and on the first day the Court decided that the special findings of the Jury in that case did not amount to a verdict of guilty. After hearing further argument, they gave Judgment on the second day to the effect that there was no evidence of a criminal receiving on the part of Mr. Tilleke, either actual or constructive.

In the case of Mong Ong the Court gave Judgment for the Appellant on practically the same grounds as in the Tilleke case, but more particularly on the ground that there was no evidence of "constructive" possession of the goods by Mong Ong nor of criminal receiving.

I am to point out that Article 73 of "The Siam Order in Council, 1903," embodying the general practice of the Judicial Committee on this point, specially provides that there shall be no appeal in a criminal case to His Majesty the King in Council from a decision of the Supreme Court, except by special leave of His Majesty in Council.

Lord Lansdowne is, moreover, aware that the Judicial Committee of the Privy Council are not as a rule very ready to grant special leave to the appeal in a criminal matter, especially when the application is made on behalf of the Crown, and that the instances of such appeals being entertained are rare, but His Lordship at the same time considers that in view of the somewhat peculiar circumstances attending the hearing of the appeal at Singapore, and, in particular, the very small amount of study the papers can have received at the hands of the Attorney-General and also of the Judges, and the fact that those papers were not complete, it is desirable that such steps as are possible should be taken to uphold the Judgment of the Court for Siam.

I have the honour to request accordingly that you will take these papers into your consideration and furnish His Lordship with your opinion as to whether, having regard to all the circumstances, the case is one in which an application for special leave to appeal should be made to the Judicial Committee of the Privy Council, and, if so, on what grounds such application can most properly be based. Lord Lansdowne will also be glad to be favoured with any general observations which you may have to offer on the papers submitted herewith.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Acting Judge Wilkinson	(No. 7)	October	26, 1903.
(B.)	Ditto	(No. 2)	January	7, 1904.
(C.)	Acting Judge Wilkinson to Mr. Davidson ..	(Telegraphic)	January	25, ,,
(D.)	To Mr. Paget	(Telegraphic)	February	1, ,,
(E.)	Mr. Paget	(Telegraphic)	February	2, ,,
(F.)	Acting Judge Wilkinson	(No. 6)	February	2, ,,
(G.)	To Colonial Office	..	February	4, ,,
(H.)	To Mr. Paget	(Telegraphic)	February	6, ,,
(I.)	Colonial Office	..	February	20. ,,
(J.)	Acting Judge Wilkinson	(No. 7)	February	22, ,,
(K.)	Mr. Paget	(Telegraphic)	February	24, ,,
(L.)	Ditto	(No. 8. Consular)	March	3, ,,
(M.)	Acting Judge Wilkinson	(No. 8)	March	3, ,,
(N.)	Colonial Office	..	March	4, ,,
(O.)	Mr. Paget	(No. 9 Consular)	March	17, ,,
(P.)	Colonial Office	..	April	7, ,,

Foreign Office to the Law Officers of the Crown.

THE Under-Secretary of State for Foreign Affairs presents his compliments to the Law Officers of the Crown and, with reference to his letter of the 30th ultimo, has the honour to transmit to them, by direction of the Secretary of State, the inclosed further despatch which has been received from Mr. H. P. Wilkinson, Acting Judge of His Majesty's Court for Siam, respecting the case of Rex *v.* Tilleke and Moung Ong.*

Foreign Office, May 9, 1904.

Report.

This is not a case in which an application should be made for special leave to appeal.

We see no ground for supposing that the decision was wrong and there is an entire absence of any special circumstances to justify such an application by the prosecution in a criminal case.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
July 19, 1904.

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* Acting Judge Wilkinson, No. 9, March 22, 1904.

TURKEY.

No. 53.

[August 18, 1904.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, May 5, 1903.

Gentlemen,

Status of Persons of British origin resident in Turkey.

I HAVE the honour to transmit to you, by direction of the Marquess of Lansdowne, a series of papers (in print), dealing with the status of persons of British origin who are permanently resident in the Ottoman Empire.

There have been foreign communities resident in the Turkish dominions ever since the fall of Constantinople, and several British communities of this description have been in existence for a prolonged period. Families which have always regarded themselves as British have been settled in Turkey in some cases for as many as ten generations past, and, though in the great majority of cases the members of these families have been born abroad, they have always in practice been treated as British subjects, and of recent years registered under the Ottoman Orders in Council accordingly.

Returns showing the numbers and names of persons registered as (1) British subjects, and (2) as British-protected persons in the Ottoman dominions, and the grounds upon which they were so registered, were prepared in 1887–89, and will be found in the inclosed volume of Confidential Print (5968). It will be seen that the number of persons thus registered with their families, by reason of their ultimate British descent, is very considerable, and probably amounts to some thousands.

Doubts have from time to time been expressed by his Lordship's predecessors as to the strict legality of this course, and the attention of His Majesty's Ambassador and of the various members of the Consular service in the Levant, called to the provisions of 4 Geo. II, cap. 21, and 13 Geo. III, cap. 21, which limit British nationality to the children and grandchildren, in the paternal line, born abroad of natural-born British subjects, but partly, no doubt, owing to the peculiar conditions of life in the Turkish dominions, it has not been found feasible to exclude from the registers of British subjects persons who are not, strictly speaking, within those two Acts.

The point has again been recently raised, and a considerable feeling of anxiety has been shown by the members of the British communities in Turkey lest Lord Lansdowne might decide that persons in the position indicated above were not entitled to be registered, and that their names (if already upon those registers) must be removed from the registers of British subjects, and no persons registered in future unless they were qualified under the Acts of 1730 and 1773.

An English barrister, Mr. Pears, who is the leader of the local bar at Constantinople, was deputed by two of the largest of these communities to urge the claim that all their members are, in law, and have always been, British subjects, irrespective of the number of generations for which they have been settled in Turkey, Three Memoranda in support of this claim have been submitted by Mr. Pears, and will be found on pp. 26, 31, and 40 of the Confidential Print herewith.

Lord Lansdowne is advised that the arguments put forward by Mr. Pears do not establish the claim of these residents to British nationality, and in this view Sir Kenelm Digby, Permanent Under-Secretary of State for the Home Department (see letter No. 22 in the Confidential Print), and Professor Dicey, K.C. (see p. 48 of Print) agree. On the other hand, there seems to be good ground for holding that these residents of British origin could not be claimed as subjects of the Porte, and that, if they be not of British nationality, they are of no nationality at all.

After a consideration of all the circumstances Lord Lansdowne is disposed to think that, should you be of opinion that the descendants of British subjects born in Turkey beyond the third generation are not entitled, in law, to British nationality, it will be desirable to introduce legislation for the purpose of confirming the status of those already registered as British subjects, and to confer that status on their descendants in the male line. If such legislation is to be undertaken, various questions arise upon which Lord Lansdowne desires, for his guidance and assistance, to be furnished with your views.

The first is whether it is possible to confine the scope of the proposed Bill to Turkey. The dominions of the Porte are, so far as is known, the only place where there are British communities of such long standing that more than two successive generations have been born abroad, but except for this there do not seem to be any arguments in favour of limiting the legislation as suggested. Residents in China, and other places where jurisdiction is exercised under the Foreign Jurisdiction Acts, would certainly feel aggrieved, and it would seem unreasonable to confer privileges upon British subjects in Turkey which are not shared in those great African Protectorates of His Majesty, which are British Colonies in all but name and technical legal status. It is also most desirable that any such alteration of the law should be made in the manner least likely to attract attention or provoke criticism, and, if it is confined to Turkey, there is a possibility that it might lead to remonstrances by the Porte against what would be represented as the removal of large classes of persons from the jurisdiction of the Sultan.

Lord Lansdowne would therefore prefer that the legislation should extend to all places where His Majesty exercises jurisdiction under the Foreign Jurisdiction Acts, and in this view the Secretary of State for the Home Department, to whom these papers have been referred, concurs.

The next question is the nature of the provisions that should be inserted in the Bill.

The great desire of all those upon whose status doubt has been cast is that their British nationality should be recognized as already existing. Any arrangement enabling them to become British subjects by letters of denization, or by naturalization would not be accepted, in any way, as a satisfactory settlement; it would increase the irritation, and the remedial means provided might even be rejected by those whom it was intended to benefit.

Lord Lansdowne therefore proposes that the Bill should provide that the issue of British subjects should, if born within places where His Majesty exercises jurisdiction under the Foreign Jurisdiction Acts, themselves be British subjects.

A Bill has already been drafted by the Parliamentary Counsel to the Treasury, a copy of which is inclosed herewith, to codify and amend the Law relating to naturalization and aliens in accordance with the Report of the Inter-Departmental Committee on the Naturalization Acts which was laid before Parliament in 1901. It is understood, however, that the Secretary of State for the Home Department does not propose to proceed with the Bill during the present Session. The question, therefore, arises whether it is better that a short Bill should be introduced at once to carry out the above objects, and efforts made to get it passed this Session, or whether the matter should be allowed to rest until the larger measure is introduced. On the one hand, it would be an advantage to set the matter at rest as soon as possible, but, on the other hand, it is desirable that the question should attract as little attention as may be, and it is thought this latter object would be better achieved by the point being dealt with in the general Bill.

If this alternative be adopted, provisional measures can be taken that will sufficiently prevent any further anxiety being felt among the members of the British communities in Turkey, and that will insure an absence of anything approaching public agitation.

It has been suggested that if the question is dealt with in the general Bill, this should be effected by a slight alteration of the wording of clause 28 (see p. 39 of the Confidential Print).

I am to request that you will be so good as to take the papers transmitted herewith into your early consideration, and will favour Lord Lansdowne with your opinion—

1. Whether persons of British descent in the paternal line born in Turkey, but not within the Acts of 1730 and 1773, are or are not British subjects;
2. If not, whether legislation to confer upon them British nationality should be confined to Turkey, or should extend to all places where His Majesty exercises jurisdiction under the Foreign Jurisdiction Acts;
3. Whether the suggestion that the issue of British subjects should be given British nationality if born in such places is, in your opinion, a desirable method of dealing with the question;
4. Whether the legislation should be enacted by a short Bill to be introduced this Session, or whether it is desirable to wait until the introduction of the larger measure;

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5. His Lordship would also be glad to be furnished with any observations of a general character which you may have to offer.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

Confidential Print, "Correspondence relative to the National Status and Registration in the Ottoman Dominions of Persons of British Descent," 1 to 24.
Confidential Print, "Returns of British-protected Subjects in the Ottoman Dominions, 1887–89" (Confidential, No. 5968.)
Draft Bill.
"Ottoman Order in Council, 1899" (Confidential, No. 7171).

Report.

It appears to be clear that persons of British descent in the paternal line born in Turkey, although not within the Acts of 1730 and 1773, are, as between His Majesty and the Ottoman Porte, entitled to the benefit of the Capitulations. There has been a long and unbroken practice to this effect, and we do not think that the Porte could successfully raise any objection to it. It is, moreover, to be noted that the Porte has never raised any such objection, and apparently never will. We do not think that it is necessary in order to bring such persons within the benefit of the Capitulations, that it should be established that for all purposes they are British subjects. It is enough if it appears (as we think it does) that they are British subjects within the meaning of the Capitulations. On this point we agree with Mr. Dicey's opinion, set out at pp. 48 and 49 of the Confidential Print which accompanies the despatch under reply. This view of the case disposes of the point which is by far of the greatest practical importance, viz., the right of these persons to British protection in Turkey.

The question whether such persons are, for all purposes, British subjects does not appear ever to have arisen in the Courts of this country. It might arise under the Foreign Marriages Act, under Lord Kingsdown's Act as to wills, or under the Act as to offences against the person. It might also arise if such persons settled in this country and claimed the franchise.

This last question is, in our opinion, one of difficulty. It is quite clear that the Acts of 1730 and 1773 have no application—the question being, as is pointed out by Sir Kenelm Digby, whether at common law such persons are natural-born subjects. To be a natural-born subject at common law it is necessary to be born within the King's allegiance.

It is clear that in certain cases this condition might be satisfied, although the birth did not take place physically within the King's dominions, as in the case of the children of Ambassadors abroad, and of children of British parents born within the lines of the King's army in foreign parts. An alien is defined by the Court in Calvin's Case (7 Rep. 16 *a*) as a subject that is born out of the ligeance of the King *and under the ligeance of another*. We think that the children of British parents born on a desert island belonging to no Sovereign would, even at common law, not be aliens. They would certainly not be born within the allegiance of any other, and as everyone must be either an alien or a subject (7 Rep. 17 *a*), we think such children would be held to be born within the allegiance, and therefore subjects. We think that the same principle would apply in the case of children of British parents born in British Protectorates, otherwise the extraordinary consequence would follow that the great-grandchild of a man born in England who had settled in, *e.g.*, Rhodesia, where his descendants had remained under English law, would be an alien.

As regards Turkey, it appears that the children in question are not Turkish subjects (see pp. 32–3 of the Confidential Memorandum), Lord Watson (13 A. C., at p. 440) appears to regard them as retaining their nationality as if they had remained in their own country. They appear to us not to be aliens within the definition in Calvin's Case (*ubi supra*), and to fall under one of the special cases referred to by Lord Coke (*ibid.*, p. 18 *a*), in which persons may be born within the allegiance of the King though not within his dominions.

We therefore think the true conclusion is that these persons are British subjects at common law.

2, 3, 4, and 5. It is, however, impossible to say that the point is clear. There is a strong body of opinion the other way, and we think it desirable that the question should be settled by a clause in a general Act somewhat in the form suggested by Mr. Hurst, with modifications as proposed by Sir E. O'Malley.

We should deprecate the introduction of a Bill dealing specially with this subject. It would call public attention to the point in a way which might be attended with disastrous results if the Bill failed to pass.

In the meantime, registration should be continued in accordance with the practice that prevailed until this question was unfortunately started by the dispatch of the Consuls to the Foreign Office without communication with the Embassy.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
August 18, 1904.

UNITED STATES.

No. 54.

[October 27, 1904.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, August 25, 1904.

Gentlemen,

Supplementary Extradition Convention between Great Britain and the United States.

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the draft of a Supplementary Extradition Convention between Great Britain and the United States (Paper A), which has been prepared with a view to include *Bribery* and *Offences against Bankruptcy Law* in the list of offences on account of which extradition may be granted under the Conventions of the 12th July, 1889, and the 13th December, 1900, between the two countries (Papers B and C).

It will be seen from the annexed correspondence that, on the 30th October last, the American Ambassador submitted to his Lordship the draft of a Supplementary Convention between the two countries, making the offence of *Bribery* extraditable (Paper D).

In referring the matter to the Home Office (Paper E), his Lordship suggested that the opportunity might be taken to include *Offences against Bankruptcy Law* in the new Convention. The print inclosed in this letter (Paper F) gives (pp. 10–34) correspondence which had taken place in 1901–1902 on the question of concluding an arrangement with the United States in regard to such offences against Bankruptcy Law. The Home Office (Paper G), having pointed out, however, that the offence of bribery could not be included in an extradition Treaty without an amendment of English law to make it an extradition crime, Mr. Choate was so informed (Paper H).

Mr. Choate having requested a reconsideration of the matter (Paper I), further correspondence with the Home Office ensued (Papers J and K), as a result of which his Excellency was informed (Paper L), that his Majesty's Government were prepared to conclude a Convention with regard to bribery, on the clear understanding that it cannot be brought into operation in this country unless and until the sanction of Parliament has been obtained to the necessary alteration of the law; and an amendment was suggested in the draft Convention to provide for its coming into effect at a date subsequently to be agreed upon. It was further suggested to his Excellency that "offences, if made criminal by the laws of both countries, against bankruptcy law" should be included in the scope of the Convention.

Papers M and N refer to subsequent conversations between Lord Lansdowne and Mr. Choate with respect to the necessary action in the matter of the legislative

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assemblies of both countries, and to his Excellency's views on the definitions of the offences as set forth in the proposed Convention.

I have the honour to request that you will take these papers into your consideration, and that you will favour his Lordship with your opinion whether in the circumstances the terms of the draft Convention are right and proper.

I have, &c.
(Signed) F. A. CAMPBELL.

List of Papers.

(A.) Draft of Supplementary Extradition Convention.	
(B.) Extradition Convention. [Library No. 849. July 12, 1889.]	
(C.) Extradition Convention. [Library No. 1111, December 13, 1900.]	
(D.) Mr. Choate to Foreign Office	October 30, 1903.
(E.) Foreign Office to Home Office	November 5, „
(F.) Print containing correspondence. [Library Confidential 7708.]	1900–1902.
(G.) Home Office to Foreign Office	November 28, 1903.
(H.) Foreign Office to Mr. Choate	December 28, „
(I.) Mr. Choate to Foreign Office	February 11, 1904.
(J.) Foreign Office to Home Office	April 27, „
(K.) Home Office to Foreign Office	May 20, „
(L.) Foreign Office to Mr. Choate	June 6, „
(M.) Foreign Office to Sir M. Durand	June 22, „
(N.) Foreign Office to Sir M. Durand	June 29, „
(O.) Home Office to Foreign Office	July 15, „

Report.

In our opinion the terms of the draft Convention as altered in red ink* are right and proper.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
October 27, 1904.

Annex.

Draft of Supplementary Extradition Convention.

THE President of the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being desirous of enlarging the list of crimes on account of which extradition may be granted under the Conventions concluded between the United States and Great Britain on the 12th July, 1889, and the 13th December, 1900, with a view to the better administration of justice and the prevention of crime in their respective territories and jurisdictions, have resolved to conclude a Supplementary Convention for this purpose and have appointed as their Plenipotentiaries, to wit:—

The President of the United States, ; and
His Britannic Majesty, .

Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:—

ARTICLE I.

The following crimes are added to the list of crimes numbered 1 to 10 in the Ist Article of the said Convention of the 12th July, 1889, and to the list of crimes numbered 11 to 13 in Article I of the Supplementary Convention concluded between the United States and Great Britain on the 13th December, 1900, that is to say:

14. Bribery, defined to be the offering, giving, or receiving of bribes made criminal by the laws of both countries.
15. Offences, if made criminal by the laws of both countries, against bankruptcy law.

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* Italics in print.

ARTICLE II.

The present Convention shall be considered as an integral part of the said Extradition Conventions of the 12th July, 1889, and the 13th December, 1900, and the Ist Article of the said Convention of the 12th July, 1889, shall be read as if the lists of crimes therein contained had originally comprised the additional crimes specified and numbered 14 *and 15* in the Ist Article of the present Convention.

The present Convention shall be ratified and the ratifications shall be exchanged either at Washington or London as soon as possible.

It shall come into force at a date subsequently to be agreed upon ~~in conformity with~~ *provided that* the laws of the High Contracting Parties *then in force provide for the granting of extradition in the cases hereinbefore mentioned,* and it shall continue and terminate in the same manner as the said Convention of the 12th July, 1889.

In testimony whereof the respective Plenipotentiaries have signed the present Convention in duplicate and have thereunto affixed their seals.

Done at , this day of .

No. 55.

[November 16, 1904.]

Foreign Office to the Law Officers of the Crown.

Foreign Office, November 10, 1904.

Gentlemen,

Supplementary Extradition Convention with U.S.A. As to date of coming into force.

WITH reference to your Report, dated the 27th ultimo, relative to the proposed Supplementary Extradition Convention between this country and the United States, I have the honour, by direction of the Marquess of Lansdowne, to inform you that, on the 8th instant, in the course of conversation with his Lordship, of which a record is inclosed herein,* the American Ambassador took exception to the wording of the penultimate paragraph of Article II of the draft Convention, viz., that the Convention should come into force "at a date subsequently to be agreed upon, provided that the laws of the High Contracting Parties then in force provide for the granting of extradition in the cases hereinbefore mentioned."

Mr. Choate based his objection on the ground that this wording would necessitate a second Agreement with regard to the date, and he urged that it would be preferable that the Article should be so worded as to bring the Convention automatically into force. The usual formula in such cases was, his Excellency said, one under which it was provided that the Convention should come into force days after its publication, in conformity with the laws of the High Contracting Parties. His Excellency expressed the hope that His Majesty's Government would consent to the adoption of this phraseology, which would leave them free to publish the Convention at such time as might be thought necessary.

I am to inclose a copy of the draft Convention as submitted for the consideration of the United States' Government, and to request that you will take the matter into your consideration, and will, at your earliest convenience, favour his Lordship with your opinion as to whether the amendment proposed by Mr. Choate is one to which His Majesty's Government may properly assent.

Should you be of opinion that it would be undesirable for His Majesty's Government to accept the amendment, it will be of great assistance to Lord Lansdowne, in discussing the matter further with Mr. Choate, to be informed of the reasons on which that view is based, and by special reference to which it may be supported.

I have, &c.
(Signed) ELDON GORST.

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* To Sir M. Durand, No. 28, Telegraphic, November 8, 1904.

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Report.

We suggest that the alterations made by us in red ink* might meet the views of the American Ambassador. The formula proposed by the American Ambassador is ambiguous, as the words "in conformity with the laws," &c., might be read as merely referring to publication according to law, and we think it ought to be made clear that His Majesty's Government are not in a position to bring the Convention into force until the necessary Act of Parliament is passed.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
November 16, 1904.

Annex.

Draft of Supplementary Extradition Convention.

THE President of the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being desirous of enlarging the list of crimes on account of which extradition may be granted under the Conventions concluded between the United States and Great Britain on the 12th July, 1889, and the 13th December, 1900, with a view to the better administration of justice and the prevention of crime in their respective territories and jurisdictions, have resolved to conclude a Supplementary Convention for this purpose, and have appointed as their Plenipotentiaries, to wit:

The President of the United States, ; and

His Britannic Majesty, .

Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:—

ARTICLE I.

The following crimes are added to the list of crimes numbered 1 to 10 in the Ist Article of the said Convention of the 12th July, 1889, and to the list of crimes numbered 11 to 13 in Article I of the Supplementary Convention concluded between the United States and Great Britain on the 13th December, 1900, that is to say:

14. Bribery, defined to be the offering, giving or receiving of bribes made criminal by the laws of both countries.

15. Offences, if made criminal by the laws of both countries, against bankruptcy law.

ARTICLE II.

The present Convention shall be considered as an integral part of the said Extradition Conventions of the 12th July, 1889, and the 13th December, 1900, and the Ist Article of the said Convention of the 12th July, 1889, shall be read as if the lists of crimes therein contained had originally comprised the additional crimes specified and numbered 14 and 15 in the Ist Article of the present Convention.

The present Convention shall be ratified, and the ratifications shall be exchanged either at Washington or London as soon as possible.

It shall come into force ~~at a date subsequently to be agreed upon provided that~~ *days after the publication of the Treaty by the High Contracting Parties, and such publication shall be made whenever* the Laws of the High Contracting Parties then in force provide for the granting of extradition in the cases hereinbefore mentioned, and it shall continue and terminate in the same manner as the said Convention of the 12th July, 1889.

In testimony whereof the respective Plenipotentiaries have signed the present Convention in duplicate, and have thereunto affixed their seals.

Done at , this day of (Initialled) R. B. F.
E. C.

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* Italics in print.

VENEZUELA.

No. 56.

[April 29, 1904.]

(No. 1.)

Foreign Office to the Law Officers of the Crown.

Foreign Office, January 21, 1904.

Gentlemen,

I HAVE the honour, by direction of the Marquess of Lansdowne, to transmit to you the papers noted in the accompanying list relative to the complaint put forward by Julio Baldon, George Green, and Walter Cummings, British subjects employed on board the United States' sloop "Alemania," of ill-treatment suffered on the seizure of the vessel by the Venezuelan gun-boat "Veinte tres de Mayo" on the 12th June, 1903.

Ill-treatment of British subjects on U.S. "Alemania," seized by Venezuelan gun-boat during revolution.

It will be seen from the statements made under oath by these men (Inclosure in Colonial Office of the 12th August—Paper A) that the American sloop "Alemania," 11 tons burden, the property of an American citizen, and sailing under the American flag, left Port of Spain on the 5th June, 1903, for Guiria, viâ Macupo, Pataque, Rio Grande, La Salina, and Taguapara. She was dispatched on the return journey from Guiria to Trinidad, viâ Rio Grande, on Thursday, the 11th June, 1903, and arrived at Rio Grande the same day. Here she took in a cargo of forty-eight and a-half bags of cocoa, and sailed on Friday, the 12th June, about noon.

The Venezuelan gun-boat "Veinte tres de Mayo" hailed her about 2 o'clock on Friday night, ordered the master, Julio Baldon, to come on board the gun-boat and to bring his papers and flag with him, which was done. Whilst the master was detained on board the gun-boat a launch was sent alongside to fetch the seven passengers and then search the vessel and its cargo. In the course of this search the soldiers upset everything on board and emptied the water-casks, which act caused much hardship, as the crew were left without water for three days.

When the launch returned again she took the captain and passengers as prisoners to the sloop, and the master was told that his vessel and cargo were seized on account of his being dispatched from Guiria by the revolutionists.

An armed crew, consisting of one officer and three soldiers, was put in charge. A line was passed from the gun-boat to the sloop, and the latter was taken in tow until Boca Grande was reached, when the sloop was ordered to proceed under her own sail to Carúpano.

Carúpano was reached on the night of Sunday, the 14th, at 11 o'clock, and the officer went on shore, ordering the mate, George Green, to come with him. The officer carried with him the sloop's register, papers, and flag, which were never returned.

The mate was ordered to look for water, and then the party returned on board with three additional armed men, who were sent on shore again on Monday morning.

At 2 o'clock in the afternoon on Monday, the 15th June, all hands were taken on shore under an armed guard and marched to the Magistrate's office to be tried.

Julio Baldon made his declaration to the Judge, and nothing was said to the prisoners at the time, but at 5 o'clock on the same day three passengers were liberated, whilst the master, mate, and four passengers were taken to gaol and kept in prison until the 21st June (Sunday evening). No food was supplied unless paid for, and in order not to die of hunger the master had to sell two gold rings to procure provisions.

The three men were then set at liberty on Sunday evening, and were left destitute in the streets of Carúpano, where they had to beg for bread. Their clothes and personal effects were detained, and have never been returned to them.

A full declaration of the above-mentioned facts was made before the American Consul, who supplied Julio Baldon and George Green with 70 cents for food.

Eventually the men begged a passage to Trinidad from the master of the British

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sloop "Avail," and they left Carúpano on Saturday, the 27th June, reaching Port of Spain, Trinidad, on Monday, the 29th June, 1903.

Mr. Bax-Ironside, His Majesty's Minister at Carácas, was requested on the 18th August, 1903 (Paper B), to address a note to the Venezuelan Government on the subject, which he accordingly did on the 24th September, and a despatch has been received from him (Paper C) forwarding a note from Señor Sanabria, the Venezuelan Minister for Foreign Affairs, from which it appears that the case was brought before the National Court of Finance at Carúpano on the 15th June, 1903.

The "Alemania" was valued, with her cargo, at 6,449 bol. 56 c., and she was adjudged to be confiscated by the Court for reasons which are given in the judgment which forms Inclosure 4 in Mr. Bax-Ironside's despatch.

The value of the so-called "prize" was awarded in equal portions to the Heads of the Customs at Carúpano, Generals J. H. García Reverón and Francisco José Aquilarte as the accusers, and to Andrés Puriel and Enrique Chirinos as the captors. Baldon, the master, was also condemned to pay certain duties, such as war tax, &c.

The Venezuelan Government also forwarded a copy of a letter addressed by the Commander of the Venezuelan man-of-war "Miranda" to the Commander-in-chief of the National Navy, La Guayra, containing a copy of a communication sent by him to the Collector of Customs at that port, in which he justifies the action of the Venezuelan Government in connection with the seizure of the "Alemania." The Commander of the "Miranda" states that the master of the sloop and her crew were taken to Carúpano to give their evidence in the legal proceedings, and that they did so in accordance with the formalities laid down by law without having been subjected to any molestation or having failed to receive either the consideration due to them on board or the sustenance necessary to support life. It will be observed, however, that the latter statement is in direct conflict with the sworn evidence of the British subjects interested which has been quoted above.

The real reasons for the condemnation of the "Alemania" by the Venezuelan Court appear to be those marked 2 and 4 in the judgment, *i.e.*, that the vessel was trading with a port which was at the time in the hands of the insurgents, and which had been closed by fiscal Decree.

On this point I am to transmit to you, for convenience of reference, the accompanying copies of former Reports furnished by you (Papers D and E), from which it will be seen that it has hitherto been the contention of His Majesty's Government that if the Venezuelan Government wished to close ports in the hands of revolutionaries an effective blockade was the only method that was legitimate.

In these circumstances, Lord Lansdowne requests that, you will take the accompanying papers into your consideration, and favour him with your opinion whether this is a case in which the Decree of the National Court of Finance at Carúpano should be recognized, and whether the Venezuelan Government should be informed that compensation must be paid to the three British subjects concerned, and the sums exacted from Julio Baldon restored.

His Lordship will also be glad to receive any observations of a more general nature which you may be disposed to offer.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Colonial Office		August	12, 1903.
(B.)	To Mr. Bax-Ironside	(No. 9)	August	18, „
(C.)	Mr. Bax-Ironside	(No. 305)	November	27, „
(D.)	Law Officers [Confidential 8022, p. 85]		July	16, 1902
(E.)	Ditto [Confidential 8168, p. 67]		July	1, 1903

(No. 2.)

Foreign Office to the Law Officers of the Crown.

Gentlemen, *Foreign Office, April* 22, 1904.

THE Attorney-General, on the 29th January last, requested, semi-officially, that certain further information might be furnished with regard to the complaint put

forward by Julio Baldon, George Green, and Walter Cummings, British subjects employed on board the United States' sloop "Alemania," of ill-treatment suffered on the occasion of the seizure of that vessel by the Venezuelan gun-boat "Veinte tres de Mayo," a matter which was submitted to your consideration in my letter of the 21st January last.

Sir R. Finlay asked that he might be furnished with—

1. A copy of Law XXI of the Venezuelan Code of Finance alluded to in the judgment of the National Court of Finance at Carúpano;
2. The Decree suppressing the customs of Guiria.

He, moreover, desired to be informed—

3. Whether the seizure took place within the territorial waters of Venezuela;
4. Whether any action was being taken by the United States' Government in view of the fact that the "Alemania" was an American vessel.

In answer to these requests for further information I now have the honour, by direction of the Marquess of Lansdowne, to transmit to you the following documents:—

1. Copy of vol. xxii of the "Collection of Venezuelan Laws and Decrees" (Paper A). On pp. 207 and 208 will be found paragraphs 6 and 10, Article 1, Chapter 1, of Law XXI, on which the judgment of the Court appears to have been based.
2. A despatch from Mr. Bax-Ironside, His Majesty's Minister at Carácas (Paper B), sending translation of the Decree of the 27th May, 1903, suppressing the custom-houses of La Vela de Caro, Guanta, Puerto Sucre, Guiria, Caño Colorado, and Ciudad Bolivar.
3. A further despatch from Mr. Bax-Ironside (Paper C), sending an affidavit by the mate of the "Alemania" to the effect that the vessel was seized while on the high seas.
4. A copy of a telegram from the same source (Paper D), reporting that the United States' Government have instructed their Minister at Carácas to make a representation to the Venezuelan Government relative to the seizure of the "Alemania."

In addition to the documents asked for by the Attorney-General I am to transmit to you, for your further information, a despatch from His Majesty's Minister at Carácas (Paper E), forwarding an opinion which he was instructed to obtain from a Venezuelan lawyer on the case of the "Virginia," in which the main issue involved is similar to that of the "Alemania," viz., that she was seized for infringing the Decree of the 27th May, 1903, which suppressed the custom-house of Guiria, and for trading with a closed port.

The "Virginia" was a Trinidad sloop owned and manned by British subjects, but sailing under the Venezuelan flag. According to the depositions of the master and mate she was cleared on the 6th June, 1903, for Trinidad by the Custom-house officials at the port of Guiria. On the following day, while off the coast of Venezuela, at Ocurrito, and while her crew had gone ashore to get water, the Venezuelan gun-boat "Veinte tres de Mayo" seized and carried her off, leaving the crew ashore. The cargo, which consisted of six bags of cocoa, as well as the wearing apparel, &c., on board the "Virginia," was also seized. The crew of the gun-boat appear to have sold the cargo for their own benefit in the Trinidadian market, for the master states that he traced the empty cocoa bags at Port of Spain. It appears, from information subsequently furnished by the Venezuelan Government, that the "Virginia," like the "Alemania," was brought to Carúpano and confiscated by order of the National Court of Finance at that place. The two men on board the "Virginia" and a passenger eventually worked their way back to Trinidad.

The legal quotations contained in M. Arismendi's opinion have, with one exception, been verified in the "Collection of Venezuelan Laws and Decrees" transmitted herewith, and marginal notes of the references have been inserted. It has been found impossible to trace the provision, quoted as Article 47, Law XXI, of the Code of Finance, to the effect that "ships coming from abroad without papers showing that they have been properly dispatched by the Consul at their start shall be immediately embargoed and proceeded against." In this connection I am to state that it is understood that at the time when the "Virginia" sailed from Port of Spain the Venezuelan Consul at that port had ceased to issue Consular clearances for Guiria because the latter place was at that period frequently and recurrently in the hands of the insurgents. It probably was held by them on the 7th June, the date of the seizure of the "Virginia," for it is known, through the correspondence which has

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passed relative to the "Alemania," that they held Guiria on the 12th and 13th of that month.

M. Arismendi also alluded to Article I of the Treaty between this country and Venezuela. I am to transmit to you a copy of the Treaty of 1834 (Paper F), Article I of which renews the provisions of the Treaty with Colombia of 1825. In Article II of this latter Treaty, a copy of which is also transmitted (Paper G), will be found the provisions quoted in the opinion.

I have, &c.
(Signed) F. H. VILLIERS.

List of Papers.

(A.)	Vol. xxii, "Collection of Venezuelan Laws and Decrees."	(No. 108)	May	28, 1903.
(B.)	Mr. Bax-Ironside	(No. 53)	March	5, 1904.
(C.)	Ditto	(No. 14, Telegraphic)	April	10, ,,
(D.)	Ditto	(No. 330)	December	24, 1903.
(E.)	Ditto		April	18, 1825.
(F.)	Treaty with Colombia [Library No. 214]		October	29, 1834.
(G.)	Treaty with Venezuela [Library No. 244]			

Report.

In our opinion His Majesty's Government should decline to recognize the Decree of the National Court of Finance at Carúpano, and should demand compensation for the British subjects concerned.

We assume that, as is stated in the Decree, the ports closed were in the hands of the insurgents.

In such circumstances the seizure could be justified only for breach of a blockade duly proclaimed and enforced. A condemnation for breach of Customs Regulations in respect of a port not under the control of the Venezuelan Government cannot be recognized.

(Signed) R. B. FINLAY.
EDWARD CARSON.

Royal Courts of Justice,
April 29, 1904.

ZANZIBAR.

No. 57.

[*Received* **April 27, 1904.**]

Foreign Office to the Law Officers of the Crown.

Foreign Office, April 20, 1904.

Gentlemen,

Cesser of French extra-territorial jurisdiction in Zanzibar. Jurisdiction over foreigners.

AS a result of the negotiations which have recently taken place between His Majesty's Government and the French Government in regard to the cesser of French extra-territorial jurisdiction within the dominions of the Sultan of Zanzibar, it has been agreed that the jurisdiction of the British Courts in those dominions shall in future extend to all French citizens and French-protected persons in that island and in the Island of Pemba.

It has also been agreed that the following two classes of persons shall be considered as "French-protected persons":—

1. Natives of a French Protectorate.

2. Persons *bonâ fide* in the employment of French citizens, residing within the Sultan's dominions.

It has further been agreed that persons whose right to be treated as French citizens or as French-protected persons in Zanzibar is disputed by the British or by the Zanzibar Government shall, pending the settlement of their respective cases by the diplomatic channel, be treated as under French protection, and shall accordingly be justiciable by the British Courts.

The competence of the British Courts in Zanzibar is at present defined by the "Zanzibar Order in Council, 1897," a copy of which is inclosed.[*]

In Article 5 (i) of this Order in Council it is stated that the Order "extends to British subjects and to foreigners, with respect to whom the Government whose subjects they are has, by Treaty or otherwise, agreed with Her Majesty for, or consented to, the exercise of power or authority by Her Majesty," and the term "foreigner" is defined as meaning "a subject or citizen of a State in amity with Her Majesty other than Zanzibar."

Protected persons who are not either subjects or citizens of a foreign Power would therefore appear not to be covered by the Order in Council of 1897, and I have the honour, by direction of the Marquess of Lansdowne, to transmit to you the draft of an Order in Council,[†] extending the definition of the word "foreigner" so as to include the individuals in question.

The phrase "claimed as being under the protection" has been added, in view of the French requirement that the dispute shall be settled through the diplomatic channel.

I am to request that you will take this letter and the draft Order in Council into your consideration, and that you will favour his Lordship with your opinion whether the terms of the draft satisfactorily carry out the object desired, or whether they can be advantageously modified or amended, and, if so, in what respects.

I am at the same time to ask that you will be good enough to add any other observations of a general nature which you may desire to make upon the papers submitted to you herewith.

I have, &c.
(Signed) T. H. SANDERSON.

Report.

We would suggest that it would be better to proceed by amending the "Zanzibar Order in Council, 1897," as follows:—

At end of 3 (vii) add: "and any person under or claimed as being under the protection of such State."

In 5 (i) after "whose subjects they are" insert "or under whose protection they are or are claimed as being."

R. B. F.
E. C.

House of Commons,
April , 1904.

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[*] Zanzibar Order in Council, July 7, 1897 (Confidential No. 6934*).

[†] Draft Zanzibar Order in Council. For text as issued see Order in Council, August 10, 1904 (Confidential No. 8229*).

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